

# HUMANITARIAN INTERVENTION: HELP TO YOUR FRIENDS AND STATE PRACTICE

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I should like to address primarily the question of justification for intervention. I start with a proposition that I think we are all agreed upon: intervention is *prima facie* unlawful in internal conflict. In short, it must be supported by one or another of a cluster of justifying principles. I should like to consider two of those principles that Professor Moore touched upon: the first is the principle of humanitarian intervention, and the second is the matter of assistance at request, that is to say, the question of a little help from one's friends.

First, let us consider the question of humanitarian intervention in internal conflicts. The argument that intervention is justifiable on humanitarian grounds is quite simply not on. It is not on in terms of the black letter rules of the relevant international documents; it is not on in terms of state practice; and, it is not on because it is bad policy.

Let me start with the black letter rules. Professor Moore mentioned in passing article 2, paragraph 4, of the United Nations Charter, which provides that all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations.<sup>1</sup> Professor Moore also made the point that if one is searching for ambiguity in that language, ambiguity that might perhaps justify the doctrine of humanitarian intervention, one can seize upon the words "against the territorial integrity or political independence of any state" and argue that humanitarian intervention is not such an activity. It seems to me that the preparatory work of the Charter belies such an interpretation. Those words were not meant to leave a loophole of that nature.<sup>2</sup> Furthermore, if one reads the General Assembly statements on the subject, the Decla-

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<sup>1</sup> U.N. CHARTER art. 2, para. 4.

<sup>2</sup> See, e.g., I. BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 265-71 (1963).

ration on the Inadmissibility of Intervention in the Domestic Affairs of States (1965),<sup>3</sup> the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (1970),<sup>4</sup> and the Definition of Aggression (1974),<sup>5</sup> the black letter rules again are quite clear. They do not support a doctrine of humanitarian intervention.

One may, of course, discount black letter rules as simply utterances on symbolic occasions which are not to be taken seriously. I turn, therefore, to the question of practice. Tom Franck and Nigel Rodley's analysis of the 19th and 20th century cases of so-called humanitarian intervention completely demolishes the argument that state practice supports humanitarian intervention.<sup>6</sup> One might also mention in this context the two most recent cases on which an argument has been based for a doctrine of humanitarian intervention: Uganda and Cambodia. It is important to note that in neither of those instances did the intervening powers rely upon a doctrine of humanitarian intervention to support their activity; Tanzania made no such claim with respect to its invasion of Uganda, and Vietnam made no such claim with respect to its invasion of Cambodia.

Further, in the Cambodian conflict, our side, that is to say, the United States and the People's Republic of China, has expressly taken the position that Vietnam was wrong in its actions. We have done this by support for the Pol Pot regime in the retention of its seat at the United Nations.<sup>7</sup> Nothing could be a clearer condemnation of any notion of humanitarian intervention than our diplomatic support for the butcher of three million people who were deposed by the Vietnamese.

Indeed, in looking at the literature, the only recent instances that I could find of some expressed reliance on doctrines of humanitarian intervention by an intervening government were the somewhat half-hearted claims by the United States in the Dominican Republic in 1965<sup>8</sup> and by Indonesia in its shabby invasion of East Timor in 1975.<sup>9</sup> In the Dominican Republic the argument

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<sup>3</sup> G.A. Res. 2131, 20 U.N. GAOR Supp. (No. 14) at 11, U.N. Doc. A/6014 (1965).

<sup>4</sup> G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

<sup>5</sup> G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc. A/9631 (1974).

<sup>6</sup> Franck & Rodley, *After Bangladesh: The Law of Humanitarian Intervention by Military Force*, 67 Am. J. INT'L L. 275 (1973).

<sup>7</sup> See N.Y. Times, Oct. 14, 1980, at A3, col. 1.

<sup>8</sup> Franck & Rodley, *supra* note 6, at 287.

<sup>9</sup> Clark, *The "Decolonization" of East Timor and the United Nations Norms on Self-*

was, of course, belied by the disproportionality of the actions by the United States.<sup>10</sup> In Timor, so-called humanitarian intervention was combined with a spurious invitation from a non-government and was factually unsupportable since the internal fighting, itself engineered by Indonesia, had ceased with the victory of the Fretilin forces long before Indonesia intervened.<sup>11</sup> Humanitarian intervention was a thin smoke screen for aggression and annexation.

The Indonesian example demonstrates that it is not just the United States, the USSR, or other Big-Power aggressors who can use humanitarian intervention as a pretext for unlawful uses of force. It is available to third world aggressors also. To come to the policy question and put it bluntly: humanitarian intervention is so blatantly open to spurious claims that it should not be countenanced.

The second matter is the question of a little help from one's friends. Professor Moore mentioned in this context article 51 of the Charter, which refers to self-defense against an armed attack that occurs against a Member of the United Nations. I think we are probably agreed that the black letter of the Charter does not permit assistance, since an internal conflict probably does not come within the notion of "armed attack" as understood by the founding fathers of the United Nations. The question is what kind

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*Determination and Aggression*, 7 YALE J. WORLD PUB. ORD. 2, 40-42 (1980). India's humanitarian intervention claims with respect to Bangladesh were in the half-hearted category also. In fact, they seem for the most part to have been foisted on India by enthusiasts of the doctrine. It has been asserted that "with the exception of some vague and controversial allegations of self-defense by Indian spokesmen, India itself has not tried to justify its intervention in East Pakistan on legal grounds. Specifically, she has not appealed to the doctrine of humanitarian intervention." Fonteyne, *The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter*, 4 CAL. W. INT'L L. J. 203 (1974). See also INTERNATIONAL COMMISSION OF JURISTS, THE EVENTS IN EAST PAKISTAN, 1971 at 96 (1972): "It must be emphasized that humanitarian intervention is not the ground of justification which India has herself put forward." Nevertheless, the Commission concluded: "[W]e consider that India's armed intervention would have been justified if she had acted under the doctrine of humanitarian intervention, and further that India would have been entitled to act unilaterally under this doctrine in view of the growing and intolerable burden which the refugees were casting upon India and in view of the inability of international organizations to take any effective action to bring to an end the massive violations of human rights in East Pakistan which were causing the flow of refugees." *But see* Franck & Rodley, *supra* note 6, at 276 (quoting Indian statements in the Security Council which seem to make an humanitarian intervention claim wrapped up in a claim that India was assisting in the decolonization process, another dubious claim for using force in someone else's territory).

<sup>10</sup> Franck & Rodley, *supra* note 6, at 287 & n. 52 (most deaths occurred after intervention).

<sup>11</sup> Clark, *supra* note 9, at 7-8.

of analogies might one draw from the rules of article 51? I think all the previous speakers are agreed that if there ever were normative rules specifically dealing with the question of assistance upon request, they have long since lost their normative quality. What we are talking about is developing new rules and developing some kind of coherent policy to support these rules. I would like to suggest in this context—and again I think that Professor Moore made the point—that it is crucial to refer to the kinds of case studies where the question has arisen, and to try to deal with ways of responding to those kinds of cases. I think, for example, of the problem of what to do about Czechoslovakia (which after all was justified by the USSR as a case of helping a friend) and of Afghanistan, to which several references have been made.

Before coming to this colloquium, I examined my own eclectic files to see if I could think of one or two examples that nobody else would mention. Indeed, I have three that no one else has mentioned, so far at least. The first of them involved a request to the New Zealand government. I think I have one of the few copies of the relevant documents in captivity outside the New Zealand Ministry of Foreign Affairs. They consist of an exchange of letters between a gentleman named Dr. Quat and the then Prime Minister of New Zealand, Mr. Holyoake, not so affectionately known as Kiwi Keith.<sup>12</sup> I do not know how many of you remember Dr. Quat, but for a period he was in control in Saigon. In 1965 a letter came under his name to New Zealand asking for assistance. The letter made reference to the Southeast Asian Treaty Organization (SEATO) Treaty. I have little doubt that Dr. Quat's letter was drafted either in Washington or in the United States Embassy in Saigon. Certainly, the pressure on New Zealand to help its friends was really pressure to help the United States rather than the beleaguered Dr. Quat. It seems to me that one probably does not want to devise a rule to support that kind of activity. Secondly, I found in my files the invitation extended in November 1975 by four minor political parties in East Timor to their Indonesian

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<sup>12</sup> Correspondence between the Prime Minister of the Republic of Vietnam, Dr. Phan Huy Quat, and the Prime Minister of New Zealand, the Right Honourable Keith Holyoake, concerning the offer of New Zealand combatant troops for service in the Republic of Vietnam. (These documents, printed by the New Zealand Government Printer in 1965, are set up like publications in the New Zealand Treaty Series or Parliamentary Papers but do not bear any Treaty Series or Parliamentary Paper numbers). For the way in which the Australian Government foisted *its* assistance on an unwilling Doctor Quat, see M. SEXTON, *WAR FOR THE ASKING: AUSTRALIAN VIETNAM SECRETS* (1981).

brothers to come in and save them.<sup>13</sup> The four parties represented only a small percentage of the population. That letter was probably drafted in Jakarta. The third situation is one where the good guys and bad guys are not so clear. The Republic of Vanuatu, the former New Hebrides, asked Papua New Guinea in 1980 for assistance to deal with the secessionist movement in Espiritu Santo.<sup>14</sup> You will recall that the New Hebrides was a French-British condominium known to the locals as a "pandemonium" because of the way it worked from time to time. As the colonial powers departed the scene, the place looked seriously as though it was going to come unstuck. This left the new government in the very difficult position of having to request the colonial powers to do something about it at the last minute. France and Britain could not agree sufficiently to do something, so it was necessary for Vanuatu to ask its neighbor Papua New Guinea to engage in a little Melanesian solidarity and provide assistance. Now I think that most of us would agree that the Vanuatu situation would have been much better handled through the United Nations or regional auspices.

The bottom line of all this is a policy question. The notion of assisting one's friends is open to cynical manipulation. The challenge is to develop a prophylactic rule which will prohibit actions in support of either faction. I would like to mention in this context, and in conclusion, a proposition put forward by my distinguished colleague, Tom Farer, some years ago in a wonderful article about "Harnessing Rogue Elephants."<sup>15</sup> Farer suggested that we develop a rule that would legitimate assistance short of tactical military support, either to incumbents or rebels, but that would prohibit absolutely the commitment of combat troops, battlefield advisors, or volunteers, no matter how few or how negligible their effect.<sup>16</sup> I would like to leave you with that thought as a possibility for the development of a workable rule in this area.

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<sup>13</sup> Text annexed to letter dated December 4, 1975, from the Permanent Representative of Indonesia to the Secretary-General, 30 U.N. GAOR C.4 (Agenda Items 23 & 88) at 4, U.N. Doc. A/C.4/808 (1975).

<sup>14</sup> *Vanuatu: May 1981 Be The Year of National Reconciliation*, PAC. ISLANDS MONTHLY, Feb. 1981, at 13.

<sup>15</sup> Farer, *Harnessing Rogue Elephants: A Short Discourse on Foreign Intervention in Internal Conflict*, 82 HARV. L. REV. 511 (1969).

<sup>16</sup> *Id.* at 532.

