

# Humanitarian Intervention – Challenges for the International Community on the Eve of a New Century

■ Noel Dorr

## Introduction

**T**he war over Kosovo earlier this year and the events which led to it raise fundamental questions about justice and world order which merit reflection on the eve of a new Millennium. The UN Secretary General, Kofi Annan, presenting his Annual Report to the UN General Assembly on 20 September 1999 spoke of the need for “a wide debate of profound importance to the resolution of conflicts from the Balkans to Central Africa to East Asia”.

This debate is between those who believe that international legitimacy is determined by the provisions of the UN Charter and who therefore question the legitimacy of the NATO decision to resort to force without a mandate from the UN; and those who consider that, with or without a UN mandate, it was imperative

for someone to act in Kosovo to stop gross and systematic violations of human rights, amounting possibly to genocide. In the latter view, NATO was right to act on its own initiative. It would have been futile to seek authority from the UN since either Russia or China or both, would have used their veto to block any such decision.

This is an argument of direct concern to us in Ireland because of our long-standing support for the authority of the UN and our equally firm commitment, endorsed by the people in the course of successive referenda on EU Treaties, to work with our partners in the European Union towards a coherent common foreign and security policy, with a possible defence dimension. To enable Ireland, as part of that commitment, to continue to play an effective part in peacekeeping and other Petersberg tasks, we have now also negotiated an agreement with NATO for certain matters under the Partnership for Peace.

Kofi Annan posed questions to each side in this debate. On the one hand, he spoke to those who see the use of force in the absence of a mandate from the UN Security Council as the greatest threat to international order: do they believe that, if a coalition of states had been ready to act to stop the genocide in Rwanda, those states should have done nothing if they did not get an immediate authorisation from the UN Security Council? On the other hand, he spoke to those who believe that the Kosovo action opened a new era when states and groups of states can take military action outside the established mechanisms for enforcing international law: do they not see that such interventions could undermine and set dangerous precedents for the future, with no clear criterion to decide when and how they might be invoked?

The Secretary General's presentation of these issues has, in turn, opened a debate between UN member states on "humanitarian intervention". This concept has not yet been adequately defined nor have any rules to govern it been agreed. Indeed it was the absence of such internationally agreed provisions, as well as the futility, as it appeared, of looking for approval from the UN Security Council, that led NATO to act without recourse to the UN and use force to stop what seemed to be an intolerable situation in Kosovo.

The context for this discussion is set by the appalling events in Rwanda, Bosnia, Kosovo, East Timor and elsewhere. Many countries are coming to believe that there is a moral imperative on the international community to act in such cases where there is extreme suffering and gross and systematic violations of human

rights verging on genocide. The question is whether this imperative should prevail over traditional concepts of state sovereignty and non-intervention, to which many countries also hold strongly. And if a new concept of humanitarian intervention is now accepted into international law and perhaps given expression in the UN Charter, then who should be entitled to carry it out and according to which criteria and rules?

To understand the background to this debate and the difficulties, which some countries find with this new concept, it is necessary to look back briefly at the problem of relations between states and to consider past efforts to establish peace, order and a measure of justice in the international system.

## **Conflict between states**

Our present concept of the state as a sovereign entity established within territorial frontiers, claiming the allegiance of all its citizens and entitled to defend itself against outside intervention, can be said to have originated in Europe in the mid-17th century. The state is now the universal form of social-political organisation and there are nearly two hundred states in the world today.

Historically, each state has seen itself as sovereign. There was no higher authority entitled to impose order or maintain peace within the international system nor would any state accept intervention in its internal affairs.

Over the past two centuries as wars became more destructive, three major efforts were made to establish peace and order in international relations. Each followed a large-scale war which overturned the existing international system. The victors then sought to construct a new international order to replace it.

The first such effort was at the Congress of Vienna in 1815. Napoleon had dominated Europe and tried to weld its diverse states into a single French Empire. After his defeat, the victors met to re-establish a Europe of independent states. One result of the Congress was the Concert of Europe – a loose arrangement between the major powers. By occasional meetings, and in an effort to maintain a balance of power between themselves, they managed to avoid further serious disruption to the international system for much of the 19th century. Although some more limited wars did take place, no other major continent-wide war took place until the early 20th century.

The effects of the First World War reverberated throughout the 20th century and sowed the seeds of a second war in mid-century. And the world still lives with its longer-term consequences. Three Empires – Austro-Hungarian, Ottoman and Russian – disappeared. The first two were replaced by a large number of independent states in regions which are still areas of conflict today; the third by a new state, the Soviet Union which, during much of the century was locked into a worldwide ideological contention with other major powers.

## **Collective security – the League of Nations**

When the First World War ended the victors sought to build a new world order on the ruins. US President Woodrow Wilson led the effort to establish a post-war settlement. His commitment to self-determination of peoples led to the emergence of many new states in Europe and elsewhere. Wilson was deeply convinced that balance of power politics, which had helped to avert general war in the 19th century, had failed disastrously in 1914 when the elaborate systems of European alliances toppled over into war. He believed that the maintenance of future peace required a radically new approach through a system of collective security.

The concept of collective security goes beyond that of an alliance in the ordinary sense. It seeks to establish a universal alliance against war or aggression. It requires that there be a standing organisation of states and a charter or covenant which sets out the principles which are to govern their relations. Such an organisation, potentially at least, would be universal in membership. All of the states involved agree that, in certain circumstances, they will consider joint action – possibly even sanctions or the use of force – against any state which goes to war in breach of the principles which all have accepted. The charter or covenant also sets out procedures to resolve conflicts and increase cooperation between states.

In principle, the possibility of collective action by such an organisation should act as a deterrent against aggression; and where aggression does take place in breach of the charter or covenant, all other member states should be willing to act resolutely against it and, if necessary, to use force, in order to restore peace.

Critics of this approach point out that using force to maintain or restore peace is itself a paradox; and, to the extent that this principle is applied in practice, the consequence may well be to magnify a limited war into one involving the whole international community. Advocates of collective security respond that the prospect of combined action by the international community will deter those who would make war in defiance of the charter or covenant; and, if it does not, then joint and resolute action by all of the other states will quickly defeat them.

The League of Nations, established in 1919 after the First World War, was the first attempt to put these ideas into practice. Sixty-three states joined eventually but it never became universal – President Wilson, whose ideas inspired the League, could not persuade his own country, the US, to join. The League did however help to establish the idea of a universal organisation committed to the new concept of collective security. But the times were out of joint. Ideologies – nazism, fascism and communism – were strong in important states and the League was weak and faltering in face of these challenges. It collapsed within two decades, and the world was again consumed by an even more destructive war.

## The emergence of the United Nations (UN)

Already while the Second World War was at its height the Allies began to plan for a new world order for the post-war years. They did not want to link this new effort with the skeletal League of Nations, which still existed until the end of the war, but they did retain the fundamental idea of a standing organisation of states committed to the concept of collective security.

Representatives of the US, the UK, the Soviet Union and (Nationalist) China met in Washington to plan the new organisation. The Allied leaders –Roosevelt, Churchill and Stalin – reviewed their negotiations during the Yalta Summit in early 1945. They agreed on a draft Charter for the new organisation and submitted it to a wider conference of all those states which had been at war with Germany or Japan by March 1945. Some fifty states attended a conference in San Francisco where the Charter was adopted with some amendments. The UN was born on 24 October 1945.

There are three core points of interest about this second effort to establish a system of collective security.

*First*, the UN started as a wartime alliance – the Allies used the name United Nations as early as 1942. Their intention was to continue the alliance into the post-war years as an instrument of international peace and security.

*Second*, those who conceived and drafted the Charter were not academics or idealists but pragmatic hard-nosed leaders deeply engaged in total war. Since they took time from the life and death war effort to negotiate this new arrangement, and they were aware of the failure of the League, one must assume that they saw it as a serious effort to establish a system of collective security to deal with the problem of conflict between states in the post-war era.

*Third*, they envisaged the UN as an organisation of sovereign states, primarily concerned with inter-state relations. A Charter provision, Article 2.7, explicitly precluded the organisation from intervening in matters which were essentially within the domestic jurisdiction of any state. The Charter, nevertheless, was imbued with ideas drawn from liberal thinking in the US at the time: it opens with the phrase “*We, the Peoples of the United Nations*”, and it contains various references to self-determination, human rights, social progress and development. The drafters may perhaps have seen these references as largely rhetorical but they helped to build into the Charter a tension which, as new states and new problems emerged, allowed for more flexible interpretations and development well beyond a strict constructionist view of Article 2.7

The Charter set out fundamental principles to govern relations between states and procedures to stop conflicts between them. It provided for two major political organs – a General Assembly where all member states are represented and which can debate and make recommendations; and a Security Council which initially comprised eleven member states (now fifteen). The Security Council has authority to take forceful action – including mandatory sanctions and the use of armed force, in order to maintain international peace and security.

Under the Charter, all member states confer primary responsibility for international peace and security on the Council. They all agree that, in carrying out that responsibility in

accordance with the Charter, the Council acts on their behalf and that they will accept and carry out its decisions. This is a remarkable innovation in international life where, historically, the principle of the sovereignty of individual states has been paramount, and no state could be bound by a decision to which it had not consented.

The Charter outlaws the use of force in international life except in two cases: where the Security Council, having formally “determined” that there is a “threat to international peace and security”, authorises or orders the use of forceful means to preserve or restore peace; and in self-defence by a member state subject to armed attack, but then only until the Security Council has taken action.

The Charter is admirable as a code of conduct for relations between states; and it contains many provisions which, if fully observed, would be conducive to more justice in international relations. Its primary concern, however, is the maintenance of international peace and security. It has been said that the formal role of the Council as such is less that of the judge, who renders justice, and more that of the policeman whose first concern is to stop the fighting if a breach of the peace has occurred. There is a judicial organ associated with the UN – the International Court of Justice in the Hague – but member states have tended to be reserved in the extent to which they have recourse to it.

## **The veto in the Security Council**

The four major powers of the day – the US, the UK, the USSR and China – in presenting the Charter they had drafted to the San Francisco Conference, stipulated that they, together with France, would be permanent members of the Security Council. The other members were to be elected by the Assembly for two years at a time (as Ireland was for 1962 and again for 1981-82). Furthermore, they insisted that each of the five permanent members would have the right to veto any proposal of substance coming before the Council. Despite the opposition of some smaller states, these provisions were carried into the Charter as adopted and they continue to govern the work and decisions of the Council to this day.

A consequence of this special status granted to the five permanent members is to limit the extent to which “collective security” can apply in practice. Since a negative vote by any one of

the permanent members prevents the Council from taking a decision, these five powers are effectively insulated against the working of the principle in any case in which they themselves are involved.

This is not fair. But it is perhaps realistic in the world as it is, where all five permanent members are nuclear powers, that we live with certain compromises. Collective security, properly implemented, may be the best principle so far devised for the maintenance or enforcement, of peace in the disordered world of international relations. But it is not pacific. It ultimately depends on the possible use of force, albeit carried out in the name of the international community. The Gulf War, although authorised by the Security Council and directed to upholding the Charter, caused a great deal of suffering and death. But, devastating as such a war was, it was at least limited to a country or a region. If there were no veto, and the Security Council had been free by majority vote to decide on collective action against the Soviet Union, for example, because of its actions in Hungary in 1956 or in Afghanistan in the 1980s, then the consequence could well have been the unthinkable - a worldwide nuclear war.

So it seems that, while this new structure of international legitimacy established by the Charter of the United Nations is a great improvement on anything which preceded it, we must still live with this degree of selectivity. The Council can never act against one of its permanent members. But what is much less acceptable is that each of the five is in a position to use its veto, not only to block action against itself, but also to block a Council decision on any matter of substance. Not long ago, China, for example, vetoed a proposal in the Council to renew the mandate of a modest UN peacekeeping force in Macedonia – solely, it appears, because Macedonia had established diplomatic relations with Taiwan. All five permanent members have also, at one time or another, used their vetoes to block the election of good candidates who might otherwise have been elected to the post of Secretary General – either because they did not like the person in question or because they wished instead to promote a candidate of their own choosing.

Virtually all other member states outside the permanent five regard this use of the veto, as inappropriate. But there is little that can be done about it directly. Any substantial change would require a Charter amendment but any amendment would require the agreement of all five permanent members.

# The development of the UN

The idea that the wartime Allies would continue their cooperation into the post-war years proved illusory. The alliance quickly gave way to Cold War confrontation. Within a decade the world was split between East and West, each armed to the teeth with thermo-nuclear weapons. By 1955, a Third World was beginning to emerge, as the Bandung Conference gave birth to what became the Non-Aligned Movement.

For much of its first half century, the Cold War fault line ran right through the Security Council. The extensive use of the veto, particularly, but not only, by the then Soviet Union, prevented the Council from functioning in the way the Charter intended. It was not, however, wholly ineffectual. Following the 1956 Suez crisis, a new concept of peacekeeping began to evolve, based on general principles rather than on specific Charter provisions. Unlike peace enforcement this did not depend on the use of coercive force. Rather it involved the positioning, with their consent, of a lightly armed force between warring parties to a conflict. Ireland has participated in many such forces over forty years and has developed some expertise in this area.

The UN as an organisation and a system of legitimacy, which super-imposes a rule of law on the relative anarchy of international relations, is now more than fifty years old. Its membership has expanded nearly four-fold. It is now truly universal - the first such universal organisation of states in history. It is the centre of a family of more specialized organisations which promote international cooperation; it has set norms for many areas of international life; and its Charter is universally accepted - even if not always observed - as the code of conduct for relations between states.

Over its history it has also provided the framework for decolonisation and the transition to independence of more than one hundred states. During that period, each emerging state aspired to UN membership as the symbol and guarantee of its newly won independence. Each committed itself to the Charter as the fundamental rule of law governing international relations - and thereby accepted the prohibition on the use of force except under Security Council authority and in the special case of self-defence against armed attack until the Council can act.

In all these ways the United Nations has been a success. But the Cold War divisions, in conjunction with the veto accorded to each of the five permanent members, meant that, for the first

forty-five years, the core organ of the collective security system, the Security Council, for the most part did not function as originally intended.

## After the Cold War

When the Cold War ended at the start of this decade, it seemed that the Security Council would at last begin to carry out the role which the Charter envisaged. The US was now the sole superpower; its Cold War opponent, the Soviet Union, had disappeared and Russia, the successor state, which looked to the West for economic support, had every interest in maintaining good relations with the US. China, too, was relatively cooperative on some major issues. The Council did, for a time, become much more active in addressing conflicts; the veto was seldom if ever used and at one point the peacekeeping forces established under authority of the Council in various situations of conflict around the world numbered nearly 80,000.

But it also became evident in these years that it was over-optimistic to think of the Council as an effective and impartial world authority capable of taking firm and resolute action in all cases of international conflict. Still less was it what many ordinary people would have wished it to be— an authority with the capacity to act decisively on behalf of the international community in cases where extreme suffering was being inflicted systematically on whole populations within the borders of a member state.

There are several reasons for this. For one thing it is not easy to mobilise a UN force. The UN disposes of no forces of its own. It depends on member states to provide them. Sometimes the prompt dispatch of a relatively small peacekeeping force could make all the difference when a conflict is in its early stages. But seeking contingents from member states and assembling a suitably equipped force can be a slow and sometimes difficult process.

Enforcement action, as distinct from more limited peacekeeping operations, requires the involvement of major powers. It may have to be accepted, however, that it is unrealistic in practice to expect member states to provide armed forces for direct use by the Council in enforcement actions as distinct from peacekeeping. The US, for example, will not agree to put contingents of its forces under direct UN command. Instead, it seems likely that where it decides on enforcement action the

Council will continue the practice of authorising the use of armed force by such member states as are willing to act.

This means that, as in the Gulf War, the Security Council, having authorised the action then has no further direct control over it. It is, rather, those governments providing forces who are responsible for their direction and control. Naturally, governments are reluctant to send their soldiers into danger and when they do, they want to ensure their safety as far as they can. For this reason they will be inclined to use overwhelming force to achieve their objectives, as happened in the case of Desert Storm – a UN-authorised operation which showed little of the moderation which might have been expected of an action carried out in the name of the UN.

An alternative for the Council would be to authorise the use of force by a particular regional organisation or alliance such as NATO or the Organisation of African Unity, as it is empowered to do under the Charter. In effect, this would mean subcontracting the task to the appropriate regional body acting under a mandate from the Council. Here again, the Council itself, having authorised the action, would retain no direct control over its implementation or over the means used to achieve the objective.

A second reason for the disappointing failure of the Security Council to play the role of world authority for the maintenance of international peace and security is the failure of permanent members of the Council to use it and to give it full support. After a short period in the early 1990s when it was veto-free, the threat and use of the veto has crept back into the Council. For example in late 1998 and early 1999, Russia made it clear that it would use its veto to block forceful action over Kosovo.

## **The role of NATO**

A more serious problem in the long term, because of its dominance in world affairs, may be the attitude of the United States. A view which seems to be gaining ground in the US looks to NATO rather than the UN as the primary organisation for the maintenance of international peace and security. This approach does not explicitly reject the authority of the Security Council or directly challenge the UN Charter as the framework for international legitimacy. But it is impatient with the constraints

which the cumbersome, and sometimes obstructive, UN procedures seem to impose.

For one thing, because of the veto, it is difficult for the Council to agree on decisive action; and where relations between the US and Russia or China deteriorate, as they have done in the past few years, the two latter countries are more apt to use the veto to assert their position as major powers. For another, there are influential figures in the US Congress who have a deep suspicion of the UN and fear it as the embryo of a world authority. Their political influence has, for some years now, prevented the US from meeting its legal obligation to pay its assessed contributions to the UN budget in full; and they oppose any suggestion that American forces might serve under UN command.

NATO, on the other hand, has been an organisation in need of a role. For nearly half a century it was a defensive alliance against possible aggression from the Soviet Union. Now that this threat has disappeared, US policy seems directed to developing a new and enlarged role for NATO as a political/security organisation of democratic states which may act even outside the territories of its member states. This is based on the belief that NATO enlargement will help to stabilise Central and Eastern Europe and guarantee democracy there. It also sees NATO as more effective in taking forceful action and easier to work with than the UN. NATO has an integrated military command; its member states have much in common in their weapons systems and it has years of common planning and training exercises behind it.

It is true that NATO acts by unanimity. In principle any one of its nineteen member states could block a decision. But this rarely if ever happens. NATO is fundamentally unlike the UN Security Council in that its members are, broadly speaking, like-minded - it is not necessary to secure the acquiescence of Russia or China before taking a decision. In practice, the overwhelming power of the United States gives it a dominant position. The other eighteen member states, concerned to maintain US involvement in an organisation which guarantees their own security, seem readily to accept and follow US leadership.

NATO has already moved well beyond its original role as an alliance for defence. In recent years it has used force in actions beyond the borders of its member states. In Bosnia this was done in coordination with the United Nations and under its authority. In Kosovo NATO acted alone without seeking any mandate from the UN Security Council.

# The European Union: towards a common defence?

A new approach may also be emerging in the thinking of Western European countries and in the aims and aspirations of the European Union. The EU has set itself to develop an effective common foreign and security policy which will lead to a common defence policy and ultimately to a common defence. There are some things which complicate the issue: the partial overlap between NATO membership and membership of the EU; the existence of neutral countries within the EU; the concern of many NATO countries to maintain US involvement in European security; and the reliance of the European members of NATO (who constitute the Western European Union, the WEU) on so-called military assets which only the US can at present provide. It looks, however, as if those involved are beginning to find a way through these difficulties. Europe will have a possibility of autonomous action in defence matters but there will still be a close link with NATO.

This ambition of the European Union to work towards a common defence policy does not in itself mean any rejection of international legitimacy as established by the UN Charter or turning away from the system of collective security centred on the Security Council. Indeed the provisions of the EU treaties which set out the objectives of the common foreign and security policy speak at several points about action in conformity with the principles of the UN Charter.

This is a qualification which Ireland, in particular, was concerned to see included in the text. Furthermore, the use of the word defence, as in the phrase a common defence policy, suggests action within the provisions of the Charter. Article 51 recognises that where an armed attack occurs there is an inherent right of individual or collective self-defence until the Security Council has taken the necessary measures. If the right of collective self-defence is inherent, then there is obviously a right to prepare in advance for such defence.

But a new theme in relation to the development of a common EU defence policy seems to have emerged strongly in the public debate over Kosovo. This does merit closer reflection since it may constitute a new approach to questions of international order within the European region. This is the assertion, now frequently heard, that the European Union should go beyond defence

properly so called – it should provide itself with the capacity, where necessary, to take forceful action outside its own borders as NATO did in Kosovo. In some cases this would be done under the authority of the UN Security Council, which seems likely, increasingly, to sub-contract peacekeeping and peace enforcement to regional organisations. However, there may also be an implication that the EU should be able and willing to take military action without Security Council authorisation if it judges it right to do so.

Some years ago, in the course of continuing controversy in Ireland about our neutrality, it was alleged that the Commission President Jacques Delors had said or implied that the EU might at some time in the future have to engage in so-called resource wars. No one has been able to trace such a statement and it seems quite unlikely that the EU, which is still faltering in its efforts to develop a coordinated foreign policy, would ever move in that direction.

But it is possible to understand the idea of a Union able and willing to use force outside its own borders in a somewhat more benign way. Many people in Europe – and many in Ireland – felt that the EU should have been capable of acting forcefully to end the atrocities in Bosnia and more recently in Kosovo, and indeed that it was its responsibility to do so even if UN authority for action could not be obtained. They deplore the fact that Europe is not really capable of acting on a matter of this kind within the European continent; and they want to advance the day when it will have the military capacity to do so.

This approach is to be distinguished from a wish to establish dominance as major powers might have sought to do in an earlier age. Rather it is based on the realist view that, in international relations, power, whether that of a single state such as the US or that of an increasingly integrated Union such as the EU, carries with it a corresponding responsibility to contribute to world order and stability, at least in the immediate region. Combined with this is a strong moral component which is driven by revulsion at the appalling events which TV images have conveyed so graphically.

It is understandable in face of the atrocities in Bosnia or in Kosovo, that this idea should gain ground. Most decent people shared the feeling that something had to be done. Many, recalling the horrors of the Nazi concentration camps in Europe in the mid-20th century, would go farther and say that Europe, by which they mean the European Union, has a special moral responsibility to act forcefully to ensure that such things will

never happen again on this continent. As Hugo Young, the respected columnist of *The Guardian* wrote in his column of 18 May 1999: “[The disinclination of the US to assume world leadership]... can only drive Europe towards greater common purpose of her own, with the collective means and strategy to insist on minimal morality within the continent’s frontiers.”

Here there is no mention of the UN. It rather seems like a fairly direct assertion that the EU should itself be willing and able to enforce basic moral standards, not just on its own member states but also on other countries of the continent. This argument - that there is a moral imperative on Europe to act to stop atrocities such as those in Bosnia and Kosovo - is greatly reinforced if the world authority and system of legitimacy, the United Nations, is powerless to act.

## **Limitations on UN action in internal conflicts**

Why can the UN not act in such cases? At times, of course, UN inaction is due to the difficulty of getting agreement in the Security Council where each of the five permanent members has a veto. But even where such agreement has been achieved, it can also be difficult to ensure that the means necessary for action are provided.

Apart from this there are limitations inherent in the Charter itself, which inhibit or prevent the Security Council from dealing with conflicts internal to a single state. Some of the worst atrocities of recent years have occurred in civil wars or in states, which have collapsed in on themselves. But the UN structure is that of an organisation of states, concerned primarily with averting or ending international conflicts.

For many member states Article 2.7, which precludes intervention in the internal affairs of member states, remains of central importance. Among the most committed to this view are two permanent members of the Security Council, China and Russia. Each has a veto and each has its own internal problems, which make it reluctant to establish a precedent for international intervention. But it must be said that the other permanent members, and indeed, to some degree every member state, would probably invoke the Article if the UN showed any

disposition to intervene, against their wishes, in matters which they considered to be their own internal affair.

If Article 2.7 were to be strictly construed, it would be virtually impossible for the Security Council to take action to stop atrocities, however appalling, within the borders of a member state. However, it can sometimes be argued that such events threaten regional stability as refugees flood across international borders. In such a case, action by the Council has been justified on the grounds that there is a threat to international peace and security – although sometimes this argument is a bit strained, not to say specious. It is also true that international law is developing in other respects and that the Genocide Convention, for example, could provide a basis for international action to stop the slaughter in such cases.

It remains, however, that the UN Security Council, which many people look to as a world authority, is severely constrained by Article 2.7. This means that, simply because they happen within the frontiers of a state, the Council can be powerless to act in face of actions which cause extreme suffering to large populations and are an outrage to the very concepts on which the United Nations is based. This is the reason why many ordinary people, in Ireland and elsewhere, who strongly support the UN, find it wanting; and it is this which impelled the countries of the NATO alliance to act in Kosovo without UN authority earlier this year.

## **NATO's action in Kosovo**

What is to be said of this action by NATO? To the extent that it sought to avert great human suffering, it is difficult to say that the decision to act was morally wrong although NATO's use of force itself caused much suffering. Its prudence has, however, been questioned as well as the extent to which its objectives might have been otherwise achieved. What appeared to be a lack of proportion in the means used has also been the subject of criticism.

But, even if, taken in isolation, such an intervention may seem morally justified in a particular case, there is also reason for serious concern at the damaging effect that even one such action may have on what Kofi Annan has called *the imperfect, yet resilient, security system created after the Second World War* – that

is the United Nations. Certainly if there were to be a series of such actions – if NATO or the EU were to feel free to use force in other similar cases on their own initiative and without a Security Council mandate – then other groups of states might well feel entitled to do the same. The result would quickly be that the whole fabric of law and legitimacy which has been built up through the United Nations since the Second World War could be irretrievably damaged.

Is there any way to reconcile what seems to be a clear moral imperative to act in face of gross atrocities with the structures of international legitimacy? That is the focus of the present debate about humanitarian intervention.

## The new world “new wars” of the 21st century

Certainly, as the new Millennium opens, it is evident that the world has changed greatly since the UN was founded. Faced with globalisation in many fields, we now have more need than ever of a recognised and effective world authority such as many people want the UN to be.

World population at six billion has doubled in the last fifty years. It may double again over the early decades of the new century. The world will then have five times as many people as at the start of the 20th century. Since 1945 the global economy has grown more than in all of human history before then.

We now speak of a global economy and life is better for much of the world’s population. But it is still the case that 1.3 billion people live in absolute poverty. Taken together, 14 countries with about 12% of the world’s population have 64% of its income. Everywhere women are over-represented among the world’s poor, displaced and refugee populations. At the same time environmental degradation, depletion of the earth’s resources and loss of its bio-diversity pose challenges to the planet itself and may mean that wars in the new century are over basic resources, including water.

Moreover, since 1945 the world has had to live with a new and frightening possibility with no precedent in all of human history – the possibility that nuclear war could destroy virtually all life on the planet. This danger may have receded somewhat since the

Cold War ended but there are still tens of thousands of nuclear weapons in existence and a number of states are working to acquire nuclear weapons capability.

Hence the need for humanitarian intervention may grow rather than recede. Of particular relevance to the issue of humanitarian intervention is the advent in recent years of a new type of organised violence in many countries. Mary Kaldor<sup>1</sup> describes this as “the new war”. These new wars

involve a blurring of the distinctions between war (usually defined as violence between states or organized political groups for political motives, organized crime (violence undertaken by privately organised groups for private purposes, usually financial gain) and large-scale violations of human rights (violence undertaken by states or politically organised groups against individuals).

Kaldor argues that these new wars have to be understood in the context of globalisation as they epitomise

a new kind of global/local divide between those members of a global class who can speak English, have access to faxes, e-mail and satellite television, who use dollars or deutschmarks or credit cards, and who can travel freely, and those who are excluded from global processes, who live off what they can sell or barter or what they receive in humanitarian aid, whose movement is restricted by roadblocks, visas and the cost of travel, and who are prey to sieges, forced famines, landmines etc.

These wars, which are usually internal to states, or which occur where states have collapsed, are “about identity politics in contrast to the geo-political or ideological goals of earlier wars.” By identity politics she means the claim to power on the basis of identity labels, which tend to be exclusionist (Croat, Serb, Bosnian, Hutu or Tutsi and so on) and which often relate to “an idealised nostalgic representation of the past.” Such groups seek to equate “nation” with “state” in a way which deals harshly, and often inhumanly, with internal groups which do not belong to the nation. She goes on to describe the new wars more fully:

[They] are ‘globalised’ wars. They involve the fragmentation of the state. Participation is low relative to the population both because of lack of pay and because of lack of legitimacy on the

part of the warring parties. There is very little domestic production, so the war effort is heavily dependent on local predation and external support. Battles are rare, most violence is directed against civilians, and cooperation between warring factions is common.

Her account of these new wars describes very well what has happened in Bosnia, Kosovo, Somalia, Angola, Sierra Leone and many other places over this past decade. There has been enormous human suffering and unspeakable atrocities among civilian populations – most notably perhaps in Sierra Leone. Despite the heroic efforts of the aid agencies, the record of the international community in dealing with these conflicts and in ending these atrocities is poor: in some cases the Security Council has been blocked by a veto or the threat of a veto; in other cases it has felt precluded from acting because the conflict, however horrifying, had to be categorised as internal rather than international; in a few cases the Council has acted but sometimes the actions it authorised have been poorly judged and inadequately funded and supported.

## The debate on humanitarian intervention

The debate on how to deal more effectively with such problems by working out new norms and new procedures for humanitarian intervention has only just begun. It will be long drawn out and difficult since many states, including some who enjoy veto rights in the Council, are strongly attached to the traditional principle of non-intervention expressed in Article 2.7 of the Charter. They will be reluctant to abandon it in favour of a new right of intervention in case that new principle might some day be turned against them. States of the so-called “Third World” have reason to be particularly wary of intervention for humanitarian reasons. Such a phrase carries too many echoes of another era when phrases such as manifest destiny, *mission civilisatrice* and the white man’s burden were a cloak for the imperial and colonial ambitions of the West.

What is interesting in these early stages of the debate, however, is that, despite the good reasons they have for wariness, a number

of Third World countries are prepared to consider how far a new principle, which would allow for humanitarian intervention in certain cases and according to certain rules, might be developed. In part this is due to a recognition that interventions such as that in Kosovo do happen; that they are likely to happen again from time to time; and that it is better that there be rules to cover them built into the structure of international law. In part, too, it is due to the fact that outrage at the gross atrocities committed in some internal conflicts is widely shared in Asia, Latin America and Africa no less than in the West.

## Core challenges for humanitarian intervention

Even if the concept of humanitarian intervention becomes generally accepted, however, it will not be easy to work out agreed norms and procedures to determine when and how it is to be implemented. Nor, if amendment of the UN Charter is required, will that be easy to achieve. However, four core issues will have to be addressed in debates on humanitarian intervention.

The *first* is the criteria to be applied in judging that it is right and necessary for the international community to authorise humanitarian intervention in a particular case. Such an action should not be undertaken simply because of violations – even substantial violations – of human rights. That is better left to established international procedures for the promotion of human rights. The threshold for “intervention” in the sense referred to here should be set much higher. It should take place only where there is systematic killing or ethnic cleansing; or where there is a gross and continuing violation of the rights of a whole population.

A *second* issue is the kind of intervention, which would be permitted, and how it is to be implemented. There would probably need to be provision, under Security Council authority, for a continuum of possible actions ranging from sanctions of various kinds and intensity to the use of force. This point in turn raises many questions relating to the proportionality and the likely effectiveness of the action to be taken: who is to undertake it and when and in what circumstances it is to end.

There is also a need to consider a very great dilemma: where a regime such as that in Iraq treats a whole population in an

intolerable way, any forceful intervention – whether by way of sanctions or the use of military force – is quite likely to inflict further suffering on the very population it is intended to help, while the rulers remain largely unaffected.

A *third* point is the difficult issue of selectivity. One Kosovo, being in Europe, is likely to attract more attention than many Sierra Leones. And yet, some measure of selectivity is almost inevitable. What if a major nuclear power such as Russia or China is involved? Action will have to be discriminating in the good sense of that word. Criteria close to those which apply to just wars may have to be considered. Is it likely that the action taken will be effective? Will the positive results, which are likely to be achieved, outweigh the damage which may also be caused?

The *fourth* challenge is how to ensure that where humanitarian intervention is fully justified, it is not blocked by a veto by a permanent member of the Security Council. This will be difficult to achieve as no permanent member will easily give up or limit the veto right it has exercised without restriction for more than fifty years.

A Charter amendment to remove the right of veto cannot pass without the agreement of all five permanent members. This is most unlikely. But it may be possible for the rest of the UN membership – all 183 other states – to put the five permanent members under more effective pressure than hitherto to agree to some voluntary limitations in the use of the veto as part of an overall package for the reform and re-vitalisation of the Security Council.

This analysis highlights difficulties in reaching any agreement on the rules and criteria governing humanitarian intervention. While the debate is fraught at times, at least, thanks to the UN Secretary General, it has begun. Heads of state of most UN member states are expected to attend a special Millennium Summit in New York next September. The theme is likely to be “The UN of the 21st century”. This could be an occasion to take the debate forward in the hope that eventually it will be possible to enlarge the fabric of international law to accommodate humanitarian intervention when required. The legacy of conflicts and human suffering these have given rise to as the 20th century ends must not be allowed to become the inheritance of the 21st century.

### Footnote

- 1 Mary Kaldor, *New Wars and Old Wars; Organized Violence in a Global Era*, Policy Press, Cambridge, 1999.