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# Humanitarian Intervention and International Society

It is the contention of this chapter that international society, like other organizations in the social world, is constituted by rule-governed actions. The first part of this chapter builds upon the discussion in the Introduction by exploring further how the rules of the society of states constrain and enable state actions. I argue for an understanding of international society that avoids the twin fallacies of making rule-following the result of conscious rational calculations or the product of deep social structures existing independently of the practices of human agents. The next part of the chapter turns to the question of how pluralist and solidarist international-society theory interprets the legitimacy of the practice of humanitarian intervention. Here, I set out the objections of pluralists and realists to legitimating this practice in international politics. The final part of the chapter offers a rebuttal of these objections by developing a solidarist theory of humanitarian intervention.

*Procedural* accounts of international legitimacy are predicated on the assumption that the test of legitimacy is state practice. This is certainly an important criterion for judging acts of intervention, but it should not be the definitive one. What is needed is a *substantive* conception that can be used to evaluate the humanitarian qualifications of specific cases of intervention, and critically to reflect upon the normative responses of the society of states. This chapter supplies such a conception by establishing minimum or threshold conditions that should define a legitimate humanitarian intervention. Actions that satisfy these should be legitimated by the society of states, but there are additional tests above the threshold that correspondingly increase the legitimacy of the action in humanitarian terms.

## The Nature of International Society

Charles Manning was the first to liken international society to a game with its own self-contained rules.<sup>1</sup> In answer to the fundamental question as to

<sup>1</sup> C. Manning, *The Nature of International Society*, 2nd edn. (London: Macmillan, 1975).

why states obey the law when it cannot be enforced, he argues that ‘the ongoing diplomatic process is indeed like a game, and like any other game, it has to have rules, and compliance with those rules’.<sup>2</sup> Manning’s contribution is to show how practices such as sovereignty and international law belong to a game that diplomats and state leaders reproduce through their actions. If we want to understand how international society becomes possible, then it is necessary to recognize that the practices that constitute it have no real-world existence independent of the ‘communal imagining’<sup>3</sup> that conjure them into existence. Martin Wight argued that the defining mark of the society of states is the reciprocal recognition of sovereignty, but sovereignty is not a physical object that we can touch, feel, or measure. Rather, to take one of Manning’s favourite analogies, it is like the existence of Father Christmas: Santa Claus is ‘real’ but he exists only because we all participate in the shared understandings that make his existence possible; similarly, sovereignty exists by virtue of the intersubjective meanings that conjure it into existence.<sup>4</sup>

This begs the question as to who does the conjuring? One answer is that states are the agents who, through their interactions, constitute the practices of the society of states. Thus, we talk about Britain, Russia, or China taking this or that action. But how can this be, since we all know that states do not exist in the way that flesh and blood individuals do? The way round this problem is to think of states not as agents, but as structures that constrain and enable those individuals who hold positions of responsibility in the state.<sup>5</sup> Thus, foreign ministers—like university lecturers—are enabled and constrained by the rules that constitute their respective positions of authority. How they play their role within international society or the university is not predetermined; rather, it is up to each individual to manoeuvre within the rules as he or she sees fit. The result in both walks of life is that some individuals live up to their responsibilities better than others, but all individuals who accept either of these positions of authority are subject to a set of constraints. As I discussed in the Introduction, these constraints are not physical but normative ones, and the fact that they are socially constructed does not make them any less real.

The purpose of the above is to make clear that, when I personify states in this book, it is a shorthand to describe those individuals who, as Robert Jackson puts it, ‘act on behalf of states: statesmen—or, in other words presidents, chancellors, prime ministers, foreign ministers, ambassadors’.<sup>6</sup> It is

<sup>2</sup> Manning, *The Nature of International Society*, 112.

<sup>3</sup> *Ibid.* 19.

<sup>4</sup> The best exploration of how sovereignty becomes constructed is provided by Alexander Wendt in his 1992 article ‘Anarchy is what States Make of it: The Social Construction of Power Politics’, *International Organization*, 46/2 (1992).

<sup>5</sup> For this insight I am grateful to Colin Wight.

<sup>6</sup> R. H. Jackson, ‘The Political Theory of International Society’, in K. Booth and S. Smith (eds.), *International Relations Theory Today* (Cambridge: Polity Press, 1995), 111.

individuals who sign treaties like the UN Charter, but this action does not bind them as individuals, it binds the states that they represent.<sup>7</sup> And, in signing treaties or sending diplomats to act as Ambassadors to other countries, state leaders reproduce the shared meanings that constitute the society of states.

The contention that the practices of the society of states are rule-governed raises the question as to whether state leaders are conscious that they are following rules. This is how realists would conceive of international society in that they would argue that governments pursue their interests while paying lip service to the rules. State leaders recognize that they have to justify their actions in terms of the rules, but this owes nothing to a normative commitment to the rules and everything to being seen to play the game so as to avoid moral censure and sanctions.<sup>8</sup> And, in response to the argument advanced in this book that the rule structure is sufficiently determinate to constrain actions that cannot be plausibly defended in terms of the rules, realists reply that good players of the game, like a skilled advocate defending a hard case in a court of law, can always find arguments to justify their positions.

This realist view that states use language 'strategically'<sup>9</sup> to advance their interests is open to the objection that it fails to understand how 'nothing is simultaneously freer and more constrained than the action of the good player'.<sup>10</sup> This is the thesis of Pierre Bourdieu, who criticizes those who make rule following the product of rational calculation, while also denying accounts of the social world that take agents out of the picture by relying on structural causes that exist independently of the practices of the actors. Bourdieu's contribution is to develop the idea of 'strategizing', which he defines as that 'feel for the game' that comes from a practical sense of what is required to play the game well. Two players might learn the rules of football but one of them is a poor player who has no real sense of where the ball is; the other knows instinctively what is required by the game and moves around the pitch in a way that suggests that 'the ball were in command of him'. Bourdieu's key point is that this shows that 'he is in command of the ball'. The best footballers achieve success by doing more than skillfully applying the rules; they have a 'feel for the game' that is not reducible to knowledge of these. Yet at the same time they are successful only because they work within

<sup>7</sup> The two best expositions of this argument are in Carr, *The Twenty Years Crisis*, and Manning, *The Nature of International Society*.

<sup>8</sup> I owe this point to Andrew Mason.

<sup>9</sup> I am borrowing this idea of strategic language use from Jürgen Habermas, who defines it as 'action orientated to success' where the defining characteristic is that agents pursue ends instrumentally based on means-ends calculations of efficiency. 'Strategic action', then, is at the opposite end of the spectrum to Habermas's idea of 'communicative action', which he defines as 'action orientated to understanding' (J. Habermas, *Theory of Communicative*, i. *Reason and the Rationalization of Society*, trans. T. McCarthy (London: Heinemann, 1984), 285).

<sup>10</sup> P. Bourdieu, *In Other Worlds: Essays towards a Reflexive Sociology*, trans. M. Adamson (Stanford: Stanford, Calif. University Press, 1987), 63.

the constraints imposed by the rule structure of the game. As Bourdieu puts it, mastery of the game brings with it a real sense that 'you can't do just anything and get away with it'.<sup>11</sup> Players, then, will act in ways that reproduce the game without this necessarily being a product of conscious calculation. Bourdieu argues that the production and reproduction of the game are 'outside conscious control and discourse (in the way that, for instance, techniques of the body do)'.<sup>12</sup>

Three important implications follow from Bourdieu's understanding of strategizing in understanding the nature of international society. The first is that the realist model of states consciously calculating their moves is too limited because it ignores how states are socialized into a set of predispositions that are not questioned. States follow their interests, but the way they define these is shaped by the rules prevailing in the society of states.<sup>13</sup> Thus, in response to the realist argument that states obey international law only when it is in their interest to do so, Hedley Bull responds that what is more surprising is that states 'so often judge it in their interests to conform to it'.<sup>14</sup> Adopting Bourdieu's argument, states define their interests in ways that take into account the constraints that '*impose themselves* on those people . . . who, because they have a feel for the game . . . are prepared to perceive them and carry them out'.<sup>15</sup>

This leads into the second and related point, which is that successful players recognize the constraints that membership of international society imposes. The major fault-line that divides realism from the English School is, in Hedley Bull's words, that, even if a state decides to break the rules, it recognizes 'that it owes other states an explanation of its conduct, in terms of rules that they accept'.<sup>16</sup> This is very different from the realist account, where the rules are instruments that states manipulate in their self-interest, and it reflects the core assumption of the English School that states 'form a society in the sense that they conceive themselves to be *bound* by a common set of

<sup>11</sup> Bourdieu, *In Other Worlds: Essays towards a Reflexive Sociology*, 64.

<sup>12</sup> Ibid. 61. John Searle makes the same argument as Bourdieu and gives the example of a baseball player who learns the rules and then begins playing the game seriously. As he or she develops as a player, his or her actions become more fluent and responsive to the demands of the game. Searle argues that it is misleading to think that he or she is applying the rules more skillfully, since what has happened is that the player has acquired a set of predispositions and skills that are determined by the rules of the game, but which do not rely on actors consciously following rules. See Searle, *The Construction of Social Reality*, 141–2.

<sup>13</sup> This is the significance of the constructivist claim that identities and interests are not exogenous to interaction; rather, as Wendt so powerfully argues, identities are constituted through interaction and changing identities generate different conceptions of interests.

<sup>14</sup> H. Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), 140.

<sup>15</sup> Bourdieu, *In Other Worlds*, 63. This argument bears an important family resemblance to constructivist claims that identities constitute interests, and that membership of the society of states brings with it an obligation to accept the binding character of international law that leads states to define their interests in ways that reinforce this legal obligation.

<sup>16</sup> Bull, *The Anarchical Society*, 45.

rules in their relations with one another'.<sup>17</sup> And, even if it is conceded that states participate in this ritual of legitimation when breaking the rules only to avoid moral censure and sanctions, this realist criticism ignores how far this need to justify in terms of the rules constrains state action. Confirming the relevance of Skinner's argument to the international level, Bull argues that 'rules are not infinitely malleable and do circumscribe the range of choice of states which seek to give pretexts in terms of them'.<sup>18</sup>

The third issue raised by understanding international society as a rule-governed activity is what happens when the rules are disputed? Experienced footballers might not be conscious of the rules constituting the game for most of a match, but, if there is a dispute over a penalty, then both teams will invoke the rules to try and win the referee over. Without the existence of the rules to provide common reference points, it would be impossible to argue over the merits of the referee's decision. The referee is the arbiter of competing claims on the football field and it is relatively easy to make decisions because the rule structure is highly determinate. The difficulty arises when choices have to be made between conflicting rules, the application of which is contested. This is the problem that faces the law-making process in both domestic and international society. One view of the law is that the task of judges is to find the appropriate rule and apply it, but, as Rosalyn Higgins argues, this overlooks the fact that determining the relevant rule is part of the decision-making function of judges. Such a determination, according to Higgins, requires making choices between alternative legal claims and it cannot be divorced from wider political and social considerations.

If we turn to the international realm, then the legal process is even more intimately bound up with the political process because of 'the lack of authoritative decisions concerning the applicability and scope of legal norms'.<sup>19</sup> Nevertheless, states can argue over whether an action belongs to a particular legal rule only because they share enough of a common language to structure the public reasoning process. In the Cuban Missile Crisis, for example, the USA and the Soviet Union disagreed over whether the Soviet deployment of missiles could be justified under the rule of self-defence, but it was only because they shared this common language that they could argue over the merits of competing claims.

<sup>17</sup> Ibid. 13; emphasis added.

<sup>18</sup> Bull's point about the constraining power of the rules is captured well in Louis Henkin's comment that the 'fact that nations feel obliged to justify their actions under international law, that justifications must have plausibility, that plausible justifications are often unavailable or limited, inevitably affects how nations will act' (L. Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979), 45). Further evidence for this proposition is that a senior Foreign Office official told me privately that the British Government would never make a move unless it could present a plausible legal defence of its action that would be meaningful to others.

<sup>19</sup> Kratochwil, *Rules, Norms, and Decisions*, 254.

It does not follow from the above that the process of public argumentation always shapes decisions. This would be claiming too much, since, as Kratochwil points out, the lack of an authoritative arbiter to interpret the application of legal rules ensures that decisions are often settled by 'bargaining and coercive moves rather than by persuasion and by appeals to common standards, shared values, and accepted solutions'.<sup>20</sup> How far this is the pattern of interstate interactions is an empirical question, but, unless states choose to promote their interests through naked threats, it is incumbent upon those who want to legitimate their actions to domestic and international constituencies to make appeals to shared rules and norms.<sup>21</sup> And actors who invoke these to defend their actions can find themselves entrapped by their own justifications in ways that serve to constrain their subsequent actions.<sup>22</sup>

Having shown the importance of rules and norms in understanding the nature of international society, *the question is how far humanitarian intervention is a legitimate move in international society*. This question has both a descriptive and normative component: the descriptive one requires a study of state practice and this is the subject of the empirical investigations in the remainder of the volume; the normative dimension relates to the question of whether humanitarian intervention should be permitted in a society of states constituted by rules of sovereignty, non-intervention and non-use of force. This is the question to which I now turn.

<sup>20</sup> Kratochwil, *Rules, Norms, and Decisions*, 254.

<sup>21</sup> As Martti Koskenniemi argues, actors 'pressured by argument . . . occasionally submit themselves to critiques and counter-arguments that invoke the same norms' (M. Koskenniemi, 'The Place of Law in Collective Security', in A. J. Paolini *et al.* (eds.), *Between Sovereignty and Global Governance: The United Nations, the State and Civil Society* (London: Macmillan, 1998), 45).

<sup>22</sup> A good example of this is the argument over the interpretation of the ABM Treaty during the Reagan Administration. The administration was committed to deploying a space-based defence system (the Strategic Defense Initiative (SDI)), but this was incompatible with the existing terms of the 1972 Anti-Ballistic Missile (ABM) Treaty. Consequently, the Reagan Administration proposed a new 'broad' interpretation of the provisions of the treaty, but this was opposed and defeated by a coalition of forces in the USA that supported the existing treaty interpretation. What is interesting about this example is that the common reference point for the argument in the USA was that treaties are binding (the principle of *pacta sunt servanda*). The Reagan Administration could have argued that it was no longer going to be bound by the treaty, but it realized that such a move would lack legitimation both domestically and internationally. Having argued that treaties were binding, and having lost the public argument for broadening the treaty, the administration was forced to constrain its space-based testing to the parameters set by a narrow interpretation of the treaty. In making this argument, Hasenclever, Mayer, and Rittberger cite Harald Müller's earlier study of the impact of the ABM Treaty on the Reagan Administration's SDI programme, which stressed the importance of regime rules and norms in constraining US policy. See A. Hasenclever, P. Mayer and V. Rittberger, *Theories of International Regimes* (Cambridge: Cambridge University Press, 1997), 183, and H. Müller, 'The Internationalization of Principles, Norms and Rules by Governments: The Case of Security Regimes' in V. Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Oxford University Press, 1999), 361–91.

## Pluralist and Realist Objections to Humanitarian Intervention

The issue of humanitarian intervention arises in cases where a government has turned the machinery of the state against its own people, or where the state has collapsed into lawlessness. Pluralist international-society theory defends the rules of the society of states on the grounds that they uphold plural conceptions of the 'good'.<sup>23</sup> However, the point of departure for solidarist international-society theory is the glaring contradiction between the moral justification of pluralist rules and the actual human rights practices of states. It takes only a quick glance at Amnesty International's annual report to appreciate how many states fail to protect the basic rights of their citizens. Following Henry Shue, R. J. Vincent defined basic rights as security from arbitrary violence and minimum subsistence rights.<sup>24</sup> International society is constituted by a rule-governed framework that enables sovereigns, in Michael Walzer's words, to protect 'the values of individual life and communal liberty'<sup>25</sup> within their borders. Following from this, if a state abuses the human rights of its citizens, should its sovereignty be respected? As Chris Brown puts it, if 'diversity entails that states have the right to mistreat their populations, then it is difficult to see why such diversity is to be valued'.<sup>26</sup> What moral value attaches to the rules of sovereignty and non-intervention if they provide a licence for governments to violate global humanitarian standards? And what are outsiders legally and morally permitted—or even required—to do in the face of such violations of international law?

<sup>23</sup> Pluralist international-society theorists are rarely explicit about the normative value to be attached to the society of states, but there is in Bull's work an occasional glimpse of the claim that the moral value of the society of states is to be judged in terms of its contribution to individual well-being. He writes, 'if any value attaches to order in world politics, it is order among all mankind which we must treat as being of primary value, not order within the society of states' (Bull, *The Anarchical Society*, 22). The implication of this is that the rules of the society of states are to be valued only if they provide for the security of individuals who stand at the centre of Bull's ethical code. What is implicit in Bull has been made explicit by Robert H. Jackson, who explores the morality of international society in terms of the 'egg-box' conception of international society developed by R. J. Vincent and Hidemi Suganami. 'Sovereign states are the eggs . . . the box is international society' and the purpose of the box in Vincent's words 'is to separate and cushion, not to act'. This leads Jackson to reflect that 'regulating states by international law to avert or reduce the incidence or extent of damaging collisions between them only makes sense if those entities are valuable in themselves . . . There is no point in egg-boxes if eggs are not only breakable but also valuable . . . international society presupposes the intrinsic value of all states and accommodates their inward diversity . . . But it requires and postulates their outward uniformity as indicated by their equal legal status'. See R. H. Jackson, 'Martin Wight, International Theory and the Good Life', *Millennium: Journal of International Studies*, 19/2 (1990), and Vincent, *Human Rights and International Relations*, 123.

<sup>24</sup> Vincent, *Human Rights and International Relations*, 14. Henry Shue conceptualized 'basic rights' as those that are necessary before any other rights can be satisfied. See Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton: Princeton University Press, 1980), 18–22.

<sup>25</sup> M. Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (London: Allen Lane, 1978), 108.

<sup>26</sup> C. Brown, *International Relations Theory: New Normative Approaches* (Hemel Hempstead: Harvester Wheatsheaf, 1992), 125.

Gross human rights violations are now a matter of legitimate international concern, but my interest in this volume is in the legitimacy of using force to prevent or stop such violations. English School solidarists like R. J. Vincent have recognized that 'states should satisfy certain basic requirements of decency before they qualify for the protection which the principle of non-intervention provides'.<sup>27</sup> Moreover, Vincent suggests that, if states systematically and massively violated human rights, 'then there might fall to the international community a duty of humanitarian intervention'.<sup>28</sup> Michael Walzer argues that 'morality, at least, is not a bar to unilateral action, so long as there is no immediate alternative available'. Humanitarian intervention for Walzer 'is justified when it is a response (with reasonable expectations of success) to acts "that shock the moral conscience of mankind"'.<sup>29</sup> The argument is not that the rules of sovereignty and non-intervention should be jettisoned, since these remain the constitutive rules of international society. Instead, Walzer's solidarist argument is that states should be denied protection of these in those extraordinary cases where governments are committing acts of mass murder, since they are guilty of 'crimes against humanity'.<sup>30</sup> At this point, states are morally entitled to use force to stop these atrocities, and, for some solidarists like Vincent, the obligation is even stronger and the society of states has a duty to act.

As I argued in the Introduction, humanitarian intervention exposes the conflict between order and justice at its starkest, and it is the archetypal case where it might be expected that international society would carve out an explicit legal exception to its rules. After all, what is the point of upholding these if governments are free to slaughter their citizens with impunity? In his discussion of how the conflict between order and justice might be mitigated, Bull argues that two key considerations have to be borne in mind: the consequences for international order of any attempt to promote individual justice; and the degree of injustice embodied in the existing order.<sup>31</sup> Bull is not prepared to assert a general priority of order over justice, suggesting that the 'question of order *versus* justice will always be considered by the parties

<sup>27</sup> R. J. Vincent and P. Watson, 'Beyond Non-Intervention', in I. Forbes and M. J. Hoffmann (eds.), *Political Theory, International Relations and the Ethics of Intervention* (London: Macmillan, 1993), 126.

<sup>28</sup> Vincent, *Human Rights and International Relations*, 127.

<sup>29</sup> Walzer, *Just and Unjust Wars*, 107. Writing over ten years after Walzer, Fernando Teson argued that 'a government that engages in substantial violations of human rights betrays the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well. Consequently, I shall argue, foreign armies are morally entitled to help victims of oppression in overthrowing dictators, provided that the intervention is proportionate to the evil which it is designed to suppress' (Teson, *Humanitarian Intervention*, 15).

<sup>30</sup> Walzer, *Just and Unjust Wars*, 106. Michael J. Smith argues that because 'the rights of states rest on the rights of individuals . . . a state that is oppressive and violates the autonomy and integrity of its subjects forfeits its moral claim to full sovereignty' (M. J. Smith, 'Humanitarian Intervention: An Overview of the Ethical Issues', *Ethics and International Affairs*, 3 (1989), 74).

<sup>31</sup> Bull, *The Anarchical Society*, 97-8.

concerned in relation to the merits of a particular case'.<sup>32</sup> However, when it comes to the question of humanitarian intervention, Bull emphasizes the dangers that such a practice poses to international order, given that states have conflicting claims of justice. He argues that the society of states had not experimented with a right of humanitarian intervention because of an 'unwillingness to jeopardize the rules of sovereignty and non-intervention by conceding such a right to individual states'.<sup>33</sup> The pluralist concern is that, in the absence of an international consensus on the rules governing a practice of unilateral humanitarian intervention, states will act on their own moral principles, thereby weakening an international order built on the rules of sovereignty, non-intervention, and non-use of force.<sup>34</sup> Bull's critique of humanitarian intervention is a moral one because he views the provision of international order as a necessary condition for the protection and promotion of individual well-being.<sup>35</sup> This defence of the non-intervention rule is based on what philosophers call rule consequentialism. The well-being of all individuals is better served by a legal rule that prohibits humanitarian intervention than by allowing it in the absence of agreement over what principles should govern such a right.<sup>36</sup> To permit humanitarian intervention in such circumstances is to accept that 'it is always going to be based on the cultural predilections of those with the power to carry it out'.<sup>37</sup>

The pluralist objection to legitimating a practice of unilateral humanitarian intervention is a powerful one, but there are four further objections that I want to consider that are raised by realists.<sup>38</sup> The first is that humanitarian claims always cloak the pursuit of national self-interest and that legalizing a right of humanitarian intervention would lead to states abusing it. This concern led Thomas Franck and Nigel Rodley to argue in 1973 that humanitarian intervention should not be permitted as a further exception to the rule prohibiting the use of force in Article 2 (4) of the UN Charter. They argue that the exception contained in the rule of self-defence was already vulnerable to abuse without adding another escape clause that might further weaken the restraint found in Article 2 (4). Because humanitarian concerns will be manipulated by intervening states, a doctrine of humanitarian intervention

<sup>32</sup> *Ibid.* 97.

<sup>33</sup> H. Bull (ed.), *Intervention in World Politics* (Oxford: Oxford University Press, 1984), 193.

<sup>34</sup> It is important to note here that, while Vincent argued for a 'duty of humanitarian intervention' on the part of the collectivity of states, he shared Bull's pluralist caution about issuing a right of humanitarian intervention to states, since this would 'issue a license for all kinds of interference, claiming with more or less plausibility to be humanitarian, but driving huge wedges into international order' (Vincent, *Human Rights and International Relations*, 114).

<sup>35</sup> See n. 23.

<sup>36</sup> A. Mason and N. J. Wheeler, 'Realist Objections to Humanitarian Intervention', in B. Holden (ed.), *The Ethical Dimensions of Global Change* (London: Macmillan, 1996), 101–2.

<sup>37</sup> Brown, *International Relations Theory*, 113.

<sup>38</sup> In making this distinction between realist and pluralist objections, I recognize that pluralists could share some or all of these realist objections. However, they have not figured prominently in their writings on the legitimacy of humanitarian intervention.

becomes a weapon that the strong will use against the weak. Having surveyed pre-1945 and post-1945 cases of possible humanitarian intervention, Franck and Rodley conclude that in 'very few, if any, instances has the right been asserted under circumstances that appear more humanitarian than self-interested and power seeking'.<sup>39</sup> The problem of abuse confirms the realist view that language is rhetorical, a public disguise that masks the real reasons why states act.

The next realist criticism is the descriptive one that, unless vital interests are at stake, states will not intervene if this risks soldiers' lives or incurs significant economic costs. The contention here is that states will not intervene for primarily humanitarian reasons because they are always motivated by considerations of national self-interest. Realists would agree with Bhikhu Parekh's definition of humanitarian intervention as action 'wholly or primarily guided by the sentiment of humanity, compassion or fellow-feeling'<sup>40</sup> while simultaneously maintaining that this normative statement does not speak to how states actually behave in world politics. Realists who advance this view might concede that humanitarian considerations can play a part in motivating a government to intervene, but states will not use force unless they judge vital interests to be at stake. Thus, the best we can hope for is a happy coincidence where the promotion of national security also defends human rights.<sup>41</sup> The strength of this position is that it recognizes the reality of state interests and power; its weakness is that it makes humanitarianism dependent upon shifting geopolitical and strategic considerations. Realists would argue that there is no alternative to this and buttress this argument against humanitarian intervention by pointing to the problem of selectivity.

Do states always apply principles of humanitarian intervention selectively? Realism answers yes and contends that the selective way humanitarian intervention has been applied in the past is a guide to how a legal right would be applied in the future. Indeed, Franck and Rodley argue that legitimating humanitarian intervention would increase the risks that states would apply the rules selectively. They argue that 'one is not encouraged by the blatant

<sup>39</sup> T. Franck and N. Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force', *American Journal of International Law*, 67 (1973), 290. One of the most notorious examples of this is Hitler's manipulation of humanitarian rationales to justify his intervention in Czechoslovakia in 1938. In a letter to Prime Minister Neville Chamberlain, Hitler wrote that 'ethnic Germans and "various nationalities" . . . have been maltreated in the unworthiest manner, tortured, economically destroyed and, above all, prevented from realizing for themselves also the right of nations to self-determination'. Hitler claimed that in protecting ethnic Germans, he was acting in conformity with the minority rights provisions of the League of Nations. These justifications were treated as bogus by most states, but Hitler could only make them because there existed a regime for the protection of minority rights. See Franck and Rodley, 'After Bangladesh', 284.

<sup>40</sup> B. Parekh, 'Rethinking Humanitarian Intervention', in Bhikhu Parekh (ed.), *The Dilemmas of Humanitarian Intervention*, special issue of the *International Political Science Review*, 18/1 (1997), 54.

<sup>41</sup> Solidarists like Michael Walzer have recognized the force of this realist criticism, he himself argues that 'states don't send their soldiers into other states, it seems, only in order to save lives' (Walzer, *Just and Unjust Wars*, 101).

failure of the international community or of states with the undeniable power to effect rescue to save Jews . . . to intervene with force on behalf of the Armenians . . . to rescue the Hutu of Burundi . . . to aid the Biafrans in their struggle for independence'.<sup>42</sup> The problem of selectivity arises when an agreed moral principle is at stake in more than one situation, but national interest dictates a divergence of response.

The fourth objection is the normative one that states have no business risking their soldiers' lives or those of their non-military personnel to save strangers. This criticism of humanitarian intervention is in tension with the descriptive claim noted above that states do not engage in intervention motivated by primarily humanitarian considerations. If the argument that states will never intervene for primarily humanitarian reasons was true, then this question of soldiers' lives would never arise. However, it does arise, as the cases of Somalia and Kosovo clearly testify, and what is being advanced here is a normative objection to humanitarian intervention predicated on the claim that it is our identity as citizens that constitutes the outer limits of our moral duties. State leaders and publics do not have duties to stop 'barbarities beyond borders',<sup>43</sup> and, if a government has broken down into lawlessness, or is behaving in an appalling way towards its citizens, this is the moral responsibility of that state's citizens and political leaders. Outsiders are not under any duty to intervene, even if they believe that they have the capacity to prevent or mitigate such evils. The reason is that 'citizens are the exclusive responsibility of their state, and their state is entirely their own business. Citizens should be morally concerned only with the activities of their own state, and the latter is responsible to and for its citizens alone'.<sup>44</sup> This extreme statist position that the only justification for risking soldiers' lives is in defence of the national interest is well summed up by Samuel P. Huntington, who asserted in relation to US intervention in Somalia that 'it is morally unjustifiable and politically indefensible that members of the [US] armed forces should be killed to prevent Somalis from killing one another'.<sup>45</sup>

Pushed to its logical extreme, the implication of the statist paradigm is that governments should not risk the life of even one soldier to save hundreds of thousands or even millions of non-nationals. Very few realists would follow Huntington and adhere to such a strict rule, but how many of our 'boys and girls' are we prepared to risk? How many of us would agree with David Hendrickson that 'the prospect of moderate casualties'<sup>46</sup> should not deter humanitarian interventions? How is moderate to be defined? It would surely

<sup>42</sup> Franck and Rodley, 'After Bangladesh', 288.

<sup>43</sup> The phrase is Ken Booth's.

<sup>44</sup> Parekh, 'Rethinking Humanitarian Intervention', 56.

<sup>45</sup> Quoted in Smith, 'Humanitarian Intervention', 63.

<sup>46</sup> David C. Hendrickson, 'In Defense of Realism: A Commentary on Just and Unjust Wars', *Ethics and International Affairs*, 11 (1997), 46.

be more than the eighteen US Rangers lost in a firefight in Somalia in October 1993, which, as I argue in Chapter 6, played a key role in leading President Clinton to withdraw US forces from that conflict. Hendrickson undermines his position by arguing that even moderate losses would be politically unsustainable in democratic polities. The problem here is that televisual and print media nurture humanitarian sentiments on the part of democratic publics that create pressures for intervention, but this has to be balanced against the risk 'that domestic public opinion will revolt against any costly or protracted involvement'.<sup>47</sup> In Chapters 5, 6, 7, and 8 I examine how successfully Western governments balanced these conflicting considerations, and how far the risk of casualties deterred them from using force in defence of humanitarian values.

Even if it is argued that states have a right to risk their soldiers in defending humanitarian values, there is the objection that such interventions are likely to end in disaster. This objection is not unique to realists and some liberals share this concern with crusading interventionism. The worry here is that noble humanitarian intentions are no guarantee against failure and humiliating exit, and that there is a dangerous arrogance in the idea that the secure liberal societies of the West have the answers, let alone the will, to solve the problems of states such as Somalia and Rwanda.<sup>48</sup> A good example of this view is Simon Jenkins, who, when giving evidence before the House of Commons Foreign Affairs Committee on 25 November 1997, stated:

What is the basis on which you decide that a particular outrage against human rights in a particular country which has not, necessarily, threatened cross-borders is something in which you should involve yourself? What is the military objective that you take . . . How do you know that you have won this particular conflict? Most important of all, it becomes quite difficult, at a certain stage, to justify asking your own troops . . . to commit their lives to the defence of—what?<sup>49</sup>

Despite being much more sympathetic to the project of liberal interventionism, Michael Ignatieff expressed similar sentiments when he questioned the 'traces of imperial arrogance' that led the USA to believe that it could go into Somalia, stop the clan warfare, and then exit within a few months having handed the problem over to the UN.<sup>50</sup> Ignatieff remains committed to

<sup>47</sup> Hendrickson, 'In Defense of Realism: A Commentary on Just and Unjust Wars', 45.

<sup>48</sup> Martin Woollacott cites that doyen of American realism, George F. Kennan, who wrote in his diary after the US intervention in Somalia that he regarded 'this move as a dreadful error'. According to Woollacott, Kennan's concern is that 'intervention in Somalia and other places was predicated on a vastly exaggerated idea of what a nation, even a very powerful one, could do for other societies, especially damaged and anarchic ones' (M. Woollacott, 'Busybodies can Do More Harm than Good', *Guardian*, 19 July 1997).

<sup>49</sup> 'Foreign Policy and Human Rights', Foreign Affairs Committee, Minutes of Evidence, 25 Nov. 1997, 4.

<sup>50</sup> M. Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience* (London: Chatto & Windus, 1998), 94.

the project of international rescue, but, writing before Kosovo, he expressed his concern that the failure of liberal interventionism in the 1990s (how far this is a fair description of the outcomes of the interventions in Iraq, Somalia, and Rwanda is addressed later in the book) had led the West to pull up the moral drawbridge on suffering humanity. How far Kosovo has changed this and how far the 'seductions of moral disgust'<sup>51</sup> continue to grip the mindsets of policy-makers and publics are issues that are taken up in the concluding chapter of the volume.

It is clear from the above list of objections that solidarist international-society theory has quite a challenge on its hands in defending humanitarian intervention as a legitimate practice. Replying to these criticisms by developing a solidarist theory of humanitarian intervention is the task of the final part of this chapter.

## A Solidarist Theory of Legitimate Humanitarian Intervention

My argument is that interventions have to satisfy certain tests to count as humanitarian. This is a minimum requirement, and, once this threshold has been crossed, there are additional criteria that if met correspondingly increase the legitimacy of a particular action.<sup>52</sup> It is necessary to make two points at this stage: first, others might agree with the criteria specified here but disagree over which ones should be built into the threshold. For example, the argument that the primacy of humanitarian motives is not a threshold criterion is likely to arouse controversy. Secondly, identifying criteria for legitimate humanitarian intervention does not resolve the problem of deciding whether a particular case has satisfied these tests. What it does do, however, is establish the common reference within which argumentation can take place.

There are four requirements that an intervention must meet to qualify as

<sup>51</sup> Ignatieff makes a fascinating parallel here with Joseph Conrad's *The Heart of Darkness* and comments that this was 'a fable about late nineteenth-century imperialism paralyzed by futility and consumed by nihilistic rage'. It is here that he introduces the idea of the 'seductiveness of moral disgust' considering that, 'having failed to civilize the savages, Kurtz [Conrad's fictional colonial overlord who goes to Africa in search of ivory but who justifies this to himself and to others in terms of a higher civilizing mission] turns against them all the force of his own moral self-disillusion' Ignatieff (*The Warrior's Honor*, 92).

<sup>52</sup> The best existing attempts to develop a framework for conceptualizing the legitimacy of humanitarian intervention are: Ramsbotham and Woodhouse, *Humanitarian Intervention*, and Teson, *Humanitarian Intervention*. Ramsbotham and Woodhouse identify five key questions: '(i) was there a humanitarian cause? (ii) was there a declared humanitarian end in view? (iii) was there an appropriate humanitarian approach—in other words, was the action carried out impartially, and were the interests of the intervenors at any rate not incompatible with the humanitarian purpose? (iv) were humanitarian means employed? (v) was there a humanitarian outcome?' (*Humanitarian Intervention*, 73). Their framework builds on Teson's pioneering work by not privileging motives over outcomes, and by emphasizing the importance of the character of the means employed. The solidarist framework in *Saving Strangers* develops these formative ideas and applies them to seven empirical case studies.

humanitarian and these are derived from the Just War tradition. First, there must be a just cause, or what I prefer to call a supreme humanitarian emergency, because it captures the exceptional nature of the cases under consideration; secondly, the use of force must be a last resort; thirdly, it must meet the requirement of proportionality; and, finally, there must be a high probability that the use of force will achieve a positive humanitarian outcome.

Turning to the first criterion, there is no objective definition of what is to count as a supreme humanitarian emergency, but some claims will be more persuasive than others. It is no good trying to define an emergency in terms of the numbers killed or displaced, because this is too arbitrary. A supreme humanitarian emergency exists when the only hope of saving lives depends on outsiders coming to the rescue. It is incumbent upon those who wish to legitimate an armed intervention as humanitarian (this would hopefully include the intervening state but it is not a stipulation since humanitarian justifications are not part of the threshold requirements) to make the case to other governments and domestic and international public opinion that the violations of human rights within the target state had reached such a magnitude that, to paraphrase Walzer, they shock the conscience of humanity. Thus, it is important to distinguish between what we might call the ordinary routine abuse of human rights that tragically occurs on a daily basis and those extraordinary acts of killing and brutality that belong to the category of 'crimes against humanity'. Genocide is only the most obvious case but state-sponsored mass murder and mass population expulsions by force also come into this category. I also include state breakdown, such as the Somali case, which led to famine and a collapse of law and order.

Humanitarian intervention is clearly justified in these situations, but, if we wait until the emergency is upon us, it will come too late to save those who have been killed or forcibly displaced. This raises the vexed problem of how early rescue should be. What about a case where only a few hundred have been killed but intelligence points to this being a precursor to a major campaign of killing and ethnic cleansing? This appears to have been the story in Kosovo and the justification for humanitarian intervention was a preventative one. This brings us to an important point: in all the cases covered in this volume, with the possible exception of the Kosovo one (see Chapter 8), military intervention came too late to protect civilians from their killers. Even though it is easier to justify a military intervention at home and abroad after blood has been spilt on a significant scale, governments should not wait for thousands to die before they act. Here I agree with Michael Bazylar that the 'intervening nation or nations need not wait for the killings to start if there is clear evidence of an impending massacre'.<sup>53</sup> The problem, of course, as

<sup>53</sup> M. Bazylar, 'Reexamining the Doctrine of Humanitarian Intervention in the Light of the Atrocities in Kampuchea and Ethiopia', *Stanford Journal of International Law*, 23 (1987), 600.

Kosovo illustrates so well, is that this assessment is likely to be disputed by other governments and domestic publics, and this begs the question as to who decides what counts as 'clear evidence' in such cases.

The other problem that confronts us is how to reconcile the moral imperative for speedy action with the Just War requirement that force always be a last resort. This is sometimes called the principle of necessity and Nigel Rodley defines it as a condition where 'nothing short of the application of armed force would be sufficient to stop the human rights violations in question'.<sup>54</sup> He argues that, unless the case can be made that delay would result in 'irreparable harm', this requires that states exhaust all peaceful remedies. In the case of humanitarian intervention this dilemma is posed starkly because, during the time that policy-makers are trying to achieve a halt to the abuses through non-violent means, massacres and expulsions might be continuing on the ground. It is too demanding to require politicians to exhaust all peaceful remedies; rather, what is required is that they are confident that they have explored all avenues that are likely to prove successful in stopping the violence. If there is doubt on this score, then state leaders are morally obliged to continue to pursue their humanitarian ends through non-violent means since, while the use of force can promote good consequences, it always produces harmful ones as well.<sup>55</sup>

The above calculation is made all the more difficult by the fact that any decision to opt for the use of force must satisfy the proportionality requirement. And, if there are strong doubts here, then the right action is to eschew the use of force on the grounds that it could lead to a worst situation. The principle of proportionately, according to Rodley, requires 'that the gravity and extent of the violations be on a level commensurate with the reasonably calculable loss of life, destruction of property [and] expenditure of resources'.<sup>56</sup> The requirement that the level of force employed not exceed the harm that it is designed to prevent or stop raises the fundamental question as to whether violent means can ever serve humanitarian purposes or whether the oxymoron of 'humanitarian war' hides a tragic contradiction.<sup>57</sup> Reflecting

<sup>54</sup> N. S. Rodley, 'Collective Intervention to Protect Human Rights', in N. S. Rodley (ed.), *To Loosen the Bands of Wickedness* (London: Brassey's, 1992), 37.

<sup>55</sup> M. Fixdal and D. Smith, 'Humanitarian Intervention and Just War', *Mershon International Studies Review*, 42/2 (1998), 302.

<sup>56</sup> Rodley, 'Collective Intervention', 37.

<sup>57</sup> This is the argument of Ken Booth and Richard Falk, who are strong advocates of cosmopolitan values in world politics but suspicious of the doctrine of humanitarian intervention. Booth argues that non-humanitarian means rarely serve humanitarian ends and that in all the cases in the 1990s where 'humanitarian war' was tried it was found wanting on pragmatic grounds. Falk is more inclined to believe that the use of force 'can be an emancipatory instrument, at least in certain extreme situations', but this requires governments 'to commit significant numbers of lives and resources over a prolonged period, with the prospect of possibly heavy losses, and even then with no assurance of success'. Given that no government has been prepared to make this commitment of resources and lives, Falk concludes dismally that 'military action in an interventional mode virtually always produces destructive and counterproductive results'. See Booth, 'The Kosovo

on the Kosovo case, Adam Roberts argues that, in 'the long history of legal debates about humanitarian intervention, there has been a consistent failure to address directly the question of the methods used in such interventions'.<sup>58</sup>

A key moral question that arises when employing violent means to secure humanitarian ends is the question of what counts as a legitimate military target. The laws of war require that civilians never be deliberately targeted, but the stipulation that they be protected as far as possible from the exigencies of war begs the question as to what risks intervenors should take in order to avoid civilian losses. Military necessity can be used to justify the killing of innocents on the grounds that this happens to be an inadvertent consequence of attacks against legitimate military targets. This is the doctrine of 'double effect', developed by Catholic theologians in the Middle Ages, which allows soldiers to harm civilians provided that this is not the intention of the act.<sup>59</sup> The problem, as Walzer argues, is that this provides a 'blanket justification' for civilian deaths that are 'unintended but foreseeable'.<sup>60</sup> According to Mona Fixdal and Dan Smith, Just War theory would proscribe that a humanitarian intervention is 'just if it produces a surplus of good over harm—taking all affected parties into consideration'.<sup>61</sup> However, this form of consequentialist moral reasoning is open to the objection that, given the terrible imponderables associated with such calculations, 'even a good cause', in Guenter Levy's words, 'is not worth any price'.<sup>62</sup>

The moral risk that opens up for leaders who decide to play the consequentialist or utilitarian game is that they can never know in advance that their decision to play god with the lives of others will lead to the just ends they hope for. In a situation where civilians are being killed by their government and where there is evidence that the target government is planning to escalate the scale of the killing, it can never be known in advance that more lives will be saved by intervention than will be lost by it, or that the means employed will not take on such a character that the moral credentials of the intervenors begin to look little different from those they are fighting against.

Tragedy: Epilogue to Another "Low and Dishonest Decade"?' and R. Falk, 'Hard Choices and Tragic Dilemmas', *Nation*, 20 Dec. 1993, 758.

<sup>58</sup> A. Roberts, 'NATO's Humanitarian War over Kosovo', *Survival*, 41/3 (1999), 110. This point is also made by Ramsbotham and Woodhouse, who argue that a key criterion is 'the means employed compatible with a humanitarian mission' (Ramsbotham and Woodhouse, *Humanitarian Intervention*, 75).

<sup>59</sup> As Walzer puts it, 'double effect is a way of reconciling the absolute prohibition against attacking non-combatants with the legitimate conduct of military activity . . . The good and evil effects that come together, the killing of [enemy] soldiers and nearby civilians, are to be defended only insofar as they are the product of a single intention, directed at the first and not the second' (Walzer, *Just and Unjust Wars*, 153).

<sup>60</sup> Ibid. Walzer argues that the doctrine of the double effect is too permissive and invites the following reply: 'what difference does it make whether civilian deaths are a direct or an indirect effect of my actions? It can hardly matter to the dead civilians, and if I know in advance that I am likely to kill so many innocent people and go ahead anyway, how can I be blameless?'

<sup>61</sup> Fixdal and Smith, 'Humanitarian Intervention', 304.

<sup>62</sup> Quoted in *ibid.*

These are the risks that face contemporary humanitarian warriors, since, as Richard Falk argues, 'an initially humanitarian orientation is no assurance that the undertaking will retain that character under pressure'.<sup>63</sup> Decision-makers can argue that their actions were required by necessity and that there were no alternatives to stop the atrocities, but, even if intervention produces a surplus of good over harm, it will never be known whether non-violent alternatives might have achieved the same result at less cost.

In saying that the humanitarian consequences of using violent means can be known only with the benefit of hindsight, we come to the final threshold or minimum criterion for a legitimate humanitarian intervention, which is that decision-makers must believe the use of force will produce a humanitarian outcome. Clearly any judgement here will be crucially influenced by how far the operation is deemed to have satisfied the proportionality requirement. Accepting that the violent character of the means does not always contradict the morality of the ends, I agree with the Argentinian international lawyer Fernando Teson that a positive humanitarian outcome is characterized by 'whether the intervention has rescued the victims of oppression, and whether human rights have subsequently been restored'.<sup>64</sup> Teson's notion of human rights being 'restored' is a problematic one because it implies that the citizens of the target state enjoyed human rights protection before the killings started, which is a question that would have to be investigated in specific cases. Consequently, I prefer to substitute the word *protection* for restored. The requirement is that a political order be established by the intervening state(s) that is hospitable to the protection of human rights. One test of this is that the withdrawal of the intervening force does not lead to a resumption of the killing and brutality. The twin requirements of *rescue* and *protection* reflect the division of humanitarian outcomes into short- and long-term ones: the former referring to the success of intervention in ending the supreme humanitarian emergency, and the latter being defined in terms of how far intervention addresses the underlying political causes that produced the human rights abuses.

Now that I have defined the threshold conditions for an intervention to qualify as humanitarian, it will be immediately apparent that I have not included the primacy of humanitarian motives as a defining test. At first sight this seems counter-intuitive, since how can an action be labelled humanitarian if it is not inspired by humanitarian ideals or purposes? The primacy of humanitarian motives in determining the humanitarian credentials of an intervention is the conventional wisdom among realists and those international lawyers who write on humanitarian intervention.<sup>65</sup> For example, as I

<sup>63</sup> Falk, 'Hard Choices', 760.

<sup>64</sup> Teson, *Humanitarian Intervention*, 106.

<sup>65</sup> Ramsbotham and Woodhouse cite the following definition by Wil Verwey in 1992 as representative of this emphasis on the primacy of motives. Verwey defined humanitarian intervention as: 'The threat or use of force by a state or states abroad, for the sole purpose of preventing or putting a halt

discuss in Chapters 3 and 4, most lawyers writing on the Vietnamese and Tanzanian interventions in Cambodia and Uganda disqualify them as humanitarian for this reason. The problem with this approach is that it takes the intervening state as the referent object for analysis rather than the victims who are rescued as a consequence of the use of force. Solidarism is committed to upholding minimum standards of common humanity, which means placing the victims of human rights abuses at the centre of its theoretical project, since it is committed to exploring how the society of states might become more hospitable to the promotion of justice in world politics. Thus, changing the referent from state motivations to victims of state power leads to a different emphasis on the importance of motives in judging the humanitarian credentials of intervenors.

The one international lawyer who has challenged the motives-first approach is Teson, who argues that making motives the defining test of a humanitarian intervention is predicated on a flawed methodology. He can be located in the solidarist wing of the English School, because he argues that governments that massively violate human rights forfeit their right to protection of the rules of sovereignty and non-intervention, and as a result, other states are morally entitled to intervene. Having set out the moral justification for any such action, Teson argues that:

The intervenor must also employ *means* that are consistent with the humanitarian purpose. But unless other motivations have resulted in further oppression by the intervenors . . . they do not necessarily count against the morality of the intervention . . . The true test is whether the intervention has put an end to human rights deprivations. That is sufficient to meet the requirement of disinterestedness, even if there are other, non-humanitarian reasons behind the intervention.<sup>66</sup>

The primacy of humanitarian motives is not a threshold condition. But if it can be shown that the motives behind the intervention, or the reasons behind the selection of the means, are inconsistent with a positive humanitarian outcome, then it is disqualified as humanitarian. It follows that, even if an intervention is motivated by non-humanitarian reasons, it can still count as humanitarian provided that the motives, and the means employed, do not undermine a positive humanitarian outcome. In advancing this claim,

*to a serious violation of fundamental human rights, in particular the right to life of persons, regardless of their nationality, such protection taking place neither upon authorization by relevant organs of the United Nations nor with permission by the legitimate government of the target state'* (cited in Ramsbotham and Woodhouse, *Humanitarian Intervention*, 43; emphasis added).

<sup>66</sup> Teson, *Humanitarian Intervention*, 106–7. Teson's critique of motives as the determining factor in judging the legitimacy of humanitarian intervention is shared by Bruce Jones, who argues that a 'robust theory of intervention should consider *both* motivation and outcomes in assessing the humanitarian character of actions'. Jones produces a matrix that maps humanitarian motives and outcomes in different cases of intervention in the Rwandan conflict in the 1990s, but the weakness of his approach is that he does not make the Tesonian point that motives are relevant only if they undermine humanitarian outcomes. See B. Jones, 'Intervention without Borders: Humanitarian Intervention in Rwanda, 1900–94', *Millennium: Journal of International Studies*, 24/2 (1995), 225–48.

I am not arguing that the society of states should praise those governments that are fortunate in achieving this happy coincidence of non-humanitarian motives, means, and outcomes. But I am arguing that, because they save lives, such interventions should be legitimated by states and not condemned or sanctioned. The society of states should reserve its praise and material support *only* for those governments that accord humanitarian reasons a significant factor in their decisions to intervene, and that satisfy some or all of the additional criteria discussed below.

The next criterion above the threshold that I want to consider is the question of whether an intervention is justified in humanitarian terms. The realist worry that states will abuse humanitarian rationales for ulterior reasons raises its ugly head at this point, but the reply to this is threefold. The first is that abuse is an objection to humanitarian intervention only if the non-humanitarian motives behind an intervention undermine its stated humanitarian purposes.

Secondly, the criticism of hidden motives simply ignores the possibility that justification might correspond with motivation, and that state leaders might recognize a moral responsibility to defend human rights. As I argued in the Introduction, a key premiss of solidarism is that governments are responsible not only for protecting human rights at home but also for defending them abroad. This responsibility includes putting their military personnel and citizens at risk to save the victims of gross and systematic violations of human rights. This view is predicated on the assumption that sovereign boundaries are moral constructions that are not immutable. Once it is accepted that there is nothing natural or given about sovereignty as the outer limit of our moral responsibilities, it becomes possible to argue for a change in our moral horizons such that it becomes legitimate for state leaders to risk the lives of their soldiers and citizens to stop gross abuses of human rights. Realists argue that governments are not morally entitled to ask their soldiers to die for humanitarian causes, but this is a weak argument, because, when soldiers join the military, they accept an obligation to serve wherever they are sent by the government.<sup>67</sup>

The third response to the argument that humanitarian claims will be abused is that it underestimates how far actors become 'entangled in their justifications'.<sup>68</sup> Governments that justify intervention in humanitarian terms establish a normative benchmark against which we can judge their subsequent actions. Moreover, since states cannot hope to justify any action

<sup>67</sup> I recognize that governments might legally send their soldiers to die in particular wars without these actions having legitimacy in the eyes of those soldiers or domestic public opinion. The obvious example here is US military participation in the Vietnam War in the late 1960s. However, my point is that governments should not be inhibited from undertaking humanitarian intervention because soldiers have not explicitly volunteered for such actions.

<sup>68</sup> K. M. Fierke, 'Dialogues of Manoeuvre and Entanglement: NATO, Russia and the CEECs', *Millennium: Journal of International Studies*, 28/1 (1999), 30.

as humanitarian, it follows, as Skinner argues, that actors who accept the 'need to legitimate' will be limited to actions that can plausibly be defended in terms of the legitimating reasons that are claimed to have motivated the action.<sup>69</sup> And, having claimed the moral high ground, governments that fail to deliver on their promises will have to defend themselves against the suspicion that they had hidden motives that undermined the stated humanitarian purposes of the mission. A discrepancy between justifications and outcomes does not prove the case, however, since there might be situations where intervention is justified and motivated in humanitarian terms but which ends in disaster. Here, it is important to ask how far the means employed were responsible for this outcome, and what reasons explain the selection of these as against other means of intervention.<sup>70</sup> Nevertheless, it is possible to imagine cases where there is no contradiction between humanitarian motives and means on the one hand, and outcomes on the other, but where intervention ends in disaster. It would be wrong to make success the defining test of legitimacy in such cases, since this would lead to the conclusion that we can judge the legitimacy of an intervention motivated by humanitarian reasons only with the benefit of hindsight. As long as decision-makers who justify their actions in humanitarian terms have done everything in their power to ensure that there is no contradiction between their humanitarian motives and the character and conduct of the intervention, then even an intervention that fails disastrously can be defined as humanitarian.<sup>71</sup>

In addition to the question of motives and justifications, the other two criteria excluded from the threshold that are likely to generate most controversy are the issue of whether humanitarian intervention should always be lawful and the question of selectivity.

The legality of humanitarian intervention without Security Council authorization has become a subject of considerable normative debate since NATO's action in Kosovo. As I discuss in Chapter 8 and in the Conclusion, the UN Secretary General was sufficiently seized by the seriousness of this question to make it a key part of his opening speech to the 1999 session of the UN

<sup>69</sup> Skinner, 'Analysis of Political Thought and Action', 112. Skinner gives the example of the merchant class who tried to justify their accumulation of profit in the Europe of the sixteenth and seventeenth centuries by appealing to religious justifications. What is important, he argues, is that, having invoked this legitimating reason, the 'merchant cannot hope to describe *any* action he may choose to perform as being "religious" in character, but only those which can be claimed with some show of plausibility to meet such agreed criteria as there may be for the application of the term. It follows that if he is anxious to have his conduct appraised as that of a genuinely religious man, he will find himself restricted to the performance of only a certain range of actions'. (Q. Skinner, 'Language and Social Change', in Tully (ed.), *Meaning and Context*, 131-2). See also Fierke, 'Dialogues', 30-1.

<sup>70</sup> When I use the word *means* in the book, I am using the term broadly, as in *The New Oxford Dictionary of English*, to refer to 'an action or system by which a result is brought about'. This encompasses not only the type of intervention—air power or ground forces for example—but also how the intervention is conducted.

<sup>71</sup> I am grateful to Jack Donnelly for alerting me to the significance of this point.

General Assembly. The starting point for reflecting on the legality of humanitarian intervention is that the majority of international lawyers argue that this practice is unlawful. Pointing to the legal drafting of the UN Charter, these jurists, often labelled 'restrictionists', argue that the ban in Article 2 (4) on the use of force against the 'territorial integrity and political independence' of states prohibits humanitarian intervention. These jurists recognize that the Security Council has the legal authority under the Chapter VII provisions of the Charter to authorize military enforcement action, but they point out that the Security Council has jurisdiction to act under Article 39 of Chapter VII only if it determines that there is a threat to 'international peace and security'. It cannot authorize military intervention on humanitarian grounds alone.

There are both legal and moral responses to the restrictionist argument that humanitarian intervention without Security Council authorization is illegal. The moral argument is that humanitarian intervention is one of those hard cases where ethical concerns should trump legality, and that, while we should always try and obtain Security Council authorization, this legal requirement can be overridden in cases of supreme humanitarian emergency. This view that humanitarian intervention is morally permitted but should not be legalized is expressed by Franck and Rodley when they argue that humanitarian intervention 'belongs in the realm not of law but of moral choice, which nations, like individuals, must sometimes make'.<sup>72</sup> Their position is that this moral imperative cannot be legally recognized because of the dangers that such a legal right would be abused.

The difficulty with this resolution of the problem is that it serves to highlight the normative limitations of a system of international law that encourages law-abiding states to break the law when this is demanded by the requirements of common humanity. I agree with Wil Verwey that accepting this conflict between legality and morality fatally weakens international law because it 'would imply the recognition—no more, no less—that international law is incapable of ensuring respect for socially indispensable standards of morality'.<sup>73</sup>

Consequently, the second response to the restrictionists is to argue that international law should recognize a right of unilateral humanitarian intervention. This argument was pressed by a minority of international lawyers during the cold war and it gained additional adherents in the 1990s. This 'counter-restrictionist' position is predicated on the claim that there is support for a legal right of humanitarian intervention in both the UN Charter and customary international law. The contention is that the promotion of

<sup>72</sup> Franck and Rodley, 'After Bangladesh', 304.

<sup>73</sup> W. Verwey, 'Humanitarian Intervention in the 1990s and Beyond: An International Law Perspective', in J. N. Pieterse (ed.), *World Orders in the Making: Humanitarian Intervention and Beyond* (London: Macmillan, 1998), 200.

human rights should rank alongside peace and security in the hierarchy of UN Charter principles. Here, counter-restrictionists point to the language in the preamble to the UN Charter and Articles 1 (3), 55, and 56, which impose a legal obligation on member states to cooperate in promoting human rights. According to Teson, the 'promotion of human rights is as important a purpose in the Charter as is the control of international conflict'.<sup>74</sup> Consequently, counter-restrictionists argue that the Security Council has a legal right to authorize humanitarian intervention irrespective of whether it has found a threat to 'international peace and security' under Article 39. Some jurists go even further and assert that, if the Security Council fails to take remedial action in cases of massive human rights abuses, then individual states should act as armed vigilantes and take the enforcement of the human rights provisions of the Charter into their own hands. Michael Reisman and Myers McDougal claim that, were this not the case, 'it would be suicidally destructive of the explicit purposes for which the United Nations was established'.<sup>75</sup>

Witnessing the images on their television sets of the atrocities committed against the minority Ibos by Nigerian troops during the civil war over the secession of Biafra from Nigeria, Reisman and McDougal produced their now famous 1969 memorandum, 'Humanitarian Intervention to Protect the Ibos'. This claimed that there was a legal right of unilateral humanitarian intervention, and they concluded their memorandum with the proposal that the UN institutionalize a system of humanitarian intervention, and suggested that the International Law Association (ILA) be asked to draft a protocol. This invitation was taken up by the ILA in the early 1970s, and, in a series of reports, it attempted to draft a set of criteria for judging the legality of unilateral humanitarian intervention.<sup>76</sup> Richard Lillich argues that these studies generated a broad consensus on the following:

1. There must be an imminent or ongoing gross human rights violation.
2. All non-intervention remedies available must be exhausted before a humanitarian intervention can be commenced (see also criteria 9).
3. A potential intervenor before the commencement of any such intervention must submit to the Security Council, if time permits, its views as to the specific limited purpose the proposed intervention would achieve.
4. The intervenor's primary goal must be to remedy a gross human rights violation and not to achieve some other goal pertaining to the intervenor's own self-interest.
5. The intent of the intervenor must be to have as limited an effect of [sic] the

<sup>74</sup> Teson, *Humanitarian Intervention*, 131.

<sup>75</sup> M. Reisman and M. S. McDougal, 'Humanitarian Intervention to Protect the Ibos', in R. Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville, Va.: University of Charlottesville, 1973), 414.

<sup>76</sup> This story is told in R. B. Lillich, 'The Development of Criteria for Humanitarian Intervention', unpublished paper, 6.

authority structure of the concerned State as possible, while at the same time achieving its specific limited purpose.

6. The intent of the intervenor must be to intervene for as short a time as possible, with the intervenor disengaging as soon as the specific limited purpose is accomplished.
7. The intent of the intervenor must be to use the least amount of coercive measures necessary to achieve its specific limited purpose.
8. Where at all possible, the intervenor must try and obtain an invitation to intervene from the recognized government and thereafter to cooperate with the recognized government.
9. The intervenor, before its intended intervention, must request a meeting of the Security Council in order to inform it that the humanitarian intervention will take place only if the Security Council does not act first (see also criteria 2 & 3).
10. An intervention by the United Nations is preferred to one by a regional organization, and an intervention by a regional organization is preferred to one by a group of States or an individual state.
11. Before intervening, the intervenor must deliver a clear ultimatum or 'peremptory demand' to the concerned State insisting that positive actions be taken to terminate or ameliorate the gross human rights violations.
12. Any intervenor who does not follow the above criteria shall be deemed to have breached the peace, thus invoking Chapter VII of the Charter of the United Nations.<sup>77</sup>

There are two important points to note about the above criteria: first, humanitarian outcomes do not even feature in the ILA list of requirements. Instead, the stipulation is the standard one in the international-law literature that the 'primary goal must be to remedy a gross human rights violation'. Where the ILA criteria do have something to offer is in their discussion of the role that the Security Council should play in the legitimation process. States contemplating humanitarian intervention are required to report to the Security Council that the action will take place only if the Council does not act first. There is no guarantee that Council authorization will be forthcoming at this point, and it is possible that a resolution might be passed condemning the proposed action. On the other hand, the great value of this criterion is that it legitimates states raising humanitarian claims before the Security Council. This opens up the possibility that the Security Council will recognize an obligation to include the protection of human rights under its Chapter VII responsibilities. It is equally possible that the Security Council might be divided on the question of the legitimacy of using force, which complicates the picture still further, raising the following questions: how many Council members have to be opposed to an action before we can say that it lacks collective legitimation, and does it matter if some or all of these

<sup>77</sup> Third Interim Report of the Subcommittee on the International Protection of Human Rights by General International Law, ILA Report of the Fifty-Sixth Conference 217 (New Delhi, 1974). Quoted in Lillich, 'The Development', 7-8.

are veto-bearing members of the Council? I take up these questions in the empirical chapters.

The dispute between restrictionists and counter-restrictionists over the legality of humanitarian intervention comes down to the question of whether this practice is legally exempt from the prohibition on the use of force in Article 2 (4). Restrictionists like Rosalyn Higgins contend 'that the Charter *could* have allowed for sanctions for gross human-rights violations, but deliberately did not do so'.<sup>78</sup> Set against this, Reisman and McDougal counter that:

Since a humanitarian intervention seeks neither a territorial change nor a challenge to the political independence of the state involved and is not only not inconsistent with the purposes of the United Nations but is rather in conformity with the most fundamental peremptory norms of the Charter, it is a distortion to argue that it is precluded by Article 2 (4).<sup>79</sup>

Anthony Arend and Robert Beck identify four criteria that an intervention must meet if it is to be exempted from the ban on force in Article 2 (4): it must not involve a prolonged military presence by the intervening state(s) in the target state; a loss of territory by the target state; a regime change there; any actions inconsistent with the purposes of the UN Charter.<sup>80</sup>

Given that the legal basis of unilateral humanitarian intervention is hotly disputed, what is the basis for deciding between the conflicting claims? The standard answer supplied by lawyers is to have recourse to customary international law. Article 38 of the statute of the ICJ refers to this 'as evidence of a general practice accepted as law'.<sup>81</sup> Customary law is different from treaty law because it is not created by written agreements between states that set down the rules to regulate their interactions in a specific area. Instead, as Arend and Beck put it, 'if over a period of time, states begin to act in a certain way and come to regard that behaviour as being required by law, a norm of customary international law has developed'.<sup>82</sup> It is not enough that states actually engage in the practice that is claimed to have the status of customary law; they must do so because they believe that this practice is 'accepted as law'. This subjective element is referred to by lawyers as *opinio juris* and is essential in identifying which rules are legally binding upon states.

Restrictionists argue that state practice in the post-Charter period does not support a legal right of unilateral humanitarian intervention. Here, they point to the following: General Assembly standards on non-intervention, such as the 1965 Declaration on the Inadmissibility of Intervention, which denied legal recognition to intervention 'for any reason whatever'; the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-opera-

<sup>78</sup> Higgins, *Problems and Process*, 255.

<sup>79</sup> Quoted in A. C. Arend and R. J. Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (London: Routledge, 1993), 134.

<sup>81</sup> Charter of the United Nations, Article 38.

<sup>82</sup> Arend and Beck, *International Law and the Use of Force*, 6.

<sup>80</sup> *Ibid.*

tion, which confirmed that 'no State or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State'; and the 1987 Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, which stated that 'no consideration of whatever nature may be invoked to warrant resorting to the threat or use of force in violation of the Charter'. The ICJ in the *Nicaragua* judgment considered the question of whether there were legal exceptions to the non-intervention rule, and its judgment was that this 'would involve a fundamental modification of the customary law principle of non-intervention', for which there was no support in state practice.<sup>83</sup> Indeed, the court cited with approval the following statement by the International Law Commission: 'The law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*.'<sup>84</sup> The concept of *jus cogens* is widely accepted in international law and denotes a peremptory norm of general international law that is described in the 1969 Vienna Convention of the Law of Treaties as 'a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character'.<sup>85</sup>

Counter-restrictionists deny that the prohibition on the use of force is *jus cogens*, claiming that there is custom from the pre-Charter and post-Charter period supporting a rule of unilateral humanitarian intervention. The latter proposition is investigated in Chapters 2, 3, and 4 in relation to India's, Vietnam's and Tanzania's use of force, but what of their argument that there existed such a right prior to 1945? This book is not the place to document the history of the doctrine of humanitarian intervention, but lawyers date the origins of the doctrine to the seventeenth-century Dutch International lawyer Hugo Grotius, who considered that the rights of the sovereign could be limited by principles of humanity. In a famous passage that shows why Grotius is the father of solidarist international society theory, he considered that, 'if a tyrant . . . practices atrocities towards his subjects, which no just man can approve, the right of human social connexion is not cut off in such a case . . . It would not follow that others may not take up arms for them.'<sup>86</sup> The doctrine was the subject of debate among international lawyers during the eighteenth century, but it was not pressed into service by states until the early part of the nineteenth century.

<sup>83</sup> Quoted in M. Weller, 'Access to Victims: Reconceiving the Right To "Intervene"', in W. P. Heere, *International Law and The Hague's 750<sup>th</sup> Anniversary* (Leiden: A. W. Sijthoff, 1972), 334.

<sup>84</sup> Quoted in Byers, *Custom, Power and the Power of Rules*, 184.

<sup>85</sup> Quoted in *ibid.* 183.

<sup>86</sup> Grotius, *De Jure Belli est Pacis*, quoted in F. Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International, 1999), 35.

The 1827 intervention by Britain, France, and Russia to protect Greek Christians from the oppressive rule of Turkey set the pattern for subsequent interventions in the Ottoman Empire. In language that was little different from that used by NATO at the end of the twentieth century to justify its use of force against the Milosevic regime, the intervening states claimed that their action was required 'no less by sentiments of humanity, than by interests for the tranquillity of Europe'.<sup>87</sup> The next case where the doctrine was invoked to justify intervention was the French intervention in 1860–1 to rescue the Christian population in Syria.<sup>88</sup> Turkish rule had led to the suppression of the traditional religious rights of the Maronite Christians and to the massacre of thousands. France was authorized by the other great powers meeting at the Conference of Paris in 1860 to end the massacres and restore order. The Sultan 'consented' to the intervention of the 6,000 French troops, but only because it was clear that non-compliance with the wishes of the European great powers would lead to strategic coercion being exercised by the Concert powers against Turkey.<sup>89</sup>

Restrictionists challenge the proposition that these cases demonstrate that the doctrine of humanitarian intervention was recognized in pre-Charter customary international law. Franck and Rodley make three important rebuttals: first, they point out that the interventions of the nineteenth-century Concert powers in the internal affairs of the Ottoman Empire have to be seen in the context of 'relations between unequal states . . . in which "civilized" states exercise *de facto* tutorial rights over "uncivilized" ones'. As such, these cases are not particularly helpful in thinking about relations between states where sovereign equality is the key legitimating principle of the society of states. Secondly, they argue that intervention was legitimated only when it was collectively authorized by the Concert of Europe; individual state action was not permissible, as in the case of Russia's assertion of a unilateral right to protect Christians living in the Ottoman Empire that led to Britain and France going to war against Russia to enforce the rules of the Concert system. Finally, Franck and Rodley question how far the interventions in Turkey's internal affairs were motivated by primarily humanitarian considerations. They recognize that humanitarian impulses played some role in the decisions to intervene, and that these reasons had legitimacy in the eyes of domestic public opinion in Western Europe and Russia, but 'these motives were certainly neither wholly pure, nor were they consistently pursued in the absence of other power considerations'.<sup>90</sup> This objection to state practice supports the realist view that states will never act for purely humanitarian reasons, but, as

<sup>87</sup> Quoted in Abiew, *The Evolution*, 49.

<sup>88</sup> This case is discussed in B. M. Benjamin, 'Note: Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities', *Fordham International Law Journal*, 16 (1992–3), 128.

<sup>89</sup> Abiew, *The Evolution*, 50.

<sup>90</sup> Franck and Rodley, 'After Bangladesh', 281.

I have argued earlier, the key question is not the purity of motives but the relationship between motives and humanitarian outcomes.

The importance of this discussion is that, if a doctrine of unilateral humanitarian intervention is part of customary international law, then we should expect to see states employing this justification and having it validated in cases where the doctrine could be plausibly invoked. Evidence of such state practice and *opinio juris* provides an important indication that the society of states has established rules to regulate this practice. Moreover, the existence of any past cases of intervention justified in humanitarian terms would provide an important reply to the pluralist objection that legitimating the practice of unilateral humanitarian intervention will open the floodgates to intervention driving huge wedges into international order.

The thesis to be developed in subsequent chapters is that there is no custom supporting the practice of unilateral humanitarian intervention in the cases of Bangladesh, Cambodia, and Uganda, but that new humanitarian claims were advanced in the 1990s. This raises the question as to whether post-cold-war practices of humanitarian intervention have created a new custom. To lay the groundwork for answering this question in Part Three, it is necessary to examine how a new rule of customary international law is created.

The formation of new custom requires both state practice and *opinio juris*, but it would be wrong to think that non-compliance with a rule means that it has lost its normative character as legally binding. Rosalyn Higgins gives the example of the international prohibition on torture, which is widely recognized as a customary rule in international law, but this recognition does not stop the majority of states from committing such abuses. The efficacy of norms, as Ruggie and Kratochwil remind us, is not measured solely by rates of compliance; rather, what is critical are the justifications given for actions and the responsiveness of other states to these. Thus, as Higgins argues, the reason why torture continues to be a legally binding rule of customary international law despite widespread non-compliance is 'because *opinio juris* as to its normative status continues to exist . . . No state, not even a state that tortures, believes that the international law prohibition is undesirable and that it is not bound by the prohibition.'<sup>91</sup> This leads her to argue that a new custom cannot emerge without the vast majority of states engaging in a contrary practice and crucially, 'withdrawing their *opinio juris*'.<sup>92</sup> In

<sup>91</sup> Higgins, *Problems and Process*, 22.

<sup>92</sup> Higgins argues that this reasoning was invoked by the ICJ in determining the law on the use of force in *Nicaragua v. United States*. The Court stated: 'if a state acts in a way prima facie incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attribute is to confirm rather than to weaken the rule' (quoted in *ibid.* 20). In relation to the same case, Michael Byers points out that, faced with a history of state practice that contradicted the rule of non-intervention, the Court expressed the opinion that 'the signi-

its judgment that non-intervention was a customary rule of international law in the case of *Nicaragua v. the US*, the ICJ expressed its view that 'reliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards a modification of customary international law'.<sup>93</sup> This emphasizes the fact that new custom requires states to raise novel claims that by definition cannot be contained in the existing law and this means that such claims are always open to the rejoinder that they are deviant and unlawful. On the other hand, the advocacy of new norms by a state or group of states might lead, as I argued in the Introduction, to a 'norm cascade', where a significant number of states embrace the norm, leading to the development of a new rule of customary international law.

The final criterion above the threshold for judging the humanitarian character of an intervention is the vexed issue of selectivity. The criticism that humanitarian intervention is selective because states intervene only for self-interested reasons resonates across the political spectrum. In reflecting on this criticism, it is important to distinguish between actions that are selective because states privilege selfish interests over the defence of human rights, and those that are selective because of prudential concerns. Robert H. Jackson makes an important distinction between 'instrumental' prudence, which is 'where leaders are expediently thinking only of themselves or their regimes', and 'normative or other-regarding prudence—where the other is anyone whose rights, interests and welfare depend upon the decisions and actions of state leaders'.<sup>94</sup> Addressing the charge of selectivity requires treating like cases alike, but, with the best will in the world, it is just not possible to take the same action in every case where human rights are threatened, because prudence as a moral virtue dictates different responses in different cases. As Vincent put it, 'considerations of prudence do not determine the moral agenda, but they do condition its treatment'.<sup>95</sup> Franck and Rodley lose sight of this crucial point in their criticisms of the society of states for not preventing the destruction of European Jewry or saving the Armenians. In the latter case, as Hendrickson points out, 'it is difficult to see what outside powers might have done',<sup>96</sup> a conclusion echoed by William Rubinstein in his persuasive study of how the allied powers could not have done more to save Jews during the Second World War.<sup>97</sup> The extreme cases of human suffering,

ficance for the Court of cases of State conduct *prima facie* inconsistent with the principle of non-intervention lies in the nature of the ground offered as justification' (quoted in Byers, *Custom, Power and the Power of Rules*, 133, emphasis added).

<sup>93</sup> Quoted in *ibid.* 133.

<sup>94</sup> R. H. Jackson, 'The Situational Ethics of Statecraft', unpublished paper in possession of the author, 12.

<sup>95</sup> Vincent, *Human Rights and International Relations*, 124.

<sup>96</sup> Hendrickson, 'In Defense of Realism', 43.

<sup>97</sup> William Rubinstein, *The Myth of Rescue: Why the Democracies could not have Saved More Jews from the Nazis* (London: Routledge, 1997).

Hendrickson argues, 'are those where there usually—perhaps invariably—exist imperative considerations on the other side that make the duty of humanitarian intervention either impossible or fraught with enormous risk'.<sup>98</sup> I will have more to say about this problem later in the book since it is probably the most commonly cited objection to legitimating humanitarian intervention, but for the moment I want to note that just because governments are selective in their interventions does not necessarily mean that we should treat their humanitarian justifications as bogus in every case where they are employed. This is an empirical question that needs examining on a case-by-case basis.

The criticism that intervention is selective depending upon considerations of interests raises the question whether humanitarian intervention is a moral duty. Solidarism establishes that humanitarian intervention is *morally permitted but is it also morally required?* A simple example of this is the decision of a bystander not to rescue a drowning child. Assuming that the bystander can swim, we would argue that the individual failed in his or her duty to rescue the child. And in some European states such as France and Germany, it is written into the law that individuals should act as rescuers in such circumstances. Yet moral choices rarely present themselves to us in this simplified way. Consider the case of the rescuers in Nazi-occupied Europe who risked their lives to save Jews from the concentration camps. We should certainly praise their actions as heroic, but would we want to argue that those who did not take similar risks were failing in their moral duty? Many refused to shelter Jews not because they were selfish or cowardly (and it was easy to be cowardly in the context of Nazi Germany) but because they feared for the safety of their own loved ones.

The story of the rescuers is one of conflicting moral imperatives, and it is the same with the claim that humanitarian intervention is a moral duty. Solidarism agrees with realism that state leaders have a responsibility to protect the security and well-being of their citizens, but it parts company with it on the question of whether this obligation exhausts obligations to non-citizens. The debate within solidarist international-society theory is over the character of these obligations. Solidarism argues that states committed to these principles—'good international citizens'—are not required to sacrifice vital interests in defence of human rights, but they are required to forsake narrow commercial and political advantage when these conflict with human rights.<sup>99</sup> The hard question is whether solidarism requires state leaders to *risk* and *lose* soldiers' lives to save non-citizens. The solidarist battle cry that state

<sup>98</sup> Hendrickson, 'In Defense of Realism', 44.

<sup>99</sup> The idea of states as 'good international citizens' was first employed by the former Australian Minister for Foreign Affairs and Trade, Gareth Evans, to describe his pursuit of a foreign policy that reconciled 'enlightened self-interest' and 'idealistic pragmatism'. The concept was developed by Andrew Linklater in 'What is a Good International Citizen?', in P. Keal (ed.), *Ethics and Foreign Policy* (Cambera: Allen & Unwin, 1992).

leaders are 'burdened' with the defence of human rights begs the question as to how this should be balanced against their responsibility to protect the lives of citizens.<sup>100</sup>

The solidarist argument advanced in this book is that, in exceptional cases of supreme humanitarian emergency, state leaders should accept the risk of casualties to end human rights abuses. To develop this argument, I want to apply Walzer's notion of 'supreme emergency' in *Just and Unjust Wars* to the moral choices facing state leaders in decisions on humanitarian intervention. Walzer's book is a powerful defence of the principle of non-combatant immunity in the Just War tradition, but, having built up the argument as to why war cannot escape moral discourse, he argues in chapter 16 that exceptional circumstances can arise where the survival of the state requires leaders to violate the prohibition against killing civilians. A supreme emergency exists when the danger is so imminent, the character of the threat so horrifying, and when there is no other option available to assure the survival of a particular moral community than violating the rule against targeting civilians. He gives the example of Britain in 1940, where British leaders employed strategic bombing against German cities as their only defence against the evil of Nazism.<sup>101</sup> Walzer does not praise leaders who violate the war convention of non-combatant immunity, claiming that 'we say yes *and* no, right and wrong'. He captures the 'agonizing' character of this by claiming that those who make these decisions 'only prove their honor by accepting responsibility for those decisions and by living out the agony'.<sup>102</sup>

If we apply this framework to a solidarist theory of humanitarian intervention, the survival of our state is not on the line (and in that sense it is not a supreme emergency in the way it was for Britain in 1940), but it is a supreme emergency for those human beings facing genocide, mass murder, and ethnic cleansing. Supreme humanitarian emergencies are extraordinary situations where civilians in another state are in imminent danger of losing their life or facing appalling hardship, and where indigenous forces cannot be relied upon to end these violations of human rights. As Walzer argues in relation to supreme emergencies, state leaders find themselves confronted with these

<sup>100</sup> The problem of balancing these conflicting moral imperatives is revealed in Jackson's attempt to construct a theory of moral responsibility in foreign-policy decision-making. He recognizes the inevitability of normative conflicts between what he calls 'national', 'international', and 'humanitarian' conceptions of moral responsibility in foreign policy, contending that good statecraft lies in balancing all three of these. Jackson clearly moves beyond a realist ethic when he argues that state leaders have a responsibility to defend human rights because they are 'human beings themselves [and] are in a better position than anyone else to help or hinder their fellow humans in other countries'. However, this commitment to solidarism does not extend to accepting casualties in defence of human rights because decisions on humanitarian intervention always 'have to pay final respects to national responsibility'. The implication is that state leaders have humanitarian responsibilities but these are trumped by a *primary* responsibility to protect the security of their citizens. This does not rule out humanitarian intervention in all cases, but it does restrict it to cases where there is little or no risk of casualties. Jackson, 'The Political Theory of International Society', 123.

<sup>101</sup> Walzer, *Just and Unjust Wars*, 251–68.

<sup>102</sup> *Ibid.* 326.

situations only on rare occasions. But, when they do, they are confronted with the ultimate choice between realist and solidarist conceptions of moral responsibility in statecraft. The latter demands that state leaders override their *primary* responsibility not to place citizens in danger and make the agonizing decision that saving the lives of civilians beyond their own borders requires risking the lives of those who serve in the armed forces. Having decided that humanitarian intervention is *morally required*, state leaders must still satisfy themselves that using force meets the requirements of necessity and proportionality, and that there is every expectation that the use of force will be successful.

Even if it is agreed that state leaders who have the power to make a difference are required in emergency situations to risk and lose soldiers' lives to save non-citizens, this still leaves unresolved the appalling moral question as to what is the threshold of unacceptable losses. The bar is considerably higher for solidarism than realism, but how high? I argue in Chapter 8 that NATO should have been prepared to launch a ground intervention to rescue Kosovars rather than rely on an air campaign that posed low risks to NATO aircrew. But how many NATO soldiers would it have been right to risk and lose to save the lives of Kosovar strangers? It cannot be a 1:1 exchange, because the consequentialist ethics that justify humanitarian intervention demand that any loss of life, as a consequence of intervention, be outweighed by the number of lives saved as a result of it. As I argued earlier, these judgments are difficult enough to make with the benefit of hindsight; for politicians who bear the awesome responsibility of taking them at the time, they impose agonizing moral choices.

Certainly, those state leaders who have to make the godlike consequentialist calculation as to whether  $X$  number of soldiers' lives should be risked to save a greater number of civilians facing imminent death beyond their borders deserve both our sympathy and our empathy. I will examine in later chapters how Western state leaders resolved this conflict between their responsibilities to citizens and strangers in the cases of Iraq, Somalia, Rwanda, Bosnia, and Kosovo.

## Conclusion

Having explored how the rules of international society enable and constrain state actions, I examined solidarist claims for a doctrine of humanitarian intervention. Here, I drew on the work of R. J. Vincent, Michael Walzer, and Fernando Teson (locating the writings of the latter two within the camp of solidarism). The analysis then turned to a discussion of pluralist and realist objections to legitimating a practice of unilateral humanitarian intervention

in the society of states. The task of the final part of the chapter was to reply to these objections by setting out a solidarist theory of humanitarian intervention. The latter identified four minimum criteria (supreme humanitarian emergency, necessity or last resort, proportionality, and a positive humanitarian outcome) that interventions have to satisfy to qualify as humanitarian. This framework challenges the conventional wisdom in the existing literatures in international relations and international law that the primacy of humanitarian motives is the defining characteristic of a humanitarian intervention. Instead, I argued that non-humanitarian motives disqualified an intervention as humanitarian only if it could be shown that these, or the means employed, undermined a positive humanitarian outcome. Interventions that satisfy the criteria of humanitarian motives, humanitarian justifications, legality, and selectivity have progressively better humanitarian qualifications than those that meet only the minimum or threshold requirements.

It might be objected at this point that an intervention should satisfy all eight requirements listed above to qualify as humanitarian. There are three replies here: first, there are no cases of intervention since 1945 that meet all these criteria and it is very implausible to think that future cases will satisfy such a demanding range of requirements. Secondly, the argument is not that we should praise interventions that meet only the threshold requirements; rather, as I argued above, we should make all efforts in our individual and collective capacities to persuade and cajole state leaders into living up to a solidarist ethic of responsibility. Confronted with supreme humanitarian emergencies, governments should be prepared to risk and lose soldiers' lives for primarily humanitarian reasons, justify their actions in humanitarian terms, work to secure Security Council authorization, and treat like cases alike.

Finally, this solidarist theory of humanitarian intervention rejects the pluralist proposition that state practice is the defining test of a legitimate humanitarian intervention. To anticipate the argument developed in Part Two, by placing the defence of human rights at the centre of a solidarist theory of humanitarian intervention, we arrive at the conclusion that the society of states should have legitimated India's, Vietnam's and Tanzania's interventions as humanitarian, because they met the minimum requirements of a legitimate action. This interpretation of the legitimacy of these actions stands in sharp contrast to state practice, and this illustrates the moral bankruptcy of cold-war international society. Solidarism gives a very different meaning to humanitarian intervention than pluralism, and it supplies us with a normative standard by which to judge the success of international society in acting as a guardian of human rights in the cold war and post-cold-war cases covered in the chapters to follow.