Civil Society Perspectives on Humanitarian Intervention

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ABSTRACT. This article explores the multiple roles played by civil society actors in relation to policy debates relating to whether to advocate or oppose humanitarian intervention under a variety of specific circumstances, or in general. There is no consistent civil society viewpoint, but rather a range of disagreements relating to whether there exists a genuine imminent threat of humanitarian catastrophe, whether the political will exists to intervene in a manner that protects a threatened population, and whether a reliance on force for humanitarian ends should ever be supported in the absence of a mandate from the United Nations Security Council. Most civil society voices prefer to assess each case on its own rather to be for or against humanitarian intervention as a general proposition. A consensus would look favorably upon humanitarian intervention endorsed by the UNSC. The problems arise where such an endorsement is not obtainable. The NATO War of 1999 to safeguard the endangered Albanian population of Kosovo illustrates the positive case for humanitarian intervention as there appeared to be an imminent threat and there existed a sufficient political will to make it seem likely that an intervention could attain its goals. The absence of support from the UNSC in this instance was offset by the participation by the UN after the fact in the work of economic and political reconstruction, although the precedent set by this use of non-defensive force has kept the Kosovo undertaking controversial. In contrast to Kosovo, civil society actors throughout the world generally rejected the claimed humanitarian justifications for the Iraq War. At this time civil society is split on the question as to whether *ever* to encourage humanitarian intervention undertaken absent a green light in advance from the UN.

KEYWORDS: humanitarian intervention, civil society, United Nations, Kosovo War, Iraq War

Introduction

No issue was more divisive in global civil society since the end of the Cold War than the morality, legality, and politics of humanitarian intervention.[1] This divisiveness meant that civil society could not effectively in the most difficult instances serve as the global voice of conscience with respect to interventionary diplomacy. On the left were too many suspicions that humanitarian claims were invoked to conceal underlying geopolitical goals. On the right was an inherent distaste for uses of force that rested on moralistic justifications rather than on the basis of security interests. Even in the center there was debate as to whether intervention was likely to have a genuinely positive set of effects,

and whether the intervening actors were sufficiently committed to devote resources and energies to the project, especially in its post-conflict, reconstruction phase. In these senses, civil society was very active in promoting or opposing proposed humanitarian interventions, but without the sort of unified approach that would add clarity and coherence to the policy debates. In some instances, especially where the facts of extreme humanitarian crisis were stark and uncontested or where the grand strategy goals of the intervening actors were plain, civil society actors were in sufficient agreement to act as either a force for intervention or of opposition.

In many respects the 1990s represented the golden age of Westphalian geopolitics: with the completion of the process of decolonization, (including the collapse of the Soviet empire) the major premise of a world order based on the universality of territorial authority under the control of independent sovereign states belonging to the United Nations was substantially realized for the first time. Additionally after the Cold War, there was no serious prospect of a major international war between major sovereign states. Furthermore, the peoples of East Europe, the Soviet Union, and South Africa had been unexpectedly liberated from oppressive rule without significant accompanying violence, a near political miracle.

In such an atmosphere the ideological tensions that had underpinned the Cold War disappeared. Instead, an economistic phase of international relations emphasizing trade, investment, and growth dominated the policy agendas of foreign offices. The emphasis on an integrated world economy was greatly facilitated by information technology and personal computers that were empowering private sector and civil society actors of all variety to participate in an increasingly networked world.[2]

It was also a historical moment that seemed highly receptive to a series of normative developments associated with law and morality.[3] After decades of dormancy the Nuremberg idea of holding leaders accountable for crimes of states was revived by governmental initiative, and applied with high dram to such dictators as Pinochet and Milosevic. In this atmosphere action was taken by governments to establish by action of the United Nations Security Council a series of hoc international criminal tribunals. Such initiatives encouraged stimulated civil society ambitions, giving rise to an unexpectedly successful campaign based on collaboration with a coalition of moderate government to establish a permanent International Criminal Court that came into formal existence in 2002.

Also in this setting of heightened sensitivity historic wrongs, long ignored, were acknowledged by political leaders, producing high profile apologies, sentimental remembrances, sometimes accompanied by newly available remedies. After decades of denial, some of the gold confiscated from Holocaust victims was returned or produced compensation in such bastions of banking secrecy as Switzerland.[4] To some extent, survivors of ordeals of forced labor in Europe and Asia received apologies, and in some instances, payments for work rendered long ago. In many settings, redress for past grievances was sought for recent and distant wrongs. One expression of this receptivity to redress was the formation of several commissions of peace and reconciliation. This approach was taken, especially in Latin American countries, in the midst of transitions from dictatorial rule to constitutional democracy. Such commissions acknowledged the wrong that had been perpetrated and looked to a future where such abuses would be

avoided, but avoided holding perpetrators accountable or instituting reparation arrangements for victims.[5]

One of the most persistent efforts was made by civil society representatives of indigenous peoples to seek vindication of their sovereign rights as nations that had long been violated. This led to a willingness of the United Nations, under the auspices of the UN Commission on Human Rights Sub-Commission on the Prevention of Discrimination and Protection of Minorities, to provide a forum that met annually to consider the grievances of indigenous peoples. This process continues, and has taken the principal form of articulating a Declaration of the Rights of Indigenous Peoples.[6]

In some ways analogous, descendants of African-American slaves and their representatives, for the first time developed serious arguments that demanded massive reparations for the abuse and suffering endured. These grievances received attention, and in some circles, sympathy, but did not lead to any kind of mass movement and did not produce any offers by accused societies to pay reparations.[7]

This global setting of heightened moral sensitivity was also reinforced by political innovation, especially the European Union that was in its way eclipsing the Westphalian era. The European experiment in regional governance, despite periodic difficulties, presented the world with an instance of the great benefits to be derived from pooled sovereignty, cooperation, and more relaxed border control. Most impressive, and often overlooked, as the transformation of Europe from being most afflicted war zone on the planet into a domain of peaceful inter-state relations with expectations of durable peace reaching a virtual certainty.

But this was not all. The international protection of human rights moved from the hinterland of world politics into a terrain of far greater policy prominence. This development was itself largely responsive to civil society activism, and especially to the work and influence of transnational human rights organizations. As a result, civil society actors became increasingly acknowledged as subjects of history to be included in any credible identification of the elements of world order. The United Nations Secretary General in most of the 1990s, Kofi Annan, repeatedly urged the inclusion of civil society actors in the work of the United Nations. In this period also there took place a series of elaborate UN world policy conferences on the environment, human rights, status of women, population, and social wellbeing.[8] Within these arenas that attracted the global media, civil society representatives tended to congregate, both to exert influence on governmental activities and to build their own networks for the future. These conference arenas became impressive experiments in *global democracy* as a result of the participation and impact of civil society actors.

In light of this chain of events, it seemed misleading for scholars or even journalists to continue their reliance on a statist framework of inquiry and interpretation that regarded *only* sovereign states, and their interactions, as worthy of attention. At the same time, the building blocks for a hopeful future based on the rule of law, global justice, and the absence of international warfare seemed to provide the world community with many of the ingredients of a hopeful future. As subsequent events have unfortunately demonstrated, this optimistic outlook based on the global setting of the 1990s did not persist, and had overlooked some dark underlying forces that would soon surface in a variety of disturbing ways.

On Humanitarian Intervention

One precursor of this more pessimistic climate of opinion arose in relation to the controversial subject matter of "humanitarian intervention." In a sense, this set of issues is a byproduct of globalization and an accompanying heightened sense of human solidarity. In the 1990s, there emerged what was described by its supporters as "humanitarian diplomacy." This emergence has many overlapping explanations, and was viewed mainly as a natural incident of the rising attention given to human rights. More cynical observers were suspicious of this humanitarian turn, and treated it as a rather desperate set of moves to sustain military budgets and national security establishments in a global setting that lacked the sort of strategic threats that existed during the Cold War. There was some reason also to believe that media attention to humanitarian catastrophes in their unfolding was altering the political climate. It was common to refer to "the CNN factor" as putting pressure on politicians and publics to do something in response to the unfolding of humanitarian disasters. Some believed that responding to humanitarian disasters was a relatively inexpensive means to deflect the growing criticism of neoliberal globalization in the 1990s as a heartless, capital-driven restructuring of global economic relations.[9]

But humanitarian intervention was also inevitably always at the edge of diplomatic propriety, and likely to encounter sharp criticism in most specific instances. The centerpiece of such humanitarian diplomacy was the use of force, most advantageously with the formal blessings and participation of the United Nations, being justified as a means employed to protect victimized peoples, a dynamic discussed and

debated in various concrete circumstances under the rubric of "humanitarian intervention."

The 1990s gave rise to several humanitarian interventions, each of which generated sharp debate in civil society circles and widely divergent academic commentary. This was especially so in connection with Somalia, Rwanda, Bosnia, East Timor, and especially, Kosovo, and later Iraq. The debate focused on three kinds of concerns: was the intervention under discussion legally, morally, and politically justified and feasible? Did a refusal to intervene in the face of a humanitarian catastrophe expose a serious weakness in the structure of world order and the quality of global leadership? Were the real reasons for the intervention associated with strategic, not humanitarian, concerns?

The voices of civil society were discordant. They clashed on the interpretation of facts, norms, and motives pertaining to each instance of humanitarian intervention. This clash was reflected in relation to the core questions, and first surfaced in a serious way after the high-profile reversal of the American approach to Somalia in 1993-1994, particularly the refusal of the Clinton presidency to sustain its dominant role in peacekeeping efforts due to armed resistance in Somalia producing American casualties. While Clinton had earlier promised by way of an embrace of "muscular multilateralism" to go beyond the George H. W. Bush approach in Somalia, the 1993 death of eighteen American soldiers in Mogadishu produced a domestic backlash, and a hasty retreat from Somalia.

This retreat led to a reassessment of humanitarian diplomacy by the United States. It spilled over in tragic ways to discourage in 1994 an international response by the

United Nations to an unfolding massive genocide in Rwanda. This seemed particularly lamentable in relation to Rwanda as most reliable observers believed that a small international commitment by way of humanitarian intervention could almost certainly have saved several hundred thousand Tutsi lives. This attitude of reluctance also accounted for the meagerness of the early commitment to oppose Serbian ethnic cleansing in Bosnia that culminated in the 1995 Srebrenica massacre of several thousand Muslim males.[10] In relation to all three of these instances, the UN had formally acknowledged its responsibility to protect and in each there existed a demonstrated and imminent humanitarian emergency. The failures to protect effectively arose from the weakness of political will on the part of major states, especially the United States, exhibited by the unwillingness to make troops available or commit the necessary resources.[11]

These cross-cutting issues assumed a much more contested form in relation to Kosovo in the late 1990s. On the one side, Kosovo was technically a sub-division of Serbia, or more accurately at the time, subject to the sovereignty of the Belgrade government of former Yugoslavia. Russia and China were geopolitical opponents of a humanitarian intervention authorized by the UNSC, and therefore no basis existed in international law to use force to protect the Albanians in Kosovo from a gathering threat of ethnic cleansing, a threat made credible by the events in Bosnia a few years earlier and as a result of several violent incidents in Kosovo. On the other side, the United States, in conjunction with the countries of Western Europe, possessed the political will and the logistical means to act effectively on behalf of the threatened Kosovars who made up about eighty five percent of the population. The strength of this political will was not

primarily an expression of a deeper humanitarian commitment in one instance rather than another, but seemed mainly to reflect mainly the presence in the Kosovo setting of a reinforcing American geopolitical motivation to reestablish Atlanticist solidarity in the aftermath of the Cold War. The United States was also eager to convey to Europe its continuing hegemony on the continent, especially in light of tensions arising in relation to foreign trade and investment. Washington was also eager to convince Europeans that NATO, then approaching its fiftieth anniversary, was still a viable alliance, that it could have a new life despite the collapse of the Soviet Union. The European locus of the humanitarian crisis was also a factor. European governments, with their memories of the Holocaust rekindled, exhibited a guilty conscience about their earlier failures to prevent violence in Bosnia, and did not want to reinforce this impression by acting passively in face of the worsening situation in Kosovo.

There were a number of factors present in the pre-intervention context in Kosovo that made recourse to force an attractive option. An initiative backed by the United States and NATO, although it had some downsides for Europe, did carry the promise of effectiveness that could not have existed if the response to Serb moves in Kosovo were once again dependent on international altruism. The success of the American-led coalition in the First Gulf War created a belief that the Kosovo War could be won quickly and decisively from the air without the risk of many casualties, which helped overcome the lingering memories of how quickly the UN peacekeeping mission in Somalia had been discredited. Finally, entrusting the operation to NATO rather than to the UN pleased American conservatives who never wanted to provide the UN with the sort of capabilities

or prominence required to be effective in situations where the territorial sovereign would not give consent for peacekeeping.

Cleavages in Civil Society

The Kosovo debate illuminated some deep divisions in civil society that were brought to the surface before, during, and after the Kosovo War. On the interventionist side were those who primarily identified with the endangered civilian population in Kosovo, and accorded highest priority to the humanitarian imperative of providing security for these potential victims along with the invalidation and criminalization of the Serbian leadership in Belgrade. It was this leadership, especially Milosevic, which was widely believed to be responsible for the genocidal events that had happened earlier in Bosnia.[12] For these advocates of intervention, their main goal was a timely and effective operation, and considerations of auspices and legality were distinctly secondary. Some argued that the UN Charter framework for the regulation of force had long since broken down, if not irrelevant.[13] Charter norms governing the use of force had long lost their authoritative status, allowing interventionists to treat "a coalition of the willing" as an adequate legal grounding for a humanitarian intervention.[14]

On the anti-interventionist side civil society actors who advanced, two often overlapping arguments: an insistence that any international use of non-defensive force without a mandate from the Security Council would establish a bad and dangerous precedent that could jeopardize the sovereignty and independence of weaker states in the future. Furthermore, that entrusting NATO with such an undertaking was to embrace "military humanism" of a highly questionable variety, which concealed a series of non-

humanitarian goals ranging from the establishment of military bases to a show of readiness of the United States to use force overseas to uphold its strategic interests.[15] In effect, extending NATO's writ beyond what was permissible by reference to the UN Charter, or even to the NATO treaty itself, amounted to the creation and endorsement of a new instrument of hegemonic geopolitics. It was on this basis that China and Russia let it be known that if approval were sought for this form of intervention, they would make use of their veto. The United States reacted to this eventuality by circumventing the UNSC, thereby avoiding the need to defy UN authority.

The Kosovo War commenced on February 14, 1999 and continued for seventy-four days, ending with a ceasefire agreement. During this period Slobodan Milosevic was indicted for crimes in Bosnia and Kosovo by the International ad hoc Tribunal for Former Yugoslavia.[16] This tribunal had been set up in 1992 under the authority of the Security Council and was funded by and was accused by critics of being overly receptive to informal US pressures.[17] The war was waged entirely from the air by NATO, and several civilian targets were selected for air strikes in Kosovo and Serbia. At the same time, the war had the effects of freeing Kosovo from oppressive Serb rule and a likely onslaught of ethnic cleansing. It also induced most of the refugees who had fled the country prior to or during the NATO attacks to return to Kosovo.

The supporters and critics focused on different aspects of the Kosovo experience. The supporters argued that only this NATO undertaking had the means and could summon the will to protect the civilian population of Kosovo, and that this was a successful example of humanitarian intervention. The critics allege that the bombing from high altitudes constituted a major violation of the laws of war that should have been

punished as a war crime. Further, that the UN presence in Kosovo after the fighting had stopped did not act promptly to ensure the safety of the now endangered Serbian minority, which resulted in what some critical observers called "reverse ethnic cleansing." Such critics also contend that Kosovo was not truly "liberated," but was made into a protectorate that includes a large, semi-permanent American military base, and that insufficient reconstruction aid was made available, which makes the situation in Kosovo verge on anarchy: widespread unemployment and crime, as well as inter-ethnic tensions, especially as between the now dominant Albanian Kosovars and the Serbian minority of ten percent or so.

The contested character of the Kosovo War encouraged assessments that were intended to influence future responses to unfolding humanitarian emergencies. The most influential assessments were made by independent groups of prominent individuals who investigated the issues in controversy, issuing reports summarizing conclusions and recommendations. Such groups performed as "independent commissions," consisting of prominent citizens appointed on the initiative of governments that funded the exercise. The goal of these exercises was to present a report to the Secretary General of the United Nations and to influence public opinion by encouraging media coverage. The main intellectual objective was to provide a normative framework for humanitarian intervention in the future that would combine the effectiveness of Kosovo without generating so much controversy. The process is itself suggestive of a norm-creating role for civil society actors operating in a new space that is neither purely statist nor purely situated in civil society. These commissions are themselves hybrid actors that have played a special role of accommodating pressures on the Westphalian framework in this

historical period where the state system remains formally in place despite its inability to address certain practical challenges without some departures from international law.

The first of these commissions was the Independent International Commission on Kosovo. It was chaired by Richard Goldstone, a member of the South African Constitutional Court and the first prosecutor at the ICTY, and was funded by various governments, but mainly by Sweden. Its final report was submitted to the Secretary General.[18] The main effort of the Commission was to find an adequate way to address the controversy surrounding the intervention. The report relied on a distinction between the "legality" and the "legitimacy" of humanitarian interventions in particular instances.[19] The argument made was that the facts relating to Kosovo justified the apprehension of an impending humanitarian catastrophe, but that there existed no *legal* means to intervene without obtaining a prior Chapter VII mandate from the Security Council. At the same time, the urgency of the situation combined with the availability of an effective means to protect the endangered Kosovar population meant that the moral and political grounds for intervention were present making the operation *legitimate*. The report also recommended efforts by the UNSC to close this gap between legality and legitimacy either by instituting a voluntary practice of suspending the veto in circumstances of humanitarian emergency or by formally acknowledging a residual right of the General Assembly or regional institutions to authorize humanitarian intervention in the event that the Security Council is gridlocked.[20]

The second effort was stimulated by the Canadian Government, and took the form of the International Commission on Intervention and State Sovereignty, chaired by Gareth Evans, a former Foreign Minister of Australia and by Mohamed Sahnoun, a

prominent diplomat and international civil servant from Algeria. The report of the

Evans/Sahnoun Commission focused more on the generic problems posed by the Kosovo

debate than on the Kosovo experience itself. [21] It advocated a creative linguistic move to

minimize the seeming inconsistency between humanitarian intervention and the idea and

reality of state sovereignty. This move involved shifting the emphasis from the right of

the intervenor to the duty of the international community to protect those who were

threatened with imminent catastrophe. This duty was called "the responsibility to

protect," a challenge to the international community to act in the face of an impending

humanitarian catastrophe. This responsibility to protect takes precedence in the event that

a government of a state withholds its consent. Such a normative shift makes sovereignty

conditional on protecting people within territorial boundaries, and is associated with

efforts to achieve so-called "responsible sovereignty." It repudiates classical views of

sovereignty as unconditional, which has provided states with a haven for the perpetration

of "human wrongs." The UNSC has been influenced by this report, accepting the

normative reorientation as a part of the reform package recommended by the Secretary

General's High-Level Panel on Threats, Challenges and Change, and formally endorsed

by UNSC resolutions, including Security Council Resolution 1706 enunciating its new

approach to the Darfur crisis.[22]

Civil society actors made two major contributions: first, to illustrate very clearly

the fault-lines of disagreement when it comes to specific instances of humanitarian

intervention in which the territorial sovereign withholds consent and the UNSC is

gridlocked, yet where the political will and logistical means are available to pursue urgent

humanitarian goals, thereby seeking to avert massive human suffering; and secondly, to

shape a normative approach by way of law, morality, and politics that seeks to protect

vulnerable peoples confronting an impending humanitarian catastrophe without

undermining international law and the authority of the Security Council. My purpose here

is not so much to argue the substantive merits of recasting the humanitarian intervention

argument in the aftermath of Kosovo, but to show how civil society actors engaged in the

debate both prior to and subsequent to the Kosovo War. A further observation is that the

pre-intervention debate involved civil society activists and organizations from below

while the post-intervention process was dominated by initiatives from above that relied

on civil society elites with close and credible ties to the Westphalian system.[23]

Post-Kosovo: 9/11, Iraq, and Darfur

Even before the 9/11 attacks, the neoconservative turn in American political life,

especially foreign policy, meant that the dynamics of normative (moral and legal)

globalization, so prominent in the 1990s, would no longer have the benefit of American

leadership. The Bush presidency from its outset in January 2001 signaled its opposition to

humanitarian diplomacy, its skepticism about international law and international

institutions, and its particular doubts about funding UN peacekeeping operations. The

new emphasis of American foreign policy would be on strategic priorities as defined by

the entourage of neoconservative advisors at the White House and Pentagon, which

translated into an increased defense budget, an unwillingness to constrain national

security policy by arms control treaties, a preoccupation with the future of the Middle

East, and a definite swing toward relying on unilateral initiatives. These features of

American foreign policy were accentuated by the US response to the 9/11 attacks.[24] This

dramatically altered global setting had a major impact on the diplomacy relevant to humanitarian intervention, and heavily influenced the ongoing civil society debate.

There was some support among liberal hawks for extending the Kosovo precedent to Iraq in the lead up to the invasion of March 2003. Most notably, Michael Ignatieff, Christopher Hitchens, and Anne-Marie Slaughter supported the invasion of Iraq on partially humanitarian grounds of deposing a cruel tyrant, and were willing to overlook the absence of UNSC endorsement.[25] Slaughter invoked the distinction in the Kosovo Commission Report that stressed the legitimacy and legality reasoning, although extending its scope. She argued that the intervention could be legitimized *after* the fact, and was thus provisionally legitimate, due to the oppressive leadership and international criminality of the Baghdad regime as personified by Saddam Hussein. The official American emphasis prior to the invasion was on the strategic threat posed by Iraq due to its alleged possession of weapons of mass destruction, its supposed links to international terrorism, and only incidentally, its dictatorial and brutal governing process. After the invasion, as it became clear that there were no WMD to be found in Iraq and no significant links to terrorism, the official rationale in Washington shifted to the promotion of democracy and human rights by way of military intervention and occupation. And most recently, after years of denial, President Bush acknowledged that oil was a factor, and that if the United States were to withdraw from Iraq it would lose control over Iraqi oil pricing, which could drive the world price up to $300-400 per barrel.

This attempted legal and moral rationalization for the Kosovo War in the context of the Iraq War was generally repudiated by civil society actors throughout the world. The American effort to mobilize international support for its invasion at the United

Nations and elsewhere gave rise to a worldwide anti-war movement that was completely

unresponsive to the alleged humanitarian benefits of the proposed American-led

intervention. On February 15, 2003, a few weeks before the invasion, there took place the

largest expression of globalized anti-war sentiment in world history, with some twelve

million demonstrators assembled in eighty countries and some 600 cities. These

demonstrations also expressed the overwhelming outlook of public opinion, especially in

the European democracies. Even in countries whose leaders were prepared to ignore their

domestic public opinion and give support to American policy, such as the United

Kingdom and Spain, the citizenry was opposed from the outset.

Of course, there was an abstract humanitarian justification for seeking regime

change in Iraq, but the means chosen illustrate the dangers of humanitarian intervention

being used as a pretext for aggressive warfare. Furthermore, even if UN authorization for

the use of force had been obtained, military action of a non-defensive sort in the absence

of any immediate threat of humanitarian catastrophe would have resulted in an outcome

not very dissimilar from what has resulted. Humanitarian intervention may be effective as

an emergency measure to protect a vulnerable population or minority, but it is rarely able

to impose a new political structure on a country. The American failure in Vietnam despite

its military dominance should have discouraged intervening in Iraq. This should also

have been the lesson of Somalia, namely, that when the humanitarian effort was

transformed by the Clinton presidency into a political restructuring operation, nationalist

energies in Somalia were mobilized to resist the foreign presence. The Iraq experience

should be interpreted throughout civil society to reinforce this lesson: in the absence of a

humanitarian emergency, intervention is most unlikely to achieve humanitarian goals at

an acceptable cost. This is especially true if the main goal is to restructure the political life of the target country. Of course, Iraq was an extreme case, given the relative stability of political rule at the time of the invasion, considering the unwillingness of the UN to give its blessings, and in view of the unified and widespread opposition to the proposed war throughout global civil society.

This opposition has, of course, continued during the long and bloody occupation of Iraq. It has taken several forms, perhaps most notably a world tribunal process.[26] In at least twenty countries, civil society initiatives organized an informal tribunal composed of citizens who passed legal judgment on the invasion and occupation, concluding that the American and British leaders were criminally responsible for violating international law, and should be held personally accountable. The culminating expression of this global initiative was the World Tribunal on Iraq held in Istanbul in June 2005, with a distinguished panel of world citizens, presided over by the Indian novelist, Arundhati Roy. The panel, without pretending professional competence or governmental authority, issued a Declaration of Conscience that expressed the judgment that the Iraq War was a war of aggression and its perpetrators were indictable under international criminal law.

The WTI heard testimony from fifty four expert witnesses, including several Iraqis, as well as international law specialists and high ranking former UN officials. Although this anti-war consensus in civil society was ineffectual in altering American policy, it did contribute to a climate of *illegitimacy* associated with the occupation of Iraq. A main lesson of the Iraq War (reinforcing the lesson of the Vietnam War) is that a strategic intervention is likely to fail even if supported by a strong political will that can

mobilize impressive military capabilities; the UN will withhold authorization, civil society and public opinion will oppose, and nationalist forces will resist.

If Iraq shows that political will is insufficient to liberate an oppressed people, the persisting humanitarian crisis in Darfur, already accounting for between 300,000 and 400,000 deaths, with more than two million others displaced and at risk, shows that a requisite political will and an aroused public opinion is necessary to fashion an effective response. UNSC 1706 accepts the mandate of "the responsibility to protect" norm, but absent the consent of the government of Sudan and without the deep commitment of the United States and other important states, the deepening ordeal endured by the people of Darfur resembles the experience of Rwanda in 1994, except that in Darfur the mass lethality is exhibited in a more gradual process. Civil society is almost as unified as in relation to Iraq, but is unable to transform the clear moral and legal commitment into a political project without the participation of the main geopolitical forces on a sufficient basis. As East Timor show, where consent is present, and a regional actor with requisite capabilities is deeply engaged, the humanitarian mission can be effectively implemented.[27]

Conclusion

In conclusion, it seems clear that "the responsibility to protect" norm is becoming an accepted as part of customary international law, but its implementation in specific instances is not a reflection of its status in law. It remains primarily dependent on mobilizing the political will of states, especially dominant states, which can be pushed just so far by an aroused public opinion calling for protective action. At present, such a

political will is not likely to be supportive of humanitarian intervention unless it coincides with significant strategic interests. Also, where the territorial sovereign refuses consent even geopolitical actors often cannot translate their interventionary commitment into viable political projects, and the attempt to do so can be exceedingly costly.

As far as the role of civil society actors is concerned, the legitimacy and legality matrix is instructive: where legitimacy and legality factors overlap, civil society will lend support to humanitarian intervention (as in Rwanda, Darfur, East Timor); where legitimacy supports a call for humanitarian intervention, but legality inhibits, civil society actors will be split (as in Kosovo); where legitimacy factors are negative or even ambiguous, and legality inhibits, then civil society will be overwhelmingly opposed to military forms of intervention (as in Iraq). In all instances, the depth of strategic interest of the intervening state(s) in changing conditions in the target society is the best predictor of whether a significant intervention will be undertaken, and if so, whether it will meet with success. But as Vietnam and Iraq show, even great strategic commitments will be insufficient in the face of mobilized resistance by the target society.

Because humanitarian intervention depends on the threat and use of force, it requires the participation of states, and usually of international institutions at the regional and global levels. Civil society actors play significant roles in shaping public attitudes, especially before and after the event. With respect to the operational aspects of humanitarian intervention, civil society actors are confined to the margins of policymaking and policy implementation. Aside from significant contributions by way of relief activities and truce observation roles on the ground, the main contributions of civil society actors has been to reframe the normative debate around legitimacy and legality

considerations, as well as with respect to the conditions surrounding a proper implementation of the responsibility to protect norm. Also, civil society activism, as in relation to the Iraq War, does influence perceptions as to the legitimacy of recourse to threats and uses of force, and subsequent occupation, especially in circumstances where the UNSC has withheld authorization. The civil society role can be one of mobilizing support for intervention, as is currently the case with respect to Darfur (e.g. George Clooney at the UN), as well as making an effort to build opposition to the use of force and military occupation as has been the case with respect to Iraq. Civil society actors can also play important roles in reporting upon compliance with or violations of international humanitarian law with respect to international military operations. Of course, these actors can only flourish in relation to constitutional democracies, and even in these their credibility depends on their degree of perceived independence and the integrity of their own internal structure, especially transparency of operations and accountability of officers.

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