



# Going to War and Global Morality

*Some Thoughts*

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## CHAPTER ONE

# INTRODUCTION

THIS PAMPHLET FIRST DISCUSSES cosmopolitan morality, that is the morality of both interpersonal behaviour and that of states towards persons. It then considers at greater length the morality of the behaviour of states towards each other. Within that subject it concentrates, as does much recent literature, on the coercive intervention by one state, or a coalition of states, in the affairs of another. More concisely, it concentrates on the morality of going to war.

There is a huge literature on the subject of just and unjust wars. Since the end of the Cold War, between the West and the USSR, there has been a recrudescence both of wars and of books and articles about them. I have sampled this literature (in the English language), reading many books or articles, mainly those of the last 15 years. All the various authors clearly have ethical presuppositions, but they seldom make it clear what these are. Actions or inactions by states or international institutions are approved or condemned, explicitly or implicitly. But I do not think that any secular author fully discusses the ethical theory on the basis of which he makes his judgement (no participant explicitly claims a divine origin of morality). Some sort of consensus is often appealed to. Thus such phrases as 'it is generally accepted' or 'it is widely agreed' are often used without specifying within what population this is supposedly true. Nor is it clear whether a consensus of that population, whatever it is, is a sufficient ground for a moral judgement.

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Another shortcoming of the literature is that there has been a great deal of debate about justice versus order, without making it clear what is meant by these terms. Justice in particular is indiscriminately used.

In contrast, this pamphlet aims to specify the ethical grounds that are required for judging the behaviour of states towards other states and towards foreign persons. The word justice is little used. Where it is, there is a clear distinction between procedural and distributive justice. As to order, the world of states is orderly if there is peace. Promoting order means promoting peace. There are degrees of orderliness, which may be measured by the number of wars weighted by the number of deaths caused.

## CHAPTER TWO

# COSMOPOLITAN RIGHTS AND WELFARE

SINCE 1945, but especially in the last 20 years, there has been increasing worldwide reference to human rights, ranging from philosophical treatises to international declarations. States have been called upon, and have agreed, to respect human rights, which are thus considered to exist independently of states.

Whence come these rights? I agree with Bentham that natural rights are ‘nonsense on stilts’. By natural rights I mean rights that somehow inhere in human beings by virtue of their humanity, independently of any society or community to which they belong.<sup>1</sup>

Rights, like all moral concepts, can arise only within a moral community or society of two persons or more. Rights and obligations are correlative concepts. Rights must be conferred, and when a right is conferred an obligation is assumed, and vice versa.<sup>2</sup> Rights may be conferred by an individual. One has a right to expect a promiser to keep his word, and he has an obligation to do so. Such rights are called specific. In a political community, the government, which has some power, can confer more general positive rights, for instance to a minimum standard of living, and it

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<sup>1</sup> My views about human rights have been elaborated in I M D Little, *Ethics, Economics and Politics*, OUP, 2002, especially Chapter 4.

<sup>2</sup> I confine the use of ‘obligation’ to situations where there is a contract. Implicit contracts are allowed if there is some evidence of a contract; but not fanciful or fictional ones. Where the moral code of a community requires some act, but where there is no contract and no right conferred, I use the term ‘duty’. This usage may not always accord with everyday parlance, but it avoids merely linguistic confusion about obligations and duties.

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thereby accepts the obligation to provide it. In such cases, there is an obliger who undertakes to do something (or refrain from doing something which he or it is otherwise free to do). A government is irresponsible if it accepts an obligation that it cannot meet; the right it pretends to create is nugatory. The same applies to a person.

A moral community or society may exist where there is no effective government. How can positive human rights arise in such a community? The answer is that they cannot, for they require a positive collective obligation to do something. The counterpart of a positive collective obligation is a positive right. However, some elements of a moral code may be almost universally accepted by members of a community with no central government. Thus it may be agreed that it is wrong to kill people; or maim or torture them, or deprive them of their property or liberty (except to prevent them doing wrong to others). It is reasonable to suppose that virtually all sane adult members of any community can understand and accept such behaviour as wrong, if only because acceptance is essential for a viable community. These wrongs or torts can be expressed as negative obligations (thou shalt not ...). So-called basic human rights are essentially negative, and are nothing other than the corollary of basic wrongs.

It may be strongly objected that human rights are not just a reflection of the negative obligations that everyone has not to kill etc. The Good Samaritan is cited. Does not a drowning child have a right to the assistance of anyone on the beach? In other words, does not everyone present have an obligation to try to rescue the child? Surely not, unconditionally; but only subject to such provisos as being fit, a good swimmer, and that no one else is much nearer. Yet a right is unconditional and requires an unconditional obligation. Of course, if there is a lifeguard, then the child has a right to be assisted; but in this case there is an implicit contract and the right is specific and not a general human right. The Good Samaritan was good; indeed, he was good *because* he had no obligation. The same considerations apply when a person is attacked. The victim has no right to be assisted by any



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casual witness. This is not to deny that the latter ought to intervene, provided there is a reasonable chance of helping the victim and that he does not risk serious injury himself.

The recognition of universal human rights, independent of states and governments, implies that humankind is to some extent a moral society. Whenever human beings meet and can converse, in however rudimentary a manner, they recognise some basic torts, and perhaps also simple contracts. There exists, it has been argued, a universal 'thin' morality.<sup>3</sup> Certainly some elements of morality have long existed independently of governments and states, whenever people came into contact with each other.

The chief examples historically of such contact have been warfare and trade. Rules of war or military codes (known in legal jargon as *Jus in Bellum*) have existed at least since the Middle Ages;<sup>4</sup> and traders recognised some commercial codes long before nation states existed. Admittedly such codes were frequently dishonoured and it is necessary to emphasise the thinness of this morality. Many claims of human rights are made which are unsupported by the almost universal recognition of a corresponding obligation that could make them a reality.

The support for non-governmental organisations (NGOs) such as Amnesty and Oxfam, and many other charities, is evidence of some common human feeling that transcends state boundaries. An essential feature of NGOs is that they are often allowed to operate in a state in ways that would be regarded as an attack on the sovereignty of that state if the operator were a foreign government.

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<sup>3</sup> See M Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, University of Notre Dame, 1994. The idea of a universal human morality is probably as old as moral discourse. But the concept of a near universal secular morality arising only from human contact is more recent. However, it probably precedes Michael Walzer. See, for instance, I Berlin 'Two Concepts of Liberty' (1958 lecture) as quoted in *EEP*, page 3.

<sup>4</sup> See M Walzer, *Just and Unjust Wars*, Basic Books, 2000, especially Chapter 3.

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The growing belief, since the Nuremberg trials of German leaders in 1946, that the perpetrators of war crimes or crimes against humanity, may be tried in an international court is further evidence of some recognition that morality exists independently of particular communities or states; and that humanity exhibits some, albeit faint, traces of a moral society.

It has been argued that virtually all sane adult persons recognise some basic wrongs, the most basic being that it is wrong to kill. But how can this be argued in the face of evidence from many countries that tens, even hundreds of thousands of people have taken part in mass murder? A distinction has to be made between doing wrong and recognising wrongdoing. It is possible that most, but certainly not all, of these murderers have later realised and would admit that they had done wrong. At the time they were incited to hatred by the passionate rhetoric of a few leaders, and many were dehumanised by drink or drugs. The case of the leaders is different. The most prominent mass murderers of the last century, Hitler, Stalin, Mao, and Pol Pot, and their minions, were not demented. But their behaviour was inhuman. They did not accept that human beings have rights and that it is wrong to kill or torture them. They would have explained their actions by reference to racial theory or communist dogma. And, throughout the ages and even now, religious extremists have effectively denied human rights. Finally, dogma and religion apart, there are always a few totally amoral and evil people.

Despite these exceptions, I think one can continue to argue that virtually all sane adult persons recognise some basic wrongs. If someone cannot accept this, then he or she cannot accept the existence of human rights. It is unfortunate that some of the exceptions have become extremely powerful. Ruthlessness helps in the pursuit and retention of power.

We have considered human rights but what about human welfare? Rights and welfare may conflict. Thus killing someone is generally accepted as wrong, even when it would surely increase utility or welfare. There are philosophers who put more emphasis

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on global welfare than on human rights. A full-blown classical utilitarian requires that every human being's utility has the same weight. This would seem to require vast transfers of wealth from rich to poor people. Since people are organised into states, this would imply massive transfers from rich to poor states, far beyond what any serious person would advocate. It can, however, be argued that the existing division of the world into states is not conducive to the welfare of mankind. We do not consider this radical idea here, and take the existence of states as given, more or less as they are.

I doubt whether anyone believes that individuals ought to show equal concern for everyone else in the world. To some extent, people think in terms of utility or welfare, but it would be immoral not to value the utility of family and friends higher than that of strangers. However, although citizens and foreigners may both be complete strangers, most people think it morally correct to be more concerned with the welfare of the former. This is because citizens are all members of the same state, and are subject to the coercion of that state which therefore has equal obligations towards them, obligations which it does not have to foreigners.<sup>5</sup>

Whatever one may think of an individual's moral weighting of the welfare of other persons, it can be forcefully argued that the government of a state should treat all its citizens equally. But there is no government of the world, and global utilitarianism therefore breaks down.<sup>6</sup> A morality *sans frontières* supports the doctrine of respect for human rights, but I do not think that there is a near universal consensus that Everyman should give his all to the poor. This is not, of course, to say that he should not give more than he does. Whether or not he should try to persuade his or her government to give more interstate aid is considered in Chapter 7.

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<sup>5</sup> See M Blake 'Distributive Justice, State Coercion and Autonomy' in *Philosophy and Public Affairs*, Vol 30, No 3, Summer 2001.

<sup>6</sup> For a contrary view see P Singer, *One World, the Ethics of Globalization*, Yale University Press, 2002.

## CHAPTER THREE

### A SOCIETY OF STATES<sup>7</sup>

A STATE CAN BE DEFINED AS AN independent political community with a government. It is responsible for law and order within a particular territory and over a particular population, asserting supremacy over any other authority within that territory or over that population. It also claims external sovereignty, that is complete independence from any other authority in the world.<sup>8</sup> The world is now partitioned into states, and almost every human is a member of some state. These states form a society, in that each state is in contact with others, and recognises that its behaviour, in trade and other ways, affects other states, and that it in turn is affected by the behaviour of other states. Each state also recognises the existence of certain rules and institutions governing their relationship.

There are thus legal rules and conventions regulating the mutual recognition of states, and their behaviour towards each other. Recognition is formally endorsed by membership of the United Nations, agreed by the General Assembly. But individual states may extend or refuse recognition of others, regardless of the UN. Sometimes, when there is extreme political disorder, especially as a result of interstate or civil war, a state may cease to exist: there is no authority able to exercise adequate control over,

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<sup>7</sup> The concept of a society of states is due to Hedley Bull, *The Anarchical Society*, Macmillan, 1977.

<sup>8</sup> States may recognise in some limited respects the authority of a union of which they are members, without ceasing to be independent states. Members of the European Union are the main example.

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and care for, the inhabitants of the territory claimed, and able to make and honour international agreements.

Much the most important interstate rule is that no state may make war on another, except in self-defence against aggression on the part of that other. But what constitutes war? And what aggression? Does a state have to wait until foreign forces have crossed the border before firing a shot? Surely pre-emption may be permissible in certain circumstances? These questions make it clear that international rules may need interpretation in any actual situation. Any such interpretation can only be made in the light of some moral principles.

Respect for a state's sovereignty, implying non-intervention in its internal affairs, has in the past been widely regarded as an absolute rule. This does not imply that a state has an intrinsic and inviolable moral status. Its moral standing may derive entirely from the fact that it is a member of a system of states, and that the welfare of mankind depends on the preservation of an orderly and peaceful society of existing states. But it has recently been argued that a state's legitimacy does not depend solely on its recognition by others. It must fulfil the proper duties of the state, to respect and protect the human rights of its members, and even to ensure some basic level of welfare. It is further argued that failure to honour these duties, whether because of weakness or evil intent, can permit morally, if not legally, the forceful intervention of another state, which would not then count as aggression on the latter's part. The moral and legal conditions for such a humanitarian intervention are hotly debated and are considered later.

We have referred to international law. It is derived from the Charter of the United Nations, from many international agreements between consenting states, and to some extent from custom. But often the law is too imprecise for there to be certainty about its ruling in particular situations; and, unlike domestic law there is, for many issues, no central body to give an authoritative ruling, or to impose sanctions. Some jurists therefore argue that,

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properly speaking, there is no such thing as international law. Nevertheless, this nonentity probably contributes to the maintenance of peace, and to orderly and beneficial economic and other relations. However, there must be some principles involved in the interpretation of the law. Furthermore anyone is free to argue that a particular law is a bad law; again, there must be some basis for questioning it. In short, while international law has a moral role, it is not definitive of interstate morality.

What then is the basis of interstate morality? Is there any analogy between persons living together in a community with a moral code, and states co-existing in a society of states? I have earlier analysed the concept of human rights. The fact that human beings are sentient autonomous creatures probably has much to do with the near universal agreement that it is wrong to harm them in various ways. Welfare is also an important consideration in the moral code of most political communities. Within such communities one also often appeals to near-universal agreement or consensus as morally decisive. But states are not sentient beings and they do not have basic rights like human beings. Furthermore, the society of states is not a political community. There is no central authority which can confer rights on states.

States are subject to the reciprocal procedural justice of international law, but the absence of a central authority implies that, as compared with domestic or municipal law, it is often less certain what the law is. Respect for the law is also much weaker than within most states. In such political communities, almost all members have come to believe that they ought, with rare exceptions, to obey the law, and also to respect other generally accepted conventions. Morality depends on consensus, and the behaviour of a member of a moral community is at least partly guided by respect for other members and the need for social cohesion. But can we say that the morality of states' actions depends on a consensus of states? Or that states' actions are partly guided by respect for other states, and the need for an orderly society of states? This would be a much more contentious view.

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It is unlikely that there would ever be a consensus of states in favour of external armed intervention in the affairs of any state on humanitarian grounds. Debates in the General Assembly of the UN make this clear. The leaders of states, especially perhaps new and fragile states, are very jealous of their sovereignty (for obvious reasons). An exception could arise (and has arisen) when a state has disintegrated, and has no effective leader – but this is not really an exception since the state has ceased to exist. A strong candidate for consensual agreement would be that the primary duty of a state and its government is to protect and care for its citizens. There may be some concern for the orderliness of the system of states, but this is essentially secondary. It is of a different order of magnitude to the respect for other members, and the concern for social order, of a member of a moral community. In short, it is doubtful whether the system of states can convincingly or plausibly be thought of as a moral community. That there is some respect for interstate agreements is undeniable. This respect is important for the maintenance of an orderly peaceful system, but it stems mainly if not wholly from self-interest. Nevertheless, states may on occasion be prepared to temper immediate self-interest for the sake of international concord. In so doing, the system of states would, at least to some degree, develop as a moral community.

Can a consensus of mankind be appealed to, rather than a consensus of states themselves, when considering interstate morality? Human rights are grounded on a consensus of human beings. Can such a consensus be appealed to when judging the action (or inaction) of states? It might be argued that a consensus of mankind confers on a state a right of self-defence against aggression just as a consensus of members of a political community confers such a right on an individual (aggression requiring agreed interpretation in both cases). But I doubt whether the thin universal morality to which I have referred can go much further. This is not to deny that universal morality, in the form of concern for basic human rights, has some influence on

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states' behaviour. Even a very oppressive regime may not want to risk worldwide accusations of inhuman behaviour. The interstate behaviour of more democratic regimes – for instance, whether to go to war on humanitarian grounds – will also depend on media-influenced public opinion, and hence on universal morality. But rights and duties are not thereby conferred on states.

It might also be argued that interstate morality can derive from a consensus that lies between all mankind and the heads of states. This might be a consensus of philosophers, lawyers, and students of international relations, of every country, religion, or culture. One might call it a consensus of the international élite. It is rather unlikely to exist. In any case, I am not sure whether an appeal to such a consensus would carry more moral weight than anyone's personal intuition.

It has been claimed that humanitarian intervention is justified when it is the response (with reasonable expectations of success) to acts 'that shock the moral conscience of mankind'.<sup>9</sup> But I find this less appealing than the claim that all human beings would accept that there are some wrongs that no one should inflict on others. To appeal to the moral conscience of mankind to decide whether the magnitude of the wrongs perpetrated by a state against its own people is sufficient to justify morally an invasion of that state is a very different matter. Who is to say whether the moral conscience of mankind is sufficiently shocked? Universal morality is too thin to determine the moral behaviour of states.

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<sup>9</sup> See M Walzer *Just and Unjust Wars*, Basic Books, 2000, page 107. Implicitly Walzer held that the Indian invasion of Bangladesh was a response to Pakistani massacres that shocked the moral conscience of mankind.



## CHAPTER FOUR

# INTERVENTIONS FURTHER CONSIDERED

### **Intervention on the grounds of self-defence**

No one contests the basic right of self-defence against attack. A universal consensus can reasonably be claimed for the extension of this right to states. But what constitutes defence and attack may be doubtful. Only a strict pacifist would rule out, in any circumstances, a first strike as a pre-emptive defence. But there can be disagreement as to how imminent and certain the anticipated attack must be. Having judged that Israel's first strike against Egypt in the Six-Day War of 1967 was justified, Michael Walzer tentatively produced a formula for morally justifiable pre-emptive defence: 'states may use military force in the face of threats of war whenever the failure to do so would seriously risk their territorial integrity or political independence'.<sup>10</sup> Formulae such as this may be useful, but whether the conditions are satisfied in a particular case will usually be debatable.

However, the threat of attack is not always from a state. A state has the right to defend itself, and an obligation to protect its citizens, against terrorist attack. The moral problem is that terrorists often come from, and are only to be found in, other states. Does this give a state the right to invade another state in pursuit of terrorists believed to be there? I think a consensus of states can probably be claimed for the view that every state has an obligation to prevent terrorism. An attacked state should seek the active co-operation of other states in discovering terrorists and

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<sup>10</sup> Ibid, p.85.

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bringing them to justice. If such co-operation is refused, then there may be a case for armed intervention. But such intervention should be subject to the proviso (required in all interventions whatever the grounds) of a reasonable chance of success, and that the human costs involved will not outweigh the likely benefit. However, even with this proviso it is questionable whether there would be a consensus in favour of any particular intervention. Those states that feel threatened would doubtless agree, but many are not threatened. Today, some of the latter are probably pleased when the US is attacked.

### **Intervention on the grounds of strategic considerations**

If one stretched Walzer's formula for justified pre-emptive defence to include threats of no likely immediacy at all (Walzer would, I think, disapprove), then one would come close to the 'balance of power' theory that was prevalent in the 18<sup>th</sup> and 19<sup>th</sup> centuries. This held that a state could justly make war to prevent a shift in the balance of power that might threaten it in the long run. This theory was supposedly exorcised by the Charter of the UN in 1945. However, the development of so-called weapons of mass destruction, which may be acquired by relatively small economically weak states, has reintroduced strategic considerations of the balance of destructive power. For example, while President George Bush could not plausibly argue that the territorial integrity or political independence of the US was threatened by Iraq in 2003, he could argue that its strategic interests were threatened; and that the war was 'preventive'.

The doctrine of 'preventive war' is very similar to the balance of power theory. It claims that war may be legitimate to forestall a distant military threat. The idea is analysed by David Luban in an important recent article.<sup>11</sup> He argues that the doctrine is far too permissive, and needs restriction. His philosophy is essentially

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<sup>11</sup> D Luban, 'Preventive War', in *Philosophy and Public Affairs*, Vol 32, No 3, Summer 2004.

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consequentialist and broadly utilitarian. He suggests that preventive war would be permissible only against a rogue state, defined as one whose policies and past record make it overwhelmingly likely that it is arming with belligerent intentions. Only potential victims would be entitled to act, not third parties. With this restriction, prevention would come close to self-defence.

The UN Charter is very strong in condemning war as an instrument of national policy (apart, of course, from self-defence), thus precluding its use to maintain a balance of power. Yet strategic considerations seem to have been readmitted by the backdoor. Thus forceful intervention is permitted if the Security Council declares that the situation in a state or region constitutes a threat to international peace and security. Since the end of the Cold War, the Security Council has been very active in making such declarations that legalise armed intervention, and also economic sanctions. The circumstances giving rise to these declarations have been varied, involving internal armed conflict (with or without a massive loss of life), more clearly humanitarian crises, and even a *coup d'état* deposing a democratically elected government (as in Haiti, in 1991).<sup>12</sup> In some of these cases, there was clearly no serious threat to international peace. On many other occasions, when there was a clear threat, there was no Security Council declaration, or only a very belated one (as in Rwanda in 1994).

There are no clear principles guiding the decision on whether a situation is a threat to international peace, and there is no reason in principle why a military build-up in a rogue state should not be declared to be such a threat – which it clearly may be. Unfortunately, however, the present constitution of the Security Council makes it unlikely that any clear principles will evolve from its decisions. Whether a declaration is made depends very much on two factors: the will and concern of a state or states that could

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<sup>12</sup> These Security Council resolutions are described and discussed in detail in S Chesterman, *Just War or Just Peace*, OUP, New York 2001, Chapter 4.

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intervene effectively; and the strategic concerns of the five permanent members of the security council who can exercise vetoes.<sup>13</sup> For this reason, we have to classify almost all the many interventions sanctioned by the UN since 1990 as strategic. Although there were humanitarian considerations, they were not decisive, as is evident from the inaction of the UN in other cases where human rights were grossly violated.

We should ask whether in the absence of humanitarian considerations there can be any moral grounds for non-defensive strategic intervention. If the intervention is conducive to world order, that is if it makes peace between states more probable in the long run, then this could override the immediate human cost that any armed intervention, or strict enforcement of economic sanctions, would be sure to cause. The morality would be utilitarian, appealing to the long-run welfare of mankind. It would be very difficult to make out a convincing case.

### **Interventions on the grounds of imperial aims**

Use of the word ‘imperial’ is deliberately tendentious. It implies that such supposed grounds for intervention have no moral basis. Prior to the partition of the world into states, imperialism meant the formation of an empire by conquering, or taking over and ruling, some territory and its inhabitants. Since the Chinese annexation of Tibet in 1959, it has come to mean imposing a form of government on another state by force or the threat of force. The main examples have been the forced imposition by the USSR of Communist government in Eastern Europe. The motives were partly strategic (the maintenance of dependent buffer states) and partly ideological (the evangelical propagation of Communism as a form of government).

Minor examples have been the US interventions in Granada and Panama in the 1980s. Whatever the real reasons of the George Bush (Senior) administration, it was argued that the US

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<sup>13</sup> They are China, France, Russia, the US and UK.

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had a right to impose unilaterally a democratic government. Since then this idea has gained some adherents, mainly in the US. The argument is that a state's moral and legal legitimacy depends on the consent of the governed. If it suppresses popular protest, it loses sovereignty. The argument is formally similar to the humanitarian argument for intervention whereby a state is held to lose sovereignty if it massively violates basic human rights. But there is a difference between massacring people and denying them votes. I have argued that basic human rights are essentially negative. They are the obverse of wrongs, things which a universal 'thin' morality proclaims no person or state may do to anyone. One cannot possibly argue that virtually every human being would understand and agree that every person must have a vote. Some philosophers claim that people have a right to live in a liberal society. I see no moral basis to this claim.<sup>14</sup>

It has been argued that a state has no right to the resources of its territory. This is analogous to the denial of a right of inheritance within a political community in the name of distributive justice. But with no world government, the concept of interstate distributive justice is meaningless. In a society of states it must be accepted, for reasons of world order, that a state is free to exploit, or fail to exploit, its material resources. If it has a monopoly it is free to charge a monopoly price, or even to refuse to trade at all. Only in extreme circumstances could trade behaviour become a reason for war. If one state seriously threatened the very existence of another, for instance by blocking all communications of a landlocked state, there might be a case in the name of defence.

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<sup>14</sup> B Barry refers to 'the fundamental right to live in a liberal society' in 'Statism and Nationalism: a Cosmopolitan Critique', page 29 in I Shapiro and L Brilmayer (eds) *Global Justice*, New York University Press, 1999. Brian Barry is very free with ascribing rights, but this is extreme even for him.

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### **Interventions on humanitarian grounds**

The NATO bombing of the Federal Republic of Yugoslavia in 1999 is the clearest case of humanitarian concerns being the dominant acclaimed reason for the intervention, which was intended to prevent further killing of Albanians by Serbian forces in Kosovo. NATO members claimed legal justification. But Russia, China, and many other nations opposed it as being a violation of the Charter of the UN. We are not concerned with legality, but many would also question the morality of the intervention. Whether it was a success in human terms, and in terms of eventual peace in the region, is also very much in question, and may never be resolved.

The most important, successful and widely acclaimed intervention on humanitarian terms was the Indian intervention in East Bengal in 1971. This brought to an end the atrocities perpetrated by Pakistan, and ensured the creation of the state of Bangladesh. The Pakistan forces had probably killed nearly a million people, and nearly ten million had fled to India between March and December 1971. If ever there was a case of a threat to international peace and security, this was it. But in the Cold War, the UN Security Council was hamstrung, and silent. India's humanitarian concerns were genuine, but she was also suffering severe economic damage. Pakistan actually started the war in December 1971, and India won in 12 days. Bangladesh has survived, and the longer run consequences for South Asia have been favourable.

Other interventions with a humanitarian element that have been subsequently acclaimed as successful, include that of Tanzania in Uganda, and Vietnam in Kampuchea, both in 1978/79. Both these were unilateral invasions by neighbours who had suffered some damage, and could claim self-defence. Vietnam's action was referred to the Security Council. Despite the horrors of Pol Pot's regime, it was widely condemned as unjustified, but no resolution was adopted (because of a Russian veto).

## CHAPTER FIVE

# NATIONALISM AND SECESSION

THUS FAR, THE SOCIETY OF STATES has been taken to consist of the actual set of states that are currently recognised by the UN. Is it not extraordinary to take states as given when the great majority of them has come to exist only in the past 50 years? Most have resulted from the break-up of empires. Their boundaries derived from colonial and imperial rivalries, and from decisions by the victors in the two world wars in the 20<sup>th</sup> century. However, following the break-up of the Soviet Union and Yugoslavia, any further disruption (or conjunction) seems unlikely in the foreseeable future.

Is there any logic determining the number of states? There has been, and still exists, the idea that every nation should have its own state. It has been proclaimed that nations have a right to self-determination. This idea was specially associated with Woodrow Wilson and the Treaty of Versailles (1919) and was influential in the creation of a number of states in central and Eastern Europe.<sup>15</sup>

What is a nation? It may be described as a part of the human race whose members have at least some of the following attributes in common – language, custom, history, religion, descent, a common territory – call them communal attributes. It does not take deep knowledge of the world to know that there are very few states that do not show great diversity in many of these attributes.

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<sup>15</sup> The desirability of nation states was recognised much earlier. J S Mill, for instance, wrote: ‘Where the sentiment of nationality exists in any force, there is a *prima facie* case for uniting all the members of the nationality under the same government, and a government to themselves apart’ (J S Mill, *Representative Government*, 1861, Chapter XVI).

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However, the presence or absence of certain communal attributes does not amount to a useful definition of a nation. They are better regarded as part causes of what is the essential defining characteristic of a nation, that is a 'desire to be under the same government, and desire that it should be governed by themselves or a portion of themselves exclusively'.<sup>16</sup> But a community, especially a small, economically-weak community, may recognise that the desire for self-government is unrealistic or not conducive to its welfare. It will not then be actively nationalistic.

In the post-Imperial era, with the world divided into states, active nationalism is necessarily disruptive. A nation state may seek to expand, and deprive others of their independence. In the 20<sup>th</sup> century, Germany and Russia were the main perpetrators of this aggressive nationalism. But when a state contains more than one nation, then one or more of them may actively try to secede. The state may agree, and a peaceful separation occur, as with the Czech Republic and Slovakia. More often, civil war results and secession, if achieved, is achieved only with violence and loss of life. Important examples are the secession of East Bengal from Pakistan and the creation of Bangladesh in 1971-72; and the Balkan wars of the 1990s that resulted in the creation of Bosnia, Croatia, Serbia and Slovenia.

Civil war may result in massacre, and this could justify humanitarian intervention. Here, however, the question is whether self-determination has a value which is independent of any consideration of life and death, and physical suffering; and which should enter into any calculation of the morality of intervention.<sup>17</sup> Is a foreign power morally justified in supporting, by arms or in any

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<sup>16</sup> Ibid.

<sup>17</sup> Of course, an insurgent movement may not be demanding secession. It may simply be wanting to seize power. *Prima facie*, if the reigning government is not guilty of any grave abuse of human rights it can legitimately claim interstate support. Support for insurgent forces is justified only if there is a case against the existing government on humanitarian or other grounds. If there is such a case, then the presence of active domestic insurgency can be a strong argument in favour of intervention. Afghanistan is a case in point.



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way, an insurgent movement demanding secession? Short of civil war, can serious oppression of a minority that would prefer more autonomy, if not full independence, morally justify intervention?

There is considerable disagreement among political philosophers and students of international relations concerning the value of a state, or a political community.<sup>18</sup> There is a spectrum of views. Those most respectful of states would seldom favour intervention, while those who are most insistent on human rights would advocate intervention more freely. Michael Walzer is among the former. He holds, in common with many other philosophers, that a tyrannical state that seriously abuses human rights may cease to have any moral claim on its citizens. But this same state may enjoy interstate recognition, and make treaties incurring interstate obligations. Should this be so? When should a state lose its sovereign right to freedom from intervention by others? Walzer introduces the concept of a union of people and government that survives the loss by a state of any moral claim on its citizens. Foreigners, he says, are in no position to deny the reality of that union. They should be guided by a 'morally necessary presumption' that there exists a 'fit' between the community and its government. In favour of the view of a 'fit' is the fact that the most oppressed citizens of a state may heroically defend it against invasion. The concept of a union that should not be challenged by foreigners is strongly prohibitive of interstate intervention. For this reason it has been strongly challenged.<sup>19</sup> For my own part, I do not know what the moral grounds are for any necessary presumption of some 'fit' which generally precludes

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<sup>18</sup> Any community that has some political institutions, and authority over certain policy areas, is a political community. All states are political communities, but not vice versa.

<sup>19</sup> My account of the concept is from M Walzer, 'The Moral Standing of States: A Response to Four Critics', *Philosophy and Public Affairs*, Vol 9, No 3, Spring 1980. References are there given to earlier works by Walzer which invited the criticism, and to the four critics and their articles.

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intervention. (Walzer permits foreign intervention only if a political community that is also a state massacres its citizens.)

However, opposition to intervention except in very extreme circumstances need not depend on any ascription of moral value to a political community. It can come from emphasising the importance of order and peace, which may be at risk from any intervention. A state is to be respected simply because it is there.

## CHAPTER SIX

# THE MORALITY OF HUMANITARIAN INTERVENTION

MANY WRITERS AND CONFERENCES have suggested necessary moral conditions for intervention on humanitarian grounds.<sup>20</sup> Typically these conditions include:

- that there is mass murder and deprivation;
- that all peaceful alternatives have been explored unsuccessfully;
- that no UN prohibition is in force;
- that there is a reasonable chance of success, doing more good than harm, and not jeopardising the long-run independence of the intervened state.

Disinterestedness on the part of the intervening state is also required by some writers, but this seems too strong. At most one could require that humanitarian grounds are dominant. Preference for multilateral action is also expressed.<sup>21</sup>

The satisfaction of the suggested necessary conditions would confer no more than a right to intervene. An obligation to intervene requires at least some element of collective agreement and power. A world government with its own military power of intervention could assume such an obligation and confer a right to be forcefully

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<sup>20</sup> A recent full discussion is in ICISS (2001a), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*.

<sup>21</sup> These conditions and views are reviewed in S. Chesterman *Just War or Just Peace*, Chapter 6.

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assisted on some suffering part of the human race. Short of world government, the Security Council could assume this obligation if the five permanent members agreed: it could then legally require UN members to provide the necessary armed forces.

Short of there being an obligation, can it be maintained that any or every state has a duty to intervene? What moral theory can be invoked to support the contention that a state ought to intervene if certain necessary conditions are clearly satisfied? The analogy is with the passer-by who ought to assist someone under attack, if certain conditions are satisfied which make success likely. It has been argued that there is a universal consensus that there are some negative human rights. It may be suggested that this consensus can be extended to the view that, under certain conditions, any person or state ought to intervene to stop these rights being violated. If so, the validity of the conditions would require a moral basis.

Before considering the moral basis of the necessary conditions for intervention, the question arises of whether, if one state has a duty to intervene, then do all states have such a duty? The fourth condition cited above makes it clear why this cannot be the case. An economist would rephrase the condition as requiring a probable positive balance of benefit over cost, both measured in terms of human welfare. The costs include the death and destruction inevitably suffered by the people of the intervened state, as well as the losses of the intervening forces. The benefit is the improvement in welfare of the intervened population. This requires assessing, not only conditions in the intervened state but also what those conditions would have been if there had been no intervention.

It is most difficult for any potential intervener to make such a calculation (which involves, of course, weighing the welfare of its own citizens against that of those it aims to help). Furthermore, the calculation would depend on which state, or states, is the intervener. Thus, the costs would depend on the location, on the cost and on the likelihood of success. In some cases it could be that only one state, such as the US, or a coalition, could intervene with any chance of success.

## THE MORALITY OF HUMANITARIAN INTERVENTION

Most writers stress that intervention should if possible be multilateral. At the 54<sup>th</sup> General Assembly of the UN Meeting (September 1999) most states (but excluding Russia, China and India) accepted that forceful intervention was permissible in an extreme humanitarian crisis if authorised by Council: but unauthorised unilateral intervention was never legitimate.<sup>22</sup> It is clear that the moral basis for a unilateral intervention, even in extreme circumstances, does not rest with a consensus of states. If it exists, it must stem from cosmopolitan morality. Insistence on Council authorisation verges on hypocrisy: the organisation of intervention with Security Council approval in time to prevent any threatening human disaster is very unlikely. It has been widely proclaimed that the genocide in Rwanda in 1994 must never be allowed to happen again. It is happening again, this time in Sudan.

The moral theory underlying the necessary conditions for forceful intervention can only be utilitarian. Some violation of human rights may present a *prima facie* case for enforcing those rights. But action can be justified only after a very careful consideration of costs and benefits. This does not imply that a state's actions should be governed by considerations of immediate utility, or that it should value the welfare of citizens and foreigners equally. The costs and benefits of intervention will be considered only if triggered by some extreme human catastrophe. The more immediate human costs and benefits have to be weighed against the cost of breaking the rule of respecting a state's sovereignty. The analogy with common examples of personal Act and Rule Utilitarianism is obvious. It needs a shock to start assessing the pros and cons of breaking a solemn contract, or a generally accepted interstate rule. However, it must be recognised that some states believe that the sovereign rights of states trump any utilitarian values.

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<sup>22</sup> See N J Wheeler, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society' in J M Welsh (ed) *Humanitarian Intervention and International Relations*, OUP, 2004.

## CHAPTER SEVEN

# INTERNATIONAL AID<sup>23</sup>

AID CONSISTS OF GRANTS OR SUBSIDISED LOANS to the governments of states by other states, either bilaterally or multilaterally through the UN, the World Bank, and other institutions. It may also take the form of debt relief. The complex history of intergovernmental aid, and varied motives of donors, are not covered here. The concern is only with the morality of transfers given at least partly to help the recipient fulfil the functions of the state, including the development of its economy and the welfare of its people.

In the society of states, there is no central authority to lay down the principles of giving aid. I have further argued that the system of states cannot convincingly or plausibly be thought of as a moral community. States therefore have no right to receive aid, there being no moral basis for such a right. However, an extensive framework of interstate agreements and institutions has grown up, including some that are mainly concerned with aid. States have some respect for these arrangements, and to this extent traces of an international morality have emerged. Most rich states have agreed to give annually a target 0.7% of national income in aid. They have thereby accepted an obligation which only one or two have honoured.

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<sup>23</sup> I have treated aid and migration at greater length in 'Ethics and International Relations' in B Barry and R. E Gooden (Eds) *Free Movement*, Harvester Wheatsheaf, 1992. Earlier I discussed the ethics of aid-giving in I M D Little and J M Clifford *International Aid*, Allen & Unwin, 1965.

## INTERNATIONAL AID

Reasons for giving aid are complex. Some tiny states could not exist without aid. They could not afford the educational and other expenditures required for a state to play its proper role in the system of states. A consensus of the richer states, interested in the preservation of world order, would probably agree that they ought to support these quasi-states. But subsidies for this purpose are a small part of total aid. How then should aid be distributed among recipient states? Donor states, and aid-giving institutions, are not bound by any agreed principles of distributive justice; each may determine its own policy in this respect.

However, although aid is given to states and not to people, popular support for it in donor countries depends on it benefiting the poor in the recipient states. It has been strongly argued by some that aid in the past has seldom helped the poor at all. Rather, it has helped some oppressive regimes to remain in power, and allowed others to pursue misguided policies which have been inimical to economic development and the relief of poverty. For these reasons, aid has been made increasingly conditional on the pursuit of economic and political policies approved by donors.

Donors are justified in making aid conditional, but many recipient governments dislike it. They regard it as an infringement of their sovereignty. Donors may often face a moral dilemma. There will be cases when aid helps desperately poor people, but also supports a tyrant who heads a stable non-aggressive regime, while also torturing his political opponents. The moral issues are no different from those considered under humanitarian intervention. They require balancing world order, welfare, and human rights.

An individual may give foreign aid privately through NGOs. This at least partially avoids the danger of supporting bad regimes and bad policies. How much if anything a person gives in this way is a matter of personal morality. One may or may not lobby one's government to give aid. This again is a matter of personal morality, but should also depend on how good one thinks the government is at dispensing aid.

## CHAPTER EIGHT

### MIGRATION

IMMIGRATION IS MAINLY a matter of a state's treatment of foreigners. Other states are exceptionally involved only if there is some interstate regulation. The relevant morality is that of the recipient state. Its primary responsibility is to its own citizens. In no state would the citizens expect the government to accord the same weight to the welfare of foreigners as to their own welfare. Everywhere immigration is controlled. Migrants come in rather freely if they are wealthy and will pay taxes, or are talented and can be expected to contribute more to the economy than they cost. But all states prevent, to the extent that they can, the entry of large numbers of poor migrants: they compete with the state's own poor and absorb welfare benefits.

Such policies come uncomfortably close to giving the welfare of foreigners zero weight, thus treating them (*pace* Kant) purely as instruments. However, exceptions are made if an asylum seeker would be killed, tortured or illegally incarcerated if returned to his own country. Thus a sharp distinction is drawn between welfare and basic human rights, and it is accepted that the latter should trump the former.

Many countries, especially communist countries, have restricted emigration. This is a restriction on personal liberty which is a denial of a basic human right. However, the flight of an educated person may be a loss to a state. As against this, the remittances of emigrants have been an important component of the income of several poor countries: and recognising the right of citizens to withdraw from a political community adds to that state's



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international standing which may be of some material benefit. There is also the question whether an emigrant should be entitled to take his property with him. Governments have acquired the right to take property away from the rich to help the poor. They are equally entitled to levy an exit tax, similar to death duties. But, unlike the latter, this tax should be returned if the emigrant comes back.

## CHAPTER NINE

### SUMMARY AND POSTSCRIPT

THE PROPOSITION UNDERLYING THE ARGUMENT of this paper is that morality requires a community. The two evolve together.

#### **Cosmopolitan Morality**

This assumes that humankind is a moral community to some extent, however limited. It is claimed that almost every sane adult human being would understand and agree that it is wrong for any person or institution to do certain things to anyone (without due legal process). These wrongs include physical harm, and deprivation of liberty or property (I bypass problems raised by embryos and children). Basic human rights are the counterpart of these wrongs, and are therefore essentially negative. The universal existence of these negative rights has been assumed here (although their existence is debatable). Positive rights require more than a moral community. They require a political community, with an authority which can effectively accept the obligation to provide whatever is implied by positive rights.

Basic rights may be held to include the 'right' of self-defence (though this is more properly described as a freedom). It is not wrong to use violence to counter violence. This freedom may be extended to states: reason requires that it includes a pre-emptive strike when attack is clearly imminent; but this freedom depends on a consensus that cannot be held to include waging preventive war to maintain a balance of power.

Cosmopolitan morality requires at least that states respect the human rights of their citizens. More controversially it may be held

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to require a state to defend its citizens against external attack. Recently it has been argued that a state has a duty to protect its citizens more generally against deprivation. However, a morality based on a consensus of mankind can say very little about the positive duties of a state towards its citizens. This is a matter for intrastate morality with which this paper is not concerned. The same is true of a state's duties to foreigners, including its aid and immigration policies, which cannot be defined separately from the duties it owes to its own citizens,

### **Interstate Morality**

The states of the world form a society. All but a few have a great deal of contact with other states, in terms of the movement of commodities, capital, people, knowledge and ideas. These interchanges are subject to custom and convention; but also to many agreed rules, often promoted and administered by interstate institutions to which nearly all states belong. This is the realm of the procedural reciprocal justice of international law, to which member states are subject. By and large, states respect the obligations they have accepted under international law: and this contributes importantly to orderly peaceful exchanges.

Nevertheless, respect for international law is weaker than is the respect for law within most states. Within political communities, almost all members come to believe that they ought, with rare exceptions, to obey the law. In contrast, in the system of states, respect for the law stems predominantly from self-interest. Members do not as a rule obey the law because they feel loyalty to, or solidarity with, the system. Nevertheless, states occasionally temper their narrow interests for the sake of international accord. It is to be hoped that this will develop to the extent that it can be said that the system of states is, at least to some degree, a moral community.

International law has a moral role in that it contributes to peaceful relations, but it is not definitive of interstate morality. Moreover, it is questionable whether there is a consensus of states, concerning any aspect of interstate behaviour, that might be

## GOING TO WAR AND GLOBAL MORALITY

regarded as a foundation stone of interstate morality. This will become clear from an examination of states' attitudes to intervention – that is to making war.

### **Making war**

If there is a consensus of states about anything, it is that sovereignty is absolute.<sup>24</sup> No state, or coalition of states, has a right to invade another state. The right of self-defence is admitted. Reason demands that a state has a right to make a first move when there is an imminent attack by another. But there is no doubt that most states would emphasise that there must be clear evidence of the imminence of an attack and its seriousness. Some other suggested grounds for intervention, such as deposing a dictator, would certainly be dismissed as imperialism.

However, this does not address the problem of a rogue state that is arming with clearly aggressive intent, but does not yet constitute an imminent threat. Our discussion of 'preventive war' suggested that, in such circumstances, only those states that were threatened would be justified in making preventive war. But more general efforts to discourage a rogue state might be desirable. The Security Council has power to authorise and organise sanctions, and ultimately forceful intervention where a situation threatens world peace: there is no reason why a military build-up in an aggressive state should not be declared to be a threat to international peace.

Humanitarian grounds merit further discussion. Cosmopolitan morality has had some successes, such as international agreements to respect human rights, and the creation of courts to judge those accused of crimes against humanity. However these measures have had little practical value. Millions continue to suffer the most cruel abuse.

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<sup>24</sup> Member states of the European Union have recognised the superior authority of the Union in certain respects. But they remain independent states. Their sovereignty remains absolute in that they have a right to secede from the Union.

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The major perpetrators of these crimes are the governments of states themselves. Many Western liberals would favour armed intervention (under certain conditions) when a state promoted or connived at the massacre of its citizens. But a moral right, let alone a duty, for any state to make war on humanitarian grounds does not emerge from a consensus of states. If it exists, it can stem only from a universal or cosmopolitan morality. Proponents of intervention agree that certain conditions must be strictly satisfied. Briefly, the humanitarian disaster must be extreme and the chances of success must be good. The insistence on extremity recognises that any forceful intervention infringes the sovereignty of the intervened state, and that respect for the sovereignty of states is a positive component of world order and peace. Humanitarian success implies a favourable balance of benefit over cost, both measured in terms of human welfare. It is extremely difficult to measure the probability of success in these terms, and it will depend on which state or states intends to go to war. It is questionable whether there has ever been intervention on purely humanitarian grounds. Kosovo comes closest, and it is doubtful whether it can be counted as a humanitarian success.

Intervention on humanitarian grounds without UN endorsement undermines the essential role of the UN in the maintenance of an orderly and peaceful system of states. It is true that UN endorsements may be unobtainable, or so slow to come that genocide is not prevented. But the status of the UN and its functioning urgently needs strengthening. It is weakened if states bypass or ignore it. The exception to this would be immediate intervention by a state that is suffering severely from events in a neighbouring state.

## GOING TO WAR AND GLOBAL MORALITY

### **Postscript**

Many writers on international morality appear to be preaching, rather than applying any established codes of conduct. They are crying out for a morality of which faint traces exist. Supporting and reforming the United Nations, and other major international institutions, thus improving international relations and making the system of states more like a community whose members trust each other, is the way to advance towards the emergence of a robust international morality. Morality and community evolve together.

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