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# **BURUNDI AND THE FUTURE OF HUMANITARIAN INTERVENTION**

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## **INTRODUCTION**

The former Tanzanian president, Julius Nyerere, led the OAU initiative in the Burundian conflict, promising that "*East African troops will, if necessary, intervene in Burundi in an attempt to stop the ethnic massacres.*"<sup>1</sup> In July 1996, the OAU attempted to secure an agreement with the Burundian leadership at a regional summit in Arusha, Tanzania, to intervene in the conflict. At this summit, Burundi's Prime Minister Antoine Nduwayo, a Tutsi, and President Sylvester Ntibantunganya, a Hutu, were pressured into requesting security assistance. Subsequently, under a barrage of threats from the army, Nduwayo reneged and rejected the idea of foreign intervention. Later on, when the massacres continued, Nyerere stated: "*We will go in whether Burundi wants it or not.*"<sup>2</sup>

It became general knowledge that, when the Burundian warlords began to raise questions around sovereignty, the OAU retreated and that no intervention took place in Burundi. Instead, the African continent was saddled with yet another military junta who seized power, claiming like so many others had done before, that they will save the country from social collapse and that the military leaders intended to move the country towards democracy as soon as possible. Why did the OAU retreat from their legally justifiable position under international law?

In the wake of recent humanitarian crises and varying international responses to such situations, the debate with respect to international intervention on humanitarian grounds has deepened dramatically. In the 1995 edition of *An Agenda for Peace*, Secretary-General Boutros Boutros-Ghali expressed less optimism about the possibilities for intervention.

There are calls for more intervention while, at the same time, many of those who may be the targets of intervention, have raised the spectre of sovereignty, claiming "domestic jurisdiction" for their genocidal acts. Burundi is a classic example. Concerns about state sovereignty consistently block any substantial progress in addressing the comparable horrors of civil wars. By its very nature, humanitarian intervention is in conflict with state sovereignty, as it places the rights of individuals above those of states.

While there is increasing international support for interventions in response to a variety of humanitarian crises, the issue of the legitimacy of such actions by the United Nations or other bodies has not been fully articulated.

This paper is an attempt to establish a legal basis within the framework of international law for humanitarian intervention in a world of nominally sovereign states. It will be argued that a norm of justified intervention can be found in the UN Charter, the Universal Declaration of Human Rights and human rights covenants, as well as in the practice that is presently developing.

Regardless of the basis to protect human rights that may be found in international law dealing with human rights and intervention, a foundation for such rights can be found in the very nature of the state system. It is also the contention that sovereignty cannot be used as a

basis in efforts to prevent humanitarian intervention, because the responsibilities which accrue to states mean that human rights must be seen as a part of the definition of sovereignty, rather than in opposition to it. In addition, the concept of sovereignty does not only include a right for the international community to violate international boundaries on behalf human rights, but also places an obligation on it to do so.

What is required, in other words, is to break free from the 'sovereignty discourse', which characterises the world as a place in which nation-states are the principal actors, the principal centres of power, and the principal objects of interest. The focus of the discussion needs to move from states as objects of intervention and their right to be left to their own devices, to the subjects of humanitarian action – people – and their rights that are external to any narrow view of state sovereignty, as well as their place within the broader international community.

Moving away from the 'sovereignty discourse', where states are the final arbiters of rights, involves reconceptualising sovereignty to include human rights. This should happen in a way that would prevent states or the international community from ignoring abuses of those rights. This paper concludes that a legally justifiable basis for humanitarian intervention can be found within the existing international law framework.

## **THE LEGITIMACY OF HUMANITARIAN INTERVENTION**

Human rights abusers, such as the Burundians, rely on sovereignty as a shield to protect them from scrutiny and to enable them to continue with their practices without any outside interference. However, in the course of reviewing international law and recent practice, as well as reconceptualising the position of people within the framework of sovereignty, several issues become clear. Firstly, individuals have a right to receive humanitarian assistance. Secondly, international organisations have a right, in certain instances, to gain access in order to provide such assistance, without regard for the wishes of the relevant government, as well as to engage in more far reaching intervention actions in certain instances. Thirdly, the international community may not only have a right, but an obligation to provide assistance and to intervene in cases of widespread gross violations of human rights.

On a more conceptual level, individuals can be conceived of as having a different relationship with the wider community beyond the state, and states have obligations toward individuals within the wider community beyond their supposed sovereign realm. That is, the state is no longer the absolute mediating focus between the individual and the international community. Rather, the welfare of individuals is now the direct concern of the international community, and states, as members of the international community, have obligations towards those individuals when the international community determines that they are in need.

These rights and obligations come into play when a state, or at least certain actions of a state, has been found to be illegitimate. When a state violates human rights or cannot meet its obligations vis-à-vis its citizens, those citizens have a right to ask for and receive assistance. The international community, in turn, has a right and an obligation to respond in a manner most befitting the particular situation, which may, in some way, involve ignoring the sovereignty of the state in favour of the sovereignty of individuals and groups. This is the most direct and damaging challenge to the sovereignty discourse with its traditional notions of state sovereignty, and represents a significant paradigm shift in the way the relationship between the individual and the international community is conceived, as well as the way in which the legitimate loci of power and authority are constructed.

In practice, this challenge has been taken up by the international community, albeit in ambiguous and sometimes contradictory ways. In the case of Uganda, Tanzania engaged in what some analysts regard as illustrative cases of humanitarian intervention. In Somalia – to the extent that one could talk about Somali sovereignty – the international community took action on humanitarian grounds that undermined the norm of non-intervention. In both of these cases, findings of threats to international peace and security (based, especially, on refugee flows), rather than specific humanitarian criteria, were used to justify the interventions. There have been other instances where the United Nations High Commission for Refugees (UNHCR) and many non-government organisations (NGOs) have either extended the limits of state sovereignty or ignored it altogether in attempts to gain

humanitarian access to affected populations.

Humanitarian intervention in the post-Cold War era has been extremely selective, and will probably continue to be so. Some would argue that this fact, in itself, is enough to call the legitimacy of such actions into question. However, this is too simplistic a reaction. It is likely that the world will continue to see more Rwandas and Bosnias and Somalias. The international community is not going to intervene in certain powerful states, nor is it going to respond in the same fashion to all humanitarian emergencies. Forsaking action in all situations because the powerful states may only choose to act in a few, is an abdication of the responsibility which this paper attempts to address.

Coherent and consistent responses to all situations would enhance the legitimacy of humanitarian interventions and allay the fears of some people regarding inconsistency. However, the present is not particularly coherent, and this situation is likely to continue for some time as the emerging global order begins to take shape. Perhaps the human rights protection that are available should be accepted, while at the same time recognising that it is not sufficient. The hope must remain that the international community, as it recognises its responsibilities, will also decide to act upon them.

Thus, it may be that while a normative revolution is taking place with regard to the rights and responsibilities inherent in claims to sovereignty, the will of the global community to adjust to this reorientation has not followed suit. The basis for the right and obligation to undertake forceful action on the part of the global community to protect human rights is established. What has not been established, is the will of that wider community to act on this responsibility in a coherent and principled manner.

## **OVERVIEW OF INTERVENTION PROCESSES**

Intervention in the emerging global order is a multi-faceted phenomenon. At its core are forceful transborder efforts to influence a government or the outcome of an internationally relevant situation, regardless of whether a government is involved. It can include activities such as overthrowing a government or annexing territory by force. However, it can also include more ambiguous forceful action that may involve government acquiescence or resistance, or the acquiescence or resistance of a rebel group. It can include actions undertaken by a state or international government organisation, and can address a security or humanitarian problem in a particular territory (recognising, of course, that the two frequently cannot be separated). Humanitarian intervention involves a situation where the humanitarian aspects are the primary factors in the decision to intervene and are the main focus of the action, including action within the traditional security realm that may mitigate the humanitarian situation.

Outside of the strict realm of intervention, the concept of humanitarian access must be pointed out. This includes instances where the UN or aid organisations negotiate with governments to gain access to affected populations in the midst of civil wars or other humanitarian emergencies, or where humanitarian access is obtained without the consent of a government, with no military component in both cases. The distinction between the two is important. Firstly, it is only a state or state organisations that have the resources to undertake interventions, while a wide variety of actors can engage in humanitarian access activities. Secondly, the legal basis for humanitarian access is somewhat different than that for intervention. Thirdly, the different natures of the two activities have implications for the manner in which they may be conceptualised within discourses about sovereignty.

One significant question is the extent to which peacekeeping activities might fall under the rubric of intervention. Certainly, traditional peacekeeping operations would not be classified as unilateral interventions, since the basic premise is that all parties to a conflict have accepted the peace keepers' presence. Furthermore, the military component in traditional peacekeeping has been relatively small. However, there have been instances recently where peace keepers have found themselves in rather ambiguous situations, where all the parties have not accepted their presence, where they have come under significant attack from one or more of the parties to a conflict, or where the mandate of the peacekeeping operation has been gradually changed to include increasingly more enforcement (that is military) activities.

At this point, such as in the cases of Somalia and the former Yugoslavia, the line between peacekeeping and intervention becomes significantly blurred, and the international community is drawn into intervention activities, whether it has been the intention to or not.

International responses have been selective and will continue to be so. To a large degree, the response to a particular crisis has depended upon the interest and will of one or more of the great powers, and this is likely to continue. However, this selectivity does not necessarily delegitimize all UN sponsored humanitarian interventions. Even though there may be certain instances where action will not be taken to respond to a humanitarian crisis, the world may be in for a period of time where it must take what it can get. That is, while situations like the Sudan and Kenya may be ignored by the international community, and the response to Somalia has been belated, this does not mean that the actions that are within reach should not be undertaken – including a rather late intervention in Somalia – while at the same time trying to make international reactions more uniform and speedy.

The international reaction to the Rwandan genocide of up to one million people was a significant failure. The UN had knowledge that a genocide was being planned, but this information seems to have been lost in the bureaucracy.<sup>3</sup> Once the genocide began – following the assassination of the Rwandan and Burundian presidents on 6 April 1994 – the international community took little action. In fact, most of the 2 500 peacekeeping troops in Rwanda who were part of the 1993 Arusha Peace Accords, were withdrawn. On 17 May the Security Council expanded the United Nations Mission in Rwanda (UNAMIR) to 5 500 troops, but they were not deployed at the time.<sup>4</sup> It was not until the French, acting under a Chapter VII mandate, intervened in one part of the country in June that any forceful action was taken to stop the genocide or at least to protect potential victims. It was a limited intervention and was tied up with French interests in Rwanda,<sup>5</sup> but it was credited with possibly saving 12 000 to 14 000 lives (mostly Hutu, with whom France had connections). Beyond this, the international community took no forceful action to stop the genocide.

Another example is the intervention in Liberia by the Economic Community of West African States (ECOWAS). In Liberia, a civil war that flared up at the end of 1989, plunged the country into total chaos. It resulted in near genocide, countless refugees, and very clear threats to international peace and security as a result of the refugee flows, as well as the spread of hostilities to neighbouring states. Even though called on by many Liberians to do so, the United States did not intervene, seeing no strategic interest in the country and claiming that it was an African problem, to be solved by Africans. The UN Security Council also failed to take action. Indeed, the two African states serving on the Security Council at the time rejected the Security Council's possible involvement, not wanting to set a precedent. About eight months after the civil war began, ECOWAS established the ECOWAS Cease-fire Monitoring Group (ECOMOG).

The international reaction to the ECOWAS intervention, and the grounds put forth for the intervention, both demonstrate a gradual shift in thinking regarding intervention. Many states and international organisations, such as the OAU, the European Community, and the Security Council supported ECOWAS' various initiatives with respect to the civil war, and the Security Council passed Resolution 788, imposing an arms embargo on Liberia. The response to the actual intervention has been very muted, with little condemnation, and ECOMOG has been generally supported by the people within Liberia. The main reason put forth for the intervention was humanitarian, including ending the "massacre of innocent civilians", and was generally accepted by the international community, even if only through acquiescence. In fact, the OAU, the Security Council and the European Community all supported the humanitarian outcomes of the intervention, while at the same time playing down the fact that force was used.

## **CONCLUSION**

Both the UN and regional organisations, such as the OAU, have been reluctant to act in a variety of situations, and have demonstrated ambiguity in deciding when and on what basis any type of humanitarian intervention should occur. Yet, both have acted forcefully in a few situations of humanitarian crises, if somewhat belatedly. This will probably continue to be the case in the near future, as the international community struggles to resolve the serious

questions raised by such humanitarian emergencies and continues to examine the relationship between such emergencies and the traditional concepts of international peace, security, sovereignty and human rights. Furthermore, the UN may be in a better position to act in some situations. It has more resources and an extensive background in conducting different types of operations, and, with the somewhat hopeful signs mentioned above, may have a greater propensity to consider human rights seriously as a basis for action. Yet, the UN might also authorise a regional organisation to actually carry out any actions. In Bosnia Herzegovina, the UN essentially authorised NATO to carry out certain forceful activities within the context of a mandate from the UN, as was also the case with the US in Haiti.

What is also needed is a clearer idea of the nature of the legal basis for humanitarian intervention, as is argued in this paper. An important practical issue is the proper development of intervention forces. There has been much talk about the formation of a UN army that could intervene in troubled areas, but little action has yet been taken. The OAU initiative in Burundi often referred to the deployment of troops, but there was little evidence of planning in that direction. The long term prospects for such forces remain unclear. Peacemaking operations call for commanders with skills in politics, war fighting, as well as the ability to deal with the complex interaction between the two. Achieving international consensus on the legal justification of and the appropriate methods and force structures to accomplish humanitarian intervention will be difficult, but the payoff could save countless lives, especially on the African continent.

## ENDNOTES

1. *East Africans will invade Burundi to prevent Civil War*, Weekly Mail and Guardian, 19 July 1996.
2. *Ibid.*
3. *UN was warned of Rwanda genocide*, newspaper says, Reuters, 11 January 1994 (Usenet Newsgroup: clari.world.africa).
4. For an overview of the Rwanda crisis and UNAMIR, see *United Nations Assistance Mission in Rwanda*, Program on Peacekeeping Policy, George Mason University, (<http://ralph.gmu.edu/cfpa/peace/unamir.html>).
5. B D Jones, *Intervention without Borders: Humanitarian Intervention in Rwanda, 1990-94*, Millennium: Journal of International Studies, 24 (2), 1995, p. 226.

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