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The United Nations and Humanitarian Intervention

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Since the end of the cold war, in territories ranging from northern Iraq to East Timor, a succession of urgent situations involving mass suffering has resulted in external military interventions that were justified on largely humanitarian grounds. There have also been situations, of which Rwanda and Bosnia are examples, in which there was a strong case for such intervention, but either no action followed or any action taken was too little and too late. All these situations involved the United Nations in numerous and complex ways: the UN has been at the centre of an unprecedented number of field operations and policy debates relating to humanitarian intervention. Member states of the UN disagree strongly on this issue, and different UN bodies have had different, and sometimes opposing, views and roles in respect of it. The subject refuses to go away, and has ominous implications for the UN.

At the heart of the UN's difficulty with humanitarian intervention lies a paradox. For its first 45 years the UN was firmly associated with the principle of non-intervention in the internal affairs of sovereign states—a fact that helped to explain the support that the UN received from governments of post-colonial states. Then, in the post-cold war era, the UN became associated with a pattern of interventionism, often on at least partly humanitarian grounds. From being an institution for the non-use of force, it became an instrument for the use of force. This chapter explores the history, causes, and consequences of this extraordinary and fateful change. I begin by examining the provisions for the use of force in the UN Charter, along with the development of human rights law and the laws of war since 1945. The chapter then reviews UN doctrine and practice on humanitarian intervention both during and after the cold war. The chapter concludes by identifying issues and controversies associated with humanitarian intervention that have arisen at the United Nations, including Kofi Annan's bold call to take the issue seriously, the UN General Assembly's not-so-bold response to a developing practice and doctrine of intervention, and the challenge posed by the Bush

Doctrine of September 2002. The question is raised: Could the problems associated with humanitarian intervention weaken or even destroy the UN?

The starting point of this chapter is that there is not now, and probably cannot be, a definite general answer in international law to the perennial question of whether states have a right of humanitarian intervention in the classical sense.[1] States and individuals continue to have radically different views of the matter. However, within the UN context the question has acquired certain new dimensions, some of which may be capable of being answered. Humanitarian intervention has affected the UN deeply, not just because it is a contentious issue, but also because it has proved to be an occasionally necessary, and almost always problematical, practice.

5.1 The United Nations Charter

In 1942–5, when they were making plans for what became the UN, the major members of the wartime alliance (itself called 'the United Nations') were engaged in a world war against the Axis powers.[2] It might seem logical that in such circumstances discussions for an international organization ought to have encompassed the right of intervention against any tyrannical regime that kills huge numbers of people. As some of their wartime declarations show, the allies were aware that the Nazi regime was committing large-scale killings. Yet, humanitarian intervention was not explicitly an issue in the debates and diplomacy leading to the conclusion of the UN Charter. Among the many reasons for this was the fact that the war was perceived more as a war against external aggression than against tyranny as such. Moreover, there was a natural concern not to frighten off the very entities, namely states, of which the UN was to be formed. As President Roosevelt said in 1944: 'We are not thinking of a superstate with its own police forces and other paraphernalia of coercive power.'[3]

The Charter is widely seen as fundamentally non-interventionist in its approach. Taken as a whole the Charter essentially limits the right of states to use force internationally to cases of, first, individual or collective self-defence, and second, assistance in UN-authorized or controlled military operations. Nowhere does the Charter address directly the question of humanitarian intervention, whether under UN auspices or by states acting independently. However, the Charter does set forth a number of purposes and rules, which are germane to humanitarian intervention. Some of these can be in conflict with others.

The strongest and most frequently cited prohibitions on intervention are those in Article 2. Article 2(4) states: '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.' Article 2(7) states: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.'

Ironically, Article 2(7), now frequently cited by post-colonial states in defence of their newly won sovereignty and in condemnation of any intervention without consent, has a colonial origin. Some of the pressure for the wording of Article 2(7) came from Britain, which was nervous about the strong pressures to dismantle the British Empire, and feared that the Charter might reinforce them. British diplomats, having failed to achieve collective British Commonwealth representation (with appropriate titanic status) in the new organization, fought a long battle to limit the powers of the new organization so far as the Empire was concerned. In particular, Britain worked hard and successfully to introduce wording into the 1944 Dumbarton Oaks proposals that the provisions for the pacific settlement of disputes 'should not apply to situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the State concerned'.[4] This provision was the precursor of Article 2(7) of the Charter.

Notwithstanding the strong presumption against the use of force against a state on account of its treatment of its inhabitants, the Charter leaves some scope for humanitarian intervention in two main ways.

The first arises from the references to fundamental human rights, which are proclaimed to be central purposes of the UN in the Preamble and in Article 1. These references, and all that flowed from them, did much to establish that the UN was no mere trade union of states, as the League had often seemed to be, but was rather a body which could have some real appeal to individuals. The UN includes in its purposes, in Article 1(2): 'To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'; and in Article 1(3): 'To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion'. Article 55 further specifies that the UN shall promote 'universal respect for, and observance of, human rights and fundamental freedoms for all'. These provisions inevitably raise the question, not addressed directly in the Charter, of what should be done if these fundamental human rights are openly flouted within a state.

The second way in which the Charter may leave scope for humanitarian intervention concerns the possibility of such intervention under UN Security Council auspices. In Article 2(7), cited above, the final phrase allows for

enforcement measures within states under chapter VII of the Charter. Chapter VII itself is much less restrictive than had been the equivalent provisions of the Covenant of the League of Nations (1919) about the circumstances in which international military action may be authorized. Under Article 39 the Security Council can take action in cases deemed to constitute a 'threat to the peace, breach of the peace, or act of aggression': in practice, humanitarian crises within states can encompass or coincide with any or all of these. Articles 42 and 51 leave the Security Council a wide range of discretion as regards the type of military action that it can take.

In the drafting process, these two aspects of the UN Charter, which later became significant in considerations of humanitarian intervention, were seen as important but not particularly controversial. The United States and United Kingdom, in particular, favoured both the statement of purposes and principles, and the more specific provisions giving the Security Council notably broad powers. The British, who are often assumed to have been state-centric in their approach, in fact consistently favoured the inclusion of reference to social security and human rights in numerous wartime documents about international organization, from the Declaration by United Nations of 1 January 1942 to the British drafts of the UN Charter preamble in 1945.[5] This was partly because they wanted a strong Security Council, free to act in a variety of situations. However, the inclusion of these two aspects was not due solely to the USA and UK, but was the result of pressure from many states, including the Soviet Union (Russell 1958: 777–9).

Authoritative legal expositions of the UN Charter have reached different conclusions on humanitarian intervention. The commentary edited by Bruno Simma contains an entry by Karl Doehring who, after stating that in the past 'the overwhelming view in international law inclined towards a rejection of humanitarian intervention', goes on to take a sympathetic view of the lawfulness under the Charter of humanitarian intervention, especially in cases where the right of self-determination is involved.[6] However, in the same volume Albrecht Randelzhofer appears to take a more absolutist view, stating: 'Under the UN Charter, forcible humanitarian intervention can no longer, therefore, be considered lawful.'[7]

5.2 Parallel streams: human rights law and the laws of war

Since 1945 there have been many political and legal developments that have made the actions of governments subject to international scrutiny and, ultimately, to certain forms of international pressure. In fields ranging from arms control to the environment there are international standards by which the conduct of states can be evaluated. In particular, the powers of states over

those under their control have been significantly limited. Two separate but roughly parallel streams of international law, both of which relate to the treatment of individuals by governments, have been of particular significance in this regard: (1) *Human Rights Law*, including especially the law relating to torture and unlawful killing; and (2) *The Laws of War* (also called international humanitarian law applicable in armed conflict), especially those aspects that address the protection of civilians.

The key concept of 'crimes against humanity' spans both these streams. It not only defines certain extreme crimes as internationally punishable, but also encompasses the proposition that even a government's actions against its own citizens may be the subject of international action. This long-standing concept was given prominence in the 1945 Nuremberg and 1946 Tokyo charters, and in the Nuremberg and Tokyo judgments of 1946 and 1948 respectively, all of which referred specifically to crimes against humanity. The first multilateral treaty explicitly prohibiting a crime against humanity is the 1948 UN Genocide Convention, which establishes that genocide, even if carried out entirely within the borders of a state, is a matter of international concern. It specifies that any contracting state 'may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide...'.[8] In the 1990s, with renewed focus at the UN on the implementation of international humanitarian norms, the concepts of 'genocide' and 'crimes against humanity' were the subject of articles in the 1993 Statute of the International Criminal Tribunal for the former Yugoslavia, the 1994 Statute of the International Criminal Tribunal for Rwanda, and the 1998 Rome Statute of the International Criminal Court.[9]

The impressive body of human rights law first emerged in the period of effective Western dominance of the UN, but it acquired a momentum of its own. The first landmark, adopted by the General Assembly in 1948, was the Universal Declaration of Human Rights.[10] Although not a treaty, and technically no more than a non-binding declaration, it gave substance and specificity to some of the Charter's general references to human rights, and came to be seen as an authoritative interpretation of them (Simma (ed.) 2002: 926). At the time, it was criticized by the Soviet Union and certain other states as an infringement of sovereignty. After eighteen years of bargaining in a much-changed UN came the two 1966 human rights covenants, respectively, on Economic, Social, and Cultural Rights, and on Civil and Political Rights, both of which were legally binding, entering into force in 1976. There was also a range of treaties on such matters as refugees (1951), elimination of racial discrimination (1965), equal status of women (1979), torture (1984), and rights of the child (1989).[11]

A particular issue within human rights law that has major implications for intervention is the right of self-determination. Article 1 of both of the 1966

UN Human Rights Covenants declares: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.' This reassertion of the Charter principle of 'self-determination of peoples' is open to interpretation as at least potentially implying a right to intervene in a territory if the rights of a people within it are being massively denied.

The large body of human rights agreements concluded under UN auspices had profound implications, not just for the relations between citizen and state, but also for the conduct of international relations. For good or ill, they strongly reinforced the view that a government's treatment of its citizens was a matter of legitimate international concern. They also provided mechanisms whereby a range of human rights issues could be pursued. The 1984 UN Convention on Torture gives a state jurisdiction if the victim is a national of that state (1984 UN Convention on Torture, Article 5). This was the basis of the judgment of the House of Lords on 24 March 1999 in the Pinochet case, that in principle the former Chilean President could stand trial in Spain. However limited its practical outcome, the decision marked a recognition that human rights standards are beginning to make inroads into the rival principle of sovereign immunity.

If such a development now seems to have been inevitable, that is not how it appeared to a majority of states at the time when many of these agreements were concluded. On the contrary, in that period the UN General Assembly also adopted numerous declarations of a general character that strongly reasserted the fundamental importance of the principle of non-intervention. A typical example is the 1965 'Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States', which stated unequivocally: 'No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.'[12]

The laws of war (otherwise known as international humanitarian law applicable in armed conflict) similarly provide some possible bases for intervention in a way that was not evident to all at the time of their adoption. In the decades after 1945, in marked contrast to much international human rights law, the laws of war mainly developed outside a UN framework. The UN was reluctant to become involved since its role was seen as the elimination of war, not the mere mitigation of its effects. As the law developed, the UN gradually became more involved in aspects of its implementation, and in the negotiation of new agreements.

Certain provisions of the main post-1945 treaties on the laws of war can be interpreted as giving some basis for humanitarian intervention. Common Article 1 of the four 1949 Geneva Conventions states: 'The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.' This wording is reiterated in Article 1(1) of 1977 Geneva Protocol I, on international armed conflicts, which additionally provides, in

Article 89: 'In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.' Some have taken the view that these provisions constitute a basis for a wide range of actions against those who systematically violate the basic rules of the conventions.[13] Others, while not denying that a right of involvement may have emerged, have taken a more sceptical view of the original meaning of common Article 1.[14]

The laws of war as they have developed since 1945 contain some provisions which could infringe on the powers of states. For example, a common article in each of the 1949 Geneva Conventions provides for a system of what is widely (and perhaps confusingly) called 'universal jurisdiction' when it specifies that states parties are 'under the obligation to search for persons alleged to have committed... grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also... hand such persons over for trial to another High Contracting Party...'[15] However, this had only limited effects. It did not turn out to be a general licence to states to issue international arrest warrants for foreigners suspected of war crimes.[16]

The laws of war, by no means, point unambiguously in the direction of a right of intervention to stop violations. A number of agreements in the fields of international humanitarian law and humanitarian assistance contain provisions that appear to exclude the idea that such agreements could provide a basis for military intervention. These provisions are to be found mainly in international humanitarian law treaties and in resolutions of the UN General Assembly on humanitarian assistance.

Since the question of humanitarian intervention arises primarily in connection with situations that are internal to a particular state, the most relevant part of international humanitarian law is that which relates to non-international armed conflicts. Yet, this part of international law offers little support for interventionism. In the 1977 Geneva Protocol II—the main agreement on non-international armed conflict—Article 3, entitled 'Non-intervention', states (in full):

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

Treaties applicable in international armed conflicts contain some comparable wording. A preambular clause in 1977 Geneva Protocol I states 'that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed

as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations'. Similar non-interventionist language can be found in the Preamble of the 1998 Rome Statute of the International Criminal Court and in Article 22 of the 1999 Second Hague Protocol on Cultural Property. The states negotiating these agreements may well have spotted the risk that the laws of war, like human rights law, might be used in order to justify some acts of intervention. The non-interventionist clauses that they inserted are a plea to major powers not to interpret these treaties as a ground for intervention.

5.3 The United Nations and interventions: 1945–90

In the cold war years, most members of the UN had good reason to be suspicious of any doctrine or practice of humanitarian intervention. Interventions and proposals for interventions by either of the superpowers or their allies were viewed as suspect on both legal and prudential grounds. Already, in 1946 the question of possible action against General Franco's rule in Spain proved extremely difficult, and highlighted the variety of possible interpretations of the Charter (Hamilton 1995: 46–63). From the mid-1960s onwards the new post-colonial members of the UN were not about to tolerate a reversion to interventionist doctrines, which they associated with the era of colonialism. The response of UN bodies to military interventions, while by no means entirely consistent, was in general to condemn them, including those with purportedly humanitarian justifications.

Security Council records are not the best place to look for an examination of the views of states on interventions during the cold war. Many issues were never discussed at all in the Security Council; and even when they were, many draft resolutions condemning particular interventions were vetoed, usually by the USSR or the USA.[17] The main focus here is on the General Assembly's stance, since that provides a fuller record, and an indication of the views of the membership as a whole.

The General Assembly almost routinely condemned a number of military interventions, including the Anglo-French intervention in Suez (1956), the Soviet intervention in Hungary (1956), the Indonesian intervention in East Timor (1975), the Moroccan intervention in Western Sahara (1975), the Vietnamese intervention in Cambodia (1978), the Soviet intervention in Afghanistan (1979), and the US-led interventions in Grenada (1983) and Panama (1989). However, not all interventions were condemned. For example, the General Assembly failed to criticize the Indian intervention in Goa (1962), partly because of sympathy with the principle of retrocession of colonial enclaves; and it did not condemn the Soviet-led intervention in Czechoslovakia (1968), because the Czechoslovak government, acting under duress, asked that the matter not be discussed.

During the cold war, the most interesting conflict of opinion within the UN on questions relating to humanitarian intervention was in connection with the India–Pakistan War of 1971. On 3 December 1971 Indian forces invaded the eastern part of Pakistan, following extreme cruelties perpetrated there by Pakistani forces in the preceding months. India justified its actions in terms which, apart from encompassing an element of self-defence, referred repeatedly to the urgency of responding to a situation that had resulted in ten million refugees fleeing from East Pakistan to India. On 4 December 1971, in a discussion in the UN Security Council on the Indian military action which had just commenced, the Indian representative said: 'We are glad that we have on this particular occasion nothing but the purest of motives and the purest of intentions: to rescue the people of East Bengal from what they are suffering.' India's policy was supported by the Soviet Union, but opposed by a majority subscribing to the language of non-interventionism. The US representative condemned the Indian action: 'The time is past when any of us could justifiably resort to war to bring about change in a neighbouring country that might better suit our national interests as we see them.' At the Council's meetings, three resolutions, which India strongly opposed, calling for a withdrawal of forces and a ceasefire were defeated only because of the Soviet veto.[18] After the Security Council decided on 6 December to refer the matter to the General Assembly under the 'Uniting for Peace' procedure, the General Assembly passed a ceasefire resolution almost identical to the one vetoed earlier in the Security Council.[19] The war only ended on 16 December, with the surrender of Pakistani forces in East Pakistan.

There were notable exceptions to the thrust of the UN's general pronouncements and resolutions opposing any kind of intervention or interference in states. The Security Council determined that two particular situations that were largely internal (in both of which a critical issue was racial domination by a white minority population) constituted threats to international peace and security: Rhodesia (1966) and South Africa (1977). In both cases it initiated sanctions under chapter VII of the Charter.[20] In neither case did the Security Council view the situation as one of acute emergency; nor did it authorize direct external military intervention within the state concerned. Thus, the Council did not support humanitarian intervention in these cases. However, it did appear to accept that domination by a racial minority, and refusal to take into account the wishes of the majority population, were factors that helped to justify taking measures under chapter VII.

None of this implied any more general challenge to the principle of sovereignty, which continued to be emphasized in UN General Assembly resolutions on many subjects. For example, resolutions on the question of aid to victims of emergency situations at one and the same time asserted the primary importance of such aid, and the continuing validity of the principle of state sovereignty, a typical example being a resolution adopted after the 1988 earthquake in Armenia that reaffirmed both 'the importance of

humanitarian assistance for the victims of natural disasters and similar emergency situations' and 'the sovereignty of affected States'.[21] Some have viewed this and subsequent General Assembly resolutions as evidence of an emerging 'right to humanitarian assistance', or even a basis for a right of humanitarian intervention.[22] However, it is wishful thinking to read the provisions of these resolutions as moving even one inch beyond the sovereignty-respecting position of inviting, appealing to, and urging states to facilitate the work of intergovernmental and non-governmental humanitarian organizations.

The pre-1990 writings of many scholars in international law and relations addressing the question of humanitarian intervention classically defined often had little to say about the UN's actual and potential roles in this area. In particular, writers who were opposed to recognition of a right of such intervention, emphasizing its incompatibility with Article 2(4) of the UN Charter, paid relatively little attention to the possibility that such intervention might be authorized by the UN Security Council.[23] On the other hand, a minority of writers suggested that humanitarian intervention was compatible with the existence, legal principles, and developing role of the United Nations.[24] In 1984, Hedley Bull suggested that an era characterized by increased attention to human rights, and by an increased focus on the UN, was bound to see a revival of doctrines of humanitarian intervention. He noted:

> Ultimately, we have a rule of non-intervention because unilateral intervention threatens the harmony and concord of the society of sovereign states. If, however, an intervention itself expresses the collective will of the society of states, it may be carried out without bringing that harmony and concord into jeopardy. (Bull *1984*b: 195)

What conclusions can be drawn from UN doctrine and practice in matters relating to humanitarian intervention during the cold war years? The non-intervention rule continued to be widely seen as fundamental. However, there were some conflicting trends and disjointed moves which pointed, often ambiguously and always controversially, in the direction of accepting the legitimacy of intervention in support of an oppressed and threatened population, especially where it was seen as a victim of colonial rule. These trends related more to intervention to support self-determination struggles than to humanitarian intervention as traditionally conceived. In addition, some writers glimpsed the possibility that the UN Security Council itself might authorize interventions on humanitarian grounds.

5.4 The United Nations and interventions: 1991–2000

After the end of the cold war, the UN became involved in the practice and doctrine of humanitarian intervention in an extraordinary variety of circumstances. The problem of whether forcible military intervention in

another state to protect the lives of its inhabitants can ever be justified became politically sensitive due to the conjunction of a large number of factors, many of which were discussed in Chapter 1. The most significant new factor was the changed nature of great power relationships within the Security Council. From the late 1980s onwards, with the decline and fall of the communist system in the Soviet Union, the Permanent Five were more disposed than before to work together on issues of peace and security. Moreover, there was a greater willingness to view internal conflicts as potential threats to international stability, and therefore a matter for Security Council action. At the same time, serious tensions between major powers remained, often hampering agreement on military action; and many UN members continued to be nervous that major powers, whether or not acting in a UN framework, might intrude into what they still saw as their internal affairs.

5.4.1 Nine cases

During the period 1991–2000 the question of whether external institutions should, on partly or wholly humanitarian grounds, organize or authorize military action within a state arose frequently. Within the UN Security Council, it did so most sharply in nine cases. In each case there was, sooner or later, a humanitarian intervention of some kind, whether or not it was with explicit UN authorization and host-state consent (years of the relevant Security Council resolutions are in brackets): Northern Iraq (1991), Bosnia and Herzegovina (1992–5), Somalia (1992–3), Rwanda (1994), Haiti (1994), Albania (1997), Sierra Leone (1997–2000), Kosovo (1998–9), and East Timor (1999).

These nine cases, while indicating how deeply the UN has become involved in humanitarian intervention, also reinforce doubts about the extent to which 'humanitarian intervention' is a separate legal or conceptual category. With the possible exceptions of the French-led operation in Rwanda in 1994 and the Italian-led operation in Albania in 1997,[25] neither the UN Security Council, nor states acting independently, have cited humanitarian considerations alone as a basis for intervention. They have generally, and justifiably, referred to other considerations as well, especially considerations of international peace and security. This is not only for the obvious procedural reason that such reference is a *sine qua non* for any action by the Security Council, but also because different issues do overlap in practice.

In all nine cases the circumstances were such as to justify a serious international response. There had been massive social disruption and violence, with large numbers of people becoming internationally displaced persons or refugees. The causes of the disruption varied greatly: in some cases the key factor was the collapse of state institutions and the emergence of widespread disorder, while in others it was the brutality of an over-powerful state. Whether every single case really constituted a 'threat to international peace and security'

is less sure, but any quibbles on this did not prevent the UN Security Council, in all but one of these cases, from explicitly referring to chapter VII of the UN Charter. Even with respect to the exception, northern Iraq in 1991, the Security Council made a veiled allusion to chapter VII by referring to threats to international peace and security.

The results of these interventions were mixed. In most if not all of them, intervention, even if too little or too late, did help to restore conditions in which people could return to their homes. The number of refugees and displaced persons who have returned, and the much more limited scale of any new outflows, is perhaps the most important single measure of the effectiveness of these interventions. However, the interventions have not had an especially impressive record of achieving a stable political order. For example, neither in Somalia following the intervention in 1992, nor in Haiti following the intervention in 1994, has there been a fundamental departure from long-established patterns of fractured and violent politics. In northern Iraq and Kosovo, interventions on humanitarian grounds did not, and perhaps could not, resolve issues of ethnic rivalry and disputes over political status.

The fact that there was much intervention with humanitarian purposes can easily distract attention from the many failures of the UN to act effectively, or even at all, in certain cases of extreme violence against civilian populations. In Rwanda in April 1994, and at Srebrenica in Bosnia in July 1995, the presence of UN peacekeeping forces did not save the victims of slaughter. In both cases the UN did subsequently authorize a use of force with a protective mandate, and in 1999 it issued the results of inquiries into the failure to act effectively at the time of these atrocities.[26] The reasons for the failure to protect endangered civilians included concern about the capacity, and safety, of the UN peacekeeping forces on the spot, lack of military preparedness for a combat role, reluctance of outside powers to risk the lives of their forces in a humanitarian cause, administrative delay and muddle, and a commitment to UN values of impartiality and non-use of force in situations where they had ceased to be appropriate. As Michael Barnett has written in his inside account of US and UN decision-making over Rwanda, what the UN did was 'all theater and public relations', but its failure to respond forcefully was also 'the *only* available choice given the reality on the ground, what member states were willing to do, the rules of peacekeeping, and the all-too-clear limits of the UN. Rwanda was beyond those limits.' He emphasized that, however questionable it was, the UN's failure to act was 'grounded in ethical considerations'.[27]

The role of individual states and alliances in the military aspects of these interventions is noteworthy. When force had to be used in a situation where military resistance was anticipated, it was generally deployed, not by the UN as such, but by a state or a coalition. The United States assumed the lead in all four cases of intervention without consent, and also in the episodes of NATO military action in Bosnia in 1993–5. Other states took lead roles in the

NATO military action in Bosnia in 1993–5. Other states took lead roles in the other four cases: France in Rwanda, Italy in Albania, the United Kingdom in Sierra Leone, and Australia in East Timor. Thus, these cases of humanitarian intervention have confirmed the more general truth that when force has to be used in support of UN purposes, its use does not follow those provisions of the Charter that envisage direct UN management of force. States, it appears, are still indispensable as mechanisms for the effective use of force.

5.4.2 Host-state consent

The nine cases demonstrate that the distinction between coercive intervention and intervention by consent has been much more blurred in practice than it ever was in theory. Of the nine cases, only four (northern Iraq, Somalia, Haiti, and Kosovo) involved a clear decision to engage in anything like a 'humanitarian intervention' in the classical sense—that is, without consent of the host state. However, even in these four cases elements of consent to the international presence did sooner or later play some part. In the case of Haiti, reluctant consent was finally given while the invading force was airborne.

In the remaining five cases (Bosnia, Rwanda, Albania, Sierra Leone, and East Timor) the international presence for the most part had a degree of host government consent. Again, in many of these cases—particularly Indonesia's acceptance of the operation in East Timor—host-state consent was given only reluctantly, and might not have been given at all if the proposed intervention had not had a degree of UN authorization and control. In all five of these interventions with host-state consent certain actions were taken which did not have such consent. Even in government-held areas intervening forces which operated on the basis of consent sometimes took particular actions without the agreement of the authorities of the country concerned; and there was an implication in many Security Council resolutions that the international activity in the territory might continue even if host-state consent were to lapse.

In all cases, the fact that there might be some degree of consent from the central authorities did not mean that there was a general situation of consent. Intervening forces, even with full consent of the host state, often had to operate in parts of the territories concerned that were under hostile—for example, rebel—control. The degree of consent could vary greatly from one place to another, and from one moment to the next.

5.4.3 International authorization

In all nine cases in 1991–2000 the UN Security Council passed resolutions calling for the observance of humanitarian norms by a particular target state

or by parties to a particular war; and in seven of the nine cases it explicitly authorized an intervention, whether by the forces of a state or coalition, or by UN peacekeeping forces, or a combination of the two. This is a record of activity going far beyond anything in the first forty-five years of the UN's existence, and it suggests that decision-making regarding humanitarian intervention, though not a monopoly of the Security Council, has become one of its key functions.

Of the seven cases in which the Security Council authorized an intervention, five for the most part had the advantage of host government consent (Bosnia, Rwanda, Albania, Sierra Leone, and East Timor). Thus, at least in legal terms the international action taken in these cases was relatively unproblematic. The two authorizations without host-state consent (Somalia and Haiti) represent a more remarkable development of the Security Council's powers. The fact that the Security Council authorized these two 'classical' humanitarian interventions, and that its right to do so was not contested by the UN membership generally, suggests that the Council is seen as being within its powers in authorizing humanitarian interventions without host-state consent. However, as Nick Wheeler suggests in his chapter, any such right is not absolute. In both cases the Security Council used language emphasizing the uniqueness of the particular situation addressed. The key resolution on Somalia, passed in 1992, said in the preamble: 'Recognizing the unique character of the present situation in Somalia and mindful of its deteriorating, complex and extraordinary nature, requiring an immediate and exceptional response.' Two years later, almost identical wording was used in the equivalent resolution on Haiti.[28] It appears that these phrases were inserted at the insistence of members of the Council who were apprehensive about creating precedents for interventions. Thus, the Council's approval of particular instances of humanitarian intervention has stopped well short of general doctrinal endorsement.

The remaining two of the 'classical' humanitarian interventions, northern Iraq and Kosovo, did *not* have explicit Security Council authorization. In both cases, it was evident that such authorization was not likely to be obtained, and so it was not formally requested. Military action was initiated by groups of states with the stated purpose of achieving the UN Security Council's objectives, but without its authorization; and it was only after such initial non-UN military action that a UN-authorized presence was established and deployed, benefiting from the consent (albeit belated) of the host state. Of these two, the Kosovo operation was much the most controversial, because it involved war, and because in the short term it increased the threat to the very people supposedly being protected. The Kosovo crisis raised the difficult question of the legality of an intervention in a case in which the Security Council had agreed on the seriousness of a problem, and had identified it as a threat to international peace and security, but had not been able to agree on military action.

Although the desirability of UN Security Council authorization for any intervention is widely accepted, even by many who would otherwise challenge the existence of any right of intervention, there are difficulties about viewing such authorization as absolutely essential. Such a conclusion would mean accepting that five states each have a veto on interventions, with the effect that any government able to count on the support of any one of them at the UN could engage in mass killings with a degree of impunity. It would also mean that the views of states in the region concerned counted for little or nothing. The International Commission on Intervention and State Sovereignty (ICISS) was right to say in its 2001 report that the UN Security Council could not have an absolute monopoly on the authorization of interventions for human protection purposes (ICISS 2001*a:* 53–5).

The difficulties that have been experienced in securing authorization from UN bodies mean that some scope has remained for action by individual states and groups of states, and for authorization by regional bodies. In many of the nine cases listed above, regional bodies had a significant role in issues relating to humanitarian intervention, and in some cases authorized it. Such authorization is politically and legally less convincing than that of the UN, with the result that it is difficult to arrive at a clear answer regarding the legality of interventions on humanitarian grounds, such as that in Kosovo in March–June 1999, not based on UN Security Council authorization.[29] There is bound to be pressure to bring an operation that did not initially have UN blessing back under the authority of the Security Council or of the UN more generally, as happened regarding both Kosovo and (in much more limited form) northern Iraq.

Authorization of an action by the UN or a regional body, while highly influential, is not the only possible source of legitimacy. Judgements about the legitimacy of an action depend not only on which international bodies give it formal approval, but also, quite properly, on perceptions of the facts on the ground. Some interventions may have a strong legal basis in the form of explicit UN Security Council approval, and yet quickly lose their legitimacy owing to a failure to achieve their humanitarian objectives or to adhere to humanitarian norms. The unravelling of the UN Operation in Somalia II (UNOSOM II) in 1994–5, following its losses in violent incidents and its involvement in killings of Somalis, is the clearest example.

Within the UN, is there an alternative to the Security Council as a source of authorization? One theoretical possibility is that, in cases where the Security Council is unable to act, the matter should be addressed by the General Assembly under its 'Uniting for Peace' procedure.[30] This requires a two-thirds majority of the Assembly.[31] In certain long-running crises there might appear to be a certain logic in pursuing this procedure. However, the permanent members of the Security Council show no sign of transferring their key powers to the General Assembly. There are, in any case, two serious difficulties with this procedure. First, getting a two-thirds majority is likely to

be a time-consuming process—a luxury in a situation of extreme urgency in which large numbers of people are at risk of being killed. Second, the General Assembly has power only to make recommendations on such matters, not decisions with binding force. Despite these difficulties, the possibility that the General Assembly might embark on such a course might be 'an important additional form of leverage on the Security Council to encourage it to act decisively and appropriately' (ICISS 2001*a:* 53).

5.5 Issues and controversies at the United Nations

The international community's repeated involvement in interventions with a humanitarian dimension has deeply affected the UN. It has imposed new tasks and expectations, and has required changes in the way the organization works and thinks. It has also reinforced the view that the organization (particularly the Security Council) needs to be reformed. It has elicited opposing views from states, and has significantly changed the images of the UN held by governments and their subjects. Most remarkably, it has led Secretary-General Kofi Annan to take a strong personal stance on a controversial issue.

5.5.1 Kofi Annan's stance

In a succession of speeches and papers Kofi Annan has reminded states that there can be a need for intervention in cases of urgent humanitarian necessity. His first major contribution on this subject was in a speech at Ditchley Park, Oxfordshire, in June 1998, in which he stated that the UN Charter 'was never meant as a licence for governments to trample on human rights and human dignity'. In this and subsequent statements, along with most proponents of humanitarian intervention, he suggested certain criteria which should be met if such intervention were to be justifiable. At the beginning of the NATO bombing campaign over Kosovo in March 1999, he issued a statement which recognized that there were occasions when force might be necessary, but also referred to the importance of Security Council authorization. He pursued the theme in a report on protection of civilians in war dated 8 September 1999, and in his address to the UN General Assembly later that month.[32] In the 1999 UN General Assembly debate following Kofi Annan's address, only eight states supported the position he took on the 'developing norm in favour of intervention to protect civilians from wholesale slaughter'. The great majority of states addressing this matter were opposed.[33] In addition, the UN's Office of Legal Affairs has remained extremely circumspect about any purported legal doctrine of humanitarian intervention.

Annan's speeches on intervention have chimed with two significant long-term changes in how the state is viewed. First, there is a tendency to see

the state as subject to certain international institutions, decisions and norms—a point that had already been emphasized by his predecessor Boutros-Ghali in his *Agenda for Peace* in 1992 in which he wrote: 'The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality.'[34] Second, there is an emerging view that the state should be understood to be the servant of the people, not its master. Some UN General Assembly resolutions have pointed in the same direction.[35] A stronger variant of this view is that state sovereignty is vested in the people, not in the government. Neither of these changes in how the state is viewed constitutes in itself a general justification of humanitarian intervention. An argument for intervention based on the presumed failure of a government to represent the majority of a population would not be relevant in a case, such as Rwanda in 1994, in which a government engaging in crimes (in this case genocide) against a minority could at least claim to represent a majority of the population. However, such an argument can help to justify humanitarian intervention in cases, such as Haiti, in which an armed minority has seized power in a state, overthrowing a democratically elected government, and continues to defy international efforts to restore an elected government.[36]

Annan's campaign has been more than a personal and institutional act of atonement for the failures to act in Rwanda and at Srebrenica. Most importantly, it has contributed to a subtle change in the terms of international debate. While there is no agreement on a new norm, there is now more awareness than before that intervention for humanitarian purposes cannot be completely excluded. Intervention can no longer be defined, as it often was in the past, as 'dictatorial interference': it is now associated with democracy and human rights. There is also more awareness that in peacekeeping or other operations under UN auspices there may be a need to use force, not least to protect threatened communities. Annan's campaign should be interpreted as a partially successful attempt to change the terms of international debate, rather than as a call for any specific change in international law.

Annan's approach received support in December 2001 in the shape of the ICISS report. The principal contribution of the report is implied in its title. It seeks to divert the international debate away from a single-minded obsession with military intervention, and to focus instead on the 'responsibility to protect'.[37] This is a responsibility of all governments, first and foremost in their own territories. The essence of the Commission's argument is that only if governments fail in this duty, and if preventive measures also fail, may coercive actions be needed. These 'may include political, economic or judicial measures, and in extreme cases—but only extreme cases—they may also include military action'. While Kofi Annan has supported the ICISS approach, it remains to be seen whether it will help to overcome states' suspicions of doctrines of humanitarian intervention.

5.5.2 Opposition of states and the General Assembly

Large numbers of post-colonial states, particularly in Africa and Asia, have opposed, and continue to oppose, the principle of humanitarian intervention. Many such states see themselves as vulnerable to foreign intervention, and are understandably sensitive about threats to their sovereignty. In some cases other and less creditable considerations are involved: many an oppressive regime would like to stop the emergence of a new norm that could upset its monopoly of power within the state.

In the UN, as in other fora, representatives of states have put forward numerous justifications for a sceptical stance towards 'humanitarian intervention'. The very term raises a daunting number of questions. Many suspect that the label 'humanitarian' conceals a range of other motives for, interests in, and outcomes of an action. In developing countries there is a strong fear that the Western powers have forgotten the economic and social agenda because of an obsession with the peace and security agenda. Behind such doubts there is often a degree of scepticism verging on hostility in regard to the actions of the United States. Even if a US-led intervention has its origins in genuine concern about atrocities, it may be perceived by other states as an act of expansionism and a strategic threat. Russia's views at the outset of NATO's 1999 war over Kosovo reflected such considerations, which were reinforced by Russia's sense of slight caused by the recent accession to NATO of three former allies, Poland, the Czech Republic, and Hungary. In addition, any practice of humanitarian intervention is inevitably selective, leading to unavoidable accusations of double standards or worse. The United States, and with it the UN, are accused of being willing to stop ethnic cleansing of the Albanian majority in Kosovo, but failing to act in Rwanda, the West Bank, Tibet, and Chechnya. Humanitarian intervention can easily be seen as just one part of a supposedly systematic pattern of US dominance of the UN. Whether such objections have real substance, they suggest that humanitarian intervention offers no quick escape from the jealousy and political warfare that has always accompanied power politics. The General Assembly's opposition, based on such considerations, is not absolute. It is directed much more against any formal doctrine of humanitarian intervention (especially in its classical sense) than it is to the occasional practice of intervention as it developed in the 1990s. The General Assembly never explicitly condemned NATO's war over Kosovo, or any of the other cases in the 1990s of military action for humanitarian purposes. The perception of some observers that states speak with different voices in the General Assembly and in the Security Council reflects the fact that in the former states frequently deal with general issues, whereas in the latter they almost always deal with concrete and current cases.

A notable feature of the debates at the UN is the way in which humanitarian intervention has been widely viewed as a separate issue from intervention in support of self-determination struggles. Some states (mainly Western, in

the 1990s) have supported the first, some (mainly third world, in the 1970s and after) the second. Viewing these two categories of intervention as distinct and unrelated, and not discussing them together, is understandable. While humanitarian issues are widely (though not universally) viewed as 'non-political', and not directed at achieving a specific permanent change in the status of a territory, self-determination is clearly a political goal. Yet humanitarian and self-determination issues do, in actual fact, overlap. It could be useful, not least in reducing the emotional temperature of the issues in international diplomacy, to recognize that humanitarian intervention is not a tidy category on its own, but part of a larger legal and political debate about very exceptional circumstances in which certain uses of force may be justified or at least tolerated.

If the General Assembly will not accept any doctrine of humanitarian intervention, will it support a more modest commitment, as proposed by the ICISS, in favour of a 'responsibility to protect'? A draft resolution has been circulating at the UN, but any substantive document embodying this principle is likely to require a lengthy and difficult process of negotiation, which has been made more difficult by the emergence of the 'Bush Doctrine' which many states see, rightly or wrongly, as representing a general interventionist threat of such a kind as to make them respond by renewing their commitment to non-intervention.

Indeed, the interventionism of the years since 1990 has not been confined to intervention on humanitarian grounds. Any world in which there is a dominant major power that is skilled at managing coalitions, and in which there are also numerous international agreements and principles that need some measure of enforcement, is bound to see a considerable interest in interventionism. In these circumstances, it is not surprising that some, such as Michael Glennon, have argued that a completely new world has emerged in which the whole UN Charter-based body of law seeking to outlaw inter-state violence is fundamentally out of date, and needs to be replaced by a new interventionist regime.[38] The idea that existing international law on the *jus ad bellum* can be ignored, or needs to be completely revised, has special appeal in the United States. The reasons are numerous: the simple fact of the USA's preponderance of military power is one, but not the only one. The special difficulties of some of the challenges that the USA has faced since 1990, and the frustrations of tackling them in a multilateral framework, have also been factors. Furthermore, the USA has inherited from its revolutionary origins and its early history certain revolutionary traditions of thought about international relations that are suspicious of old-fashioned inter-state relations and all their diplomatic, legal, and military accompaniments.

In September 2002 President Bush announced a new 'National Security Strategy' that is bound to affect debates on the right of states to use force.

Although the word 'intervention' is never used, the document is implicitly interventionist on eclectic grounds that include fighting rogue states, tyrants, and terrorists, and acting against certain threats before they are fully formed. The document is no pure unilateralist manifesto: in two short passages it recognizes the value of acting through multilateral institutions, including the UN.[39] However, the 'Bush Doctrine' has caused anxiety because, in this initial version at least, it conveys little sense of the continuing importance of the non-intervention rule. It has had the effect of reinforcing fears both of US dominance and of the chaos that could ensue if what is sauce for the US goose were to become sauce for many other would-be interventionist ganders. One probable result of the enunciation of interventionist doctrines by the United States will be to make states even more circumspect than before about accepting any doctrine, including on humanitarian intervention or on the responsibility to protect, that could be seen as opening the door to a general pattern of interventionism.

Paradoxically, another probable result may be to move the focus of decision-making about the use of force more towards the UN Security Council. This is because interventions on preventive grounds, or to topple dictatorial governments, usually pose problems about whether they conform to international law, and whether they will have the effect of worsening international tensions. One way around such problems, and also around domestic political doubts, is to seek international approval through an authoritative body. Other things being equal, a fundamental distinction is still drawn between intervention with Security Council approval, which tends to be tolerated, and intervention without it, which is often viewed internationally with suspicion.

5.5.3 Changes in Security Council powers, composition, and decision-making

The facts that the Security Council has the power to authorize interventions, and has often done so since 1990, have contributed to a sense that the Security Council actually matters. Questions have been raised about its powers, its composition, and its manner of reaching decisions on life and death issues.

The considerable legal powers of the Security Council have been the subject of much discussion and analysis in the post-cold war era. The exercise of these powers, not least in cases of intervention, has confirmed the breadth of the discretion conferred on the Council to proclaim a situation a 'threat to peace and security'—the essential legal preliminary to its taking action on a matter. Furthermore, the Council has remarkable powers under Article 25 of the Charter to require UN member states 'to accept and carry out the decisions of the Security Council in accordance with the present Charter'. There are legal limits on the Council's powers, but they are modest (Gowlland-Debbas 2000: 301–11; Nolte 2000: 315–26; Simma (ed.) 2002: 442–64, 701–16).

In reality, the Council's powers are limited more by nature than by specific legal provisions. They are limited by the fact that states still maintain a strong capacity for independent decision-making: powers so extensive that the Security Council has never dared to do what it is technically entitled to do under Article 25, namely, to require all states to take part in a military action. Furthermore, even operations that have support from the Security Council frequently run into practical difficulties, one of the most serious of which is the dismal fact that states participating in an action are often prepared to put only minimal resources into it. When such states are primarily concerned with limiting their losses, and with exit strategies, they almost invite opponents to attack them. The disillusion in the United States about the UN, however artificial, ill-informed, and Washington-based it may be, is evidence of the reluctance of great powers to get heavily committed to supporting the operations of an organization they do not entirely control.

The long-standing question of the Security Council's composition has also been affected by its practice of intervention. There have been accusations that there has been selectivity in decisions about intervention due to the preoccupations of the Permanent Five. Yet expansion of the Security Council would not be simple. It has sometimes proved difficult to reach decisions in a Security Council with fifteen members, five armed with the veto. True, this difficulty should not be exaggerated: the real obstacle to getting prompt and effective action in Bosnia in 1992–5 and in Rwanda in 1994 was not so much lack of capacity of the Security Council to reach decisions, but the lack of willingness of states (including members of the Council) to implement such decisions as were reached. Nonetheless, it is likely that it would be harder to achieve results in an enlarged Security Council. This suggests that if the much-needed expansion of the Security Council does take place, it will have to be accompanied by other changes to improve its capacity, and that of its member states, for taking and implementing decisions promptly.

The process by which decisions are made to intervene, or not to intervene, has been undergoing significant scrutiny and change. In an age of instant communications, such decisions are taken against a background of widespread but often superficial awareness of the human dimension of humanitarian crises. Improvements in decision-making procedures, especially any that improve first-hand knowledge of the situation in the territory concerned, are needed in their own right. They can also help to overcome perceptions of humanitarian intervention as exclusively reflecting the interests and preoccupations of Western states.

There have been three specific changes in recent years in how Security Council decision-making regarding intervention is conducted and then examined at the UN:

1. *Permitting certain non-state bodies to give testimony to the Council.* Regarding Kosovo, UNHCR gave such testimony on 10 September 1998. This had a

major impact on the deliberations of the Council, was followed by some tough resolutions, and is an interesting case of one part of the UN system effectively lobbying another part into taking action.

2. *Sending delegations from the Security Council to investigate particular situations on the ground.* This was done in September 1999 in respect of East Timor, before the Australian-led force was authorized. In October 2000 eleven members of the UN Security Council visited Sierra Leone and other states in the region to examine the UN role.
3. *Conducting serious retrospective examinations of humanitarian crises involving the Council.* Two important examples are the detailed account of the establishment, maintenance, and fall of the 'safe area' of Srebrenica in Bosnia in 1993–5, and related events; and the survey of genocide in Rwanda in 1994 and the failure both of the UN and its member states to act.[40]

Among the hard problems that remain is the acceleration of the Security Council's decision-making process. The three changes outlined above may on occasion help with expediting the decision-making process, but even this cannot be guaranteed. The first two in particular could be used as a delaying tactic. By definition, cases of extreme humanitarian emergency are urgent; and the spectacle of UN inaction in crises is damaging. Yet the UN, including the Security Council, has often been seen by states as an institution on which insoluble problems can be dumped, sometimes with the unstated but detectable purpose of avoiding decisive action. Another delayed or inadequate response, as in Rwanda or Bosnia, remains a distinct possibility.

5.5.4 Use of force distinct from peacekeeping and enforcement

In many crises during the 1990s, the absence of preparedness to use force in a manner appropriate to extreme humanitarian crises was at least as serious an obstacle to intervention as was the lack of an agreed legal doctrine of humanitarian intervention. A key issue is for the UN and its member states to develop a conception of the use of armed force that is distinct from the familiar forms of peacekeeping and enforcement. Such a conception has been needed, not just in cases where a humanitarian intervention into a country is being contemplated, but also in cases where UN peacekeeping forces are already in place and, in a deteriorating situation, witness atrocities or ceasefire violations. In such cases, the notions of neutrality, impartiality, and the non-use of force (all of which have been associated with peacekeeping) are not necessarily appropriate.

The purposes for which force can be used in humanitarian operations include the following: defending safe areas, protecting threatened populations, opposing and even trying to remove a regime, protecting humanitarian relief,

protecting international observers, and rescuing hostages. The performance of such tasks requires armed forces that are configured, trained, and equipped for action in a hostile environment, and have an effective system of command and control, whether UN-based or delegated to a state or international body. Such action may also require the withdrawal of UN peacekeeping forces and related personnel from places where they are vulnerable to reprisals and hostage-taking. In some cases, a peacekeeping force might need to be so armed from the start that it can adopt a forceful protective or combat role. In other cases, it might metamorphose into a body with such capacity: the transformation of UNPROFOR in Bosnia in May–August 1995, and then the further post-Dayton transformation into IFOR and SFOR, being such cases.

The UN has begun to address the use of force in UN operations. In its report issued in 2000, the Panel on UN Peace Operations chaired by Lakhdar Brahimi took some limited steps in this direction. It stated, for example:

> United Nations peacekeepers—troops or police—who witness violence against civilians should be presumed to be authorized to stop it, within their means, in support of basic United Nations principles. However, operations given a broad and explicit mandate for civilian protection must be given the specific resources needed to carry out that mandate.[41]

It was symptomatic of the state of the debate in the UN that the Brahimi panel was able to make progress by entirely avoiding the question of humanitarian intervention as such. A glance at the panel's composition, which reflected real divisions on this issue in the world generally, indicates that there would have been no prospect of agreement on the principle of humanitarian intervention. The Brahimi report avoided certain other matters as well: it did not address squarely the systems of military support, control, and deployment that would be necessary for such missions to be conducted effectively. However, the report was a step in the direction of getting more serious about the use of force. A key remaining question concerns the extent to which UN member states generally will prepare their armed forces for coercive operations under UN auspices: failure to do so will merely perpetuate the unhealthy reliance on a very few states—principally the USA, UK, and France—to do the UN's military work.

The various UN-related efforts to protect vulnerable populations since 1991 suggest some uncomfortable lessons about how force should be organized and used. Two stand out. *First*, it is no accident that the Security Council has shown a marked tendency to rely on the armed forces of states and coalitions, as distinct from under UN command and control, not merely for enforcement actions against international aggression, but also for operations with human protection purposes. Many reports, including Brahimi and ICISS, have failed to note how consistent this pattern is. The reasons for it include not just the greater military resources of states, but also their greater capacity

for strategic planning and fast decision-making. *Second,* it is often impossible to provide protection on a neutral and impartial basis, simply responding to attacks and threats. Instead, there is a need to recognize the principal threat and adopt a robust policy towards it, an approach that may on occasion require something close to an alliance with one or another party to a conflict. This is a plausible interpretation of how policy eventually developed in Bosnia in 1995, East Timor in 1999, and Sierra Leone in 2000. In all these cases such an approach helped to bring a phase of armed conflict to an end. These are difficult lessons for various UN bodies and agencies to absorb. In particular, they suggest that even more radical departures from the traditional doctrines associated with UN peacekeeping may sometimes be called for than the modest changes accepted in the Brahimi and ICISS reports (*Report of the Panel on United Nations Peace Operations* 2000: 48–55; ICISS 2001*a:* 57–67).

5.5.5 International administration

A principal cause and consequence of many interventions for humanitarian purposes is the need for some form of international administration of the territory concerned. Even in cases in which the UN Security Council did not authorize the original intervention, it may find itself having to handle the resulting situation. Many of the interventions of the 1990s led to the establishment of some form of international administration, or at least administrative assistance, in the territory concerned. In 1999, in both Kosovo and East Timor, the UN assumed direct although temporary responsibility for the territory. There were also many cases in which the UN had some more modest administrative role. In Bosnia and Herzegovina from December 1995 onwards, when the Office of the High Representative was established under European Union auspices with a powerful supervisory function, the UN Mission in Bosnia and Herzegovina (UNMIBH) was jointly involved with it in many aspects of administrative assistance. There were also elements of such assistance in Haiti, Albania, and Sierra Leone. These various exercises in latter-day enlightened colonialism have been marked by a commendable degree of flexibility. Instead of following certain standard concepts of trusteeship, as the League of Nations did, the UN has adopted a wide variety of forms of international administrative assistance, sometimes in cooperation with regional bodies.[42]

The United Nations' involvement in the administration of territories poses some difficult, even threatening, problems. It puts UN officials in a peculiar position, in which they have both to uphold the interests of the territory they administer, and the impartiality of the UN *vis-à-vis* its member states. It requires a high degree of competence in the management of a range of administrative matters with which the UN does not ordinarily deal, and often depends on relatively young and inexperienced people to do much of the work—hence the accusations of 'gap-year colonialism'. Although by no

means all these efforts have been successful, there are some solid achievements. A common feature of these 'variable geometry' systems of administrative assistance has been the emphasis on multi-party elections as one mechanism to facilitate both the resolution of conflicts and the transfer to self-government.

5.5.6 Alternatives to intervention: prevention and protection

Some have concluded from the enduring problems and mixed results of interventions in the 1990s that it would be better to concentrate on prevention of man-made catastrophe, not intervention once it has happened; and on a broad range of protection efforts rather than just those embodied in military interventions. There has been much support for this general approach, with particular attention being paid to preventive diplomacy. In 2000, both the UN General Assembly and the Security Council adopted resolutions on the vital role of conflict prevention. In 2001, the ICISS report particularly favoured protection and prevention as means of reducing the need to rely on military intervention (ICISS 2001*a*: 11–27).

However, viewing intervention and preventive diplomacy as two different topics, even as alternatives, may be mistaken. Serious efforts to resolve a conflict situation often, quite naturally, threaten the prospects of one or more belligerent parties, and lead them to engage in acts of violence. Thus, it was after serious efforts at preventive diplomacy in East Timor in 1999 that events reached a crisis requiring international intervention. The same was true of negotiated agreements on the wars in Rwanda in 1993 and Sierra Leone in 1999. ICISS is on strong ground in calling for a wide range of protective measures, but in this connection it explicitly accepts that this does not resolve the difficult questions about the circumstances in which the responsibility to protect should be exercised through intervention.

In many cases, the alternative to intervention is to allow politics to take their course. Processes of political change, peaceful struggle, or even civil war, do sometimes in the end yield outcomes that lead a society back towards international standards. There are grounds for scepticism about the assumption that the use of force from outside can always cure a difficult situation. Foreign military interventions to save lives of the subjects of dictatorships of the Right or Left, in Spain or the Soviet Union, might well have failed, led to prolonged war, and reinforced the regimes they would have been intended to remove. There is something to be said for letting some dictatorial systems die from their own inner defects, and for the proposition that self-liberation leads to more enduring results than external assistance. The existence of alternatives to intervention needs to be more fully accepted in UN debates, but offers no escape from the dilemma in which the UN is repeatedly placed: some situations can be of such gravity and urgency as to make intervention seem justified as a first rather than last resort.

5.6 Conclusion

The subject of humanitarian intervention is unavoidable for the UN because of its dual role both as an upholder of international standards in human rights and humanitarian law, and as the global body with responsibilities regarding the use of force. However, the subject is as difficult for the UN as it is unavoidable, and could even pose a threat to the organization.

In principle, humanitarian intervention is one important means of addressing a fundamental problem of international organization: the relation between law and power. If there is no effective means of implementing international law, it may be discredited, and the UN would be discredited with it. The old dictum that law without power is no law retains its meaning, and can reinforce the case for humanitarian intervention to stop flagrant and repeated violations of basic norms. Although lawyers sometimes see law as gradually replacing power politics, in reality law and power have to operate in harness together; and humanitarian intervention may be one way in which they can do so.

However, in practice, if law and power are to operate in harness, law may get tied too closely to the most powerful state, with potentially damaging results. The potential threat to the UN arises partly because the subject of humanitarian intervention has the capacity to worsen the always crucial and at the same time tangled relationship between the UN and the United States. The United States, which is usually expected to be the principal intervener in humanitarian causes, has shown every sign of impatience with tying its military might and reputation to this difficult role. Humanitarian intervention threatens to exacerbate an already strong American sense that the UN is a body that lures the United States into traps in such places as Somalia. The associated emphasis on humanitarian norms and procedures is seen as placing burdensome constraints on US actions, with such baneful results as the strong US opposition to the International Criminal Court.

There are other ways in which humanitarian intervention could be an issue to weaken, even destroy, the UN. This is because of six worrying developments arising from the practice of intervention since 1991: (1) the great majority of member states, having long seen the UN as an institution in which their sovereignty can be protected, are worried about any doctrine or practice that would challenge that vital UN function; (2) states may augment their national armaments to reduce their vulnerability to intervention, and trust the UN system as a source of protection even less than before; (3) there is a risk of the UN building up expectations of its capacity to protect threatened civilians, only to preside once again over another Rwanda or Srebrenica, leading to disillusion and cynicism about the organization; (4) actual cases of humanitarian intervention leave the UN having to manage a series of difficult territories, some of which may fall prey to violence and chaos; (5) different states and different parts of the UN system often have

opposing views either on the issue in general, or on particular cases, adding to the mutual suspicion among states; and (6) the governments of many developing countries suspect that the Western powers have down-played the economic and social agenda (and have provided very limited resources for aid programmes) because of their preoccupation with the peace and security agenda in general and military interventions in particular.

In reality, any damage to the UN caused by the idea and practice of humanitarian intervention is likely to be more limited than this catalogue of problems suggests. This is because of two key considerations on which this chapter has focused. First, ever since the inception of the Charter the UN has been based on a delicate and logically insoluble tension between the rights of peoples and the rights of states; and it has been part of the success of the UN that it has not rested on exclusively statist pillars. Second, the phenomenon of humanitarian intervention, thanks to its costs and inherent fragilities, is likely to be self-limiting. Already, in the early 1990s, it was widely recognized that there would be limits to the new interventionism, and in particular to the UN's capacity to manage complex crises in collapsing states.[43] What has been happening at the United Nations is a gradual and incremental change in the interpretation of the Charter rules and the UN's responsibilities, particularly as regards the balance between the rights of individual sovereign states and the rights of the community—whether the latter be defined as individual human beings or the entire community of states. These trends will doubtless continue, more through precedent and improvisation than by any legal or doctrinal revolution. The UN will continue to be involved occasionally in proclaiming policy objectives which lead to calls for intervention on humanitarian as well as other grounds; authorizing such intervention; and picking up the pieces of interventions by others. If the UN presides over just enough humanitarian intervention to make cruel dictators and criminal warlords lose sleep, and to enable failed states to begin the path to recovery, but not enough to make rulers generally fear collapse of the non-intervention norm, a tolerable point of balance will have been struck.