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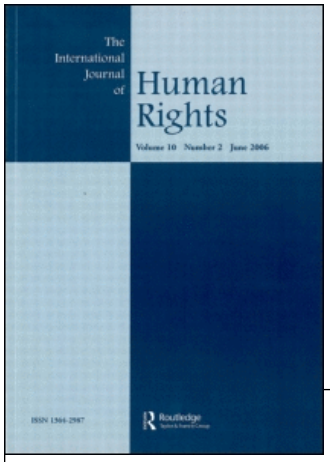

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Legitimacy and Humanitarian Intervention: Who Should Intervene?

James Pattison [a]
[a] Department of Politics and Philosophy, University of the West of England, Bristol, UK

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Legitimacy and Humanitarian Intervention: Who Should Intervene?

JAMES PATTISON

Department of Politics and Philosophy, University of the West of England, Bristol, UK

ABSTRACT *In this article, I examine who should undertake humanitarian intervention. Should we prefer intervention by the UN, NATO, a regional or sub-regional organisation, a state, a group of states, or someone else? To answer this question, I first determine which qualities of interveners are morally significant. I highlight in particular the importance of an intervener's effectiveness and, in doing so, develop a particular conception of legitimacy for humanitarian intervention. I then consider the more empirical question of whether (and to what extent) the current agents of humanitarian intervention actually possess the morally relevant qualities identified, and therefore should intervene. In the last part of the article, I consider ways of improving agents' willingness to intervene and, ultimately, the legitimacy of humanitarian intervention.*

Introduction

Since the end of the bipolar, divisive international system of the Cold War, the United Nations and its Security Council have been reinvigorated, and this has been reflected in the number of its peace operations. Military force sponsored by the UN was used only 22 times from 1946 to 1990, but 56 times from 1990 to 2000.[1] There has been a similar proliferation in peace operations by non-UN actors, such as regional organisations.[2]

The events of 11 September 2001 and the 2003 War on Iraq, however, risked undermining this new-found willingness to undertake humanitarian action. First, in the aftermath of the terrorist attacks on the USA, a common – and perhaps well-founded – fear was that states would turn inwards, focusing their interests on national security and the 'War on Terror' rather than on humanitarian intervention to protect the human rights of individuals in far-off places. Second, the US- and UK-led operation in Iraq threatened to damage the credibility of humanitarian intervention irrevocably, since one of the justifications offered by George Bush and Tony Blair was essentially humanitarian: to end the violation of human rights by the Ba'athist regime and to bring freedom and democracy to Iraq. That this war had seemingly questionable motives, used force indiscriminately, involved the abuse of civilians, and has led, in effect, to civil war, could have created an unrelenting cynicism and rejection in the international community of any international action for apparently

Correspondence Address: Dr James Pattison, Department of Politics and Philosophy, University of the West of England, Frenchay Campus, Coldharbour Lane, Bristol BS16 1QY, UK. Email: james.pattison@uwe.ac.uk

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humanitarian purposes. The risk of world public opinion and elites being against any future international action with a purported humanitarian justification was increased further by the degree of worldwide attention on – and condemnation of – the war.[3]

Although these two events have led to a degree of reluctance on the part of Western states to participate in peacekeeping operations and perhaps to conduct controversial humanitarian interventions in the future, there have still been a number of humanitarian interventions and peacekeeping missions since.[4] Examples include: intervention in the Ivory Coast by France, the Economic Community of West African States (ECOWAS), and the UN; the ECOWAS and UN action in Liberia in 2003; the EU and UN intervention in the Democratic Republic of Congo (DR Congo); the Australian-led peacekeeping mission in the Solomon Islands in 2003; African Union peacekeeping in Darfur and Burundi in 2003 and 2004 respectively; and the US intervention in Haiti in 2004. In addition, there continue to be calls for humanitarian intervention to be undertaken in a number of other places where the violation of basic human rights currently goes unchecked. More generally, despite recent opposition to the war in Iraq, there has been a growing consensus in the international community that humanitarian intervention can be morally acceptable on occasion. Indeed, it is much harder to find someone who completely supports non-intervention nowadays. The lack of action in Rwanda (or, more accurately, lack of effective action) and the subsequent genocide had a massive impact on the theory and practice of intervention. Even those who are deeply suspicious of humanitarian intervention and deeply sceptical about its prospects of success will probably still admit that it might, in theory, be justified when a humanitarian crisis is sufficiently serious.

Underlying this apparently increased acceptance of humanitarian intervention has been a gradual change in the concept of sovereignty. As traditionally conceived, the principle of sovereignty emphasises a state's freedom from external interference, so that it can pursue whatever policies it likes within its own boundaries. Although this notion of sovereignty as *authority* provided a legal and normative barrier that weaker states could use to fend off the interference of larger states, it presented the leaders of certain states with what was essentially a free hand to violate their citizens' human rights with impunity. Humanitarian intervention, from this perspective, is unjustifiable. Indeed, a key aspect of the traditional notion of sovereignty is the non-intervention principle.

This notion of sovereignty as authority, however, is no longer sacrosanct.[5] The concept of sovereignty has been gradually changing to one of sovereignty as *responsibility*, the responsibility to uphold citizens' basic human rights. The report by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, *The Responsibility to Protect* (generally referred to as '*R2P*'), has been a key development in this context.[6] *R2P* argues that if a state does not protect the human rights of its citizens, such as in cases of genocide, war crimes, ethnic cleansing, and crimes against humanity, sovereignty is temporarily suspended, and there is an international responsibility to respond by undertaking humanitarian intervention. This notion of a 'responsibility to protect' has, to a certain extent, caught on in policy-making circles. Most notably, at the 2005 UN World Summit, states agreed that there exists a universal responsibility to protect populations and indicated their preparedness to undertake humanitarian intervention 'should peaceful means be inadequate' and when 'national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.[7]

Despite this agreement, it remains unclear which particular agent in the international community should act in response to the mass violation of basic human rights. This question arises because, as things stand, there is not an obviously legitimate institution to

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undertake humanitarian intervention. The UN might, at first glance, appear to be the most appropriate agent, yet its failures in Rwanda and Bosnia have cast significant doubts over its credibility as a humanitarian intervener. There are a number of other potential agents of humanitarian intervention, but, as I will discuss, none of these agents is an outstanding choice.

Yet the moral stakes could not be much higher. Which particular agent undertakes humanitarian intervention has substantial implications for, first, those suffering the humanitarian crisis. Thousands of peoples' lives, security and future depend on which particular agent intervenes. Who intervenes also has significant implications for those individuals who collectively form the intervener. These individuals may face increased taxation, decreased spending on public services, military casualties, but, at the same time, may enjoy an improved international standing. Moreover, there are significant implications for the international system as a whole. For instance, an illegitimate intervener might weaken international law and order and destabilise certain regions and areas, such as by creating refugee flows.

As a result, this article will answer the question, 'who should intervene?' Should it be the UN, NATO, a regional organisation (such as the African Union), a state or group of states (perhaps with the authorisation of the UN Security Council), or someone else? The first part of the article (I) discusses the qualities required for an intervener to be legitimate. I argue for a particular normative conception of legitimacy that asserts the moral significance of an intervener's effectiveness. The second part (II) considers which of the current agents of humanitarian intervention (if any) have the qualities identified and should therefore be the preferred choice to undertake humanitarian intervention. In the final section (III), I consider ways of improving the preferred agents' willingness to act.

But before beginning, I need to clarify four points. First, my use of the concept of legitimacy draws on Allen Buchanan's account of political legitimacy.[8] This account is normative in that it is concerned with the morality of political power, and, as such, differs from sociological legitimacy (or 'perceived legitimacy'). As Daniel Bodansky notes, there is 'a conceptual difference between saying, "the Security Council is legitimate", and "the Security Council is accepted as (or perceived as) legitimate"'.[9] For Buchanan, '[w]hether an entity is politically legitimate depends on only whether the agents attempting to wield political power in it are morally justified'.[10] So, legitimacy pertains to agents – it is an 'agent-justifiability question'. Rather than the focus being on whether a particular *action* is justified, the concern is with the justifiability of the *agent* undertaking the act. Hence, we need to know the qualities of an agent (i.e., intervener) that would mean it could justifiably wield power (i.e. to undertake humanitarian intervention). My aim is to determine what these features are.

This focus on the agents of humanitarian intervention distinguishes my discussion from other accounts of humanitarian intervention, which tend to concentrate on whether, when, or why a particular intervention is justifiable. For the purposes of this article, I largely assume that humanitarian intervention is justified in certain circumstances, that is, when a serious humanitarian crisis arises. My concern instead is *who* should intervene in these circumstances. And whilst there is some overlap between the two questions on certain issues, my approach concentrates much more on the institutional questions – the qualities needed for an intervener to be legitimate – than most other accounts, which tend not to address directly these questions and which instead devote their energy to the question of just cause.

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Second, it is important to make clear that my use of the term legitimacy does not necessarily imply legality. It might be true that those interveners who can *legally* undertake humanitarian intervention are also *morally* legitimate, but we should not assume that this is the case. Although some international lawyers automatically equate legality and legitimacy, this usage is not consistent with an apparently growing trend in international law to distinguish between the two. The most famous example of this is the Independent International Commission on Kosovo's assertion that 'the intervention was legitimate, but not legal, given existing international law'.[11]

Third, I take legitimacy to be scalar, that is, a matter of degree. A number of different qualities contribute to the legitimacy of an intervener. To be *fully* legitimate, an intervener needs to possess all the relevant legitimating qualities. But an intervener does not have to possess all of these qualities in order to have *an adequate degree of* legitimacy. Any combination of qualities is acceptable, as long as they each contribute enough legitimacy so that, *when added together*, the intervener has an adequate degree of legitimacy. Hence, this approach is cumulative: the legitimacy of an intervener depends on the combined contribution of the various qualities that it possesses. This differs from a categorical approach. On a categorical approach, an intervener would need to possess all of the relevant qualities in order to be legitimate. If it were to lack even one quality, it could not be legitimate.[12] By contrast, on the scalar approach I adopt, an intervener that lacks one quality could still have an adequate degree of legitimacy, depending on the other qualities that it possesses. Notwithstanding, to be *fully* legitimate, an intervener will need to possess all of the relevant qualities.

Lastly, I do not presuppose that, when a humanitarian crisis arises, there will be a large pool of interveners ready and willing to undertake humanitarian intervention from which we can select. For varying reasons, there is often an unwillingness and a lack of commitment to undertake humanitarian intervention. My aim is first and foremost normative: to indicate whose intervention we should prefer when a humanitarian crisis arises. But I will also indicate who would be the next best choices, if the first choice decides not to intervene. In addition, towards the end of the article, I will consider ways of achieving these goals, that is, of improving the willingness and commitment of most legitimate interveners, so that in the future we will have more willing – and better – interveners to choose.[13]

I. Legitimacy and humanitarian interveners

Effectiveness

What are the most important factors for an intervener's legitimacy? Or, to put it another way, what are the morally relevant qualities when deciding who should intervene? In what follows, I outline and defend one particular consequentialist approach, the key assertion of which is that an intervener's effectiveness is the *primary* (and a *necessary*) determinant of its legitimacy. When deciding who should intervene, this conception focuses on the intervener that will be the *most effective*. But it does not hold that this is the *only* determinant of an intervener's legitimacy. Other non-consequentialist factors, such as an intervener's internal and external support and fidelity to the principles of *jus in bello*, matter to a certain degree, although they are less important than effectiveness.

Before going any further, it is worthwhile spending some time considering why we should take the consequences of an intervener's action seriously. The notion that an intervener should be effective is intuitively appealing. Indeed, in the normative debates

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surrounding humanitarian intervention, one subject that continually arises is the effectiveness of humanitarian intervention. The discussions on *how*, *when* and, most notably, *whether* humanitarian intervention should be undertaken all revolve around this issue. As Eric Heinze argues, consequentialist thinking on humanitarian intervention is the dominant and common-sense moral approach, since it identifies the most morally relevant concerns.[14] Those who are sceptical of intervention can cite the failure of the 1991 UN and US interventions in Somalia and UN action in Bosnia as examples of the ineffectiveness of intervening to save lives. John Stuart Mill, for example, defends the principle of non-intervention because humanitarian intervention is unlikely to be successful, given the importance of self-determination.[15] Those more favourable to intervention, on the other hand, can highlight the successes of NATO's 1999 action in Kosovo, UN-authorised Australian-led action in East Timor, and Indian action in Bangladesh.

Despite their differing empirical judgments, what both sides agree on is the importance of intervention being successful. If humanitarian intervention is not successful, then it should not occur; but if it is, perhaps it should. The basis of this highly plausible notion is a certain consequentialist logic: if intervention in another political community is to be undertaken in order to achieve a humanitarian outcome, it matters that it should achieve that humanitarian outcome.

From this intuitive notion follows another: *those* that undertake humanitarian intervention should be successful. If the UN, for instance, is to intervene in Burundi, it should do so effectively. This is a frequent requirement made of interveners both in the academic literature and by those involved with the practice of humanitarian intervention. For instance, in his address to the 54th session of the UN General Assembly, Kofi Annan called upon member states to unite in the quest for more effective policies to stop egregious violations of human rights.[16] Furthermore, the Just War tradition typically requires war to have a reasonable prospect of success and to be proportionate. These two criteria can be interpreted as requiring that those undertaking war should be expected to be effective and, when applied to humanitarian intervention, that interveners should have a good prospect of success.[17]

At the very least, then, a degree of consequentialist thought on humanitarian intervention is appealing. This helps to provide some initial backing for my claim that an intervener's effectiveness is the primary determinant of its legitimacy.

Three Types of Effectiveness

To see more clearly why an intervener's effectiveness is such an important consideration for its legitimacy, it helps to distinguish between three types of effectiveness. The first type of effectiveness most clearly demonstrates the significance of an intervener's effectiveness and why effectiveness is the primary determinant of an intervener's legitimacy. This is an intervener's 'local external effectiveness', which depends on whether an intervener is likely to promote or harm the enjoyment of basic human rights of those in the political community that is subject to its intervention. In other words, to be locally externally effective, an intervener needs to be successful at tackling the humanitarian crisis. For instance, if the UN is to intervene in Darfur with the purpose of helping the Darfurians, it is vital that its intervention should benefit the Darfurians. If it were likely to make the situation even *worse*, then it would be locally externally ineffective and (in all probability) would not be legitimate.

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Why is this a highly significant factor for an intervener's legitimacy? If an agent is to go to the extreme of undertaking *military* action in another state, with the risk of great harm to the citizens of this state, in order to end, decrease or prevent a humanitarian crisis and assist (some of) these individuals, it seems paramount that it will actually assist these individuals. More specifically, my reasoning is as follows. The degree of human suffering typically involved in the violation of basic human rights is perhaps the greatest moral wrong, more morally urgent than other moral concerns. That is, we tend to think, generally speaking, that rape, torture and murder are more morally significant than repression, inequality, etc. A humanitarian crisis usually involves the *mass* violation of basic human rights. As such, it involves the worst moral wrong on a massive scale: *mass* killing, *mass* rape, *mass* torture, and so on. Accordingly, it is of the utmost moral importance that the humanitarian crisis is effectively tackled. It follows that an intervener's local external effectiveness is vital. This is because a locally externally effective intervener will tackle the humanitarian crisis and therefore prevent, reduce or halt the worst moral wrong on a massive scale – the mass violation of basic human rights.

The second type of effectiveness is 'global external effectiveness'. This depends on whether an intervener is likely to promote or harm the enjoyment of basic human rights in the world at large. The significance of an intervener's global external effectiveness is best seen in its negative aspect: an intervener that undertakes humanitarian intervention that severely harms the enjoyment of basic human rights in the world at large loses legitimacy. For instance, an intervener could destabilise the neighbouring states of the target political community (perhaps by creating a large refugee flow) and therefore severely harm the enjoyment of basic human rights of those in neighbouring states.

The third type of effectiveness is an intervener's 'internal effectiveness', which depends on the consequences for the intervener's own citizens. Like global external effectiveness, the importance of internal effectiveness is also typically best seen in its negative aspect. In most cases, we would not expect an intervener to make an *improvement* in its own citizens' enjoyment of basic human rights, given the costs of humanitarian intervention in terms of lives and resources. Instead, humanitarian intervention is likely perhaps to *decrease* some of its citizens' enjoyment of basic human rights, e.g. its soldiers who are wounded and killed in action. But this decrease must not be excessive: an intervener that undertakes reckless humanitarian intervention, which will *severely* decrease its own citizens' enjoyment of basic human rights (perhaps by incurring heavy casualties among its own forces or by bankrupting the state), loses legitimacy (i.e. it is ineffective overall). Thus, an intervener's legitimacy depends also on its internal effectiveness and typically how internally *in*effective it is.

Given the importance of an intervener's being effective in these three senses, it follows that an intervener's *overall effectiveness* is a *necessary* condition of its legitimacy. If, when combining its local external effectiveness, global external effectiveness and internal effectiveness, an intervener is ineffective overall, it cannot be legitimate. If an intervener's effectiveness were not a necessary condition of its legitimacy, an intervener could be legitimate even though it (1) failed to make an improvement in the humanitarian crisis – and so lacked local external effectiveness, (2) undertook intervention that was excessively costly to human rights worldwide – and so was extremely globally externally ineffective, and/or (3) undertook intervention that was excessively costly to its citizens – and so was extremely internally ineffective. Accordingly, an intervener must be likely to make an overall

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improvement in the enjoyment of basic human rights to be legitimate. A similar point is made by Jane Stromseth:

> humanitarian intervention should have a reasonable prospect of success in stopping the atrocities that triggered intervention in the first place. Otherwise, the interveners will simply be exposing their soldiers and the target population to life-endangering situations without the hope of success that justifies the risks to be borne.[18]

The standard way that the intervener will be effective overall is by being substantially locally externally effective, that is, by successfully tackling the humanitarian crisis. It follows that, in most cases, an intervener's local external effectiveness is a necessary condition of its legitimacy. An intervener cannot be legitimate if its intervention is likely to worsen the situation of those suffering the humanitarian crisis.

How should we measure the effectiveness of an intervener? The expected increase in the enjoyment of human rights for all three types of effectiveness should be considered in the long term and should be judged by comparison with the counterfactual of nonintervention. Assessing intervention in the long term does not mean that short-term results are of lesser importance. Where possible, the intervention 'must be tailored to suit these long-term objectives, though ... securing an immediate cessation of hostilities will, in some cases, trump other objectives'.[19] If a state's intervention is expected to save 50,000 lives in the short term but cost 40,000 lives in the long term, this is still a positive outcome in the long term (10,000 lives have been saved).

To be effective in these three ways, interveners need to have a number of characteristics. These include: the required military and non-military resources; a suitable strategy and mandate to be able to use successfully these resources; the necessary commitment to ensure a lasting resolution to the humanitarian crisis; and the ability to intervene in a timely manner, i.e., quickly when the situation is ripe for humanitarian intervention.

However, an intervener's success is not determined fully by the degree to which it possesses these characteristics. Circumstances can affect an intervener's effectiveness in two ways. First, an intervener will have a different expectation of success in different circumstances. For instance, there may be more local resistance to the intervention by State A in State B than in State C. Hence, the *probability* of success varies according to the situation. Second, an intervener will have greater opportunity to achieve a large-scale success in some situations than in others. Where there is a terrible humanitarian crisis and the potential for great harm to a large number of individuals, such as genocide, there is more scope for an intervener to achieve extremely beneficial consequences by tackling the crisis and preventing the harm. Other less (although still) serious situations, such as the oppression of political opposition, present less scope for an intervener to achieve extremely beneficial consequences. Hence, the *magnitude* of the potential success varies according to the circumstances.

Now to the crux of the matter: when an intervener has a *high probability* of achieving a success with a *large magnitude*, effectiveness may be *sufficient* for it to have an adequate degree of legitimacy. An intervener may be legitimate, for instance, simply because it is highly likely to prevent genocide. This is the case even if it lacks other qualities. On a scalar approach, a legitimate intervener does not need to possess all of the morally relevant qualities; it need only have enough of these factors in order to possess an adequate degree of legitimacy. An intervener can have an adequate degree of legitimacy by achieving hugely beneficial consequences. The likely achievement of these extremely beneficial

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consequences means that it is likely that extreme levels of human suffering will be prevented. The good achieved by this intervention is likely to outweigh any other moral problems that come from the intervener's not possessing other qualities. Suppose, for example, if in the beginnings of the genocide in Rwanda, the USA had been willing to intervene and was highly likely to do so effectively. Given that this could have saved hundreds of thousands of lives, the fact that it lacked other qualities (for instance, it might not have consulted the Rwandans and its soldiers might have committed abuses) would not have undermined its general legitimacy as an intervener.

So, in unusual circumstances where hugely beneficial consequences are more than likely, effectiveness can be sufficient for an adequate degree of legitimacy. In most cases, however, effectiveness will not be sufficient because an intervener will not have a very high probability of achieving a very sizeable success. Normally, then, an intervener's legitimacy will also depend on the degree to which it possesses other, non-consequentialist qualities, such as fidelity to the principles of *jus in bello* and internal and external support (I establish the importance of these qualities below). Moreover, even where hugely beneficial consequences are more than likely, and effectiveness is sufficient for an intervener to have an *adequate degree of* legitimacy, the intervener will not be *fully* legitimate unless it has all the relevant qualities. Hence, effectiveness can, at most, be a *sufficient* condition for an *adequate* degree of legitimacy. In the majority of circumstances, it is not even sufficient for this.

Effectiveness is, then, a substantial consideration when deciding who should intervene. It is a necessary condition of legitimacy and even occasionally sufficient for an adequate degree of legitimacy. But why is effectiveness only sufficient for an *adequate* degree of legitimacy in *exceptional* cases? Why is it not sufficient for *full* legitimacy *in all cases?* On an extreme consequentialist approach, effectiveness is not a *primary* determinant of legitimacy. It is the *only* determinant. This approach therefore presents a different sort of challenge to the conception of legitimacy for humanitarian intervention that I am proposing. It claims that it does not go far enough to hold that effectiveness is the primary determinant of an intervener's legitimacy. However, in placing all moral weight on consequences, an extreme consequentialist approach disregards other moral qualities, which are also significant for an intervener's legitimacy. The legitimacy of an intervener also depends on three other qualities that have intrinsic as well as instrumental value: the intervener's fidelity to principles of *jus in bello*; its internal support; and its external support.

Fidelity to the Principles of jus in bello

The first intrinsically valuable quality is the conduct of the intervener during intervention. This is often mentioned as an important consideration.[20] Some insist that an intervener must follow principles of international humanitarian law.[21] Others frame this requirement in terms of Just War Theory, and, in particular, with reference to the principles of *jus in bello*, principles of just conduct in war.[22]

There are several principles of *jus in bello* that can be applied to humanitarian intervention. For our purposes, the three main principles are: a strict rule of noncombatant immunity which maintains that civilian casualties are impermissible; a principle of proportionality which limits the harm that the intervener can cause to combatants; and a restriction on the sort of soldiers the intervener can use (e.g. not child soldiers).

The conception of legitimacy that I have been defending leaves room for some non-consequentialist values by claiming that effectiveness is the *primary* (rather than *sole*)

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consideration. By contrast, an extreme consequentialist approach cannot fully account for these principles of just conduct in war in its conception of legitimacy and is therefore unpersuasive. By placing all moral weight on an intervener's effectiveness, it marginalises the importance of an intervener's expected fidelity to these principles of *jus in bello*. In this context, Heinze claims that a purely consequentialist account 'has serious problems when employed as part of a theory of the morality of war based on human rights, because it suggests that aggregate human suffering is the *only* moral concern that need be addressed'.[23] He claims that if, for instance, a purely consequentialist principle alone were used to determine proportionality in NATO's war in Kosovo, it would have been permitted to pursue its primary end of the capitulation of the Milosevic regime unconditionally, regardless of civilian casualties.[24]

That said, a consequentialist defence of these principles of *jus in bello* can be made – an intervener that follows these principles will, generally speaking, face less resistance from the local population.[25] But this defence is not wholly reliable. An intervener will sometimes be more successful if it abandons these principles and uses the most efficient means. Yet that an intervener follows these principles of *jus in bello* matters intrinsically.

Indeed, there seems to be something more to the importance of an intervener's expected fidelity to the principles of *jus in bello* than simply whether this improves its effectiveness. This is the distinction between *doing* and *allowing*. That is, there is a morally relevant distinction between what one does oneself and what one allows others to do.[26] In addition to any instrumental justification, a reason why an intervener's likelihood of following the principles of *jus in bello* is important when deciding who should intervene is that an intervener should not itself do harm (specifically, harm that is impermissible according to these principles).[27] It would, to a certain degree, be better if an intervener were to *allow harm*, perhaps thereby being less effective, than for it to target civilians, to use chemical weapons, or to rely on child soldiers. Indeed, it seems more important that an intervener has a satisfactory degree of fidelity to the principles of *jus in bello* when it is using force for humanitarian purposes than for any other reason. When going to the lengths of using military force for humanitarian purposes, it matters intuitively that an intervener should be likely to do so in a way that is itself humanitarian.

One reason why the doing and allowing distinction matters is because when one does the action, it is *oneself* who is violating the right, whereas when one allows the action, it is *someone else* who is violating the right. There is a difference between the government of state A violating state B's citizens' rights and the government of state A not intervening to stop the government of state B violating its own citizens' rights. To be sure, I am not claiming that the difference between doing and allowing is of overwhelming moral significance. In fact, on an absolutist, deontological position according to which the difference between doing and allowing is of absolute moral significance, an intervener could never be legitimate because intervention almost always involves some harm that is impermissible.[28] My point is rather that there is, at least, *some* moral significance in the distinction between doing and allowing. When deciding who should intervene, it matters, *to a certain degree*, that an intervener will not violate innocent individuals' rights itself, even though this may ultimately allow more rights to be violated. Thus, who undertakes humanitarian intervention should be determined in part by the non-instrumental importance of an intervener's following principles of *jus in bello*.

That said, according to the scalar approach to legitimacy adopted in this article, an intervener can be sufficiently legitimate, even though it does not have a satisfactory degree of

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fidelity to the principles of *jus in bello*. As long as the intervener is able to make up in other ways the loss of legitimacy that comes from its not following closely the principles of *jus in bello*, its overall level of legitimacy may still be sufficient for it to have an adequate degree of legitimacy. One clear way in which an intervener can make up this loss of legitimacy is if there is a high expectation of achieving extremely beneficial consequences, for instance by preventing genocide. Suppose that there is mass ethnic cleansing – genocide – in Benin. Tens of thousands of civilians of a certain ethnic group are being slaughtered, maimed and raped every day by government troops and militias. Suppose further that Nigeria intervenes in Benin to stop this ethnic cleansing, and does so very effectively, but in doing so uses conscripts, a number of whom kill and sexually assault the non-combatants they are supposed to be helping. Although Nigeria's intervention would far from being *fully* legitimate, the fact that it is effective at preventing genocide means that it would have an *adequate degree* of legitimacy overall. Hence, if hugely beneficial consequences are highly likely, then effectiveness may be sufficient for an adequate degree of legitimacy and the importance of an intervener's following these principles of *jus in bello* can be trumped by the consequences that it will achieve.

This is not equivalent to endorsing an extreme consequentialist approach. Given the intrinsic importance of an intervener's following the principles of *jus in bello*, the intervener's expected effectiveness is sufficient for an adequate degree of legitimacy only in particular circumstances.[29] As discussed above, these are circumstances in which the intervener has a *high probability* of achieving a success with a particularly *large magnitude* – in short, when highly beneficial consequences are more than likely. In other cases, effectiveness is not sufficient for an adequate degree of legitimacy because of the non-instrumental significance of an intervener's following these principles.

Internal and External Support

There are two other intrinsically valuable qualities that need to be taken into account in any conception of legitimacy for humanitarian intervention. These are that an intervener should have the support of, first, its domestic population and, second, those in the political community that is subject to its intervention. The former is what I will refer to as an intervener's 'internal support', the latter an intervener's 'external support'.[30]

Internal support

Let us begin with the case for internal support. To have internal support, an intervener needs to have the backing of its citizens on the proposed intervention. To be sure, the importance of an intervener having internal support can be justified instrumentally. An intervener that has internal support will, for political reasons, be more likely to commit the financial, military and diplomatic resources needed for success. However, the instrumental justification does not fully capture why internal support matters. To that extent, there are two intrinsic reasons why internal support matters.

The first is Lockean. It is important that an intervener has internal support of its domestic population because these individuals provide the resources for humanitarian intervention. Generally speaking, it seems intuitive that an individual should have some freedom to determine how his own resources (property) are used. To be sure, there are moral constraints on how someone should use his resources. Notwithstanding, some

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degree of control over one's own resources is intuitively attractive. This argument could be applied to any governmental action that uses its citizens' resources, but it is much more convincing for humanitarian intervention because of the level of resources involved.[31] Those individuals from whom the intervener is collectively formed ultimately have to foot the bill for humanitarian intervention, perhaps through significantly increased taxation or greatly decreased public spending elsewhere. It seems right, therefore, that intervention should have their support.[32]

The second reason is Rousseauian. Internal support is morally significant because of the importance of individuals' having a voice in the running of their political institutions. Individual self-government here possesses significant value. In Robert Dahl's words: 'To govern oneself, to obey laws that one has chosen for oneself, to be *self-determining*, is a desirable end'.[33] As a significant undertaking by the state, it is important that humanitarian intervention be responsive to the concerns of individual self-government by being representative of its citizens' opinions on intervention. An individual's freedom to choose whether there should be intervention matters. To be sure, individual self-government is not always an overriding value; rather, more individual self-government is *by and large* desirable. Occasionally, other moral factors (such as highly beneficial consequences) may trump the importance of individual self-government, but this is not to deny its value.

External support

Having seen why it is important that an intervener has internal support, let us now turn to consider external support. Like internal support, the importance of this quality can be justified instrumentally, but this does not fully capture why an intervener should have external support. Again, there are two intrinsic reasons for the importance of an intervener's external support.

The first highlights the potential burdens of humanitarian intervention. Those in the community subject to intervention might have to suffer civilian and military casualties, damage to vital infrastructure, increased levels of insecurity, and other costs involved with being in a war zone. Given that these individuals face these burdens, it seems important that an intervener should have their support. The underlying principle here is that an individual should have some choice in the burdens that he or she faces. Those subject to the humanitarian intervention should have their opinions on the intervention taken into account because intervention may have a negative impact on their basic human interests.[34]

The second argument again highlights the non-consequentialist importance of individual self-government. It is important that an individual should be self-governing even if his opinions, if realised, would not obviously promote his well-being. It follows that a state, coalition of states or multinational organisation should not intervene to protect those who do not want their political community to be subject to humanitarian intervention. This is the case even if intervention would promote these individuals' well-being in the short-term, for instance, by protecting them from being the victims of oppression and from the violation of their basic human rights.[35]

For these reasons an intervener's internal and external support have non-instrumental value. It follows, then, that the dominance of consequentialist thought on humanitarian intervention is further limited by the intrinsic value of internal and external support. Nevertheless, given that effectiveness can, on occasion, be sufficient

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for legitimacy, the value of these two qualities, like that of fidelity to the principles of *jus in bello*, is not absolute. They are important, but not necessary, factors for the legitimacy of an intervener.

Other Qualities?

Having seen that an intervener's internal and external support are important conditions for the legitimacy of an intervener, it might be asked whether it is also important that an intervener has the support of international public opinion. This is the first of three other qualities that are sometimes, but mistakenly, claimed to be important for the legitimacy of an intervener. Although it may be the case that there is some instrumental importance to global support, it is doubtful whether it has any intrinsic value. The individuals who are included under global support (everyone in the world minus those included already under internal and external support) are unlikely to provide any significant resources for the intervention or face any burdens that significantly and directly affect their basic human interests. These individuals are essentially international bystanders, generally not directly affected by the intervention. Moreover, since the individuals in question are not in any way governed or ruled by the intervener, individual self-government cannot be invoked to justify the importance of an intervener representing these individuals' opinions. Thus, whether the intervener reflects the opinions of those individuals in the wider international community is not relevant to its legitimacy because these people are not directly involved with the intervention. The individuals in the wider international community are typically unburdened bystanders, whose opinions ultimately do not matter for the legitimacy of an intervener that is using its own citizens' resources to undertake a military intervention for the sake of those suffering the humanitarian crisis.

Another quality often argued to be important for the legitimacy of an intervener is that it receives the proper legal authorisation.[36] In practice, this requires an intervener to have UN Security Council authorisation.[37] But it is also doubtful whether this has intrinsic (or even instrumental) value.[38] The argument relies on the importance of the procedures by which interveners achieve their legal authorisation. Yet the procedures of the UN Security Council are notoriously problematic. Given both the unrepresentative make-up of the Council (with no permanent representation from the Southern hemisphere) and the lack of transparency and undemocratic nature of its decision-making (which gives the permanent five members veto power), it seems clear that Security Council authorisation is not intrinsically valuable. As Fernando Tesón argues, those who defend Security Council authorisation often do so because of the importance of process, but a process depends on the credentials of those who participate.[39]

It may be replied that, it is important instrumentally for an intervener to receive proper legal authorisation from the UN Security Council because this will ensure that the intervener has the right motivation for undertaking humanitarian intervention – it will filter out interveners with improper, self-interested motivations for intervening. Underlying this (perhaps empirically dubious) argument is the claim that, to be legitimate, interveners need to have a humanitarian motivation. But this claim can also be challenged. It is questionable whether the motivation of an intervener has much moral significance, at least intrinsically. To be sure, there is something intuitively attractive about the Kantian notion that an agent should be motivated by the right sorts of reasons for its action to

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have moral worth. However, in the context of humanitarian intervention, the value of an intervener's motive seems small.

To see this, it is important to distinguish between an intervener's *intention* and its *motive*.[40] An intervener's intention is the objective it wishes to achieve with the intervention, whereas its motive is its underlying reasons for intervening. An intervener's intention is crucial to the humanitarian credentials of a humanitarian intervention – an intervener needs to have a humanitarian intention (i.e. the objective of tackling the humanitarian crisis) in order to be said to be engaged in 'humanitarian intervention'. However, its underlying reasons for having this intention – its motive – seem less important. The intrinsic justification is weak: intuitively, the mindset of those undertaking intervention does not seem important, especially when compared to the other qualities relevant for an intervener's legitimacy. It seems far more important that an intervener is able to tackle successfully a serious humanitarian crisis or follows principles of *jus in bello* than its leaders choose to intervene for altruistic reasons. As Tesón argues, we should not reject an intervention where a political leader decides to intervene to stop genocide in a neighbouring country because he thinks this is the best way to win re-election.[41]

Consequently, it is doubtful whether global support, proper legal authorisation or right motivation are important factors for the legitimacy of a humanitarian intervener.

Weighing up the Qualities

Let me summarise the argument so far. To be *fully* legitimate, an intervener needs to be internally effective, globally externally effective, locally externally effective, follow principles of *jus in bello*, have internal support, and have external support. Whether it has global support, the right motives or legal authorisation is less of a concern. To have an adequate *degree of* legitimacy, an intervener does not need to have all of these contributing qualities. Whether an intervener has an adequate degree of legitimacy depends on whether it cumulatively has enough of these qualities. An intervener could have an adequate degree of legitimacy yet lack one of these qualities. It may, for instance, lack internal support, yet be highly effective at tackling genocide. The only *necessary* condition of legitimacy is that the intervener is expected to be effective. This is because of the overwhelming impact this quality has on the legitimacy of an intervener. Indeed, in exceptional circumstances where extremely beneficial consequences are highly likely, effectiveness can be *sufficient* for an intervener to be legitimate.

That effectiveness can, on occasion, be sufficient for an adequate degree of legitimacy shows the dominance of effectiveness in this conception of legitimacy. But this conception is not wholly consequentialist. In most cases, the degree to which an intervener possesses the three largely intrinsic qualities – internal and external support and fidelity to principles of *jus in bello* – plays a large role in the legitimacy of an intervener. And even when effectiveness is sufficient for an adequate degree of legitimacy, an intervener needs to possess these non-consequentialist qualities to be fully legitimate.

II. Which Current Agent Should Intervene?

Let us now use this conception of legitimacy to see who should actually intervene. Some, such as Daniele Archibugi, doubt the legitimacy of *all* current agents of humanitarian intervention, and argue that only reformed or new agents could be legitimate.[42] If this view is

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correct, then no one should intervene until we develop intervening agents that are more satisfactory. As will become apparent, my reading of the current situation is less pessimistic.

Out of the *currently* existing interveners, humanitarian intervention by NATO would be probably the most legitimate. This is because of its effectiveness, which can be seen both with its success in previous missions (such as in Bosnia and in Kosovo) and in its level of military infrastructure. Indeed, NATO has tremendous military and logistical resources (including now a well-equipped rapid reaction force, the NATO Response Force). In addition, when NATO does intervene, it tends to do so with the commitment, first, to ensure a rapid resolution to the humanitarian crisis and, second, to ensure long-term peace and stability.

This argument for NATO reflects the significance of effectiveness in the conception of legitimacy I have outlined. What matters most is that an intervener is successful at halting a humanitarian crisis and NATO is, at the moment, the most likely to be successful. It is questionable, however, whether NATO always uses humanitarian means. The Kosovo intervention was heavily criticised for its sole use of airpower and its reluctance to deploy ground troops.[43] The bombing campaign damaged vital infrastructure and killed a number of civilians. It follows that, although NATO would have an *adequate degree of* legitimacy, it is far from being a *fully* legitimate intervener. Moreover, NATO remains essentially a collective defence organisation, and this determines its decision-making.[44] As such, in most cases it lacks the willingness to undertake humanitarian intervention. This does not undermine its legitimacy when it *does* act, but it does mean that we need to consider other options.[45]

If NATO decides it does not want to get involved in a humanitarian crisis, a state acting by itself or a coalition of the willing is probably the next best option. Much depends on which particular state intervenes. In particular, many mid- and large-sized Western, liberal democratic states have the required military and non-military resources, and are therefore likely to be effective. But this effectiveness is likely to be limited: a number of these states would face a high level of local resistance. For instance, Archibugi argues that, after the war on Iraq, the USA does not have the credibility in the eyes of the world to carry out humanitarian intervention.[46] Where it does intervene, it is likely to face extreme local opposition (which can harm the chances of a successful outcome) and will lack external support. Similarly, ex-colonial masters intervening in their former colonies may also be highly unpopular amongst the local inhabitants.[47] Conversely, non-Western states, which might face less resistance, are limited to intervention in nearby or neighbouring states at best, given their lack of resources. This need not be a drawback, though. As Walzer argues, the most successful interventions in the past 30 years have been acts of war by neighbouring states.[48] But nearly all states are highly selective interveners, choosing to stand by on many occasions. So, again, we have to look for the next best option.

The third best option is perhaps the UN. Rather than having a standing army of its own, readily available for quick deployment, the UN has to rely on ad hoc contributions of troops from member states. Since member states have been increasingly reluctant to commit their soldiers, UN missions often lack enough troops to fulfil their mandates. In addition, UN troops do not always show adequate fidelity to the principles of *jus in bello*. Stephen Kinloch-Pichat argues that a lack of discipline, amoral personal behaviour and the corruption of the contingents participating in UN missions have been recurrent themes in UN interventions.[49] That said, the UN seems to have learned from some of its past mistakes. It is now more willing to give its troops a stronger mandate, so that

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they have the necessary rules of engagement for success. Other improvements include the strengthening of the UN Stand-By Arrangements System (UNSAS), under which member states make conditional commitments of troops and resources to UN missions, and, as part of this scheme, the creation of the Stand-By High Readiness Brigade (SHIRBRIG), which provides the UN with some rapid reaction capability. Yet, ultimately, whether the UN intervenes depends on the UN Security Council. The permanent five Council members can block humanitarian intervention whenever they choose. When this happens, and when NATO and states choose not to act, who should then intervene?

The next best option is likely to be for a regional or a sub-regional organisation to undertake humanitarian intervention. As for state intervention, much depends on which particular regional or sub-regional intervener intervenes. The African Union suffers from massive shortfalls in funds and equipment, as the case of Darfur has demonstrated. ECOWAS lacks the funding and resources to intervene successfully and its troops have violated principles of *jus in bello* in past operations.[50] The EU is by far the most capable regional organisation, but lacks the ability to deploy a large-scale force out of area. Notwithstanding, regional and sub-regional organisations are often more willing to intervene, given their geographical proximity to the humanitarian crisis (they have a vested interest in local stability). If they had the resources to be able to undertake effective humanitarian intervention, they may be willing to intervene more frequently than other agents.

Overall, then, no current agent of humanitarian intervention is fully legitimate according to the conception of legitimacy outlined above. Although NATO may have an adequate degree of legitimacy, and other agents' intervention would probably be better than no intervention whatsoever, we cannot be satisfied with this situation. The problem is twofold.

First, there are too many occasions when humanitarian intervention should be undertaken, but is not. Too often NATO and capable states fail to act, and Security Council authorisation for UN operations is too often stymied. The result is that many mass violations of human rights continue unabated.

Second, as the preceding analysis demonstrates, no existing intervener is fully legitimate. This means that, when humanitarian intervention does occur, it will probably have some significant flaws. In particular, the intervener is likely to have at least one of the following failings: (1) it will lack local external effectiveness and therefore fail to tackle the humanitarian crisis effectively; (2) it will lack internal effectiveness and so cause significant harm to its own citizens; (3) it will lack global external effectiveness and so cause significant harm to the international community; (4) it will show inadequate fidelity to the principles of *jus in bello*; (5) it will lack internal support and consequently fail to represent properly the opinions of those providing the resources needed to undertake the intervention; and (6) it will lack external support and therefore fail to take into account properly the opinions of those suffering the humanitarian crisis.

III. Reforms

It is clear then that we need to improve the mechanisms and agents of humanitarian intervention so that we can legitimately tackle the egregious violations of human rights on a much more frequent basis. Options include: the codification of criteria for humanitarian intervention in international law; augmenting regional organisations' capacities; the extension of UNSAS; the creation of a cosmopolitan, permanent UN force; and even the increased use and regulation of private military companies.[51]

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There are therefore two interlinked challenges: (1) to increase the international community's willingness to undertake humanitarian intervention – and particularly the willingness of interveners, such as NATO, that are likely to be most legitimate – and (2) to increase the international community's will to reform current institutional arrangements so that humanitarian intervention can be undertaken more legitimately. These challenges are interlinked. Central to improving the international community's will to reform the mechanisms and agents of humanitarian intervention is improving the will to undertake humanitarian intervention. If international actors are keener to intervene to tackle egregious violations of human rights, then they will be more likely to push for reforms to the current mechanisms and agents of humanitarian intervention that will enable them to do so more effectively and, ultimately, legitimately. Conversely, one way to improve the international community's will to intervene is to improve the mechanisms and agents of humanitarian intervention. But how will we achieve these reforms?

One practical way of improving the international community's will in these two regards, suggested by John Clarke, is to highlight the successes of previous interventions.[52] Commitment and willingness often depends on the support for intervention from the agent of intervention's home population. This support is more likely to be forthcoming when this population has been shown by the media and by the UN that previous interventions have been successful.[53]

Another way of improving the international community's will to undertake humanitarian intervention and to reform the current mechanisms and agents of intervention is to encourage a subtle adjustment in states' perceptions of their national interest. In this context, Kofi Annan has called for a new, broader definition of the national interest in which states recognise that the collective interest is identical with their national interest.[54] To that extent, humanitarian intervention carried out effectively by states (or other agents) can have potential benefits for that intervener, such as increased international status, greater standing in regional organisations, and the opening up of new foreign markets. More generally, most of us have an interest in a just global order. A narrower understanding of the national interest misses such benefits.

Furthermore, Chris Brown argues that we need to get away from treating humanitarianism as a separate category of state behaviour.[55] This is the product of a Realist mindset, he argues, since it takes states to be rational egoists who act in the pursuit of their material interest, with anything that varies from this requiring explanation.[56] The danger with this mindset is that it will be reinforcing. That is to say, it will lead to a lack of humanitarian intervention, with states regarding standing by in the face of a humanitarian crisis as the behaviour expected of them, unless there is a material interest clearly involved. Brown proposes instead that we adopt a more ideational notion of interests, which would remove the need for a separate category of humanitarian action.[57]

But even on narrow understandings of self-interest, such as those favoured by Realists, humanitarian intervention can be justified. There has been a growing realisation that the disruption caused by a humanitarian crisis far away can have significant domestic effects. For instance, failed states are more commonly being viewed as breeding grounds for international terrorism. It is important, therefore, that we emphasise these links between humanitarian intervention and national interest, thereby tapping into a potential source of political will to undertake humanitarian intervention and to reform. Doing so will help achieve more frequent and more legitimate humanitarian intervention in response to the mass violation of basic human rights.

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Notes

1. Charlotte Ku and Harold K. Jacobson, 'Broaching the Issues', in Charlotte Ku and Harold K. Jacobson (eds), *Democratic Accountability and the Use of Force in International Law* (Cambridge: Cambridge University Press 2003), p.17.
2. See Alex J. Bellamy and Paul D. Williams, 'Who's Keeping the Peace? Regionalization and Contemporary Peace Operations', *International Security*, Vol. 29, No.4 (2005), pp.157–95.
3. These two events led a leading commentator to conclude that 'the sun of humanitarian intervention has set for now'. Thomas G. Weiss, 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *Security Dialogue*, Vol.35, No.2 (2004), p.149.
4. See Neil Macfarlane, Carolin Thielking, and Thomas Weiss, 'The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?', *Third World Quarterly*, Vol.25, No.5 (2004), pp.977–92.
5. See Jarat Chopra and Thomas G. Weiss, 'Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention', *Ethics and International Affairs*, Vol.6 (1992), pp.95–117.
6. International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre 2001).
7. UN, *2005 World Summit Outcome*, General Assembly Resolution 60/1 (2005). Available online at www.un.org/summit2005/documents.html (visited 8 May 2007), p.30.
8. Allen Buchanan, 'Political Legitimacy and Democracy', *Ethics*, Vol.112 (2002), pp.689–719; Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press 2004).
9. Daniel Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?', *American Journal of International Law*, Vol.93, No.3 (1999), pp.596–624.
10. Buchanan, *Justice, Legitimacy, and Self-Determination* (note 8), p.239.
11. Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press 2000), p.289.
12. According to some accounts of Just War Theory, for instance, war can be justly waged only when eight criteria of *jus ad bellum* (just cause, reasonable prospect of success, right authority, right intention, formal declaration of war, last resort, absolute justice and proportional response) are met. If one of these criteria is not met, war should not be waged. In recent years, many theorists have used the same categorical approach for humanitarian intervention. The most significant example is the Canadian government-commissioned *R2P*, which requires an intervener to meet five criteria (just cause, proportionate means, last resort, reasonable prospects and right intention). ICISS, *R2P* (note 6).
13. Also note that for the purposes of this article, I define humanitarian intervention as 'transboundary military action by an external agent with the predominant purpose of preventing, reducing, or halting an ongoing or impending egregious violation of human rights'.
14. Eric A. Heinze, 'Commonsense Morality and the Consequentialist Ethics of Humanitarian Intervention', *Journal of Military Ethics*, Vol.4, No.3 (2005), pp.168–82.
15. John Stuart Mill, 'A Few Words on Non-Intervention' in John M. Robson (ed), *Collected Works of John Stuart Mill Volume XI: Essays on Equality, Law, and Education* (Toronto: University of Toronto Press 1984), pp.111–24. That said, he limits the principle of non-intervention to 'civilised' societies.
16. Kofi Annan, 'Secretary-General Presents His Annual Report to General Assembly', *UN Press Release*, 20 September 1999, SG/SM7136 GA/9569. Available online at www.un.org/News/Press/docs/1999/19990920.sgsm7136.html (visited 4 July 2007).
17. On the consequentialist logic of these two principles of Just War Theory, see Mona Fixdal and Dan Smith, 'Humanitarian Intervention and Just War', *Mershon International Studies Review*, Vol.42 (1998), pp.283–312, and Heinze, 'Commonsense Morality' (note 14).
18. Jane Stromseth, 'Rethinking Humanitarian Intervention: The Case for Incremental Change' in J. L. Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Aspects* (Cambridge: Cambridge University Press 2003), p.268.
19. John Clarke, 'A Pragmatic Approach to Humanitarian Intervention', *Journal of Humanitarian Assistance.* Available online at http://www.jha.ac/articles/a072.pdf (visited 18 July 2007), p.3.
20. See, for instance, Heinze, 'Commonsense Morality' (note 14), Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge: Polity Press

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1996), p.226, and Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, Second Edition (New York: Transnational Publishers 1997).

21. See, for instance, Tom J. Farer, 'Cosmopolitan Humanitarian Intervention: A Five-Part Test', *International Relations*, Vol.19, No.2 (2005), pp.211–20, and ICISS, *R2P* (note 6).
22. See, for instance, Simon Caney, *Justice Beyond Borders* (Oxford: Oxford University Press 2005) and George R. Lucas, 'From *jus ad bellum* to *jus ad pacem*: Re-thinking Just War Criteria for the Use of Military Force for Humanitarian Ends' in Deen K. Chatterjee and Don E. Scheid (eds), *Ethics and Foreign Intervention* (Cambridge: Cambridge University Press 2003), pp.72–96.
23. Eric A. Heinze, 'Waging War for Human Rights: Towards a Moral-Legal Theory of Humanitarian Intervention', *Human Rights and Human Welfare*, Vol.3 (2003), pp.83–94; emphasis added.
24. Eric A. Heinze, 'The Moral Limits of Humanitarian Intervention: Reconciling Human Respect and Utility', *Polity*, Vol.36, No.4 (2004), p.550.
25. For rule-consequentialist justification of these principles, see R.B. Brandt, 'Utilitarianism and the Rules of War', *Philosophy and Public Affairs*, Vol.1, No.2 (1972), pp.145–65, and R.M. Hare, 'Rules of War and Moral Reasoning', *Philosophy and Public Affairs*, Vol.1, No.2 (1972), pp.166–81.
26. Samuel Scheffler frames the distinction between doing and allowing in terms of this distinction between primary and secondary manifestations of our agency. In his view, '[t]here is little doubt that some idea of this sort has an important role to play in ordinary moral thought'. Samuel Scheffler, 'Doing and Allowing', *Ethics*, Vol.114 (2004), p.215.
27. To be sure, some harm is permissible according to the principles of *jus in bello*; the concern is with *impermissible* harm, that is, harm that is suffered by civilians, disproportionate, or caused by child soldiers.
28. Fernando Tesón, 'The Liberal Case for Humanitarian Intervention' in J.L. Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Aspects* (Cambridge: Cambridge University Press 2003), p.115. Thomas Nagel outlines (but does not necessarily endorse) an absolutist defence of *jus in bello* in 'War and Massacre', *Philosophy and Public Affairs*, Vol.1, No.2 (1972), pp.123–44. Iain Atack gets closer to this position in 'Ethical Objections to Humanitarian Intervention', *Security Dialogue*, Vol.33, No.3 (2002), pp.279–92.
29. A similar position is adopted by Heinze, who argues that promoting the good is the *most important* moral concern, although not the *only* moral concern, in humanitarian intervention. Heinze, 'Commonsense Morality' (note 14), p.175.
30. For a more detailed defence of the importance of these values, what I elsewhere call 'internal' and 'external representativeness', see James Pattison, 'Representativeness and Humanitarian Intervention', *Journal of Social Philosophy*, Vol. 38, No.4 (2007), pp. 569–87, Allen Buchanan, 'The Internal Legitimacy of Humanitarian Intervention', *The Journal of Political Philosophy*, Vol.7, No.1 (1999), pp.71–87, and Tesón, *Humanitarian Intervention* (note 19), pp.126–9.
31. For instance, the cost of the Kosovo intervention has been estimated as $48 billion. ICISS, *R2P* (note 6), p.71.
32. This is not to endorse what Buchanan terms the 'discretionary association view of the state'. On this view, government is taken to be *solely* the agent of the associated individuals and its role as the furthering of these individuals' interests. The problem with this view, as Buchanan points out, is that it is too strong. Although a government may have an obligation to promote its citizens' interests, this obligation should not be regarded as absolute. Buchanan, 'Internal Legitimacy' (note 30).
33. Robert Dahl, *Democracy and its Critics* (London: Yale University Press 1989), p.89.
34. To be sure, it is not necessary for an intervener to have the support of *all* those in the political community that is subject to the humanitarian intervention, which would include those committing the atrocities. Rather, it is important that an intervener has the support of the victims and burdened bystanders. See Tesón, 'The Liberal Case' (note 28), p.107.
35. Note that this is not an argument for *communal* self-government (which is sometimes used to defend strict non-intervention), but *individual* self-government.
36. See, for instance, ICISS, *R2P* (note 6).
37. The only plausible exception – apart from self-defence – to Article 2(4) of the UN Charter, which provides a general legal prohibition on the use of force, is when the Security Council authorises intervention under Chapter VII.
38. I explore these arguments in more detail in James Pattison, 'Humanitarian Intervention and International Law: The Moral Significance of an Intervener's Legal Status', *Critical Review of International Social and Political Philosophy*, Vol. 10, No.3 (2007), pp. 301–19.
39. Fernando Tesón, 'Ending Tyranny in Iraq', *Ethics and International Affairs*, Vol.19, No.2 (2005), p.18.

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40. This distinction between intention and motive has been increasingly recognised in the literature on humanitarian intervention. For instance, see Terry Nardin, 'Introduction' in Terry Nardin and Melissa Williams (eds), *NOMOS XLVII: Humanitarian Intervention* (New York: New York University Press 2006), pp.1–28, Pattison (note 38), pp. 301–19, and Tesón, 'Ending Tyranny' (note 39). Those who overlook this distinction tend to exaggerate the importance of motives. See, for instance, Mohammed Ayoob, 'Humanitarian Intervention and State Sovereignty', *International Journal of Human Rights*, Vol.6, No.1 (2002), pp.81–102.
41. Tesón, 'Ending Tyranny' (note 39), p.9. A more plausible justification of the importance of an intervener having a humanitarian motive is instrumental: a well-motivated intervener is more likely to be successful. There is, however, little evidence to support this claim. Indeed, a common – and quite persuasive – argument is that an intervener needs to have mixed motives in order to be successful. See Mark S. Stein, 'Unauthorized Humanitarian Intervention', *Social Philosophy and Policy*, Vol.21, No.1 (2004), p.35.
42. Daniele Archibugi, 'Cosmopolitan Humanitarian Intervention is Never Unilateral', *International Relations*, Vol.19, No.2 (2005), pp.220–4.
43. See Nicholas J. Wheeler, *Saving Strangers* (Oxford: Oxford University Press 2000), p.290, and Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press 2001), pp.220–1.
44. Terry Terriff, 'NATO: War Fighters or Cosmopolitan Warriors?', in Lorraine Elliott and Graham Cheeseman (eds), *Forces for Good: Cosmopolitan Militaries in the 21st Century* (Manchester: Manchester University Press 2004), pp.117–33.
45. Humanitarian intervention is often rejected because of interveners' apparent selectivity in where they intervene. For a repudiation of these arguments, see Wheeler (note 43), p.134, Thomas M. Franck, *Recourse to Force: State Action against Threats and Armed Attacks* (Cambridge: Cambridge University Press 2002), p.189, and the International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Research, Bibliography, Background: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre 2001), p.150.
46. Archibugi (note 42), p.224.
47. There may also be similar problems for a NATO force, if it comprises these nationalities.
48. Michael Walzer, 'Arguing for Humanitarian Intervention', in Nicolaus Mills and Kira Brunner (eds), *The New Killing Fields: Massacre and the Politics of Intervention* (New York: Basic Books 2002), p.23.
49. Stephen Kinloch-Pichat, *A UN 'Legion': Between Utopia and Reality* (London: Frank Cass 2004), p.178.
50. See, further, Binaifer Nowrojee, 'Africa on its Own: Regional Intervention and Human Rights', *Human Rights Watch World Report 2004*. Available online at hrw.org/wr2k4.4htm (visited 8 April 2007).
51. I explore the merits of the creation of a cosmopolitan permanent UN force in James Pattison, 'Humanitarian Intervention and a Cosmopolitan UN Force', *Journal of International Political Theory*, Vol. 4, No.1 (2008), pp.126–45. and the case for and against using private military companies for humanitarian intervention in James Pattison, 'Outsourcing the Responsibility to Protect: Humanitarian Intervention and Private Military Companies', in Hartmut Behr (ed.) *Beyond National Security: New Regional and Global Perspectives on Non-State Violence*, forthcoming. The problems with PMCs more generally are explored in James Pattison, 'Just War Theory and the Privatization of Military Force', *Ethics & International Affairs*, Vol. 22, No.2 (2008), forthcoming.
52. Clarke (note 19).
53. Also see Stromseth (note 18) p.270.
54. Chris Abbott, 'Rights and Responsibilities: The Dilemmas of Humanitarian Intervention', *Global Dialogue*, Vol.7, No.1–2 (2005), p.7.
55. Chris Brown, 'What, Exactly, is the Problem to which the "Five-Part Test" is the Solution?', *International Relations*, Vol.19, No.2 (2005), p.227.
56. Ibid. p.227.
57. Ibid. p.228.