

An Encyclopedia of War and Ethics

Preface

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Index

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populations of the Soviet Union in either a first or second strike* to deter a Soviet nuclear attack. The U.S. doctrine of massive retaliation* estimated that, should such retaliation be done, up to 350 million casualties (primarily civilian) would result. In his discussion of mutual assured destruction (MAD)*, Herman Kahn was asked how many American deaths would be acceptable under that policy, and his reply was 200 million (again primarily civilian). The practices of siege* and embargo are also forms of hostage taking, since the primary sufferers are civilians. The practices of aerial warfare* during World War II as in Dresden, Hamburg, Tokyo, and Hiroshima* and Nagasaki*, and in Vietnam* and the Gulf War*, also involved holding civilians hostage.

The taking of hostages as a way to put pressure on an enemy has been utilized also by terrorists*, in much the same fashion as was practiced in the medieval period, in order to get the release of imprisoned members or to gain ransom. Military efforts to gain the release of hostages, in the absence of a formal declaration of war*, have proved difficult. The issue of hostage taking arose at war crimes trials after World War II. In the trial, *United States v. Wilhelm List et al.*, called the *Hostage Case*, twelve generals assigned to southeastern Europe were charged with criminal disregard of the laws of war in their treatment of hostages and other civilians. In a broad sense, modern war strategies where the primary targets and casualties are civilians inevitably utilize them as hostages.

See AERIAL WARFARE; COMBATANT-NONCOMBATANT DISTINCTION; FORBIDDEN STRATEGIES; INNOCENTS; SIEGE WARFARE.

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HUMANITARIAN INTERVENTION. Assistance provided to people within a nation by outsiders without the consent of the national government. Humanitarian intervention pierces the veil of sovereignty, the basis for the integrity of nation-states in the international system. The idea of inviolable national sovereignty has served the international system well since the Treaty of Westphalia of 1648, but times have changed. There have been massive violations of human rights* by national governments, especially in this century. Also in this century, there is new international law with regard to human rights, and there are new international mechanisms for implementing and monitoring that law, especially in the United Nations* system. There is increasing acknowledgment that the doctrine of noninterference in the internal affairs of nations should be revised. The practice of nations has already moved ahead of international law in this area, as illustrated by the delivery of international humanitarian assistance without the consent of the national governments in Iraq*, Bosnia*, and Somalia.

Some writers equate humanitarian intervention with any sort of humanitarian

assistance in armed conflict, but it is more useful to take intervention to mean the delivery of assistance without consent. Some use the term humanitarian intervention to refer to the use of coercive military action to free civilians from oppressive situations, situations in which there are serious violations of human rights. In such cases, the action may be wholly military in character. Here, however, the focus is on the provision of humanitarian assistance involving such things as the delivery of food and medicine or providing temporary housing.

Some define humanitarian intervention as armed intervention for humanitarian purposes, but this does not recognize the possibilities of unarmed coercive measures such as sanctions or noncoercive assistance such as airdrops of food.

Further confusion may arise from the fact that military units are often used in noncoercive ways to deliver disaster relief. Military resources were used for the Berlin airlift in the late 1940s, but they were not used as instruments of coercion. Military resources may be used even where there is no conflict. The U.S. armed forces, for example, were used to help provide relief following floods in Bangladesh and in the aftermath of the Mount Pinatubo eruption in the Philippines.

In some cases, nongovernmental organizations have provided humanitarian assistance without consent, more by stealth than by coercion. *Médecins sans Frontières* (Doctors Without Borders), for example, specializes in delivering medical care to civilians in conflict situations, even when those in power do not agree to their providing such services. Thus, the actions of nongovernmental organizations sometimes can be viewed as a form of humanitarian intervention, even though they are not undertaken under the aegis of any official national or international body.

The situation in Iraq in 1991 is worth elaborating because it has elements of both humanitarian intervention and consent-based assistance and shows how the two can become entangled and confused. On April 5, 1991, the UN Security Council passed Resolution 688, condemning Iraq's repression of the Kurds and calling for humanitarian assistance. On the same day, President George Bush ordered the U.S. military to begin airdropping emergency humanitarian supplies to Kurdish refugees camping along the Iraq-Turkey border. On April 7, U.S. military aircraft began airdropping relief supplies for Kurdish refugees. On April 16, President Bush announced that American, British, and French troops would construct secure camps in northern Iraq for the Kurds. The humanitarian assistance provided to civilians in Iraq in April 1991 is often cited as a breakthrough representing the first time in which humanitarian intervention was internationally sanctioned. For example, Mario Bettati, a French professor of international law, said that Resolution 688 "broke new ground in international law, for the first time approving the right to interfere on humanitarian grounds in the hitherto sacrosanct internal affairs of member states." Similarly, David Scheffer, an international lawyer with the Carnegie Endowment for International Peace, said the resolution "established an unprecedented set of rights and obligations for aid agencies and the host government. In the past, UN aid agencies worked

within sovereign borders only with the consent of the host government. Resolution 688 marked a significant change in that operating procedure wherever the local government is resistant to any intervention."

The case is really not so clear. Several points need to be made to correct or qualify these positions. There have been many previous cases of humanitarian intervention, under various definitions of that term. For example, in 1979-1980, while the people of Cambodia were suffering under Khmer Rouge terror and Vietnam's invasion, the United States encouraged and paid for the provision of food and medicine across the border by nongovernmental organizations and the United Nations without the permission of the de facto authorities. In 1983-1984 the U.S. government provided extensive assistance to Afghans who remained in parts of Afghanistan not under Soviet control. Both the Afghan government and the Soviet Union complained about this intervention. Several other cases are enumerated in the literature on humanitarian intervention.

If this was not the first time humanitarian intervention had taken place, it might be argued that this was the first time that such action had international approval. Or it might seem to have been the first time international approval was given for humanitarian intervention specifically by UN forces. As a reading of the resolution itself shows, there was no clear approval of that sort. The language does not plainly authorize either unilateral or multilateral intervention for humanitarian purposes. The resolution asks that "Iraq allow immediate access by international humanitarian organizations to all of those in need of assistance." It does not say that assistance will be provided whether or not Iraq allows it.

The language of the resolution was ambiguous. On April 16, 1991, the United States, Britain, and France announced that under their interpretation of it, they were entitled to send troops to northern Iraq and establish secure encampments to provide supplies for Kurdish refugees. They then proceeded with "Operation Provide Comfort" to establish safe havens for Kurds in northern Iraq.

There was and is a great deal of opposition to humanitarian intervention of the sort suggested (though not actually articulated) in Resolution 688. In his history, *Desert Shield to Desert Storm*, Dilip Hiro points out that "Of all the resolutions on the Gulf crisis and its aftermath, resolution 688 emerged as the one which met the most opposition, with five of the 15 members voting against or abstaining." More generally, "Many Third World countries saw resolution 688 as the beginning of a process by which the Western powers, using the forum of the UN Security Council, meant to diminish their political independence and sovereignty." It may be significant that most of the commentators who hail Resolution 688 as a breakthrough in international law are from countries that are likely to do the intervening, not from countries that might be the purported beneficiaries of humanitarian intervention.

In *Pandaemonium*, Senator Daniel Moynihan (D-NY) observes that the Security Council actually justified the intervention on the basis of the questionable argument that "the massive flow of Kurdish refugees over Iraq's borders and

into Turkey and Iran had created a 'threat to the peace' and, therefore, justified further action by the Council under Chapter VII of the Charter." International lawyer Richard Gardner also points out that the U.S. government relied for legal authority on the authorization to use force to restore international peace and security and that the Security Council "at no time asserted a collective right to intervene for exclusively human rights purposes." The resolution justified intervention partly on the basis of the threat to international peace and security, and not on humanitarian grounds alone.

Resolution 688 was passed, and the action was taken after the truce in the Persian Gulf War*. The armed conflict to which this humanitarian assistance related was not the Persian Gulf War but the Iraqi government's attempts to suppress the Shia insurgency in the south and the Kurdish insurgency in the north. Neighboring Turkey and Iran were troubled by the heavy influx of refugees, but they did not threaten military action. What was the threat to international peace and security?

On April 18, Iraq's foreign minister signed a memorandum of understanding on the role of UN humanitarian centers (UNHUCs). In Hiro's account:

Baghdad welcomed UN efforts to promote the voluntary return home of Iraqi displaced persons and to take humanitarian measures to avert new waves of refugees, and allowed the UN to set up UNHUCs, staffed by UN civilians, all over the country in agreement with Baghdad, to provide food aid, medical care, agricultural rehabilitation and shelter. It promised to make cash contributions in local currency to help cover the UN's in-country costs. The arrangement was "without prejudice to the sovereignty, and territorial integrity, political independence, security and non-interference in the internal affairs of Iraq."

Thus, after April 18, Operation Provide Comfort, designed to set up safe havens for Kurdish refugees inside Iraq, was undertaken with the agreement of the Iraqi government. The agreement expired in 1992.

Humanitarian assistance was provided in the period following the Gulf War cease-fire by the International Committee for the Red Cross* (ICRC) in the south as well as the north. In September 1991, in accordance with Iraq's agreement with the United Nations, the UN High Commissioner for Refugees (UNHCR) took over the assistance programs that had been handled by the ICRC, except in the Penjwin region, where the ICRC continued to provide assistance for some 10,000 Kurdish families.

The major problematic issue in Iraq was not whether assistance would be provided, but how the different agencies would coordinate their services. The resolution did not describe any general guidelines or principles for deciding when the international community would undertake humanitarian intervention. Why Iraq? Why not other places as well?

The U.S.-British-French-Netherlands intervention to establish camps and the subsequent Memorandum of Agreement regarding humanitarian assistance were

designed to help Kurds in the north. No comparable assistance was provided to the Shia in the south or to the general Iraqi population. This is especially significant in view of the suffering inflicted on the Iraqi population as a consequence of the economic sanctions following the Persian Gulf war. The lack of guidelines for the delivery of assistance opened the possibility that humanitarian intervention would be undertaken selectively to serve political purposes.

Several conclusions can be drawn from this analysis of the Iraq case. First, resolution 688 did not plainly authorize humanitarian intervention.

Second, while humanitarian intervention was provided for a time in Iraq by the United States, Britain, France, and the Netherlands, there also was a great deal of humanitarian assistance provided by the ICRC and by the UN system under an explicit agreement with the Iraqi government.

Third, the humanitarian actions of the United States, Britain, and France were mixed with their political and military actions. There is no way to sort out the extent to which one motive or the other prevailed. As a result, these countries are open to charges of using humanitarian intervention for their own political and military purposes. A more effective separation might have been maintained by using separate, independent agents for humanitarian action. To the extent that the United States, Britain, France, and the Netherlands were concerned with ameliorating human suffering, they could have funneled more resources through ICRC and UNHCR.

Fourth, if the international community is to claim that humanitarian intervention is warranted in some extreme situations, there is a need for clear guidelines for determining when that action is to be taken, what the action is to be, and how the relevant decisions are to be made.

Fifth, too much importance has been placed on the importance of humanitarian intervention in armed conflict situations. Historically, most effective humanitarian assistance in armed conflict situations has been provided with the consent of the conflicting parties. More attention should be given to the possibilities for obtaining such agreements.

See NATIONALISM; PROPAGANDA; PROPORTIONALITY.

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