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**Who Intervenes and Why it Matters:
The Problem of Agency in Humanitarian Intervention**

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(ABSTRACT)

The debate over humanitarian intervention has tended to focus on the conditions under which the resort to armed intervention is permissible while paying less attention to which actors are best suited to engage in such a complicated and demanding undertaking. The purpose of this paper is to explore characteristics that affect the ability of potential agents of humanitarian intervention to effectively undertake this operationally and politically demanding task. While the military wherewithal of the intervener is fundamental, I argue that a potential intervener's legitimacy as an agent or enforcer of humanitarian norms is also crucial in determining whether and the extent to which it is a suitable agent. In other words, the efficacy of a potential intervener depends not only on its military wherewithal, but also on certain non-material factors that can affect its ability to effectively exercise this power. Using a consequentialist ethical framework, this paper examines the various material and non-material factors that can militate either for or against the suitability of certain actors undertaking humanitarian intervention in various parts of the world. I ultimately use this framework to examine the suitability of various possible agents of a potential humanitarian intervention in Darfur, Sudan.

Introduction

Most scholarship on the subject of humanitarian intervention deals with the conditions under which the resort to armed intervention is morally permissible and/or when, if ever, humanitarian intervention is permitted under international law. To be sure, delineating the precise conditions of human suffering under which the act of intervention is permissible is a crucial step in developing workable prescriptive principles to guide humanitarian intervention. Likewise, grounding such an argument in international law serves an important legitimating function for its conduct. But delineating the ethical and legal grounds for humanitarian intervention has little real-world applicability if one cannot identify which actors are best-suited to undertake it. Therefore, the purpose of this paper is to explore the characteristics of potential agents of intervention that have a bearing on their ability to undertake successful humanitarian interventions in various parts of the world. In other words, which international actors are the most suitable to engage in such a complicated and demanding undertaking and why, specifically, do they merit this task?

If the central concern in the debate over humanitarian intervention is the suffering of those people who are in need of being rescued and those who may otherwise be affected by the use of military force, it might seem misplaced to focus on the suitability of the agent who undertakes such an act. Addressing

this question appears to shift the primary concern from the plight of those suffering to the suitability of the agent who should attempt to rescue them.¹ This is particularly true when one considers the various material, normative and political factors that can militate either for or against the suitability of certain actors undertaking humanitarian intervention in various parts of the world. Furthermore, whereas addressing the issue of the conditions that permit humanitarian intervention requires that we delineate clear principles, rules and criteria that can be applied consistently to different cases over time, the suitability of a particular actor as an agent of intervention can vary substantially with changes in the international distribution of power, prevailing political circumstances or other agent-specific factors.² This concern therefore entails cogent moral reasoning as well as a heavy dose of political pragmatism.

I begin by framing this concern in consequentialist terms, essentially arguing that the overall efficacy of a potential intervener has important bearing on its ability to maximize human welfare in a given humanitarian catastrophe. The most basic element of such efficacy, of course, is the military wherewithal of the agent, though there are several non-material factors that are largely a function of an agent's perceived legitimacy in international society. Drawing from classic works in international relations theory concerning the relationship between power and legitimacy, I then identify and explain three additional and interrelated elements of efficacy: multilateral legitimation, the humanitarian credentials of the intervener, and the position of the intervener in the prevailing international political context. The final section of this paper is an analysis of the ongoing humanitarian crisis in Darfur, Sudan, wherein I examine the suitability of various possible agents of a potential humanitarian intervention there based on the elements of efficacy relevant to intervention. Based on the analysis of Darfur, I ultimately argue that the starting-point preference for agents of humanitarian intervention should be that of multi-lateral regional organizations, though departures from this preference are warranted, and even preferred,

¹ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 38.

² Chris Brown, "World Society and the English School: An 'International Society' Perspective on World Society," *European Journal of International Relations* 7 no. 4 (2001): 97.

depending on the circumstances of the crisis at hand and the presence or absence of the other elements of efficacy.

Consequentialism and Power

Consequentialist reasoning suggests that the expected or actual consequences of human actions are the key to their moral evaluation, and that an act is only morally permissible to the extent that it promotes or maximizes a certain value or good—usually understood in terms of human welfare.³ A consequentialist approach to humanitarian intervention thus leads to the conclusion that it is only permissible under those conditions where its adverse consequences will not eclipse the good that brings about. In other words, it must be reasonably expected to result in “more good than harm.” Most of the scholarly literature therefore argues that the conditions of human suffering in a given humanitarian catastrophe must be sufficiently severe before humanitarian intervention is countenanced—a logic that is inherently consequentialist.⁴ To come to such a conclusion, however, is to make certain assumptions about the attributes of the agent undertaking the intervention—namely, that it possesses the relevant military capability to do so effectively.

The imperfect but illustrative analogy of the drowning swimmer captures nicely the consequentialist logic involved in addressing this moral dilemma.⁵ If a person is drowning and there are a group of bystanders, one of whom can surely take action to rescue the person, then it seems fairly intuitive that the imminence of this person drowning is sufficient to justify someone else taking the risk to save the person, so long as the rescuer does not excessively endanger others in doing so. The most intuitive solution is for the person who is the strongest and most experienced swimmer to undertake the rescue—perhaps an off-duty lifeguard. We would certainly not want a weak and inexperienced swimmer

³ See Philip Pettit, “Consequentialism,” in Peter Singer, eds., *A Companion to Ethics* (Oxford: Blackwell Publishers, 1993), 231.

⁴ I have reviewed this literature and dealt with the consequentialist ethics of humanitarian intervention at length elsewhere. See Eric A. Heinze, “Commonsense Morality and the Consequentialist Ethics of Humanitarian Intervention,” *Journal of Military Ethics* 4 no. 3 (2005): 168-182. Eric A. Heinze, “Maximizing Human Security: A Utilitarian Argument for Humanitarian Intervention,” *Journal of Human Rights* 5 no. 3 (2006): 283-302.

⁵ Joel Fienberg, *Doing and Deserving* (Princeton: Princeton University Press, 1970). See also Kok-Chor Tan, “The Duty to Protect,” in Terry Nardin and Melissa S. Williams, eds., *Humanitarian Intervention (NOMOS)* (New York: New York University Press, 2006), 96.

to undertake the act of rescue, who might himself get into trouble and require rescuing, thus imperiling more human lives. To minimize the risk of this happening, therefore, a consequentialist approach would conclude that the rightful agent of such a rescue is the one with the ability to render it most likely that more good than harm will come of the rescue attempt.

Applying the logic of this example to humanitarian intervention yields a similar prescription. Leaving aside the more difficult question of whether the actor with the greatest ability has a moral *duty* to intervene,⁶ one can at least make the rather modest and uncontroversial claim that if anyone should intervene, it should be an actor with sufficient ability. In the Just War discourse, this requirement is an essential part of ensuring that the intervention has a *reasonable prospect for success*.⁷ According to consequentialist logic, an important morally-relevant factor when it comes to identifying a rightful agent of humanitarian intervention is military capability, as measured by the traditional indicators: military expenditure, defense industrial base, technological capability, number and quality of troops/officer corps, rapid-reaction and lift capability.⁸ After all, bringing about more good than harm in a humanitarian intervention not only requires that the intervener prevail, but that it does so quickly and decisively with as little “collateral damage” as possible.

Of course, it is not as easy as simply identifying the most militarily powerful actor in international society and designating it as the rightful agent of humanitarian intervention. There are several non-material factors that influence the extent to which an appropriately powerful actor is able to effectively and decisively stop human suffering in other states. In other words, meeting the consequentialist requirement of doing more good than harm entails more than simply a power asymmetry between the intervener and the target. To return to the above analogy, what if the bystanders and/or the

⁶ See Henry Shue, “Limiting Sovereignty,” in Jennifer M. Welsh, ed., *Humanitarian Intervention in International Relations* (Oxford: Oxford University Press, 2004), 16-22. Iain Brassington, “Global Village, Global Polis,” in Alexander Moseley and Richard Norman, eds., *Human Rights and Military Intervention* (Aldershot: Ashgate, 2002), 234. See also Tan, 84-116.

⁷ See Mona Fixdal and Dan Smith, “Humanitarian Intervention and Just War,” *Mershon International Studies Review* 42 (1998): 303-305.

⁸ See generally Ashley J. Tellis, Janice Bially, Christopher Layne, and Melissa McPherson, *Measuring National Power in the Postindustrial Age* (Santa Monica: RAND, 2000), Ch. 7.

victim do not trust the strong swimmer to undertake a task of such great consequence, and his rescue attempt provokes some bystanders into trying to stop him, thus causing chaos and more drowning deaths? Would a slightly weaker swimmer, but one that is considered more trustworthy, be preferred? If none of the bystanders are individually trusted to carry out a rescue, should they all do it together to ensure that no one gets taken advantage of? What kinds of organizational and coordination problems might this present? Perhaps bystanders who know the victim well—neighbors or relatives—should be first in line to attempt the rescue in order to alleviate some of these problems. But what if the neighbors and/or relatives are hopelessly weak swimmers?

These dilemmas roughly correspond to those inherent in the problem of agency in humanitarian intervention, wherein a certain degree of power is an important, but not the only, attribute an agent must possess if it is to be efficacious, which is to say to do more good than harm in carrying out the intervention. A consequentialist approach must therefore also consider non-material factors that can either enhance or impair an agent's efficacy, such as the moral standing and overall trustworthiness of the interveners or the potential utility of multilateralism and regional actors. In other words, only by having an appreciation of both raw power and what I shall call "the politics of legitimacy" can consequentialism make progress toward solving the problem of agency in humanitarian intervention.

Power, Efficacy and the Politics of Legitimacy

The relationship between power and legitimacy is a subject upon which there is a modest consensus in the international relations theoretical literature. I will therefore only briefly outline the general context of the discussion among prevailing realist, liberal and English school thought. Each of these theoretical schools, broadly construed, conceives of legitimacy in international relations as that which is in conformity with "internationally held norms and understandings about what is good and appropriate."⁹ Realist thought, of course, emphasizes the acquisition and maintenance of material power as the driving force behind international relations. The founders of classical realism nevertheless go to some length to distinguish legitimate power from illegitimate power. Hans Morgenthau, for instance,

⁹ Martha Finnemore, *National Interests in International Society* (Ithaca: Cornell University Press, 1996), 2-3

argued that the exercise of legitimate power is that which is somehow morally or legally justified, and that distinguishing the exercise of this kind of power from the exercise of naked power has profound implications for the conduct of state foreign policy.¹⁰ For Morgenthau, “[l]egitimate power, which can evoke a moral or legal justification for its exercise, is likely to be more effective than equivalent illegitimate power, which cannot be so justified. That is to say, legitimate power has a better chance to influence the will of its objects than equivalent illegitimate power.”¹¹ Legitimate power, in other words, is more efficacious than illegitimate power. The legitimacy of an *act* therefore depends on the extent to which the act is undertaken in accordance with widely-shared norms and understandings about what is right, which are manifested in international law and morality. The legitimacy of the *actor* that undertakes the act is a slightly different matter.

Scholars of a decidedly more liberal brand have propounded a similar distinction between legitimate and illegitimate power, though focusing more on the legitimacy of the actor rather than the act itself. G. John Ikenberry and Charles Kupchan exemplify the liberal understanding of legitimate power as “exercising power according to widely embraced principles and norms.”¹² According to this logic, the exercise of power is most effective if the actor exercising it is generally perceived to be a just and decent entity that pursues collective interests, not just its own selfish ones. Related to this is Joseph Nye’s famous concept of “soft power,” which is basically the ability of a state to get other actors to do what it wants by attracting and persuading them to adopt its goals. Soft power derives its influence from the desirable characteristics of the agent wielding it—its values, culture, credibility, level of prosperity and openness at home, and how it conducts itself internationally.¹³ A state wielding substantial soft power is therefore able to command substantial influence among its peers by co-opting rather than coercing them.

¹⁰ Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 7th edn (Boston: McGraw Hill, 1993), 32.

¹¹ *Ibid.*

¹² G. John Ikenberry and Charles A. Kupchan, “Liberal Realism: The Foundations of a Democratic Foreign Policy,” *The National Interest* 77 (Fall 2004): 45. See also G. John Ikenberry, *After Victory: Institutions, Strategic Restraints, and the Rebuilding of Order After Major War* (Princeton: Princeton University Press, 2001).

¹³ Joseph S. Nye, *The Paradox of American power: Why the World’s Only Superpower Can’t Go it Alone* (Oxford: Oxford University Press, 2002), 8-9. See also Joseph S. Nye, *Soft Power: The Means to Success in World Politics* (New York: Public Affairs, 2004), Chapter 4.

Soft power is, of course, related to hard power (e.g. military, economic) and can serve to reinforce it. A state endowed with substantial soft power will be able to exercise its hard power with less protest from its peers because of their generally positive disposition toward that state's values, ideals, and ultimately, its intentions. The possession of soft power thus facilitates the exercise of hard power. Again, this is basically another way of saying, as Morgenthau did, that an actor exercising legitimate power will be more effective than one exercising equivalent illegitimate power.

English school theory provides a further refinement of this general understanding of the relationship between power and legitimacy. Legitimacy enhances the efficacy of power, though power, in turn, “contributes to the substance of the principles of legitimacy that come to be accepted.”¹⁴ As Hedley Bull argued, legitimating principles of international law and morality derive their content and relevance from powerful states taking up and acting on them.¹⁵ Importantly, these legitimating principles change over time along with the normative structure of international society. Indeed, numerous scholars have argued that the legitimacy of the *act* of humanitarian intervention came about as result of a changed international normative context (namely, the end of the Cold War), whereby changes in the distribution of power led to normative shifts that brought new actors with new values to the fore of world politics.¹⁶ The act of humanitarian intervention therefore gained legitimacy (though under heretofore vague circumstances) because certain values or combinations of values relevant to human rights, human dignity, state sovereignty and military force became privileged by international society. Actors in international society—knowingly or unknowingly—engaged in a process of *legitimizing* of the “norm” of humanitarian intervention, which resulted in this act to be considered *legitimate*, at least under certain circumstances.

¹⁴ Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005), 20.

¹⁵ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, 3rd edn (New York: Columbia University Press, 2002). See especially Andrew Hurrell, “Preface to the Third Edition,” xii.

¹⁶ See especially Nicholas J. Wheeler, “The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society,” in Jennifer M. Welsh, ed., 31. Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca: Cornell University Press, 2003), 53.

Ian Clark has similarly argued that the point at which *legitimacy* and *legitimation* overlap is the realm of politics—“the meeting ground of norms, distributions of power, and the search for consensus.”¹⁷ If we want to understand the politics of legitimacy relevant to potential *agents* of humanitarian intervention, we must therefore engage the contemporary political discourse about which actor(s) are the most appropriate agents of humanitarian intervention and what characteristics international society perceives renders them such. What values, combination of values, or other characteristics must actors possess for them to be considered legitimate agents of humanitarian intervention? In what follows, I identify three factors commonly held to confer legitimacy upon the agents of intervention and explore how and why such characteristics enhance the legitimacy, thus the efficacy, of a potential intervening agent. Using consequentialist reasoning, I also examine whether factors that enhance legitimacy may actually be at odds with material capability and how this affects the efficacy—and overall moral desirability—of intervening agents.

Multilateralism

The debate about multilateralism and unilateralism is common in the literature on humanitarian intervention, and the view that humanitarian intervention must be “multilateral” to be legitimate is widespread.¹⁸ This sort of language requires elaboration. In everyday discourse, when we say that an intervention is “unilateral,” we typically mean that all or a vast majority of the operational aspects of the intervention were decided upon and carried out by one state. A “multilateral” intervention, therefore, is one involving several states acting collectively, possibly through a formal international organization. In international legal discourse, however, a “unilateral” humanitarian intervention is one that has not been authorized by the UN Security Council, whereas “multilateral” implies that it has. In this sense, a unilateral humanitarian intervention is synonymous with an “unauthorized” or “illegal” intervention, whereas multilateralism refers to the collective decision-making process used by the UN to deem the *act*

¹⁷ I. Clark, 3. See also Inis L. Claude, “Collective Legitimation as a Political Function of the United Nations,” *International Organization* 20 no. 3 (1966): 369.

¹⁸ Finnemore, *Purpose of Intervention*, 78. See also International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), Chapter 6.

of humanitarian intervention permissible (and legal) in a particular situation, regardless of how many states actually take part in carrying it out. As such, UN-sanctioned interventions confer multilateral legitimacy upon their agents in a somewhat different sense than those that are carried out collectively by several states. John Ruggie and others have referred to this aspect of multilateral legitimacy as its “qualitative” dimension.¹⁹

As to this qualitative dimension, when the UN Security Council authorizes a humanitarian intervention under its Chapter VII powers, it is essentially legalizing and providing legitimacy to the *act* of intervention more than it is designating specific actors as legitimate *agents* of intervention. The point is that whatever legitimacy the agent accrues by undertaking a UN-sanctioned intervention is only partially derived from the act being deemed “legal” by the UN. Thus, the legitimacy that the agent accrues by undertaking a UN-sanctioned intervention is derived from the fact that an international body with near universal membership has authorized it in the spirit of consultation and coordination with other UN member-states. The act of intervention itself may even be conducted more or less by one state, though if it is authorized by the UN, the state undertaking it may be said to have, as Kofi Annan has put it, a “unique legitimacy that one needs to be able to act.”²⁰ The United States, for example, intervened in Haiti in 1994 more or less by itself, but both the US and its intervention maintained a sense of multilateral legitimacy because it obtained prior Security Council authorization.

The other aspect of multilateral legitimacy is more straightforward—what Ruggie and his colleagues might refer to as its “quantitative” dimension.²¹ Here the legitimacy of the agents is derived from the fact that waging war for humanitarian purposes has considerable potential for partisan abuse—a pervasive concern in the political discourse on humanitarian intervention. Smaller states are particularly apprehensive about any emerging “right” of humanitarian intervention for fear that they will be the targets of an invasion intended to serve the geopolitical interests of the intervener, though under the pretext of

¹⁹ John Gerard Ruggie, “Multilateralism: The Anatomy of an Institution,” in John Gerard Ruggie, ed., *Multilateralism Matters: The Theory and Praxis of Institutional Form* (New York: Columbia University Press, 1993), 6. See also Finnemore, *Purpose of Intervention*, 81.

²⁰ “Annan Warns US over Iraq,” *BBC News*, 11 September 2002.

²¹ See Finnemore, *Purpose of Intervention*, 80.

humanitarianism. According to this thinking, interventions involving *several* states are preferred in order to discourage adventurism or exploitation of the situation by a single state pursuing its own selfish interests.²² So if an incident of human suffering is large-scale and severe enough to permit military intervention, then arriving at operational decisions collectively is the best means of ensuring that a particular state does not exploit the situation for its own ends to the detriment of a humanitarian outcome. This is especially true if operational decisions and other aspects of the conduct of the intervention must undergo a formal collective decision-making process, such as the one used by NATO. In this sense, multilateralism legitimates the agents of intervention by “democratizing” decision-making, which allows the interveners to benefit from collective wisdom, gain broader support, and ultimately ensures that they are focused on the task at hand: saving lives.²³

Quite apart from the unique “qualitative” multilateral legitimacy that UN authorization bestows upon agents of intervention, UN-sanctioned interventions, in theory, grant their agents the “quantitative” aspect as well. According to the UN Charter, UN enforcement operations (which include UN-authorized humanitarian interventions) are to be commanded and controlled by the Military Staff Committee—composed of representatives of the permanent members of the Security Council—so that the UN can exercise operational control over the military forces undertaking the intervention.²⁴ In this way, the military forces are held accountable to the international community, thus precluding any one state from pursuing its own selfish agenda under the aegis of the UN. In practice, however, UN enforcement has never worked this way. Once Security Council authorization is obtained, the UN becomes a spectator while the member-states essentially direct their militaries autonomously.²⁵ This becomes particularly problematic if one state has a preponderant role or is undertaking the intervention alone.

²² Jack Donnelly, “Genocide and Humanitarian Intervention,” *Journal of Human Rights* 1 no. 1 (2002): 103. See also Finnemore, *Purpose of Intervention*, 81.

²³ Terry Nardin, “The Moral Basis for Humanitarian Intervention,” in Anthony F. Lang, Jr., ed., *Just Intervention* (Washington, DC: Georgetown University Press, 2003), 21.

²⁴ Charter of the United Nations (UN Charter), 26 June 1945, Stat. 1031, Article, 47.

²⁵ Thomas G. Weiss, David P. Forsythe, and Roger A. Coate, *The United Nations and Changing World Politics*, 4th edn (Boulder: Westview, 2004), 56.

Despite the practical problems involved in assembling a “pure” multilateral coalition, there is substantial support for the proposition that potential agents of intervention maintain more legitimacy if they act multilaterally—in both the literal quantitative sense and the unique qualitative sense. Both approaches confer legitimacy to the exercise of power by agents of intervention, which, according to prevailing thought in international relations theory, enhances the efficacy of the interveners. One could also argue that multilateralism in the quantitative sense enhances efficacy by bringing the combined force of many states to bear on the target, both politically and militarily.²⁶ On the face of it, then, a consequentialist approach to humanitarian intervention would place a high value on the multilateral legitimacy of the agents of intervention. In practice, however, there are important ways in which multilateralism, while enhancing legitimacy, may actually undermine efficacy.

There is noteworthy empirical evidence that multilateralism—particularly through a formal collective organization—slows decision-making, facilitates hesitance, and runs contrary to basic military understandings of unified command.²⁷ Among the earliest evidence of this was during NATO’s initial military involvement in the Bosnia crisis in May of 1993. In this case, NATO was to provide air support to UN peacekeepers on the ground in Bosnia protecting civilians inside “safe areas” from Serb assaults. In addition to NATO’s own collective decision-making rules, however, there was a complex arrangement for authorizing airstrikes that required authorization from both UN civilian leadership and NATO authorities. This “dual key” arrangement required that officials from both organizations agree on airstrikes, while both held veto power over when and where strikes could take place. As a result of this elaborate process, the full force of NATO airpower was stifled, and because no authorization was forthcoming under the “dual key” arrangement, NATO was unable to act when Serbs overran the safe area of Srebrenica and subsequently executed 7,000 men and boys.²⁸

²⁶ Finnemore, *Purpose of Intervention*, 17.

²⁷ See ICISS, 61.

²⁸ Derek Chollet, *The Road to the Dayton Accords: A Study of American Statecraft* (New York: Palgrave Macmillan, 2005), 8-9, 184-185. See also Samantha Power “A Problem From Hell:” *America and the Age of Genocide* (New York: Perennial, 2002), 392.

Of course later NATO was much less hesitant to use force when it bombed the former Yugoslavia in 1999 in order to avert ethnic cleansing in the province of Kosovo. While the US undeniably plays a preponderant role in NATO—both institutionally and militarily—the collective decision-making procedures were still a notable constraint on the projection of (mainly US) force. According to some analysts, this unnecessarily increased the duration and intensity of the campaign.²⁹ NATO’s political and military leadership had hoped that a sustained bombing campaign would force Serb nationalist Slobodan Milosevic to back down within days. But when he did not relent, and actually began to escalate his ethnic cleansing campaign in Kosovo, a debate ensued among NATO allies concerning how to proceed more aggressively.³⁰ The thrust of the controversy was over target selection and approval, which according to NATO rules requires the consent of the North Atlantic Council (NAC), which consists of the permanent representatives of all NATO members-states (19 at the time).³¹ Realizing the virtual impossibility of this, the NAC agreed to give its proxy on sensitive targeting decisions to Secretary-General Javier Solana, who participated in target selection along with the US, Britain and France, who each had a “veto” over any target.³² Even with this streamlined selection process, NATO military commander Gen. Wesley Clark complained intensely about the cumbersome process of acquiring allies’ approval for attacking sensitive targets and the overall lack of consensus among allies on how to break the will of Milosevic.³³ The campaign that was initially predicted to last three days thus dragged on for 78. So frustrated was the US by NATO’s cumbersome decision-making process that toward the end of the conflict it began circumventing the NATO chain of command for missions involving US planes, for which target approval was generally obtained in about 30 minutes.³⁴

²⁹ See United States General Accounting Office (USGAO) Report to Congressional Requesters, *Kosovo Air Operations: Need to Maintain Alliance Cohesion Resulted in Doctrinal Departures* (GAO-01-784: July 2001). See also John E. Peters, Stuart Johnson, Nora Bensahel, Timothy Liston and Tracy Williams, *European Contributions to Operation Allied Force: Implications for Transatlantic Cooperation*, (Arlington, VA: RAND, 2001).

³⁰ Dana Priest, “United NATO Front was Divided Within,” *Washington Post*, 21 September 1999, A1.

³¹ Wesley K. Clark, *Waging Modern War: Bosnia, Kosovo and the Future of Combat* (New York: Public Affairs, 2001), 422.

³² Dana Priest, “Bombing by Committee: France Balked at NATO Targets,” *Washington Post*, 20 September 1999, A1.

³³ W. Clark, 421. Priest, “Bombing by Committee.”

³⁴ Michael Ignatieff, *Virtual War: Kosovo and Beyond* (New York: Metropolitan Books, 2000), 102-103.

In both of these instances, while the legitimacy conferred by the multilateral decision-making arrangements rendered the interventions more politically acceptable to international society, the price for this in both cases was both efficacy and rapidity of action. In the Bosnia crisis, for instance, it took over two years—during which there were multiple kidnappings of UN personnel, the massacre of 7,000 people at Srebrenica, and countless other atrocities—before NATO acted decisively. As for the Kosovo intervention, an exclusively US-operated intervention may well have posed a greater opportunity for US exploitation. But under the circumstances, the number of lives that could have been saved from a quicker and more decisive intervention might have rendered this a reasonable risk to take.

None of this is to say that the pursuit of multilateral legitimation is not worthwhile. The dangers of partisan abuse are still great enough to prefer that the agent of intervention be a multilateral coalition. Unilateral state power, however, might at times be the better choice during times when people are suffering and lives are being lost while waiting for a multilateral consensus on military strategy or attempting to collectively decide the legality of attacking certain targets. As Jack Donnelly observes, “[e]ven a single state may act on behalf of broader moral or political communities—which may offer active or passive support...”³⁵ Whether or not a single state or small group of states acting outside a formal multilateral framework maintain the requisite legitimacy to carry out an effective intervention thus depends on the extent to which they demonstrate other qualities of legitimacy as agents of humanitarian intervention.

Humanitarian Credentials

Another factor commonly found in the literature concerning the legitimacy of an agent of intervention is the extent to which such an agent itself engages in conduct that is consistent with prevailing norms concerning human dignity—specifically, human rights norms. Proponents of this view argue that only governments that respect the human rights and dignity of their own citizens are entitled to intervene militarily to protect the rights and dignity of people in other states.³⁶ This is why, according to

³⁵ Donnelly, 104.

³⁶ Fernando, *A Philosophy of International Law* (Boulder: Westview, 1998), 59.

some, that NATO's intervention over Kosovo maintained substantial legitimacy despite its illegality.³⁷ That is, as an alliance of the world's foremost democratic, rights-respective, and prosperous states, the NATO states collectively embody substantial credibility as purveyors of norms relevant to human rights and dignity, thus maintain legitimacy as agents for humanitarian intervention. There are basically two reasons why international society should favor such a requirement of potential agents of intervention, one philosophical and the other more pragmatic.

The most sustained philosophical grounding for this argument comes from a liberal theory of the state, which argues that a state is only sovereign to the extent that its domestic institutions conform to democratic standards of good governance and respect the rights of citizens.³⁸ Sovereignty is thus the outward face of internal legitimacy—a motif that reflects the trend in international society that favors conformity with democratic standards of good governance.³⁹ This trend is noticeably evident in the requirements for admission into the world's principal regional organizations, such as the European Union (EU), NATO, the Organization of American States (OAS), and most recently the African Union (AU), whose Charter insists that “[g]overnments that come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.”⁴⁰ It nevertheless follows from a liberal theory of the state that if an internally illegitimate government orders its armed forces to militarily intervene in another state, since such a government is illegitimate, it cannot act validly on behalf of its own citizens. It therefore cannot rightly order its own citizens to go to war because it lacks the authority, thus the moral standing, to compel obedience from those over whom it rules.⁴¹ International acts such as humanitarian intervention are therefore illegitimate if they are ordered or undertaken by an illegitimate government.

³⁷ Adam Roberts, “NATO’s ‘Humanitarian War’ Over Kosovo,” *Survival* 45 no. 2 (1999): 107. See also Independent International Commission on Kosovo, *The Kosovo Report* (Oxford: Oxford University Press, 2000).

³⁸ Tesón, *Philosophy*, chapter 2. Charles R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), 96.

³⁹ Katherine Fierlbeck, *Globalizing Democracy: Power, Legitimacy, and the Interpretation of Democratic Ideas* (Manchester: Manchester University Press, 1998), 12.

⁴⁰ Constitutive Act of the African Union, 26 May 2001, OAU Doc. CAB/LEG/23.15, Article 30.

⁴¹ Tesón, *Philosophy*, 59.

Even if we take it that a state's internal legitimacy—couched in terms of domestic democratic credentials—has a bearing on its external legitimacy, the philosophical argument by itself does not address how this influences the efficacy of a potential agent of intervention. Returning to the above analogy of the drowning swimmer, what practical reasons are there for forbidding a murderer from rescuing a person who is drowning? One might first reasonably argue that a tyrannical state is simply not to be trusted to use its military to promote human rights and dignity abroad because it has not enshrined these values toward its own citizens. Given such a state's utter disregard for the rights, dignity and security of its own citizens, it seems highly suspicious that a military intervention by such a state would meaningfully endeavor to promote and protect these values for people in other states. It also seems likely that an intervention by a tyrannical state would provoke at least some resistance among the alleged beneficiaries of the intervention, as well as possibly other states. One can imagine such scenarios if states with scant domestic democratic credentials like North Korea, Zimbabwe, Sudan, or even China intervened in another state ostensibly to protect foreigners from abuse by their own government. There are thus obvious cases where the internal legitimacy of a state would be grounds for disqualifying it as a potential agent of intervention on consequentialist grounds.

While it may be preferable that the intervening agent itself conforms to democratic standards of good governance, conformity to such principles in the domestic setting is not the only measure of a state's suitability as an intervening agent. On this view, the international legitimacy of a potential intervening state is largely detached from its internal practices, as such legitimacy is conferred by, thus is the property of, international society.⁴² For instance, quite aside from its domestic democratic credentials, a state's past practice of military intervention can also affect the extent to which it is able to effectively undertake an intervention in a particular situation. To the extent that a state's controversial record of past interventions or its brutal and exploitative interventionist past in a certain part of the world provokes distrust of that state as an appropriate agent of intervention, then that state's efficacy as an intervener can

⁴² I. Clark, 186.

only be undermined.⁴³ Not only does this raise suspicions about the potential intervener's desire to genuinely protect people, but as the example of Darfur will demonstrate, it enhances the risk of provocation resulting in resistance from within the target state and from other external actors.

The relationship between multilateralism and the humanitarian credentials of the agents, however, can affect its overall legitimacy, and therefore efficacy. In other words, an agent with strong humanitarian credentials would theoretically not require multilateral legitimation to the same extent as one with weaker humanitarian credentials in order to muster the requisite legitimacy to mount an effective humanitarian intervention. The Nigerian-led humanitarian interventions in Liberia in 1990 and Sierra Leone in 1997 serve as cases in point. During these interventions, and throughout much of its recent history, Nigeria was characterized by substantial political instability and repression, owing to several coups and successive military dictatorships that committed serious human rights abuses.⁴⁴ This alone would be a plausible reason to insist that the projection of its power, however modest, be checked multilaterally. Yet under the aegis of the Economic Community of West Africa States (ECOWAS), Nigeria spearheaded two moderately successful humanitarian interventions.⁴⁵ According to the argument advanced thus far, the legitimacy that Nigeria lacked as an agent of intervention owing to its paucity of humanitarian credentials was compensated by the fact that these interventions were conducted under the multilateral authority of ECOWAS, with Nigeria contributing most of the troops (about 75% in the Liberian intervention) but with smaller contingents from Ghana, Gambia, Guinea, and Sierra Leone.⁴⁶

The point of this example is to illustrate that the agents of these interventions obtained legitimacy—thus efficacy—not from their humanitarian credentials, but by acting through a formal multilateral institution in order to check the preponderant Nigerian role. Importantly, the UN Security

⁴³ James Kurth, "Humanitarian Intervention After Iraq: Legal Ideals vs. Military Realities," *Orbis* 50 (Winter 2005), 90.

⁴⁴ See Toyin Falola, *The History of Nigeria* (Westport, CT: Greenwood, 1999), chs 12-13. See also Bamidele A. Ojo, *Problems and Prospects of Sustaining Democracy in Nigeria: Voices of a Generation* (Huntington, NY: Nova Science Publishers, 2001), 120-127.

⁴⁵ Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention in International Law* (Oxford: Oxford University Press, 2002), 134-137, 155-156.

⁴⁶ Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996), 151

Council granted these interventions retroactive validation after they had been undertaken.⁴⁷ Had Nigeria unilaterally intervened in these crises, there would be reason to expect that the *post facto* approval would not have been forthcoming from the UN Security Council. The tentative conclusion to be drawn is that while it might be ideal for intervening agents to have strong humanitarian credentials and to act multilaterally, it is not necessarily the case that unilateral interventions on one hand, and those conducted by non-democracies on the other, should be altogether forbidden. But the more repressive and abusive the potential intervener is, the stronger it must be insisted that the projection of its power be checked multilaterally. Likewise, if a potential intervener has substantial humanitarian credentials, and permitting it to project its power unilaterally increases the chances for a quick and decisive intervention, the less we should worry about checking its power multilaterally, particularly in extreme humanitarian emergencies. Yet there is another related factor to consider.

Prevailing Political Context

The extent to which an actor must act multilaterally and/or demonstrate humanitarian credentials depends crucially on the position that the agent occupies in the prevailing international political context. One can conceive, for example, of a potential agent of humanitarian intervention that has solid democratic credentials at home, a generally positive record of past interventions, yet its position in the prevailing international political context is such that this actor is likely to struggle in mustering the requisite legitimacy to mount an effective intervention. Much of this depends on the extent to which the potential actor is perceived to abide by widely-shared international norms in its international behavior more generally, as well as precisely which norms are privileged at any given moment.⁴⁸

There is, of course, a vast literature on the effect of norms on state behavior, and how normative or ideational structures (in addition to material influences) shape not only states' rational calculations,

⁴⁷ United Nations Security Council (UNSC) Resolution 788, 12 November 1992, UN Doc. S/Res/788. UNSC Resolution 1132, 8 October 1997, UN Doc. S/Res/1132. See also Murphy, 153.

⁴⁸ I. Clark, 193.

but also the very preferences and identities that underlie them.⁴⁹ According to this thought—usually associated with English school and social constructivist theory—the normative structure can change to privilege certain values or combinations of values at different times. Shifts in the normative structure thus socialize states to have different preferences or priorities internationally.⁵⁰ Importantly, these shifts in normative structure usually accompany shifts in the material structure, such as changes in the distribution of power, wherein the ascendance to primacy (or dominance) of new global actors brings about increased emphasis on the norms and values these actors enshrine. As Nicholas Wheeler and others have argued, when the Cold War ended, Western liberal democratic states (particularly the United States) ascended to primacy and with them, liberal norms of democratic governance and human rights became increasingly privileged *vis á vis* traditional norms of state sovereignty.⁵¹ This created a normative context in which the act of humanitarian intervention came to be perceived as increasingly legitimate, though still very controversial.⁵² Likewise, actors associated with the spread of these norms became their “carriers,”⁵³—those liberal democratic states associated with human rights and democracy that became the primary agents of humanitarian intervention during the 1990s and enjoyed a certain legitimacy in this role. As such, just as certain norms enjoy primacy, the purveyors of those norms enjoy a certain legitimacy as the rightful agents of norm enforcement.

Norm carriers, however, are in a particularly precarious position in international politics. While states’ status as norm carriers grants them a certain degree of legitimacy as agents to act on behalf of these norms, interventional events can create a blowback effect of sorts, in which purveyors of human rights norms become perceived as abusing their privileged normative position because of frequent abuse of these norms or by engaging in double-standards. If the credibility of a human rights norm carrier

⁴⁹ See especially Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999). See also John G. Ruggie, *Constructing the World Polity: Essays on International Institutionalization* (London: Routledge, 1998).

⁵⁰ Finnemore, *National Interests*, 23. See also Christopher Gelpi, *The Power of Legitimacy: Assessing the Role of Norms in Crisis Bargaining* (Princeton: Princeton University Press, 2003).

⁵¹ Wheeler, “Humanitarian Responsibilities,” 32-41.

⁵² S. Neil MacFarlane, “Intervention in Contemporary World Politics,” *Adelphi Papers* 350 (2002): 60.

⁵³ Alex J. Bellamy, “The Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian intervention After Iraq,” *Ethics & International Affairs* 19 no. 2 (2005): 32.

becomes diminished as a result of its rhetoric or behavior, it creates an international political context in which the actor finds it increasingly difficult to persuade other actors to support its agenda, possibly even provoking opposition. One obvious situation where we can conceive of heretofore “legitimate” agents of humanitarian intervention currently finding difficulty mustering the legitimacy to effectively intervene has to do with the terrorist attacks of 11 September 2001 (9/11) and the ensuing “global war on terror” spearheaded by the US, which has affected the position of many Western liberal states in the prevailing international normative structure. This is not to say that international human rights norms and those relevant to democratic governance and the rule of law have somehow lost their currency in international politics. The problem, rather, is that the invasion of Iraq in 2003 was particularly controversial globally, not only because of an alleged US unilateralist impulse, but especially after the exposure of prisoner abuse in the Abu Gharib and Guantanamo Bay detention facilities and allegations of US troops raping and murdering Iraqi civilians.⁵⁴ As a result, the US’s credibility as a carrier of human rights norms has been diminished, thus undermining the humanitarian credentials that had previously lent it legitimacy as an agent of intervention during the 1990s.

More important is the fact that the US administration has attempted to legitimize the Iraq invasion by characterizing it as a humanitarian intervention because the original argument for the invasion—Saddam’s alleged illegal weapons programs—turned out to be largely overstated and exaggerated.⁵⁵ This, in turn, has made it look as if the US and its allies (principally the United Kingdom) used a human rights justification to mask the exercise of hegemonic power.⁵⁶ While the controversy over the Iraq war and the war on terror more generally has not directly affected norms relevant to human rights, democracy, or even humanitarian intervention, it has “impacted negatively on the ability of the US and its allies to act

⁵⁴ See Human Rights Watch, *The Road to Abu Gharib*, (New York: Human Rights Watch, 2004). See also Ryan Lenz, “US Troops Being Investigated for Alleged Rape, Killing of Family in Iraq,” *Associated Press*, 30 June 2006.

⁵⁵ Kenneth Roth, “War in Iraq: Not a Humanitarian Intervention,” in *Human Rights Watch World Report 2004: Human Rights and Armed Conflict* (New York: Human Rights Watch 2004), 13-33.

⁵⁶ Paul D. Williams and Alex J. Bellamy, “The Responsibility to Protect and the Crisis in Darfur,” *Security Dialogue* 36 no. 1 (2005): 37.

as norm carriers,”⁵⁷ despite the fact that these states possess substantial domestic democratic credentials. The normative structure of international society itself has not necessarily changed, but the position of certain actors within it has, thus adversely affecting their legitimacy and efficacy as agents of humanitarian intervention. So even if potential agents of intervention maintain the requisite military capability, possess relevant humanitarian credentials, and act multilaterally, their diminished normative position in international society may still render them ineffective as humanitarian interveners.

Non-intervention in Darfur

The humanitarian crisis in Darfur provides a particularly relevant illustration of the problems of agency in the conduct of humanitarian intervention outlined above. This conflict in Darfur, Sudan began in February of 2003, when two rebel groups—the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM)—attacked Sudanese government military installations in response to decades of political marginalization and economic neglect. Khartoum responded to the rebellion by arming and supporting horse-mounted Arab militias called *Janjaweed*, providing them with arms and air support and giving them free reign to terrorize, rape, and pillage the non-Arab villages of Darfur in attempt to deprive the rebels of a civilian support base.⁵⁸ Since 2003, thousands of civilians have been killed by both government bombardments and at the hands of the *Janjaweed*, while about 2 million have been forcibly displaced, resulting in tens of thousands more deaths in displacement camps due to starvation and disease.⁵⁹ At the time of writing, there is a shaky peace agreement in place between the Sudan Government and one of the (now three) rebel groups, while a 7,000-strong AU monitoring force patrols an area the size of France. Khartoum continues to accept the presence of this force as long as it lacks the mandate and capability to combat *Janjaweed* and government-sponsored atrocities, though it has to date

⁵⁷ Bellamy, 39.

⁵⁸ Human Rights Watch (HRW), *Darfur Destroyed: Ethnic Cleansing By Government and Militia Forces in Western Sudan* (New York, Human Rights Watch, 2004). See also HRW, *Darfur in Flames: Atrocities in Western Sudan* (New York, Human Rights Watch, 2004).

⁵⁹ Miriam Mannak, “UN Calls for Darfur Aid,” *Worldpress.org*, 1 June 2006, available at <<http://www.worldpress.org/Africa/2368.cfm>> (25 June 2006).

vociferously opposed a UN peacekeeping presence in Darfur, which Sudan's President Omar Bashir has characterized as "re-imposing colonial rule."⁶⁰

The situation in Darfur stands as a relatively straightforward case for the permissibility of armed humanitarian intervention, particularly during the escalation of the atrocities in the spring of 2004—far before a meaningful peace process was underway when many of the victims could have been saved. Based on these extreme and large-scale atrocities being perpetrated in Darfur, a properly undertaken humanitarian intervention during the spring, or even early summer, of 2004 would have stood a strong chance of saving more people than it imperiled, as called for by a consequentialist approach to humanitarian intervention. But the extent to which this consequentialist requirement could be met would depend crucially on the nature of the agent(s) undertaking the intervention, particularly given the unique political context of this crisis.

Obstacles to Western Intervention

As the state with the greatest capability, the United States is probably the most obvious candidate for consideration as undertaking or leading such a task. In addition to possessing the military wherewithal, the US is, by most measures, a liberal democratic state whose citizens enjoy most internationally-recognized human rights, a broad array of political freedoms, and high levels of human security compared to most other states.⁶¹ Its record of past military interventions, however, is quite controversial, most recently, of course, in Iraq. Indeed, of the factors articulated above that serve to militate against the US as an appropriate agent of intervention in Darfur, the US's normative position in the prevailing political context as a result of the Iraq invasion is undoubtedly the most prominent.

It is no big secret that the invasion of Iraq has severely damaged US credibility throughout the world, prompting analysts to ponder America's "legitimacy crisis," and what needs to be done to restore

⁶⁰ "Annan 'Hopeful' of Persuading Sudanese Authorities to Accept UN Force in Darfur," *UN News Centre*, 22 June 2006, available at <<http://www.un.org/apps/news/story.asp?NewsID=18967&Cr=sudan&Cr1=>> (23 June 2006).

⁶¹ This is, of course, notwithstanding the American tendency to not recognize socio-economic rights as true human rights and the fact that the US has not ratified the International Covenant of Economic, Social and Cultural Rights, thus depriving US citizens to a *legal right* to certain socio-economic goods such as food, housing and health care.

US credibility in the world.⁶² Even before 9/11, however, concerns about the US's unilateral, unconstrained projection of power had become widespread. It was during the Clinton administration, after all, that French Foreign Minister Hubert Védrine coined the term *hyperpuissance* (hyper-power) to characterize the inescapable reality of American political, economic and military dominance of the world.⁶³ Against this backdrop, the international reaction to the invasions of Afghanistan and Iraq has served to both reflect and reinforce the fact that "many people outside the United States simply do not trust America to use its enormous power wisely or well."⁶⁴ Mindful of the frustrations of alliance warfare experienced during the Kosovo crisis, the US made no formal use of NATO when it invaded Afghanistan in 2001. When it then undertook the invasion of Iraq in 2003 despite the protest of most governments of the world, this instance of unconstrained American unilateralism was perceived as "a culmination of a tendency, rather than an isolated departure,"⁶⁵ thus making suspicion of American power in this case particularly acute.

If this general distrust of unrestrained American power alone were not enough to stymie a potential humanitarian intervention in Darfur, as the Iraq war unfolded US intentions became increasingly suspect. Of course the primary argument put forth for the invasion of Iraq was that Saddam Hussein possessed and had active programs to develop weapons of mass destruction (WMD), which the US administration allegedly feared may be used against the US or its allies, or even given to terrorists.⁶⁶ But as the war raged on and evidence in support of this assertion became increasingly elusive, the US administration began emphasizing the humanitarian argument for the invasion, essentially arguing that the war was justified because it removed a tyrant and was bringing freedom and democracy to Iraqis.⁶⁷ Given the human toll that the civilian population was sustaining and the torture and abuse of detainees in Abu

⁶² Robert Kagan, "America's Crisis of Legitimacy," *Foreign Affairs* 83 no. 3 (2004): 65-87. Robert W. Tucker and David C. Hendrickson, "The Sources of American Legitimacy," *Foreign Affairs* 83 no. 6 (2004): 18-32.

⁶³ Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order* (New York: Alfred A. Knopf, 2003), 43.

⁶⁴ Michael Cox, "Martians and Venutians in the New World Order," *International Affairs* 79 no. 3 (2003): 532.

⁶⁵ I. Clark, 225.

⁶⁶ George W. Bush, Address to the United Nations General Assembly, 12 September 2002, <<http://www.whitehouse.gov/news/releases/2002/09/20020912-1.html>> (25 July 2006).

⁶⁷ Terry M. Neal, "Bush Reverts to Liberal Rationale for Iraq War; Critics Still Oppose War Despite Hussein's Human Rights Record," *Washington Post*, 9 July 2003.

Gharib, however, the humanitarian justification seemed even more disingenuous to outside observers than the WMD argument, prompting further suspicion that the US was essentially after Iraq's oil and waging an imperialistic war against Arabs and Muslims.⁶⁸

Amidst this controversy, events in Darfur came into the international spotlight, raising the issue of humanitarian intervention to put a stop to what the US administration itself characterized as "genocide." The US, however, found itself isolated among its international peers on the question of whether genocide had taken place in Darfur, prompting accusations that the US was essentially "hying" the charge of genocide as a smokescreen behind which it could invade Sudan for other reasons, such as access to the vast oil reserves quite obviously coveted by US oil companies.⁶⁹ The framing of the crisis as "Arab on African" violence was likewise criticized by prominent Arabs as yet another selective and unfair vilification of Arabs as *génocidaires*, particularly in a context in which the Western media routinely identify them as the instigators of terrorism.⁷⁰

Given the international political context brought about by the US involvement in Iraq, the US could scarcely have been in a worse position to undertake a humanitarian intervention in Darfur in the spring of 2004. The parallels seemed all too present: an unrestrained superpower unjustly killing Muslims and Arabs to access resources and expand its imperial influence, all behind the pretext of humanitarian intervention. If the mere accusation of genocide by the US was exploited to such a degree as an assault on Arabs and Muslims, one could expect that the actual deployment of US forces to Sudan would not only provoke outcry and opposition throughout the Muslim world and beyond, but also open up a new front for jihadist attacks against US and accompanying forces. A statement by Osama bin Laden calling for "Mujahedin and their supporters...to prepare for long war against the crusader plunderers in

⁶⁸ Ramesh Thakur, "Western Medicine is No Cure for Darfur's Ills," *Financial Review*, 31 August 2004. See also Michael Clough, "Darfur: Whose Responsibility to Protect?" *Human Rights Watch World Report, 2005* (New York, Human Rights Watch 2005), 34.

⁶⁹ Peter Beaumont, "US 'Hying' Darfur Genocide Fear," *The Observer*, 3 October 2004. See also Samantha Power "Dying in Darfur: Can the Ethnic Cleansing in Darfur be Stopped?" *The New Yorker*, 30 August 2004, available at <http://www.newyorker.com/fact/content/?040830fa_fact1> (25 June 2006).

⁷⁰ Alex de Waal, "Who are the Darfurians? Arab and African Identities, Violence, and External Engagement," *African Affairs* 104 (April 2005): 200-201.

Western Sudan” attests to this concern.⁷¹ An American intervention in Darfur would have thus added another layer of conflict to a region already devastated by war, causing more civilian suffering and further destabilizing the region. From a consequentialist perspective, therefore, the US seems to be a particularly unsuitable agent of humanitarian intervention for this particular crisis.

If the problem with a US or US-led invasion were simply fear of an unconstrained and thus exploitative US invasion, then it might have made sense for such an intervention to be undertaken multilaterally by NATO, which is still a sufficiently capable agent but could act as a check on such unilateral opportunism. But even assuming the absence of such insidious ulterior aspirations on the part of the US, or that such ambitions could be held in check by acting multilaterally through NATO, the fundamental problem is not the US’s purported ulterior motives, but the atmosphere of mistrust between the Western and the Muslim worlds facilitated by the Iraq war and the war on terror more generally.⁷² In other words, while acting through NATO would probably help to curb the danger of a partisan US intervention to the extent this danger exists, it would do little to assuage the perception by many in the Arab and Muslim world of a NATO intervention as a neo-imperialist crusade. Not only is the US the leading member of NATO, but the UK and several other member-states have also been involved in the Iraq war. With prominent Arabs and Muslims stoking fears of American-led Western neo-imperialism, and with calls by Islamic radicals for *jihad* against what they portray as Western attempts to subjugate Muslims, an intervention under NATO auspices would seem to be just as susceptible to the risks outlined above as a unilateral US intervention.⁷³ Multilateralism matters, but in this case it matters less.

The problematic position occupied by Western powers in the prevailing political context is thus inescapably intertwined with the highly controversial Iraq invasion and a global uneasiness about the war on terror in general, at least for the foreseeable future. While certain Western powers may otherwise be in the best position to undertake humanitarian interventions in places like Darfur, the position of Western

⁷¹ “Osama bin Laden Issues Warning to the West,” *Telegraph*, 23 April 2006. See also Edith M. Lederer, “Tribal Leaders Reject UN Force in Darfur, Threaten ‘Holy War.’” *Washington Post*, 10 June 2006.

⁷² Meg Bortin, “For Muslims and the West, Antipathy and Mistrust,” *International Herald Tribune*, 22 June 2006.

⁷³ See “Big Demonstration Denounces Foreign Intervention in Darfur,” *UPI Arabic News Service*, 26 June 2006.

agents of intervention in the prevailing political context is such that they would be increasingly likely to have to wage two conflicts if they were to intervene in Darfur: an offensive one against those committing atrocities, and a defensive one against forces provoked by a perceived Western invasion of the Muslim world, *à la* the Iraq invasion. This contextual dynamic would not be present, however, if the intervening agents were non-Western or comprised of an otherwise regional force. Intervening in Darfur would therefore seem to be a job for which other African or Middle-Eastern actors would be best suited.

Challenges to an “African Solution”

The idea of an “African solution” to this crisis is one that gained much traction in the debates over the Darfur crisis. There are indeed good reasons to prefer that the agents of intervention in Darfur be African, or at least non-Western, given the profound difficulties outlined above that a Western intervention in Darfur would likely face. I will discuss the African Union Mission in Sudan (AMIS) currently patrolling Darfur in more detail below, though it should be mentioned from the outset that this force is not conducting a humanitarian intervention as that term is understood here. That is, AMIS has yet to conduct combat operations that employ offensive force against those committing atrocities against civilians.⁷⁴ The issue I deal with is the suitability of a multilateral AU force for undertaking a humanitarian intervention in Darfur in the spring of 2004, not necessarily whether the AMIS monitoring/peacekeeping mission as it was initially deployed was the best of all possible options. I do, however, draw from the difficulties faced by the AU in undertaking AMIS as a general gauge of the difficulties the AU would face in deploying a humanitarian intervention.

While not undertaking a humanitarian intervention, strictly speaking, it is nevertheless important that the international force initially charged with providing security in Darfur is organized multilaterally under the auspices of the AU. This is because if humanitarian intervention ever were to be undertaken in Darfur by an African force, there would be few individual African states that maintain the humanitarian credentials required for a state or small groups of states to intervene unilaterally. Furthermore, unilateral

⁷⁴ HRW, *Imperatives for Immediate Change: The African Union Mission in Sudan* (New York: Human Rights Watch, 2006), 22-30.

military interventions among African states—even well-intended ones—have had a bad tendency to provoke wider wars and cause untold human suffering. The decade-long “civil war” in Zaire/Democratic Republic of Congo (DRC), which began in 1996, is the most recent example of what can happen in Africa when states take it upon themselves to intervene militarily in one another’s affairs. The government of Rwanda—which has been particularly enthusiastic about sending its troops to Darfur, and has since been among the top troop contributors to AMIS⁷⁵—played no small part in the chain of events that led to what has been called “Africa’s first world war.”

Because of Rwanda’s own experience of enduring the horrors of genocide and its desire to not have it repeated again while the world stands idly by, it seems intuitive that the government of Rwanda led by Paul Kagame would be especially keen on taking action to halt ethnic-based killings in Darfur.⁷⁶ Kagame is, of course, an ethnic Tutsi—the group that was targeted for genocide in Rwanda in 1994—and was the leader of the Rwandan Patriotic Front (RPF), which was the Tutsi rebel group based out of Uganda that invaded Rwanda and ultimately halted the genocide. These credentials as a humanitarian interventionist, however, sit quite uncomfortably with his government’s subsequent involvement in the war in Zaire/DRC. Rwanda’s involvement in this conflict initially involved spearheading indiscriminate attacks on refugee camps in Eastern Zaire in 1996 to “clear” them of Hutu extremists perceived by Kagame to be a security threat, in which Rwandan forces committed numerous atrocities.⁷⁷ After gaining a foothold within Zaire and with help from Uganda, Burundi and Angola, Rwanda subsequently aided the Zairian rebel leader Laurent Kabila in overthrowing the Mobutu regime, triggering a decade-long spiral into regional war in which over 3 million civilians have been killed.⁷⁸ When Kabila rebuked his Rwandan patrons, Rwanda again invaded the (renamed) DRC in 1998 with the help of Uganda and

⁷⁵ “AU to Deploy More Troops in Darfur,” *Pan-African News Agency Daily Newswire*, 1 October 2004. “AU Planning to Send ‘Several Thousand’ Troops to Darfur,” *Agence France Presse*, 29 September 2004.

⁷⁶ Anne Penketh, “Rwanda Tries to Stop Killings in Darfur,” *The Independent*, 27 September 2004, 23.

⁷⁷ United Nations General Assembly (UNGA), Report of the Joint Mission Charged with Investigating Allegations of Massacres and Other Human Rights Violations Occurring in Eastern Zaire since September 1996, 2 July 1997, UN Doc. A/51/942, para. 77.

⁷⁸ William G. Thom, “Congo-Zaire’s 1996-97 Civil War in the Context of Evolving Patterns of Military Conflict in Africa in the Era of Independence,” *Journal of Conflict Studies* 19 no. 2 (1999): 93-123.

Burundi and engaged in extensive commercial exploitation of its mineral resources (namely coltan)—so much that Kagame even bragged that his war efforts in the DRC were “self-financing.”⁷⁹ Angola, Namibia, Zimbabwe and Chad intervened on the side of Kabila, for which they were permitted to essentially annex portions of the DRC for commercial purposes. These states, especially Zimbabwe, have all profited from the war immensely, to the extent that their involvement in it became necessary to secure their own economic salvation in the face of collapsing domestic economies.⁸⁰ Essentially, what began as a Rwandan intervention to address a security threat in Eastern Zaire turned into regional armed conflict involving over a dozen rebel groups and at least seven governments that intervened under various pretexts, though ultimately sought economic gain.⁸¹

Given this recent bout of suspicious and exploitative interventions within Africa, as well as overall scarce domestic democratic credentials, the best “African solution” to the Darfur crisis would thus seem to be a multilateral one. The most recent effort at mustering a multilateral AU force to provide security in Darfur—again, while not constituting a humanitarian intervention—has nevertheless been plagued by many of the usual impediments to effective action inherent in formal multilateral military operations. For instance, the initial deployment of AMIS in June of 2004 was for the purpose of monitoring a ceasefire that really only existed on paper, prompting AU officials to rethink AMIS’s operations before it even began.⁸² It is at this point where glacial pace of multilateral decision-making became an impediment to effective action, which was particularly apparent in this case because the AU was only created in 2002 and this was its first attempt at such activity. A month after deployment, AU officials requested an assessment of the situation by the Ceasefire Commission, though it was not until October 2004 that the Commission’s chairperson proposed to increase the size and broaden the mandate

⁷⁹ Quoted in Dena Montague, “Stolen Goods: Coltan and Conflict in the Democratic Republic of Congo,” *SAIS Review* 22 no. 1 (2002): 112.

⁸⁰ Filip Reyntjens, “Briefing: The Second Congo War: More Than A Remake,” *African Affairs* 98 (1999): 248. International Crisis Group (ICG), *Africa’s Seven Nation War*, 21 May 1999, ICG Democratic Republic of Congo Report No. 4.

⁸¹ Ian Fisher and Norimitsu Onishi “Armies Ravage a Rich Land, Creating ‘First World War’ of Africa” *New York Times*, 6 February 2000.

⁸² HRW, *Imperatives*, 14.

of AMIS to include “protecting civilians it encounters under imminent threat and in the immediate vicinity.”⁸³ Once the proposal was approved by the AU Peace and Security Council, the enhancement of AMIS was scheduled to be completed within 120 days, during which time conditions of human security precipitously deteriorated. The 13-month evolution of AMIS from an essentially unarmed monitoring group to its status as a slightly more robust peacekeeping operation was directed by several such assessments, proposals, and subsequent approvals by AU bodies. One could thus expect that an actual humanitarian intervention undertaken by the AU would experience similar bureaucratic hurdles and collective decision-making constraints.

The other problem, however, is the limited military capabilities that any AU force would have on the ground. AMIS, for instance, has suffered from logistical difficulties in deploying personnel, poorly-trained personnel, chronic lack of resources, strategic and operational gaps, and debilitating intelligence and communications gaps.⁸⁴ The AU’s own assessments have characterized the operation overall as lacking the “basic elements of a balanced military force...required to deal with the situation in Darfur.”⁸⁵ These problems are slowly but surely being addressed, however, as NATO states have been assisting the AU by providing airlift for AMIS personnel and engaging in extensive training of troops and officers. In addition, most indications are that AMIS will eventually be folded into the existing UN peacekeeping mission running parallel to AMIS in the rest of Sudan, even potentially with NATO close air support. But even NATO officials are quick to admit that “neither the Sudanese government nor the African Union... ‘want to see white, European troops coming into Sudan.’”⁸⁶ It is nevertheless highly probable that a humanitarian intervention undertaken by the AU would require at least some help from NATO or some of its members.

⁸³ AU Peace and Security Council, Communiqué of the Seventeenth Meeting, 20 October 2004, PSC/PR/Comm.(XVII), para. 6.

⁸⁴ African Union, Pledging Conference for the African Union Mission in Sudan: An Opportunity for Partnership for Peace, 26 May 2005, CONF/PLG/3(I), para. 107. See also HRW, *Imperatives*, 20.

⁸⁵ Quoted in HRW, *Imperatives*, 30.

⁸⁶ Judy Dempsey, “Pressure Rises over NATO’s Darfur Role,” *International Herald Tribune*, 19 February 2006. See also Colum Lynch, “UN Chief Seeks Western Support for Darfur Force,” *Washington Post*, 3 March 2006, A10.

Given the AU's experience in deploying AMIS, it should be expected that a humanitarian intervention in Darfur under the auspices of the AU would also take some time to materialize, during which countless innocent civilians would continue to be abused, displaced, or killed. In this light, an "African solution" to the Darfur crisis seems less than optimal. However, instead of settling for a sluggish AU to deploy what would probably be, at least initially, a second-rate intervening force, would it have been better if the US or NATO had quickly and decisively intervened, thus running the risks associated with a Western intervention in the heart of the Muslim world? Would it have been better to shrug off the cumbersome and phased multilateral procedures of the AU in favor of a unilateral intervention by one or a few of Sudan's neighbors? There is, of course, no way of knowing with certainty what would happen in such scenarios, but the facts surrounding each possibility give us a general idea of the likelihood of what could go wrong in each of them. In this sense, the efficacy of an intervening agent depends not only on its ability to actually rescue people in the short term, but to do so without itself provoking or instigating additional human suffering. The potential problems associated with a US or NATO intervention, or a unilateral intervention by another African or Middle-Eastern state, profoundly militate against the efficacy of these potential intervening agents. The history of suspicious and exploitative military interventions in Africa, an overall lack of humanitarian credentials, and the relative military weakness of most African states weigh heavily against a regional unilateral intervention. And while the overwhelming military advantage of the US or NATO might compensate for its lack of legitimacy to a certain degree, as we know from the US experience in Iraq, quick and decisive victories in initial combat phases of a military intervention are only part of the story. And given the prevailing international political context, any Western intervention in a predominantly Muslim state runs an enormous risk of triggering indigenous and even foreign resistance.

A multilateral force under the auspices of the AU does not entail these same risks that detract from its efficacy, but the trade-off is a much slower and less militarily dominant intervening agent. A modestly-sized AU force of around 7,000 (the current size of AMIS) transported by NATO and armed with proactive rules of military engagement would still not prevail as decisively as a direct Western

intervention. An AU force of this composition would have nevertheless been the most suitable agent for a humanitarian intervention in Darfur in the spring of 2004. Unfortunately, when the AU decided that it had the responsibility to protect Darfurians, humanitarian intervention, per se, was not the option on the table and was therefore not undertaken. Achieving minimum efficacy for an AU force may still also require the indirect support of some Western states to provide air-lift and other logistical, communication and intelligence assistance. But under the circumstances of the Darfur crisis, the most effective agent for a humanitarian intervention would have been a multilateral regional force, appropriately armed and mandated, under the sponsorship of the AU.

Conclusion

The ideal agent of humanitarian intervention would maintain sufficient military power to prevail against a modest military force, have sound humanitarian credentials, occupy a privileged position in international society, and enjoy multilateral legitimation. At a time when there is a shortage of actors willing to undertake humanitarian intervention, however, such a requirement hardly seems realistic, though these factors must still be considered in evaluating the suitability of a potential agent of intervention for a particular crisis. Adequate military power is, of course, the most basic element, though it is also the only element that cannot be compensated for by any or all of the others, and is the only one that is by itself necessary (though not sufficient). If an agent does not have the minimum resources required to prevail militarily, it is not a suitable agent of intervention no matter how legitimate it otherwise may be. The only other factor that may itself be necessary is the agent's position in the prevailing political context, though even if certain actors do not enjoy a positive position, the projection of their power could plausibly be made more acceptable if undertaken through a formal multilateral organization. An actor's military power alone, however, is not by itself sufficient, for as the Darfur example illustrates, even the most powerful actor in the world may not be the most effective agent of intervention if it lacks any or all of the other elements to a significant enough degree. Likewise, the analysis above suggests that states that lack domestic democratic credentials are not necessarily precluded

as agents of intervention if they act multilaterally, nor is unilateral intervention prohibited if the agent has strong humanitarian credentials, or more importantly, enjoys a privileged position in international politics.

Having identified several factors relevant to the suitability of potential intervening agents, it is tempting to try and identify the most important among them or otherwise rank them relative to one another. I resist this temptation primarily because which of these attributes is more important will vary according to the urgency and severity of the humanitarian crisis to be averted, the nature of the entities that are primarily responsible for committing the atrocities, and a host of systemic conditions that weigh heavily upon whether a particular agent is best-suited to undertake humanitarian intervention. As to the first point, for humanitarian intervention to be permissible by *any* agent, the human suffering at hand must meet certain threshold conditions of severity and scale. Though once the threshold is met, the speed with which the atrocities take place and the urgency of a response will influence which of the factors identified above will maximize the possibility of an effective intervention. For instance, while the Darfur crisis likely meets this threshold, the immediate need for a military response to this crisis was probably not as urgent as it was during the crisis in Rwanda in 1994, for example, where 800,000 people were killed in 100 days. While it may sound callous, the fact that Darfur was “Rwanda in slow motion”⁸⁷ would provide international actors with more time to ensure that the intervening agent meets the requirements as outlined above for intervening in Darfur. In a “Rwanda-style” crisis, however, by the time a multilateral regional force were assembled and deployed, it would be too late. A crisis of this magnitude would thus necessitate a much quicker response, whereby certain risks associated with unilateralism or a paucity of humanitarian credentials may be acceptable under the circumstances.

Related to this concern are the characteristics of the target of intervention—that is, the agent that is committing the atrocities against which force would be directed. First of all, it is a harsh reality that there are no agents currently suitable to militarily intervene against extremely powerful states like the permanent members of the UN Security Council. This aside, however, we can say that the more powerful the target of a potential intervention, the more emphasis must be placed on the military power of the

⁸⁷ Anthony Lake and John Prendergast, “Stopping Sudan’s Slow-Motion Genocide,” *Boston Globe*, 20 May 2004.

intervener, though one should be wary of this requirement translating into a prescription for great power war. The non-material characteristics of the target relative to the intervener are also crucially important, which, as evidenced by the Darfur example, illustrates the profound importance that contextual elements have on the suitability of intervening agents. As the Darfur example shows, the prevailing political context today is such that barring an extremely urgent Rwanda-style genocide, Western powers are not in a good position to undertake a maximally effective humanitarian intervention in predominantly Muslim or Arab states. This does not mean, however, that Western states' (particularly the US's) diminished credibility as carriers of human rights norms prevents them from intervening in regions where this dynamic is less pronounced—which at the present time, may be limited to Europe.

Political context and the position that potential interveners occupy within it therefore affects to a substantial degree the extent to which potential intervening agents must possess the other elements of efficacy. I have argued that under the circumstances of the 1999 Kosovo intervention, a unilateral US intervention may well have been more effective than the more cumbersome multilateral approach, though the diminished position of the US in the political context of today would likely preclude a unilateral humanitarian intervention by the US in all but a few regions in the world. Likewise, while international society may have welcomed a unilateral intervention by the US to halt or avert any number of the humanitarian crises in Africa during the 1990s (e.g. Liberia, Burundi, Rwanda, Sierra Leone, southern Sudan, DRC), this is quite far from the situation today.

A consequentialist approach to humanitarian intervention must thus consider material as well as nonmaterial attributes of potential intervening agents in appraising the extent to which certain actors would be effective agents of intervention. Material power is the most basic element of efficacy, but certain non-material elements forged by the politics of legitimacy also play a crucial role in either facilitating or impeding military power to such an extent that it affects whether certain actors maintain the requisite efficacy to do more good than harm in a humanitarian intervention. While the relationship among these factors is complex, this chapter has hopefully provided some insight into how they operate in relation to one another in conferring legitimacy and thus efficacy on potential intervening agents.

Applying the insights from the preceding analysis undoubtedly leads to close consideration of the prevailing political context in appraising the suitability of certain actors or agents of intervention. Taken together, the various elements of efficacy under the present international political milieu suggest a starting-point preference for regional formal organizations as the best-suited agents of intervention. However, given the difficulties that many regional organizations would undoubtedly face in authorizing, organizing and deploying an appropriate military force, there may be foreseeable situations in which departing from this preference in favor of a unilateral interventions, or interventions undertaken by the US or other “extra-regional” actors, may be the most effective. It would nevertheless behoove international society to encourage and assist regional organizations like the AU to develop more robust capabilities and more streamlined and reliable procedures for undertaking humanitarian intervention. This is far from a perfect prescription, but based on the analysis above, it would be the best way to balance the need for both military power and legitimacy in a way that maximizes the efficacy of the intervener, and therefore minimizes human suffering.