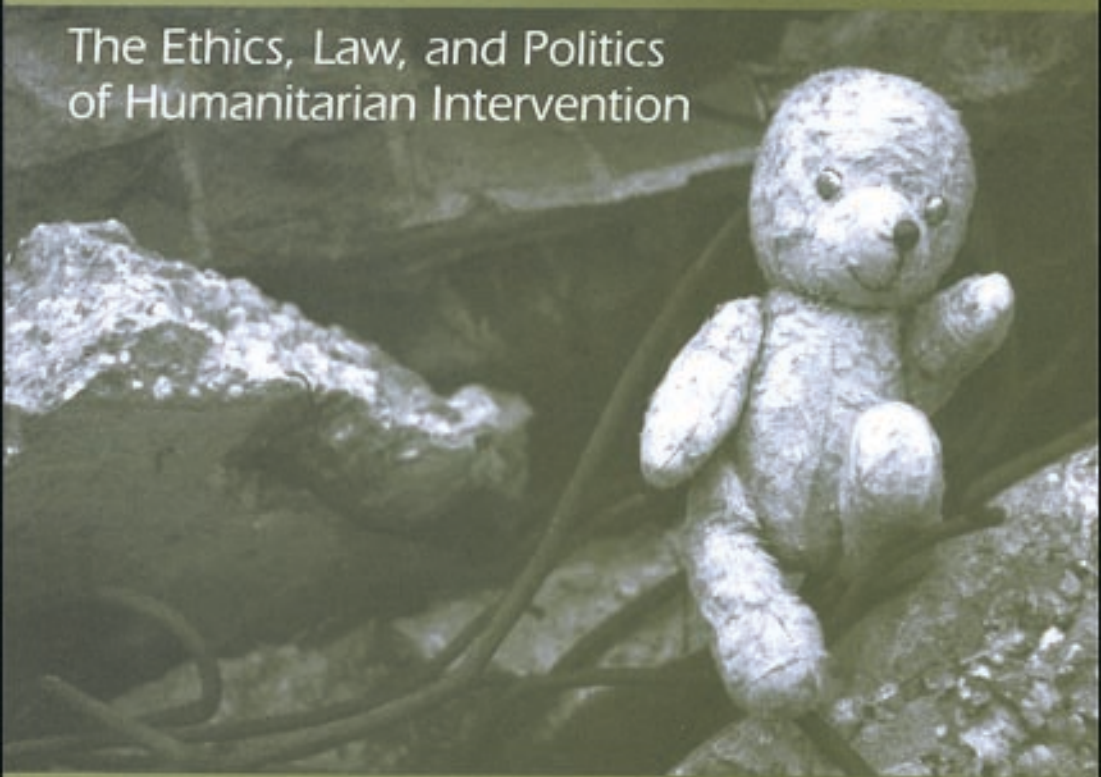


Waging Humanitarian War

The Ethics, Law, and Politics
of Humanitarian Intervention



Eric A. Heinze

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of Humanitarian Intervention

ERIC A. HEINZE

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Preface and Acknowledgments

This book represents the culmination of eight years of thinking on the subject of humanitarian intervention. Like many who have written on this subject, I first became intrigued by it in the aftermath of the 1999 Kosovo intervention by NATO, which influenced my views on this subject a great deal. By the time I entered my doctoral program in 2001, I had decided that this was the area in which I would focus my research. Having just completed a Master's degree and written a thesis on the Kosovo intervention, my ideas about humanitarian intervention upon entering my Ph.D. program were notably interventionist. In other words, I believe that the world needed more, not fewer, military interventions to promote human rights abroad, and I was highly critical of the legal and normative barriers that stymied humanitarian interventions where there was a moral imperative to intervene and stop human suffering.

September 11, 2001, occurred less than a month into my doctoral studies, and like most observers, I knew 9/11 would affect almost every aspect of international relations, including the subject I had so passionately begun to investigate. Then came the U.S. invasion of Afghanistan, and soon after, numerous scholarly articles began to appear with titles like "Humanitarian Intervention after September 11" and "Humanitarian Intervention and the War in Afghanistan." After Afghanistan and the toppling of the repressive Taliban regime, there was a sense among some scholars and students of humanitarian intervention (including myself) that at last states now have compelling national security reasons to take gross human suffering in other countries seriously. With the new terrorist threat emanating from such brutal, even genocidal, regimes, military interventions could be now used for both counterterrorist and humanitarian purposes.

This moment of euphoria was short-lived, however, as the U.S. soon began preparing for its invasion of Iraq, which took place in March of

2003. Aside from perhaps the Kosovo intervention, the U.S.-led invasion of Iraq influenced my thinking on this subject more than any other event. The U.S. administration portrayed the invasion of Iraq as somehow part of the global war on terrorism, implying—though never actually stating—that Iraq had something to do with September 11, and that its alleged possession of weapons of mass destruction (WMD) were an intolerable threat to U.S. security. As the subsequent occupation of Iraq entered its second year, such arguments grew increasingly empty and were eventually debunked by the bipartisan 9/11 Commission. By this time, however, the justification for the U.S.-led invasion of Iraq had changed. All of a sudden, it was not Iraq's ties to al-Qaeda or its possession of WMD that compelled the U.S. invasion; it was Saddam Hussein's brutality toward his own people. In other words, the invasion of Iraq was a genus of humanitarian intervention intended to liberate the oppressed people of Iraq from the yoke of tyranny. This argument was, not surprisingly, received with much skepticism by scholars of humanitarian intervention and raised well-founded fears about how the humanitarian argument could be used as a pretext to mask the exercise of hegemonic power. In my own mind, the invasion of Iraq was not humanitarian, in either its motivation or its outcome to date. It has been widely characterized by well-respected scholars, public officials and foreign policy practitioners as a mistake, while its deliberate conflation with humanitarian intervention by administration officials has done untold damage to any moral credibility that the U.S. has as a force for good in international affairs. As I argue in chapter 5 and elsewhere, it is largely a result of the Iraq war that so many people continue to suffer and die in Darfur, Sudan.

The effects of these events on my views about humanitarian intervention are manifested in the pages that follow. Above all, this book is an attempt to develop prescriptions about humanitarian intervention at the theoretical level that strike a balance between intervening in these cases that cry out for military intervention, yet constraining the kind of military adventurism that brought about the debacle in Iraq. In short, I am much more cautiously "interventionist" today than I was when I first began investigating this subject.

Yet this book is also perhaps unique in that it hopes to say something of interest to scholars and students of several disciplines. Armed conflict—especially humanitarian intervention—has several dimensions that cross traditional disciplinary boundaries. Moral theorizing about war has been around since at least medieval times, yet it is only fairly recently that humanitarian intervention, in particular, has been the subject of ethical, legal, and political analyses alike. Unfortunately, like moral, legal, and political dimensions of humanitarian intervention,

various ethical, legal, and political inquiries into this subject have often reached dramatically different conclusions about when and if it should be undertaken. Therefore, this book aspires to develop theoretical prescriptions about humanitarian intervention with an eye toward reconciling the often competing claims of morality, international law and political possibility.

Having said that, my formal training is in the political science subfields of international relations and political theory, yet I investigate this subject using techniques from the fields of ethics, international law, and international relations. The inherent danger in this approach is when a scholar from one discipline enters the territory of others, his relative lack of familiarity with the terrain often leads him to step on landmines. For instance, even though this book begins with a very simple philosophical proposition, it proved to be controversial among some of those who read the manuscript prior to publication. Yet the interplay among ethics, law, and politics inherent in this subject necessitates an interdisciplinary approach that actively engages with the distinctive characteristics and literature of the various dimensions of this subject. Treating each discrete dimension of humanitarian intervention in isolation has been done far too much and has led to arid and unhelpful prescriptions. I am therefore willing to take the risk of stepping on a few landmines by writing what already seems to be a provocative book if the result is a text that reflects and synthesizes the insights of these different disciplinary perspectives in a coherent and logical fashion. I suspect, though, that some philosophers will take issue with my playing fast and loose with the philosopher's toolkit, as due to certain restrictions, I was not able to comprehensively address every objection or potential critique of my line of reasoning. Nevertheless, I stand by my contention that the ethics of humanitarian intervention are *primarily* and *fundamentally*—though certainly not exclusively—consequentialist in nature, and if this serves to provoke further debate on this issue then this book will have achieved one of its main purposes.

Likewise, some international lawyers may take issue with my drawing of normative parallels between the legal principle of universal jurisdiction and the act of humanitarian intervention. Yet, such an argument still merits consideration. If conclusions about a potential normative grounding of humanitarian intervention in international law can be derived from legal principles to which the law is already committed, this tells us something very important about those legal commitments and how we might go about interpreting their normative underpinnings. For too long, the moral imagination of humankind has been limited by what is thought to be politically possible. Thus, if this book accomplishes anything, it is to remind its readers that reconciling what morality

demands, what the law permits, and what is politically possible, should never be thought impossible or not even merit the attempt to do so.

Like any other book, this one would not have been possible without the assistance of a number of friends, family, colleagues and sponsors. I am especially indebted to Dave Forsythe, who directed a very different version of this project when it was my doctoral dissertation at the University of Nebraska. Dave and I probably disagreed on about as much as we agreed during this process, but that disagreement—as well as Dave’s patience, professionalism, and guidance—are no small reason why this book exists today. Jeff Spinner-Halev, who also served on my doctoral committee, was also instrumental in the early stages of this project. Jeff went out of his way to provide extensive comments not only on my dissertation, but also on this manuscript. I am also indebted to David Rapkin, Jean Cahan, and Lloyd Ambrosius for their assistance during the conceptual stages of this project. Numerous other colleagues provided invaluable insight and feedback. Tony Lang, Fran Harbour, Michael Freeman and Brian Lepard all read the manuscript and provided extremely helpful comments and criticisms, which have undoubtedly improved its quality. Others who read and provided invaluable feedback not only on parts of this manuscript, but on some of my other related work, include Nick Wheeler, Greg Russell, Peter Penz, Howard Adelman, Peter Baehner, Ken Rutherford, Doug Borer, Mutuma Ruteere, and numerous others with whom I have been on conference panels or engaged in other scholarly exchanges. However, I alone take responsibility for the views, mistakes or omissions in this book. I especially want to thank Doug Borer for his professional and personal advice throughout my short career as an academic, but especially for his friendship.

My colleagues at the University of Oklahoma have also provided an extremely supportive environment that enabled me to successfully carry out this project. Among others, these include Suzette Grillo, Greg Russell, Bob Cox, Mitchell Smith, Bob Franzese, Greg Miller, Josh Landis, Kelly Damphousse, Paul Goode, Justin Wert, Yong Wook Lee, Giovanna Gismondi, Pete Gries and John Fishel. I would also like to thank Sara Sherman, Megan Carlson, Katherine Ensler and Tamy Burnett for their thorough and competent research and/or editorial assistance. I am also grateful to the support staff in both of my departments at OU, most notably Sandi Emond, Jacque Braun, Malin Eichman, and Cathy Brister.

I am especially appreciative of the support I have received at the University of Oklahoma. Few universities offer junior faculty so many resources to pursue their research agendas, and this book would not have been possible without this emotional, moral and financial support. Both the Department of Political Science and School of International and Area Studies at Oklahoma University have supported this project whole-

heartedly, not only by funding my trips to various academic conferences, but by providing the kind of comfortable and collegial academic environment that scholars can often take for granted. I am also grateful to the College of Arts and Sciences, the Vice President for Research, the Office of the President, and the OU Research Council for their generous funding of my work and travel related to this project. Outside the OU system, this research was supported in part by a grant from the Oklahoma Humanities Council (OHC) and the National Endowment for the Humanities (NEH). Findings, opinions, and conclusions do not necessarily represent the views of OHC or the NEH.

Some of the material in this book is revised from articles I authored that were previously published elsewhere. Chapter 2 is a revised version of "Maximizing Human Security: A Utilitarian Argument for Humanitarian Intervention," *Journal of Human Rights* 5 no. 3 (2006): 283–302. I would like to thank Taylor and Francis (www.informaworld.com) for granting permission to reprint portions of this article. Likewise, I thank the Centre for Conflict Studies at the University of New Brunswick for permission to reprint portions of "Law, Force, and Human Rights: The Search for a Sufficiently Principled Legal Basis for Humanitarian Intervention," *Journal of Conflict Studies* 24 no. 2 (2004): 5–32, which is an early version of the analysis in chapter 3.

Finally, my family has given me the support and love that makes it possible to complete such a daunting undertaking without losing one's mind. My parents, grandparents, siblings, and in-laws have had nothing but perfect confidence that this book would become a reality. This kind of moral support and personal validation are what having a family is all about, and I am extremely lucky to have a wonderful family. My parents, Greg and Kathy Heinze, are the most generous, loving and supportive people I know. I can only hope to someday be the kind of parent to my children as they have been to me.

My wife, Melissa, has also unflinchingly stood by me from the very beginning of this project. Her understanding and tolerance for the many late nights in the office, the frequent travel and the long sessions of me complaining and stressing about this book cannot be understated. Perhaps the most refreshing thing about Missy in this regard—though she does work in the field of higher education—is that she is not an academic. Time spent with her has thus been a most welcome escape from the pressures and anxieties of writing a book and searching for a publisher. Lunch and afternoon pints with colleagues may have been dominated by talking shop, but thankfully, dinner and evenings spent with my wife were not. Yet Missy's patience, support and love were instrumental to this book coming to fruition. It is therefore with love and appreciation that I dedicate this book to Her.

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Introduction: The Concept of Humanitarian Intervention

In March of 1999, member states of the North Atlantic Treaty Organization (NATO) led by the United States commenced what would become a seventy-eight-day bombing campaign against the Federal Republic of Yugoslavia. The purpose of this military operation was to halt what most reports indicated was ongoing and escalating ethnic cleansing in Kosovo, the victims of which were the mostly ethnic Albanian population of that province. On the eve of what would become *Operation Allied Force*, U.S. President Bill Clinton stated that ending this tragedy was a moral imperative, a view shared by leaders of many Western democracies.¹ A central problem, however, is that NATO's use of military force was technically a violation of international law because it was not in self-defense and did not obtain prior authorization from the United Nations (UN) Security Council. Since then, the Kosovo intervention has been widely portrayed, rather paradoxically, as an "illegal but legitimate" humanitarian intervention.² It was morally justified, yet it violated international law. The humanitarian crisis in the Darfur region of western Sudan that began in 2003, likewise triggered calls for armed intervention to stop government-sponsored militias from terrorizing the civilian population and forcing them into displacement camps.³ As in Kosovo, there again seemed to be a sufficient moral imperative to intervene militarily to stop the atrocities in Darfur. This time, however, developments in international politics since the Kosovo intervention served to militate against armed intervention by those actors otherwise in a position to do so.

Cases such as these raise serious concerns in the theory and practice of armed humanitarian intervention. How are we to reconcile what is thought to be morally imperative with what is legally permissible and politically possible? Can one develop a prescriptive framework for

humanitarian intervention that reconciles the often competing claims of morality, law, and politics? This book is an attempt to address these issues.

This book contributes to the growing body of literature on what is commonly referred to as humanitarian intervention, generally understood as the transboundary use of military force for the purpose of protecting people whose government is egregiously abusing them, either directly, or by aiding and permitting extreme mistreatment. A topic of great academic interest in recent years, the idea of humanitarian intervention has its philosophical roots in the just war tradition, which dates back to the fifth-century writings of the theologian, Saint Augustine, and was revived in the thirteenth century by Saint Thomas Aquinas. By the sixteenth and seventeenth centuries, the writings of Francisco de Vitoria and Hugo Grotius situated the subject of humanitarian intervention within the discourse on the law of nations, the precursor to contemporary international law.⁴ The debate over humanitarian intervention has remained principally the purview of international lawyers, as it is part of the broader international legal discourse on the use of force under the UN Charter legal paradigm. Nevertheless, the past fifteen years have witnessed sustained efforts by scholars to explore the moral and political dimensions of this debate, as well as its myriad legal nuances.

A fundamental predicament arising from any subject that embodies multiple dimensions, that in turn attracts scholars from several disciplines (law, philosophy, ethics, political science, and international relations), is that the various facets are inevitably investigated separately, or by using analytical frameworks that cannot easily be applied to the different dimensions of the subject. The literature on humanitarian intervention is rife with analyses by enterprising legal scholars, who construct sophisticated arguments about the status of humanitarian intervention under international law.⁵ But this tells us very little about when humanitarian intervention is morally justified, or which actors in international society are best suited to effectively undertake such a difficult and demanding task. While ethical and political analyses of humanitarian intervention abound, scholars have only recently begun to address the ethical, legal and political dimensions of this subject with an eye toward reconciling their competing and often conflicting imperatives.⁶ In this sense, scholarship on humanitarian intervention is very much a reflection of its problems in practice—that is, its ethical, legal and political dimensions rarely seem to cohere.

In light of this reality, *Waging Humanitarian War* seeks to address the subject of humanitarian intervention in a way that permits a synthesis among its ethical, legal and political dimensions. This book offers a normative argument for humanitarian intervention and articulates the

conditions under which humanitarian intervention is morally permissible—the ethical dimension—establishes whether such ethical prescriptions can be grounded in international law—the legal dimension—and identifies which actors are best suited to undertake humanitarian intervention under prevailing political realities—the political dimension. Rather than developing an all-encompassing theory of humanitarian intervention, I elucidate its different dimensions within a logically consistent and empirically precise normative argument that draws from the same basic analytical framework.

- What level or severity of human suffering must be imminent or ongoing before humanitarian intervention is morally permissible?
- Is there a corresponding body of international law that supports this moral argument, thus providing a legal basis for humanitarian intervention under certain conditions?
- Which actors should then undertake humanitarian intervention and why do they merit this task?

These are the ethical, legal, and political questions this book answers.

The Ethical, Legal, and Political: A Synthesis

Each of these questions is individually important in the ongoing debate over humanitarian intervention, although the common thread that connects them is the underlying concern for the suffering of people who are being abused or neglected by their own government. After all, the ultimate goal of humanitarian intervention is to effectively alleviate human suffering. Even though the intent is to halt or avert human suffering, the well-known moral dilemma of humanitarian intervention is that it inevitably brings a certain degree of harm to innocents when it deploys deadly force—even if this violence is directed against those perpetrating harm against innocent civilians. This is why virtually every serious scholarly treatment of humanitarian intervention argues—but more often simply assumes—that humanitarian intervention should be reserved for extreme cases only, or supreme humanitarian emergencies, to avoid doing more harm than good.⁷ Thus, there are very good reasons why most proponents of humanitarian intervention consider an imminent genocide as morally defensible grounds for intervening militarily, while precluding intervention for lesser abuses like political repression or denying voting rights. The risks involved in armed conflict are simply too great to justify using force to avert small-scale or otherwise minor abuses.

This reasoning involves a logic that is inherently *consequentialist*, whereby the moral rightness of human action is judged according to the consequences it brings about in terms of a certain value or good.⁸

How severe must atrocities be within a state before armed rescue is justified? To this, a consequentialist would answer: severe enough so that the consequences are likely to be better—or at least not worse—than those that would have occurred without intervention. But, without an account of the various factors that determine the goodness of an outcome—that is, an account of “the good”—such a prescription provides little practical guidance. Because the purpose of humanitarian intervention is to alleviate human suffering, it follows that it is appropriately conceptualized in terms of the welfare or well-being of those at risk. While a more precise account of human well-being is required, this is the basic consequentialist logic that constitutes the starting point for this inquiry. This is why the basic analytical framework of this book as a whole draws from and builds upon an explicitly consequentialist logic that posits the suffering of innocent people as the referent object of concern in the conduct of humanitarian intervention.

A crucial assumption that follows this reasoning is that if humanitarian intervention is to be justified at all, then it must be done primarily with reference to the well-being of those on whose behalf the intervention is allegedly undertaken. Yet it must also be done but also with reference to the well-being of the broader community of humankind. The first element of this assumption is rather obvious, because there is no point in undertaking a humanitarian intervention if it fails to alleviate suffering or endangers people further. One must also consider the broader implications that humanitarian intervention has for other innocent people who may be affected by the inherent death, destruction, and destabilization that accompanies military force. For example, if an ethnic minority in a state is being massacred by its government, then reference to the well-being of this group of people suggests that humanitarian intervention against the government or its agents is justified. But one must also consider the effects that the intervention will have on innocent persons that may not be members of this group and make the unenviable decision of whether the risks are worth it. Whether or not the risks of going to war are worth it depends on the extent and severity of the human suffering at issue. The purpose of the ethical inquiry in this book is to put meat on this bare bones consequentialist logic, and to arrive at a more precise account of the conditions of human suffering under which humanitarian intervention is likely to promote well-being more than imperiling it.

The aim here is not simply to rehash conventional arguments about reserving humanitarian intervention for exceptional cases. Most schol-

arship simply assumes that humanitarian intervention is permissible in extreme cases only, but, the aim of this ethical inquiry is to develop a more detailed threshold of human suffering that observers can employ to recognize situations wherein humanitarian intervention stands a reasonably successful chance of doing more good than harm. When the plight of human beings is such that it demands the attention of others, those who intend to take action must be guided by acceptable moral principles that act as a general guide on what to do in given circumstances. The purpose of this ethical inquiry is to develop prescriptive principles using a fundamentally consequentialist argument.

In addition to contributing to the scholarly debate, the practical advantage of delineating prescriptive principles is to facilitate decision-making on how to respond to particular humanitarian emergencies. Simply put, to have morally coherent and agreed on principles in crisis situations provides a general sense of what to do in response. When considering humanitarian intervention, what is lacking is not information or intelligence as much as analysis and translation of data into agreed policy prescription.⁹ Therefore, prescriptive ethical principles serve a vital function in the practice of intervention because they prescribe calculated action based on our best moral judgments about how to respond to particular circumstances.

This is also the role of law in an ideal sense—to fix a policy response to a societal need and provide a stable framework of expectations to organize international activity.¹⁰ From a legal standpoint, it is crucial that moral prescriptions find grounding in international law, lest employing them in practice derides the legitimacy of the legal rules themselves, and the rule of law in general. Law also serves to codify ethical norms in order to increase the obligation actors to engage in moral behavior. The overarching concern among legal analyses, therefore, is whether there is a *legal right* to humanitarian intervention, and if so, under what circumstances and according to what body of law? The lawfulness of humanitarian intervention is important precisely because legal rules themselves often have a fundamental moral dimension. For instance, the principles of nonintervention and the nonuse of force enshrined in the UN Charter speak to international society's basic moral convictions about the dangers of reckless military crusades and the undesirability of war in general. Likewise, the human rights principles in the Universal Declaration of Human Rights (UDHR) peak to the position we are willing to accord individual well-being in international relations.¹¹ In the tradition of legal positivism, however, these norms serve mainly to prohibit humanitarian intervention, irrespective of persuasive moral arguments that endorse it in specific cases.¹² As a result, the power of positive law is diminished if the gap between it and coherent moral

convictions is allowed to become too wide. To paraphrase Thomas Franck, there is no sense in having law if it offends what our moral convictions consider to be right and just.¹³ In this sense, international law stands to gain by narrowing the gap between itself and what accepted morality requires. Thus, the purpose of this legal inquiry is to ascertain whether existing international law can accommodate an essentially consequentialist moral argument for humanitarian intervention. Does international law reflect the consequentialist insight that intervention is only permissible under exceptionally severe conditions, and if so, to what extent does the law articulate such conditions?

Even if one makes a persuasive moral argument for the conditions under which humanitarian intervention is permissible, and such an argument is firmly grounded in international law, as a practical matter there is still the problem of identifying which actors in international society should undertake this task. There may be sufficient ethical and legal grounds for the act of humanitarian intervention, but to say that armed intervention is likely to do more good than harm—if undertaken in certain extreme and exceptional cases—is to make certain assumptions about the agent undertaking it. Namely, that the agent is sufficiently more militarily powerful than the entity against whom the intervention is directed. A consequentialist logic that posits the suffering of the imperiled population as the foremost concern necessarily considers the military wherewithal of the potential intervener to be paramount. Humanitarian intervention can only achieve its aims if the intervener prevails militarily, and it is even more successful if the operation is swift and decisive. But raw power and the material ability to deliver it, are certainly not all that matter—even for consequentialists.

One of the defining features of humanitarian intervention is the inherent danger that a state may use humanitarian justifications to cloak its ulterior motives and wage an aggressive war or engage in some other type of self-aggrandizing adventurism. Indeed, one of the key obstacles to legalizing humanitarian intervention is the widespread concern that certain states might abuse this legal permission as a pretext for nonhumanitarian war.¹⁴ Even if an actor is adequately powerful, it may possess other attributes that diminish the likelihood its intervention will produce a positive humanitarian outcome—in terms of both its proclivity and ability to do so.

For instance, international society should be suspicious of a state waging war for ostensibly humanitarian purposes if that state is a flagrant violator of the most basic international human rights or has a history of brutal and exploitative military interventions. Even the perception of a potential intervener as partisan, or otherwise illegitimate, can strongly militate against its ability to do more good than harm, particularly if such

an intervention provokes opposition from other actors.¹⁵ Thus, whether a certain actor maintains the requisite characteristics in order to meet the basic consequentialist moral requirement of doing more good than harm depends crucially on politics—that is, “the meeting ground of norms, distributions of power, and the search for consensus.”¹⁶ The potential agent must be sufficiently powerful, but to increase the likelihood of an effective and successful intervention, it must also possess attributes that render it a legitimate agent of humanitarian intervention.

The attributes of the agent undertaking humanitarian intervention therefore have profound implications for its ability and proclivity to alleviate human suffering, thereby offering up another moral dilemma. Is it more important for a potential intervener to be militarily powerful or maintain legitimacy as an agent of intervention in order to effectively halt the abuse of innocent persons? Certainly, there are situations in which actors, who are otherwise militarily capable, might not be the most appropriate agents of intervention. But, the adequate resolution of this moral concern depends crucially on existing power realities and how these realities relate to the perceived legitimacy of the potential agent in international society—that is, it depends on politics. The purpose of this political inquiry book is to examine the relationship among state power and the various political realities that determine the extent to which actors are considered legitimate agents of humanitarian intervention, therefore enhancing their overall ability and proclivity to minimize human suffering.

Conceptual Concerns

Humanitarian intervention is a subject about which there is much controversy and confusion. Military intervention comes in many forms, most of which are far from humanitarian, while international intervention by humanitarian aid organizations is the farthest thing imaginable from military force. Therefore, it is not surprising that humanitarian intervention is a term popularly used to designate a wide range of activities related to both armed conflict and alleviating human suffering in other countries. For this reason, it is imperative to be very clear about what this book investigates.

The definition of humanitarian intervention used in this work is

the use of military force by a state or group of states in the jurisdiction of another state, without its permission, for the primary purpose of halting or averting egregious abuse of people within that state that is being perpetrated or facilitated by the *de facto* authorities of that state.

While this definition is quite similar to many definitions of humanitarian intervention found in the literature, some may nevertheless take issue with it, or even contest the use of the term “humanitarian intervention.”¹⁷ A lengthy defense or explanation of each aspect of this definition is not intended, but a few areas of potential confusion deserve further clarification.

First, humanitarian intervention involves the transboundary use of military force and is distinct from crossing borders to provide humanitarian aid, which does not entail military force. Providing humanitarian aid involves actors crossing borders for purposes such as the delivery of food and medical relief to civilians or refugees, but does not entail a coercive aspect and is normally conducted with the consent of the target state. This activity has historically been the purview of aid organizations, typically involving one or more UN agencies like the High Commissioner for Refugees and various nongovernmental organizations (NGOs) such as Médecins Sans Frontières and the International Committee of the Red Cross.¹⁸

A second important distinction is between humanitarian intervention and the rescue of nationals. Like humanitarian intervention, rescuing nationals can involve military coercion within another state, without its permission, to rescue people from harm. The difference is that the people being rescued are nationals of the intervening state who face extreme danger in the territory of another state, the government of which is unable or unwilling to protect the endangered nationals. Rescue missions to save one’s own nationals have, at times, been referred to as humanitarian intervention, but because they are premised on the legally recognized relationship between a state and its citizens, they are more accurately characterized as acts of self-defense or even self-help.¹⁹ Humanitarian intervention, by contrast, is saving nationals of a state other than one’s own.

A more subtle yet crucial distinction is between peacekeeping and humanitarian intervention. The source of this confusion stems from the fact that both of these activities involve the deployment of foreign military forces in the territory of other states, but this is essentially where the similarities end. Peacekeeping involves the deployment of military and civilian personnel to war-torn states to “promote the termination of an armed conflict or the resolution of longstanding disputes.”²⁰ It requires a cessation of hostilities among warring factions, usually in the form of a ceasefire or peace agreement, and the consent of the state on whose territory the operation takes place. Peacekeeping must be neutral with respect to the belligerents involved, because it is essentially a form of conflict resolution whereby a nonbelligerent party engages in various confidence-building measures and assists conflicting parties in imple-

menting the terms of peace agreements they have concluded. Peacekeeping also typically maintains deterrent or defensive rules of engagement designed to ensure stability and order with the minimal use of coercion. While conducted mainly by military personnel, peacekeeping missions also involve certain nonmilitary functions, such as electoral support, promoting the rule of law, crowd control, disarming civilian agitators, and other quasi-police functions.²¹ So, whereas peacekeeping involves limited military capability, neutrality, permission of the host state and defensive rules of engagement, humanitarian intervention requires substantial military capability along with proactive or offensive rules of engagement and militarily engages one party in order to disable its capacity to cause human suffering. In short, peacekeepers are (lightly) armed mediators, whereas actors conducting a humanitarian intervention are tantamount to belligerents in an armed conflict.

A related source of confusion involves UN enforcement operations, which are distinct from peacekeeping, but may or may not be considered humanitarian interventions as defined here. Most peacekeeping operations take place under the auspices of the UN, are directed by the UN's Department of Peacekeeping Operations (DPKO) and are conducted by personnel on loan from member states—so-called UN blue helmets. UN enforcement operations are different primarily because they entail more proactive and coercive rules of engagement permitted under Chapter VII of the UN Charter. Enforcement operations are also frequently carried out by state militaries (as opposed to blue helmets under the direction of the DPKO) that have been authorized by the UN Security Council but are acting more or less autonomously. While some peacekeeping missions under the DPKO have evolved into more robust Chapter VII peace enforcement operations, such as the UN Organization Mission to the Democratic Republic of the Congo (MONUC),²² peacekeeping operations are not humanitarian interventions. The reason for this is that the blue helmets are not engaged in armed conflict in the same way as the intervening agents of a humanitarian intervention—even though their mandate is more robust than traditional peacekeeping. United Nations enforcement operations in which the Security Council has authorized states to take any means necessary (the euphemism for using force) to alleviate human suffering are humanitarian interventions. In these cases, states have essentially been granted the legal authority to wage armed conflict for humanitarian purposes. The UN Security Council has authorized humanitarian interventions of this sort in Somalia (1993), Haiti (1994), Rwanda (1994) and Bosnia (1995). Humanitarian intervention as understood here is therefore only carried out by states or groups of states (e.g., NATO or ad hoc coalitions), either with or without UN authorization. When it comes to humanitarian intervention, the United