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IN THE WAKE OF SOMALIA
Humanitarian Intervention as a Role
for the United States Military

by

TAMMY PHILLIPS

B.S., United States Air Force Academy, 1987

A thesis submitted to the
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In The Wake of Somalia

Thesis directed by Professor Claudia Mills

In December, 1992, President Bush set a new precedent for the use of the United States military when he sent troops into Somalia for the humanitarian purpose of ending their famine. This thesis takes the perspective of the United States soldier, and asks whether or not it is morally justifiable to use the United States military to stage purely humanitarian interventions. To get to a point where this question can even be addressed, however, some preliminary problems must be resolved: What is humanitarian intervention? From whose rights, and whose duties, does it stem? Is humanitarian intervention justifiable? Permissible? Obligatory? What are the principles that guide our actions?

It is concluded that, although respecting and protecting the basic human rights of others can be said to be a duty shared by all, with the ultimate manifestation of this duty being humanitarian intervention, it should not be a federal military endeavor; at least not as our military, its mission and obligations, are constructed today.

This thesis is dedicated to the millions of Americans, present and future, who count on their Commander in Chief to make just decisions.

I want to thank Professor Claudia Mills for her extremely insightful and productive criticisms, for her valuable time and support, and for her remarkable ability to make it all seem worthwhile.

CONTENTS

| | |
|--|-----------|
| INTRODUCTION & OVERVIEW..... | 1 |
| CHAPTER | |
| I. HUMANITARIAN INTERVENTION DEFINED..... | 4 |
| Sovereign Territory..... | 6 |
| Human Rights..... | 14 |
| Security Rights..... | 16 |
| Subsistence Rights..... | 16 |
| Right against Social Oppression..... | 21 |
| Restating Humanitarian Intervention..... | 28 |
| II. CONCERNS OF THE COMMUNITY..... | 30 |
| International Concerns..... | 30 |
| Domestic Concerns..... | 39 |
| A Duty to Protect Others..... | 40 |
| Considering Resources..... | 41 |
| Action-Guiding Principles..... | 49 |
| III. THE INDIVIDUAL SOLDIER..... | 52 |
| Patriotism..... | 66 |
| IV. CONCLUSIONS..... | 76 |
| BIBLIOGRAPHY..... | 79 |

INTRODUCTION AND OVERVIEW

Operation Restore Hope began in December of 1992 when President Bush sent troops into Somalia. Their mission was to ensure that relief shipments reached the starving people, bypassing the warring clan members who had previously been intercepting the supplies and hoarding them for themselves. Additionally, U.S. troops were to rely mostly on the intimidating nature of their presence in repressing the clan members. Violence was to be used only if it became absolutely necessary. Thus, as images of starving Somalis and strong, sensitive Marines flooded U.S. television screens, a new precedent was being set, and a new role for our military was taking shape.

It was by tugging on the moral fibers of our collective conscience that justification for the relief effort was effected. Most of us did not like to rise from our bountiful dinner tables and see starving, helpless children, too weak even to stand up, on the nightly news. When the Marines made their lavishly publicized amphibious landing on the shores of Mogadishu, we were made to feel proud of our country's effort to end the hunger. It was our duty to intervene. Or was it? In the beginning, there was little doubt about the

Marines' ability to squelch the "Warlords" and get the food to the starving. But is that all there is to humanitarian intervention? Is that what is considered to be success? When will the mission be complete? Will it be when there are no more starving people in Somalia, or will it be when the clan members stop fighting and a recognized government is in place? Will there again be a time when Somalia takes care of itself? And what will be the guidelines that determine when this time has been reached? These are questions that face the United States now. But some questions were left unanswered before Operation Restore Hope even began, and remain so today: Is it the duty of the United States Military to provide humanitarian assistance, in the form of intervention, to foreign nations? From where would this duty stem, and how much does it cost? How much response is enough, but not too much? Finally, can our government justify risking the lives of our soldiers?

Whether Operation Restore Hope was an entirely humanitarian gesture or an attempt by the U.S. to conceal its complicity in inducing the famine in Somalia is debatable, but not what is at issue here. I wish to use this case as an instance from which to study the ethics of the doctrine of humanitarian intervention. This thesis is broken into four chapters. Chapter I defines humanitarian intervention in a workable manner from which

the rest of the paper can proceed. Chapter II addresses the legal and moral implications which affect the international community, and those which affect the domestic front. Using the principles derived from such considerations, I will attempt to set up the principles that govern the military role of the intervening state. In Chapter III, I will examine what duties and obligations are expected of, and/or morally required of, the soldiers of the intervening state. Specifically, the rights and obligations of the individual soldiers of the intervening state will be weighed against the rights of those for whom the intervention is taking place. Whether humanitarian intervention should be a role for the United States military will be decided here. Chapter IV contains a recap of the arguments set forth, and concluding comments. Please note that this thesis is primarily interested in the policy of humanitarian intervention as it applies to the United States. Although the topics explored and principles derived could probably be applied to most of today's Western democracies, references to "government" or "the military" are specifically reference to these entities as they are constructed here in the United States.

CHAPTER I

HUMANITARIAN INTERVENTION DEFINED

Most studies of humanitarian intervention begin by determining what kinds of actions deserve that label.

Thomas Pogge says there are two substantive elements:

(A) The government of some state, X, takes measures that interfere in the internal affairs of another state, Y, in a way that is both coercive and (at least *prima facie*) illegal. The interference is coercive in that it involves the use or threat of violence and thus is not freely consented to by Y's government. The interference is (at least *prima facie*) *illegal* in that it violates the territorial sovereignty of Y's government as defined by international law. (The interference may not be illegal all things considered inasmuch as international law, though it stipulates that the *de facto* government of any state has a right to territorial sovereignty against all foreign governments, no longer views this right as infeasible.)

(B) There are persons within Y's territory, generally members of Y, who are suffering severe deprivations or abuse; and the interfering measures taken by X alleviate such deprivations or abuse, or are intended to do so.¹

Howard Adelman similarly defines humanitarian intervention as a use of force for humanitarian purposes:

humanitarian *intervention* defined herein... (as) the use of foreign military forces within the sovereign territory of a state against the

¹Thomas W. Pogge, "An Institutional Approach to Humanitarian Intervention," *Public Affairs Quarterly*, Volume 6, Issue 1 (January 1992), p. 89.

protests of that state for the humanitarian purpose of protecting a minority population.²

This he contrasts with humanitarian action, which he says does not employ military forces and generally proceeds with the consent of the host government. The common threads through both Pogge's and Adelman's definitions are, first that force is used to achieve humanitarian ends, and, second, that this use of force is against the wishes of the state in which the intervention is taking place. If force is not used, then, and if the state in which the intervention is taking place consents to or invites the intervention, the operation is not humanitarian intervention as defined. However, this leaves out some instances of what would appear to be humanitarian intervention: Somalia, for example. Because Somalia does not have a recognized sovereign, it cannot be said that the intervention there was against the wishes of the state. For this reason and others which will become more clear as this study progresses, the definition requires further clarification: namely, what is considered the sovereign territory of a state, and what constitutes severe deprivations, or a humanitarian purpose?

²Howard Adelman, "The Ethics of Humanitarian Intervention: The Case of the Kurdish Refugees," *Public Affairs Quarterly*, Volume 6, Issue 1, (January 1992), p. 62.

Sovereign Territory

The way most of us determine where one state ends and another begins is to look at a map, where borders are clearly marked with solid lines. Many maps will also present each state in a different color, further illustrating the borders. But what is it about a given area that distinguishes it from the rest of the land surrounding it? The exchanges between Michael Walzer and David Luban offer two distinct answers: Walzer emphasizes not so much the actual land mass, but the "union of people and government,"³ while Luban submits that what amounts to putting so much weight on the concept of the sovereign state overlooks other important dimensions of legitimacy.⁴ A chronicle of these arguments will bring to light the complications in defining a sovereign state, and why this may be important to a study of humanitarian intervention.

Walzer says the purpose of government is to defend the citizens against an invasion, but the citizens are not bound to defend the government. Rather, the citizens are bound to one another. The government is the citizens' means of defending their way of life. The idea

³Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy and Public Affairs* 9, no.3, (1980), p. 212.

⁴David Luban, "Just War and Human Rights," *Philosophy and Public Affairs* 9, no. 2, (1980), p. 166.

of communal integrity, he says, "derives its moral and political force from the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out among themselves."⁵ Should their government go astray, should it become tyrannical and oppressive, it will have no bearing on its legitimacy within the international community. "The state is constituted by the union of people and government, and it is the state that claims against all other states the twin rights of territorial integrity and political sovereignty."

Because foreigners lack the inside knowledge to form concrete judgments about the state, they are to presume that "there exists a certain 'fit' between the community and its government and that the state is 'legitimate.'"⁶ Thus the sovereign territory of a state includes two ingredients: the physical area and the bound political community that inhabits it. Walzer is attempting to describe the sort of union that deserves recognition in the international community: a union between a bound political community and the physical area upon which they reside. This account, however, seems to leave those who may be lacking one or the other of these ingredients in some kind of unprotected void. Somalia, a member of the

⁵Walzer, Op. Cit., p. 210.

⁶Walzer, Op. Cit., p. 212.

United Nations, is a case in point.

Prior to 1991, Somalia's government was headed by the dictator General Mahamad Siad Barre, who gained power in 1969 following a military coup. During his 22 years in office he averted a number of clan-led uprisings by employing his superior Soviet- and U.S.-supplied military. However, in January of 1991 his troops were pushed out of the city of Mogadishu by a southern clan headed by Ali Mahdi, who was subsequently set up as president. Soon thereafter, General Mohamad Aidid, a member of an alternate sub-clan, opposed Mahdi and fighting resumed. In the meantime Barre reassembled his army and attacked, only to be driven out of Somalia by Aidid in May 1992. Consequently, there is no recognized government in Somalia today.

Where, on Walzer's account, does this leave the Somali people? There is no state-- no union of people and government-- to make a claim of territorial integrity, much less political sovereignty. However, there still seems to be territorial integrity. If the Ethiopian army crossed the borders of Somalia, for example, the international community would most likely cite it as an act of aggression, thereby justifying foreign intervention on behalf of the Somali people. The twin claims of territorial integrity and political sovereignty, then, are separable. Because Walzer never

represents one of these claims without the other, it seems he believes them to be inseparable. But as the Somali example illustrates, this is not the case. Although there is no political sovereignty, if you asked a Somali where he was from, he would probably reply "Somalia." The sovereignty, or union, he is expressing is not political. Rather, the stronger tie is to cultural affinities, history, and communal integrity that have little to do with the government. This illustrates Walzer's point that the members of a community are bound to each other, and not to government. In the event of internal unrest, political sovereignty may not be present while territorial integrity still holds.

But Walzer goes on to say that "a state is legitimate or not depending upon the 'fit' of government and community, that is, the degree to which the government actually represents the political life of its people."⁷ In other words, the government, whose job was earlier said to be that of protecting its citizens, must also serve as an adequate reflection of its people's desires and way of life in the international community. Somalia, then, is once again left outside the confines of Walzer's definitions. As it stands, it does not possess the 'fit' needed to be considered legitimate. If it cannot be called a legitimate state, then what is it? Any civil

⁷Walzer, *Op. Cit.*, p. 214.

war seems to present this problem. Just because a sizeable group of people are experiencing civil unrest should not mean their claim to sovereign territory is illegitimated. And indeed it does not, and I do not believe this to be what Walzer is intending.

The legitimacy of a state in international society encompasses a different set of arguments to be used when a foreign power is deciding whether to intervene. "They are not to intervene unless the absence of 'fit' between the government and community is radically apparent."⁸ This account supports the intervention in Somalia. There was obviously no 'fit' between government and community; there was no government. However, the 'fit' need not be between community and government, as such, to be recognized and hence command respect from the international community. Walzer returns to communal integrity, cultural binds, the people as examples of 'fit' that can make a state, though objectively illegitimate, command the respect of foreigners.

Luban criticizes Walzer for putting so much weight on the concept of the sovereign state because it is "insensitive to the entire dimension of legitimacy."⁹ According to contract theory, political communities are

⁸Walzer, Op. Cit., p. 214.

⁹Luban, "Just war and Human Rights," Op. Cit., p. 166.

made legitimate by the consent of their members. They acquire rights which derive from the rights of their members. At the same time, "human rights accrue to people no matter what country they live in and regardless of history and traditions."¹⁰ What is important, then, is first the rights of people, then the rights of political communities derived from the people's rights, then the rights of states. This contradicts Walzer's "politics of *as if*," which favors the international community acting *as if* a state were legitimate when their ignorance as foreigners keeps them from clearly seeing whether there exists a 'fit' between people and government sufficient to warrant legitimacy.¹¹ What Walzer calls the politics of *as if* merely amounts to a justification for turning our backs on the rights of the oppressed within a nation in the name of respecting state sovereignty under the doctrine of non-intervention. The idea that the political community, or the sovereign state, has rights in and of itself is without foundation.

In light of the Somalia case, employing the politics of *as if* would have severe consequences. If the international community continued to act *as if* there was a 'fit' between the Somali people and their government--

¹⁰David Luban, "Romancing the Nation-State," *Philosophy and Public Affairs*, 9, no. 4 (1980), p. 396.

¹¹Walzer, *Op. Cit.*, p. 216.

whatever clan was calling itself the leader-- the famine would continue and more helpless people would die. Using Luban's strategy of first looking to the people, then the political community, then the state for rights observances, the abhorrent actions of rights violators can more quickly be stifled. Although Walzer's more restrictive view would probably help us avoid an infinite regress of unsuccessful interventions, it is argued here that Luban's position is much more suitable to meeting the needs of today's world, and is the position which should be adopted when attempting to define a state for international policy-making.

Both Walzer and Luban agree that the state derives rights from its members. The debate, however, pivots on the question of which rights transfer from the citizens to the state, giving the state a legitimate claim. Walzer maintains that "the right to live in a historical community and to express (their) inherited culture through political forms worked out among themselves" is what gives a community its moral and political force.¹² Luban says it is the substantive basic rights of security and subsistence, for without these, a person would not be able to realize other rights because his life would

¹²Walzer, *Op. Cit.*, p. 211.

consist in the perpetuation of survival and nothing more.¹³ Basic human rights must be intact in order for people to enjoy other rights, such as Walzer's right to live in a political community. These rights will be discussed in detail in the next section.

Because it is the rights of the people which come first in defining a state, sovereignty is not necessarily an element in the definition of a state. Although territory has historically been a part of the definition, restricting it to territorial sovereignty only serves to complicate matters when civil unrest is present. It also complicates matters when defining humanitarian intervention. Whether the land upon which an oppressed people live is sovereign or not seems irrelevant to the act of humanitarian intervention. Violations of human rights can occur without sovereignty, as is seen with the Somalia case. Distinguishing which human rights, if any, warrant intervention will be the topic of the next section, and will clarify the second part of the definition of humanitarian intervention, namely what constitutes *severe deprivations* or a *humanitarian purpose*.

¹³Luban, "Just Wars and Human Rights," Op. Cit., p. 175.

Human Rights

If humanitarian intervention was placed on a continuum of international responses to various rights violations, it would be at the far right, the last resort when all else has failed. Such a continuum might look something like this:

| | | | | | |
|---------------|------------------------------|--------------------|---------------|---------------|---------------------------|
| Communication | Denial of Friendly Relations | Economic Sanctions | Int'l Boycott | Aid to Rebels | Humanitarian Intervention |
|---------------|------------------------------|--------------------|---------------|---------------|---------------------------|

Now, suppose rights violations were also placed on this continuum, in such a way that each type of right's position on the chart marked how far down the continuum one might be justified in moving in pursuit of rectification:

| | | | | | |
|---------------|------------------------------|--------------------|---------------|---------------|---------------------------|
| Communication | Denial of Friendly Relations | Economic Sanctions | Int'l Boycott | Aid to Rebels | Humanitarian Intervention |
| Right A | Right B | | Right C | | Right D |

The rights warranting the drastic response of humanitarian intervention would be the type of right the violation of which significantly undermines, if not destroys, those things rights in general are meant to uphold.

Human rights are understood to be those held simply by virtue of one's being a person.¹⁴ This is based on the notion that all human beings have the same basic nature, and have it equally. The rights based on this nature,

¹⁴Jack Donnelly, The Concept of Human Rights. St. Martin's Press, New York, (1985), p. 9.

then, must be universal and held equally by all. This, however, is too broad a definition. In determining the kind of rights worthy of protection by humanitarian intervention-- the violation of which constitutes a severe deprivation-- a more restrictive set of criteria is needed. Henry Shue's notion of "basic rights" provides the sufficiently restrictive parameters needed to justify humanitarian intervention.¹⁵

A basic right is one which must be present before other rights can be realized. A basic right specifies "the line beneath which no one is to be allowed to sink... (they) are everyone's minimum reasonable demands upon the rest of humanity."¹⁶ For Shue, there are three basic rights: security, subsistence, and liberty. Luban cuts this short list even further, arguing that security and subsistence are the basic human rights for which justified wars can be waged.¹⁷ Each will be presented below, as well as speculation as to why other rights, namely the right against social oppression, should not be included.

¹⁵Henry Shue, Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy. Princeton University Press, Princeton New Jersey, (1980), Chap. 1.

¹⁶Shue, *Op. Cit.*, pp. 18-19.

¹⁷Luban, "Just Wars and Human Rights," *Op. Cit.*, p. 392.

Security Rights

The right to security is the negative right not to be physically aggressed upon. It boils down to one having a right over her own body: to not be beaten, raped, murdered. The right to security is basic because without it, the enjoyment of other rights would not be possible. Without the right to security, others would have extremely effective means in which to keep one from enjoying other rights.

Subsistence Rights

The right to subsistence entails the rights to clean air, water, adequate food, clothing, shelter, and minimal preventive public health care.¹⁸ The boundary of adequacy is drawn at what is needed for one to live a reasonably healthy life of more or less average length. Determining this is another subject; what is important here is, again, the idea that subsistence is a basic right because without it, other rights cannot be enjoyed. Shue argues that subsistence should be provided for those who cannot provide for themselves, namely children. He does not address the social issue of providing for able-bodied adults who refuse to work. In this way the right to subsistence is narrowed to include only providing for the helpless, although the entitlements of others are not denied. Here subsistence will be further narrowed to

¹⁸Shue, *Op. Cit.*, p. 23.

include only the rights to air, water, adequate food and shelter.

Subsistence rights generally do not entail simply rights to take what one needs to survive. Hence the pivotal question remains:

If persons are forbidden by law from taking what they need to survive and they are unable within the existing economic institutions and policies to provide for their own survival (and the survival of dependents for whose welfare they are responsible), are they entitled, as a last resort, to receive the essentials for survival from the remainder of humanity whose lives are not threatened?¹⁹

An affirmative answer to this question confirms subsistence as a universally distributed right. As such, humanitarian intervention is justified as the ultimate manifestation of the duties which accrue to the "remainder of humanity" as a result of the entitlements of the needy. This will be addressed in greater detail later.

In contrast, a negative response to this question denies subsistence as a right at all and illegitimizes humanitarian interventions in the name of subsistence altogether. If subsistence is a right, it must be a universal right, simply by its essential character to the life of all people. In denying that those incapable of helping themselves are entitled, as a last resort, to receive essentials from others, one commits oneself to a

¹⁹Shue, *Op. Cit.*, p. 24.

position which denies any person the right to stake a claim on another's resources. There cannot be a line drawn which legitimizes the claims of compatriots, for example, or even family members, but not others, for in so doing one would be giving priority to the basic rights of one group over another, thus acknowledging that a right exists. If the right exists, it must be universal due to its essential character. One would be hard-pressed to come up with a policy supporting the notion that some have a right to eat, or essentially a right to live, while others do not.

That (on Shue's definition) subsistence is a basic right is obvious: one cannot enjoy other rights if one is starving or otherwise in a deteriorating state. The right to subsistence parallels the right to security in that both are universal and both are basic. Since both are essential to the enjoyment of other rights, both must be socially guaranteed. Basic rights are not means to the enjoyment of other rights, but rather essential ingredients in that enjoyment.

An assumption of universalization lies beneath the claim that there are human rights which are basic. According to Shue's position, basic rights, security and subsistence among them, must be intact in order for one to enjoy any other rights. The specific situation of a given individual is irrelevant: basic rights must be

present for all. Basic rights, therefore, enjoy characteristics that other rights, such as due process or freedom of speech, do not. Generally, a basic right is an historically recognized right (although probably not in *rights language*) and will not foreseeably disappear in the future, regardless of any and every type of social or political reform. Basic rights stand independent of political belief and cultural practices.

As was previously argued, basic rights are those which most readily transfer from the individual to the state. The claim that basic rights exist requires inquiry on both the individual level and on the level of universalizing rights for a people.²⁰

The "rights of a people" is another way of saying the "rights of a state." What is meant is the rights attributed to a recognized group. The first problem of indeterminacy lies in determining what counts as a recognized group.²¹ Some of the same problems arise as when determining sovereignty: Should only a *people* be considered a "legitimate political community"? If so,

²⁰This discussion is not meant to be exhaustive with respect to the difficulties and intricacies associated with the topic of rights. Rather, the intention is to acknowledge that there are problems in this area which, though beyond the scope of this paper, are too important to be ignored.

²¹David Makinson, "On Attributing Rights to all Peoples: Some Logical Questions," *Law and Philosophy* 8: 53-63, 1989, p. 55.

what about religious groups, ethnic groups, linguistic groups, and cultures? Why should a political community be granted recognition over other distinct entities? This is especially troublesome when considering that some individuals identify more closely and hold stronger ties to their religion, for example, than they do to the government of the area in which they reside.

If groups other than political communities were granted rights in the same way, it would be extremely difficult, if not impossible, to determine the legal principles from which the international community should operate. There could be no law which respected borders, for example, for many times religious, ethnic, cultural, and linguistic ties cut across the borders drawn by the international community. For this and similar reasons, international law has generally been meant to apply to political entities, or *states*.²²

On the individual level, universalizing human rights has its own problems. First of all, from what source-- experience, intuition, etc.-- does one draw the information to determine which rights are deserving of universalization? And can we be assured that this source, whatever it may be, will not fall into the trap of ethnocentrism? Shue's method-- attempting to demarcate those things which must be present in every

²²Makinson, *Op. Cit.*, p. 55.

situation in order for other things to be enjoyed-- seems the least flawed. However, his list is very short. Others, including those in more politically powerful positions than that of "Philosopher," disagree with Shue's limitations and seek to add to his list more diverse rights.

A Right Against Social Oppression

One such right which might be thought to warrant the same amount of attention and respect as security and subsistence is the right not to be socially oppressed. However, it is not included on my list of those things for which humanitarian intervention can be justified for several reasons. First, unlike security and subsistence, freedom from social oppression is not needed that other rights may be enjoyed. While it may be necessary for some to have liberties so they can establish, exercise, and ensure the recognition of rights in general, it is not clear that all must have these liberties.²³ Second, the notion of oppression, when not accompanied by violence or physical enslavement, is sometimes difficult to recognize. What if the oppressed are not protesting their situation? Should we Westerners impose our values on them, condemning their situation and bringing their oppressors to justice even though that may not be what they want? Consider, for example, the way in which the

²³See Shue, *Op. Cit.*, pp. 19-20.

women of the Middle East are treated. A Saudi Arabian woman cannot drive a car, travel unaccompanied, sit in the front of a bus, show her face, walk abreast a man, look anyone in the eye, and the list goes on. Many are married off to strangers at a young age. A woman's task in that marriage, regardless of what she might want for herself, is to produce male offspring. By our standards, these women are discriminated against, raped, tortured, sold into slavery, oppressed beyond the fathomability of most Americans. But we do not hear them complaining. Should we, then, through intervention, seek to change the ways of their country, that they might enjoy their right against oppression? If so, then must we also intervene in Latin American countries and save those women from the same sort of (lesser) oppression? If so, where do we draw the line?

Even in cases where the oppressed are fighting back and crying for help, the line between those circumstances warranting humanitarian intervention and those which require a lesser response is not clear. When those who are suffering are not actually dying as a result of their deprivations, it is not clear that a violent military response, which will inevitably result in some deaths, is at all appropriate. Can it be guaranteed that such drastic measures will in fact improve their situation, considering they have not yet fallen to rock-bottom, they

have not crossed that "line beneath which no one is to be allowed to sink?" The point is that, although a right against oppression does indeed have merit, it cannot in all cases be placed alongside security and subsistence on the continuum of international responses to human rights violations for at least four reasons: First, it is not needed that other rights may be enjoyed; second, it is too value-laden; third, it is in many cases too difficult to differentiate from the accepted cultural norms of a foreign people; and finally, since those in question have not actually hit rock-bottom, the likelihood that such a response will actually worsen their situation, instead of improving it, is greater than when violent intervention is used under more dire circumstances. Of course, none of these factors are meant to condone social oppression, only to illustrate the difficulty of upholding the right across territorial and cultural borders. The right against social oppression is not the sort of right against which humanitarian intervention can be justified, at least not in today's world.

Security and subsistence, on the other hand, do not have these problems. They are necessary for the enjoyment of other socially guaranteed rights. Hence they must necessarily accrue in order for one to exercise Walzer's defined right to live in a historical community and express one's inherited culture. This can be readily

seen: Under the threat of losing his means to subsistence or being physically beaten should he express his inherited culture, one is not free to exercise such expression. Shue illustrates this using the example of free assembly:

...it is not that security from beatings, for instance, is separate from freedom of peaceful assembly but that it always needs to accompany it. Being secure from beatings if one chooses to hold a meeting is part of being free to assemble. One is, on the contrary, being coerced not to assemble by the threat of the beatings.²⁴

It must be emphasized, however, that the rights that a state holds, as an internationally recognized entity, do not always parallel the rights held by its citizens as individuals. For example, the first article of the International Covenant on Economic, Social, and Cultural Rights adopted by the General Assembly of the United Nations in 1966 states, "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."²⁵ This does not mean that through the International Covenant the individual has been granted a universal right to self-determination. Individual self-determination is not the sort of thing that should be universalized by the above standards. It fails to meet the criterion previously set

²⁴Shue, Op. Cit., p. 26.

²⁵Quoted in Makinson's article, Op. Cit.

forth of what constitutes a basic right and therefore serves only to undermine the benevolent intent of declaring any rights universal. Self-determination is not necessary to the enjoyment of other rights. It is not an historically recognized right; further, self-determination may be in violation of cultural practices, and therefore not stand independently. However, self-determination on a national level is an historically recognized right, it does not violate, but rather respects, cultural practices, and virtually has no bearing on the notion of universalizing rights on the individual level. Hence, the right to national self-determination is a right the state derives from the rights of its citizens, yet holds independently.

The importance of this distinction between the rights held by individuals and the rights held by states becomes apparent when considering the open-ended nature of the commitments expected of one people by another, and a lack of specification of who bears the obligation to rectify past wrongs. Although these considerations bear on the subject of justifying humanitarian intervention, they will be dealt with in the next section.

In order to defend the limited nature of Shue's list of basic rights, and to defend further my own belief that the rights to security and subsistence are necessarily universal, we must consider their scope and weight. The

scope of a right is the determination of what a right is to.²⁶ The weight of a right is its ranking against other rights; the weightier is the one which takes precedence in a conflict. Within these two parameters lie the limits of exceptions and absolutes. "To be exceptionless is a matter of scope, and to be absolute is a matter of weight."²⁷ An example of an exception to a right, which limits the scope of that right, is the classic case of one claiming to be exercising her right to free speech when yelling "Fire!" in a crowded theater. Freedom of speech does not include such abuses, nor does it include other abuses, such as defamation or inciting a riot. These are all examples of exceptions to the right to free speech. Similarly, the weight of a right can serve to limit its application. Using the same example, the other theater patrons' right to watch a movie peacefully is ranked higher than the given individual's right to be disruptive. If any rights are both exceptionless and absolute, security and subsistence, are. This, of course, is not to say that the possibility of other exceptionless and absolute rights does not exist, however strong my own intuitions may be.

Correspondingly, if any rights transfer from the

²⁶James W. Nickel, Making Sense of Human Rights. University of California Press, (1987), p. 48.

²⁷Nickel, Op. Cit., p. 49.

citizens to the state, then these transfer with them. The transfer of the right to security from the citizen to the state is easy to envision: a state has the right not to be attacked as its citizens have the right not to be attacked. But a transfer of the right to subsistence is more difficult to conceptualize. There remains the question of whether subsistence is a *right* or more appropriately a *biological necessity*. How does a right to subsistence transfer? Perhaps it is manifested in the right to economic development: a state has the right to acquire the means to support itself as its citizens have the right to subsistence. In any case, it makes no difference whether subsistence is considered a right or a biological necessity, since it must be present in order for one to live and in order for one to enjoy other rights.

If there is a right to live in a historical community, as Walzer submits, this right carries with it the rights to security and subsistence. One mustn't exercise this right in order to enjoy other rights. In fact, there could be instances where the abandonment of this idea is more beneficial. For example, a culture in which the women are horribly oppressed, as was described above, would not be the best place for a woman to live. If it is said that her living there is a right, she should also have the right to leave. This merely equates

to freedom of movement, which, although a right, is not a right that is necessary for the enjoyment of other rights. The woman living in the oppressive state can still manage to enjoy other, more basic, rights. She can eat, for example.

It makes more sense, then, to say that if there are any rights which can be demanded by everyone, they must be the basic rights of security and subsistence. These rights attach more closely with the rights derived by the state from its citizens than do the citizen's rights to historical communities and cultural expression.

The curtailment of *severe deprivations or abuse*, for which humanitarian intervention is justified, must entail the violation of basic rights. Whether the violation of other rights could also be included would involve an extensive and detailed study of all so-called "human rights." Such a study would be inappropriate here. Hence, I will leave *severe deprivations* narrowly defined as violations of the rights of security and subsistence.

Restating Humanitarian Intervention

The above sections have sought to clarify what is meant by the terms "*sovereign territory of a state*" and "*severe deprivations*," as used by Pogge and Adelman in their descriptions of humanitarian intervention. It was determined that *sovereign territory* really has little to

do with it. As is seen in Somalia, there need not be a recognized sovereign in place in order for humanitarian intervention to be warranted. Rather, an act of humanitarian intervention seeks to protect humans, any humans, whose basic rights are being violated against the violator, whoever that may be.

Humanitarian intervention is distinguished from humanitarian action in that it is protection against rights violations, in which a use of force is, or quite feasibly could be, warranted in such protection. This is opposed to humanitarian action, in which mere assistance in realizing basic rights is given. A violation of these basic rights constitutes a *severe deprivation*. Using this line of reasoning, humanitarian intervention can be more clearly stated as follows:

Humanitarian intervention occurs when the military forces of an outside state are used to protect otherwise helpless people against violations of the basic rights of security and subsistence.

This is the definition which will be used for the remainder of this paper, the definition for which the principles that govern the military role of the intervening state will be intended. These principles will be examined in the next section, where the potential concerns of the international, as well as the domestic, community will be explored.

CHAPTER II

CONCERNS OF THE COMMUNITY

This new definition of humanitarian intervention assumes, first, that there are rights to security and subsistence, and, second, that they are basic in the sense described by Shue. This move, which necessarily universalizes some human rights, is needed in order for a domestic community to feel any obligation toward another community. If these assumptions are granted, there remain the more substantial problems of the feasibility of ensuring that these rights are secure globally and the determination of whose responsibility this security is. This chapter will explore the complications imposed by the universalization of human rights, hence the justification *or obligation* of humanitarian interventions, on both the international and domestic fronts.

International Concerns

Historically the United Nations has concerned itself more with the justification of when it is *permissible* to stage a humanitarian intervention, than when it is *mandatory*. This is evident in the wording of UN Charter

2(4), which reads,

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.²⁸

On the surface, this article appears to ban all uses of force. But a closer reading, keeping in mind the intent of humanitarian intervention, shows that it does not. The first two conditions, the use of force "against... territorial integrity or political independence," are clearly not instances of a use of force for humanitarian purposes. Although one could effect a humanitarian intervention on the way to other ends, the mission of genuine humanitarian intervention is not conquest, or political subjugation. We are talking here of interventions of a purely humanitarian nature, not the use of "humanitarian intervention" as a shield against criticisms when some other purpose for invasion exists. Hence, humanitarian intervention as defined passes the first two stipulations of the article banning the use of force.

The third instance of when force is prohibited, when it is "inconsistent with the Purposes of the United Nations," requires a deeper look. Indeed, one of the

²⁸Quoted in Fernando R. Teson, Humanitarian Intervention: An Inquiry into Law and Morality. Transnational Publishers, Inc., (1988), p. 127.

purposes of the United Nations is the promotion of human rights.²⁹ This would seem to exclude humanitarian intervention from the blanket prohibition, since the promotion of human rights is its purpose also. From this standpoint, humanitarian intervention can be seen as the ultimate manifestation of such a promotion: the willingness to do practically anything in the name of promoting human rights. The preservation of human rights would, therefore, supersede the ban against the use of force in the United Nations Charter.

This argument establishes that under international law the use of force against another state or entity is permissible when human rights are being violated and the use of force is for the purpose of stopping these violations. These conditions support humanitarian intervention as defined earlier. The more interesting question, however, is whether humanitarian intervention is ever morally obligatory.

If it is granted that the universal rights of security and subsistence belong to all people, and that people can reasonably expect that these rights will be honored, it would appear to be the duty of all people to respect and therefore protect the rights of all others.

²⁹Article 1(3) states, "...to achieve international co-operation...in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Quoted in Teson, Op. Cit., p. 131.

The thought is this: the nature of the rights in question are such that they can be considered claims not against a particular person, but against all people, who in turn have claims against all others. Therefore all people have claims against all others, and all people have the same claims against them. This is admittedly very simply and very broadly stated-- hardly practicable in the real world. But it is also what the whole thing boils down to, *in the real world*. Rights invoke duties; duties place burdens on their bearers; burdens petition scrutiny.

In attempting to put such a vague notion to work, it becomes necessary to address some related questions: Whose rights take precedence when allocating resources for their protection? Do we take care of our own first, then give whatever is left over to needy outsiders? How much do we reserve for others? Is there a duty to give *anything at all* to anyone other than our own compatriots? This is no simple dilemma.

Nickel argues that the duties invoked by universal rights need not be addressed to everyone, or even to some worldwide agency. "All that is required is that for every rightholder, there is at least one agent or agency with duties to protect..."³⁰ In the case of the basic

³⁰James W. Nickel, "How Human Rights Generate Duties to Protect and Provide," *Human Rights Quarterly*, Volume 15, Number 1 (February 1993), p. 80.

rights to security and subsistence, all persons and all institutions have duties to refrain from violating these rights in others. In this sense the claim-against is universal-- it is against everyone. Each government, correspondingly, has the duty to protect its citizens from violations and to take positive steps in ensuring these rights are upheld. Thus universal duties are divided up on positive/negative lines: "Negative duties to refrain fall on everyone; positive duties to protect fall on governments."³¹ All people fulfilling their negative duties, and the specific government in question, then, can be called the primary addressees. When these parties fail, or when their response, however genuine, is not enough, it may be necessary to identify secondary, or backup duty-bearers. Nickel identifies two categories of secondary duties associated with international human rights:

1. Responsibilities of the residents of a country to create, maintain, support, and participate in institutions that will respect and uphold rights;
2. Responsibilities of other governments and of international institutions such as the United Nations and the World Bank to discourage rights violations and to encourage efforts to uphold rights.³²

A duty on the part of the United States to protect the

³¹Nickel, "How Human Rights Generate Duties to Protect and Provide," Op. Cit., p. 81.

³²Ibid, p. 83.

basic rights of the Somali people would stem from this second category. "These are responsibilities to encourage and assist countries in their efforts to respect and uphold human rights, to pressure governments that violate rights to cease doing so, and to assist the victims of rights violations."³³ Because the United States is the backup addressee does not mean that the duty is any less important, that it bears any less weight. All this suggests is that in the case of universal human rights, if the primary addressee is for some reason negligent, there will still be an addressee in the form of a backup.

Pogge also argues in favor of there being duties which transcend the borders of one's homeland.³⁴ His argument is based on showing the falseness of "the widely held belief that, while there may be cases in which humanitarian intervention is morally permissible, there are no cases in which it is, as such morally mandatory." Human rights, he argues, furnish primarily a criterion of justice, "which assesses a global institutional framework as being the more unjust the less protective of human rights it is on the whole."³⁵ Such a global institutional

³³Nickel, *Ibid*, p. 85.

³⁴Thomas Pogge, "An Institutional Approach to Humanitarian Intervention," *Op. Cit.*, pp. 89-101.

³⁵Pogge, *Op. Cit.*, p. 41.

framework, he acknowledges, has at least two relevant limitations. First, it is presumed that human rights are activated only through the emergence of social institutions. This means that where social institutions are lacking, such as in a Hobbesian state of nature, human rights and human-rights violations do not exist. For this reason, additional criteria are needed if it is to be denied that "anything goes" in the absence of social institutions. He describes a second limit by stating that "the *global* moral force of human rights is activated only through the emergence of a *global* scheme of social institutions."³⁶ In today's world, this does not exclude responsibility for human rights outside one's own borders because we are all participants in a global institutional framework. Although we do not share a global government, *per se*, we are nevertheless participants in a complex scheme of interdependency; states in today's world are not self-contained, self-supporting entities. The idea here is that those who participate in a social institution share a responsibility for the justice of that institution. Correspondingly, they are to blame for any unjust activities in which the institution might participate.

In this way, when the institutional approach is applied on a global level in the way that Pogge applies

³⁶Pogge, *Op. Cit.*, p. 91.

it, the requirement of "participation in social institutions" implies that one must be somewhat to blame in order for responsibility for the justice of the global order to exist. Hence, one's individual transboundary duties arise from one's responsibility to refrain from participating in unjust social schemes and to push for social reform where needed. Although plausible, and in at least some sense in agreement with Nickel's position, this argument leaves open a wide range of instances where one can easily relieve oneself of the responsibility to alter or rectify the situation. In cases where a reasonable plea of ignorance can be made, or when the connection between one's actions and the violation of others' rights is hazy, even a plea of nonculpability can be made.

So where does this leave the question of who takes precedence when allocating resources for the purpose of rectifying human-rights violations? On Pogge's account, those for whose situation one is the most responsible would be given priority over those for whom the responsibility may be more indirect. Hence, yet another can of worms has been opened. It would be difficult, if not impossible, to make an acceptable moral argument in favor of such criteria. By basing one's decision to intervene on one's own complicity in a given situation, and not taking into account the urgency of one set of

circumstances over another, the duty to respect and protect human rights is sufficiently defiled as to render it merely a duty to rectify past wrongs, and not a duty that embraces a respect for rights at all. The more correct answer, it would seem, would entail not a test of how much the addressee is to blame for a given situation, but rather a test of the neediness of the people, the urgency of the circumstances. Perhaps this criterion would entail a duty to reform or create institutions in such a way as to ensure that the neediest are attended to first, thereby repudiating the test of culpability altogether. This, of course, extends the watchdog duty of respecting and protecting human rights to all people, without discretion.

Other relevant factors when determining who takes precedence include the intervening state's chances for success and its projected ability to carry the mission to completion. These factors are internal to the intervening state, and they will be dealt with in the following section. What has been established here is 1) that moral duties to respect and protect basic human rights exist, 2) that these duties are universal, 3) that these duties transcend territorial borders, and 4) that culpability is not an adequate criterion for classifying who carries the responsibility of executing these duties; the responsibility belongs to all. It can be inferred,

then, 5) that there exists a universal moral obligation to intervene for humanitarian purposes, when warranted and when able.

This conclusion raises the question, Is there an instance when humanitarian intervention is not obligatory? When domestic constraints and considerations are added to the puzzle, it will be seen that there are exceptions to the universal duty to intervene.

Carrying out the duty to respect and protect basic human rights involves addressing questions whose answers directly affect one's everyday life at home. The next section will attempt to elucidate some of the domestic problems associated with global duties.

Domestic Concerns

The purpose of government, it is said, is to protect the rights of the people for which it was established.³⁷ The military is a federal entity; military members are government employees. They are paid by the state, kept by the state, ruled by the state. In the U.S., the Commander-in-Chief of the military is also the President of the country-- an elected governmental position. Since the primary purpose of government is to protect the people for which it was established, and the military is

³⁷See Walzer, "The Moral Standing of States," Op. Cit., for example.

the wielding physical power structure of the government, the purpose of the military is similarly to protect the people. Can a duty on the part of the military to protect the rights of others, *foreigners*, be derived from this fact? This seems to be the perplexing question on the minds of tax payers across the United States.

Given that the purpose of our government is to protect *us*, from where does this duty to protect *outsiders* spring? Would we still have the duty if our resources were more limited? If not, why not? If so, at what cost to ourselves?

A Duty to Protect Others

This paper began with a discussion of state sovereignty, which established that it is not necessary that an area be sovereign for intervention to be warranted. It will be recalled, however, that sovereignty was necessary in order for the rights of the citizens to transfer to a state, thereby giving that state rights.³⁸ It was argued that, according to contract theory, political communities are made legitimate by the consent of their members. Although not necessarily the *same* rights, they acquire rights which derive from the rights of their members. At the same time, "human rights accrue to people no matter what country they live in and

³⁸Luban, "Just War and Human Rights," *Op. Cit.*, p. 166.

regardless of history and traditions."³⁹ What is important is first the rights of people, then the rights of political communities derived from the people's rights, then the rights of states. Basic human rights know no political boundaries.

The previous section established that the duties correlative with the notion of universally basic human rights include the moral obligation to respect and protect the basic human rights of others, regardless of territorial boundaries. All people have claims against all others, and all people have the same claims against them. To remain consistent, then, these duties, which directly accrue as a result of the rights, must transfer along with those rights from the people to the political communities to the state. The duties must also know no political boundaries. The argument here is that all states which derive rights from their citizens must also accept the duties that go along with such rights. In the case of basic human rights, the duties include a moral obligation to respect and protect the basic human rights of others. This position will be challenged below.

Considering Resources

The above conclusion solicits the question, what is entailed in the requirement to "respect and protect"? If

³⁹Luban, "Romancing the Nation-State," Op. Cit., p. 396.

each country is going to stake the same claim to its people's rights, must it then carry out its correlative duties to the same degree? The practical answer, of course, would be that each country must do what it is reasonably capable of doing.

It is Shue's position that, by prioritizing rights and preferences, the "affluent" become the bearers of the responsibility to protect the basic rights of others.⁴⁰ Because one should not sacrifice her own basic rights so that another might enjoy his basic rights, those currently living at the subsistence level do not share in the responsibility to protect the rights of others. It most likely would not serve a positive purpose if I lost my rights in securing yours. Then someone else would have to come to my aid. If that person lost his rights, someone else would have to step in, and so on. Thus, a country such as Somalia, which cannot even provide for its own people, is not expected to come to the aid of another. But a country such as the United States, which has resources in abundance, is so obligated.

The United States would not be expected to jeopardize its citizens' basic rights. Rather, on Shue's scale, its "preference satisfactions," or luxuries.⁴¹

⁴⁰Shue, *Op. Cit.*, pp. 111-130.

⁴¹See Shue, *Op. Cit.*, p. 115 for a graph delineating the argument for his Priority Principle.

While it is required that a transfer of preference satisfactions, cultural enrichment, and non-basic rights (in that order) be made for the security of others' basic rights, it is only permissible, though irrational, that one sacrifice her own basic rights to secure the basic rights of another. This duty to aid is universal: once everyone has sacrificed their preference satisfactions for the purpose of honoring others' basic rights, if need be it goes to the next level, to cultural enrichments. Then, if need be, it goes to non-basic rights.

All this argument seems to amount to is that securing basic rights is the responsibility of the affluent, *because they can*. This does not seem to be much of an argument. Shue's position does not tell the average tax-paying American why it is her money, not some capable Other's money, that should be spent half-way around the world. This is especially perplexing when there are enormous bills to pay for security and subsistence right here at home.

If the purpose of government is to protect the people for which it was established, and the state derives its rights and duties from the citizens, the state has a duty to respect and protect the basic rights of others. But at what cost to its own citizens? On Shue's account, at the cost of first luxuries, then, if necessary, cultural enrichments, then non-basic rights.

But this does not follow as cleanly as Shue thinks that it does. He acknowledges the difficulty in separating preference satisfactions from cultural enrichments, but he places non-basic rights in a category of their own (just below basic rights on a scale of importance.) However, depriving one of her luxuries cuts directly into her non-basic right to property.⁴² Thus when advancing the sacrifice of preference satisfactions, the line between such entities and non-basic rights, if discernible at all, is very thin.

Returning to the notion of state sovereignty, the transfer of rights and hence duties from the citizens to the state harbors a further problem. The discussion above would endorse the idea that those who do not belong to a sovereign state do not have as much of a duty toward others' basic rights as those who do. If one does not belong to a sovereign state, his duties only accrue on an individual level; he pays no state to carry out the duties it accumulates as a result of the transfer of his rights. Although this person's *rights* are of equal weight as every other person's, although his rights are as deserving of respect and protection-- of humanitarian intervention-- his correlative *duties* are not equal,

⁴²That there is a non-basic right to property is based on the United States Declaration of Independence, which is in turn based on the political philosophy of John Locke, which it would be inappropriate to go into here.

regardless of his capability to perform them.

This position can be defended using Nickel's categories of backup duties. The individual has the primary duty to refrain from violating rights, and the secondary duty to involve himself in the creation and maintenance of institutions that recognize rights. Thus, except for not paying taxes, the "nationless" man is as duty-bound as the citizen of a sovereign state.

Still to be answered is the confounding question of who is ultimately charged with the duty to secure basic human rights. Although this duty is universal, distributing it equally is impossible, even when it is delegated to primary and secondary addressees. The problem lies in the idea that, although it is governments that acquire the positive duties of "encouraging, assisting, upholding, and pressuring,"⁴³ it is a collectivity of people that makes up government, that gives government its purpose. Therefore, it is ultimately the people who carry out the duty. This is not such a problem when it is a primary duty, because it is for the fulfillment of this duty-- to protect its people-- that government was established in the first place. In other words, by establishing a government, the people are looking for some amount of protection. The

⁴³Nickel, "How Human Rights Generate Duties to Protect and Provide," *Op. Cit.*, p. 85. See also p. 34 of this text.

people who give the government its power, then, do so for the purpose of gaining the benefits of protection. They do not empower government for the purpose of taking on additional burdens, although this may be an inescapable consequence. When government fulfills a secondary duty, then, it seems that in a sense it is forcing its moral duties upon the citizens for which it was established, because these secondary duties, although possibly inescapable, do not further the benefit of governmental protection. In a democratic system such as ours, this happens, apparently, quite cleanly: "If government by the people is a reality-- and rights to political participation dictate that it ought to be-- the obligations of governments will be obligations of their peoples."⁴⁴ Thus the individual is, perhaps involuntarily, moved from being the bearer of a negative duty to refrain, to the bearer of a positive duty to aid.⁴⁵ Thus there exists a conflict between the government's primary function of protecting its own citizens, and its role as a secondary addressee in world affairs.

There does not appear to be a domestic correlation with the positive duty the government has as a secondary

⁴⁴Nickel, Making Sense of Human Rights, Op. Cit., p. 43.

⁴⁵See p. 34.

addressee in world affairs. There are no laws which enforce positive moral duties; there are no laws requiring that an ordinary citizen come to the aid of another. Being a Good Samaritan, for example, is strictly a moral duty in that it requires positive action, and there is no law requiring that such action be taken.⁴⁶ Similarly, there is no law mandating the observance of others' rights to subsistence.

Arguing that the government is only justified in enforcing legal duties and not moral duties merely amounts to a tautology, that one could rightly refute simply by pointing out that if a law were made that enforced a positive moral duty, it becomes a legal duty, and hence the government is back within its bounds. However, something can be said for the fact that, in the United States today, there are no laws requiring the ordinary citizen to come to the aid of another. There are no Good Samaritan laws. Although acts of charity and assistance are highly valued in our society, are considered virtuous, noble, and heroic, the decision to aid others is, nonetheless, made not by appeal to the law, but by consulting one's individual moral values. Is this not a reflection of what the people of the United

⁴⁶Currently, the laws addressing the actions of Good Samaritans are designed to keep them from getting sued should their good intentions render not-so-good consequences.

States, at least, will allow their government to have their hands in? Does this not illustrate that the people of this democratic nation do not want the government forcing strictly positive moral duties on them? While the government is within its rational boundaries in enforcing negative moral duties, it has no business, at least not today, forcing its citizens to fulfill positive moral duties.

When the duties in question are not those of the individual, but duties the government, as an entity, has accrued as a secondary addressee, the government is even further out of line enforcing them. The purpose of the government is to protect the people for which it was established. The point I wish to make is that, since the duties to respect and protect the basic human rights of others are universal, and their fulfillment is the responsibility of us all, the government's role in the individual fulfillment of such an obligation should be one of aiding its citizens in getting the job done effectively and efficiently. Since other than basic rights may be sacrificed in performing such duties, the government, in fulfilling its primary role of protecting the rights of its citizens, should aid in keeping the cost per capita to a minimum. This governmental obligation does not clash with its role of protecting its own citizens, but rather enhances it.

At this point, by summarizing and merging the international concerns with the domestic concerns portrayed thus far, some practical principles to guide our actions as a nation will be elucidated.

Action-Guiding Principles

The argument delineated under the heading "International Concerns" was that 1) moral duties to respect and protect basic human rights exist; 2) these duties are universal; 3) these duties transcend territorial borders; and 4) the responsibility of executing these duties belongs to all. Therefore 5) there exists a universal moral duty to intervene for humanitarian purposes, when warranted and when able.⁴⁷ I then argued that in keeping with its role of protecting its own citizens, government resources should be used to keep the cost of fulfilling individual moral obligations to a minimum.⁴⁸ A careful meshing of the two arguments will show their compatibility and practical workability.

The argument must be constructed as follows: 1) it is recognized that universal duties to respect and protect basic humans rights exist; 2) these duties ultimately belong to the individual moral agent. The most effective and efficient way of carrying out these

⁴⁷See pp. 38-39.

⁴⁸See pp. 48.

duties is (usually) through the use of government resources. The best way to get the job done, at the smallest cost per capita, is through the use of the government. Therefore, as part of its role of protecting the rights of its own people, 3) government resources should be used to help the individual carry out his moral obligations to others.

The principles which can be drawn from this include the idea that we are all, individually, responsible for respecting and protecting the basic human rights of others, and the best means of fulfilling this obligation is (usually) through the employment of governmental resources. This leads to the following guidelines:

- 1) The duties to respect and protect the basic human rights of all are duties that should be honored by all, at all times.
- 2) These duties should be carried out in such a way as to minimize the cost to the bearers of the duty.
- 3) Government resources for the purpose of helping its citizens fulfill their duties to others should be employed when it is determined that such utilization will in fact minimize the costs per capita, and where this action is democratically sanctioned.

These general guidelines are presupposed by the notion that when it is possible for agents to intervene, they must do so. If intervention or any other positive action is not possible in the specific situation, the duties do not merely evaporate. There still exists the duty of respect, which in many cases carries no positive, material contribution. The mere recognition of the

rights of others is in many cases sufficient in itself. Therefore countries and individuals of limited resources are not exempt from having a responsibility toward others. Their responsibilities cannot even be said to be of a lesser degree; what is lesser is their *capability* to carry out positive *material* actions. It is not necessary to delegate the responsibility for carrying out such duties to certain individuals or certain countries; the responsibility belongs to us all. It is similarly not necessary to exclude those living at the subsistence level themselves from having any responsibility toward others. As basic human rights accrue to all people, so do the duties toward others.

The next section will attempt to bring to light some of the more perplexing problems associated with the individual military member's role in humanitarian intervention.

CHAPTER III
THE INDIVIDUAL SOLDIER

The previous section argued that if the role of the government is to protect the individual rights of its citizens, then the role of government with respect to moral duties should be to help its citizens fulfill their obligations in the least costly manner. Government resources are utilized to achieve this end. In the case of humanitarian intervention, the government resource employed at the present time is federal troops:

Humanitarian Intervention occurs when the military forces of an outside state are used to protect otherwise helpless people against violations of the basic rights of security and subsistence.⁴⁹

Clearly there is something very generic, very cold about calling the military a "government resource." The word "resource" conjures images of soil, fertilizer, machinery. Often this is how the military is viewed: as a machine. It is seldom and fleetingly that writers remember that the real "machinery" of the military is not nuts and bolts, but men and women with lives of their own, with *rights* of their own. Because of this, staging humanitarian interventions should not be a mission of

⁴⁹See pp. 4-29.

today's United States military for several related reasons: First, because the military is comprised of individuals with the same universal basic rights as everyone else, and imposing such a responsibility on these individuals violates their basic rights. Second, because the meaning and intent of the military oath is to protect the United States. It does not require, and should not be read to require, that risks be taken for any other reason. Current military policy, however, renders the soldier powerless to choose his or her own destiny. Finally, military indoctrination, coupled with the military judicial system, further constrains the soldier's freedom of choice. Although respecting and protecting the basic human rights of others can be said to be a duty shared by all, with the ultimate manifestation of this duty being humanitarian intervention, it should not be a military endeavor; at least not as our military, its mission and obligations, are constructed today.

There are many factors which contribute to this idea that the military is an inorganic institution. The first and most potent argument is that the men and women who make up the armed forces of the United States are doing so voluntarily, with full knowledge of the risks which may be involved. This is true only to a certain extent. Consider the words of the oath of office:

I (state your name), having been appointed an Officer in the United States (Air Force, Army, Navy, etc.) do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

A member of the United States Armed Forces acknowledges and accepts the risks involved in supporting and defending the Constitution. The use of force inevitably carries with it the risk of physical harm. This is a risk the soldiers of the military accept and acknowledge when they enlist. But the scope within which this risk is expected of the soldier is, or should be, limited to combat operations in the defense of his country's security-- supposedly its Constitution, and possibly what its Constitution stands for.

Sometimes this means more than simply defending our borders. In cases where combat is not involved, the risks the soldier acknowledges in taking the oath do not apply. Hence, in these instances, the oath does not apply. For example, a military member may legitimately find herself aiding her countrymen by stacking sandbags along the Mississippi river during a flood, or cleaning up the rubble after a hurricane. When troops are sent to supplement state and federal natural disaster relief programs, such utilization is not found directly in the

oath. However, justification with respect to the oath is not really necessary, because this type of endeavor does not involve the risks associated with combat. Stacking sandbags does not involve enemy fire. The soldier is not asked to kill, and risk being killed. The oath, designed to portray the commitment the soldier has in defending his country in combat, does not apply in this instance because combat is not involved.

Another example in which the military might be called on to aid others is if one of its allies has been unjustly attacked by an external, or even internal, force. In this example, the oath does apply, and justification is warranted with respect to it. It can be argued that allowing an ally-- a possibly vital economic tie-- to be taken over by a hostile invader could result in severe monetary and other losses which would directly affect our domestic lives, as well as our position in the International community, thus jeopardizing our national security in the strictest sense. Here the same risk is involved as would be with literally defending our borders, and this risk is justifiable on the same grounds-- national security in the strictest sense. For example, many felt that the Gulf War, in which the United States drove an aggressive Iraq out of Kuwait, was fought only to secure a source of oil for the U.S. Although it would be difficult, if not impossible, to maintain that

oil had nothing to do with it, it would also be tough to argue that oil is not a major, if not **the** major, component in not only our economy, but in our everyday way of life. Using the "war for oil" argument, then, the Gulf Conflict is justified by pointing out that the United States has a vital, self-interest in preventing an aggressive despot from gaining two-thirds of the world's present energy source. It protects this interest by coddling and protecting allies within the oil-rich regions. Oil is necessary to our national security in the strictest sense.

This example illustrates two things: First, how a justification for war using national security can be made; and second, that a threat to national security can be construed along many different lines. The United States government, acknowledging that many Americans do not understand the importance of oil to our economy and our way of life, *that without oil we lose our basic rights*, utilized several very different approaches to justifying our actions: they compared Saddam Hussein to Hitler, for example, and repeatedly reminded us that Iraq aggressively, and wrongly, crossed the border into helpless Kuwait.⁵⁰ These reasons for going to war may not

⁵⁰The United States' complicity in arming Iraq, or the legitimacy of Iraq's claim that the borders of Kuwait were not those originally agreed upon, are separate issues, more appropriately addressed within the context of a political analysis. My purpose in using the Gulf

have anything to do with oil, but nonetheless they have everything to do with national security. Hitler was a threat to the whole world, as is a hostile aggressor. The use of force in such an instance, then, is covered by the oath. Essentially, and in most cases, an enemy of our allies becomes an enemy of ours.

Nowhere is it even implied in the oath, or elsewhere, however, that the job of the United States soldier also entails taking the risks associated with combat for the purpose of securing the basic rights of those living outside the immediate realm of the government by which his military was established, for reasons other than self-interest. Volunteering to support and defend the Constitution, and what it stands for, of the country of which one is a citizen is very different from volunteering to stage humanitarian interventions.

If "supporting and defending the Constitution" implies supporting and defending everything the Constitution stands for, one could argue that because the Constitution gives the Executive the power to enter into treaties, the military could justifiably be used in upholding those treaties, which may mean going into a

War as an example is not to reflect my personal opinion of U.S. actions in the Gulf region, but to demonstrate how the use of our forces in combat outside our immediate borders can be justified using a standpoint of national security in the strictest sense.

foreign land for humanitarian purposes. However, if the oath is interpreted to mean that the military may be used by the Executive in any circumstance covered by the Constitution and its 206 years of history, then the oath is arbitrary; the soldiers of the United States have signed up to risk their lives, to kill and be killed, for just about anything. I do not believe this to be the case. A closer reading of the Constitution shows that where the military is mentioned, it is in the context of national security in the strict sense.

The Constitution begins by clearly defining its purpose:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The body of the Constitution serves to delegate these goals to the different factions of government. The Congress is given the responsibility of providing for "the common defence":

(The Congress shall have the power)
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
To raise and support Armies...;
To provide and maintain a Navy;
To make Rules for the Government and Regulation of the land and naval Forces;
To provide for calling for the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
To provide for organizing, arming, and

disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States...

The President is given the duty of Commander in Chief. His job as such is to oversee military operations and take responsibility for them. The President is also given the power to make treaties. However, having the power to enter into treaties does not in itself imply that the military can be used in enforcing these treaties, especially if the treaty entered does not in any way involve the military. Consider, for example, that in addition to declaring war, the Congress has the power to lay and collect taxes, to coin money, to establish post offices, and to promote the "progress of science and useful arts." It would be absurd to insist that, because the Congress is given these powers in the Constitution, it can use its power to declare war to enforce them. Just because a power is granted in the Constitution, which the military vows to support and defend, does not mean that this power carries with it use of the military in its execution.

The purpose of the military, clearly expressed in the opening paragraph, is to provide for the common defense. This is reflected in the words of the Oath: "against all enemies, foreign and domestic..." This means defense of the nation, not defense of each specific, isolated power granted in the Constitution, nor

is it defense of every last case in every Constitutional Law book. It is defense of the principles inherent within the Constitution as a whole. If the Constitution is picked apart, line by line, it loses its force. In order to achieve the system of checks and balances it embodies, a single part of the Constitution cannot stand without the rest. The powers of the Congress must necessarily be complemented by the powers of the Executive. The powers of the Supreme Court must similarly accrue. Hence, in supporting and defending the Constitution of the United States, members of the military vow to provide for the common defense of the Constitution as a whole.⁵¹

Moreover, a narrow reading of the Oath and of the implications of defending the Constitution is necessary in order to limit the scope of the risk associated with volunteering to serve in the Armed Forces. No sane person would volunteer to make the sacrifices our soldiers make if he thought he was signing his life away arbitrarily. This will be discussed in greater detail below. The point I wish to make here is that what the

⁵¹This very issue, in fact, is currently being debated on Capitol Hill. In light of the mess in Somalia and the perceived vacillation of President Clinton's foreign policy, the Senate is proposing legislation which would limit the President's power to send troops into Haiti or Bosnia, and to offer American combat troops for any United Nations force not commanded by an American, without congressional approval.

soldiers of the United States agree to support and defend
is the principles inherent in the Constitution as a
whole; that in taking the oath of allegiance, one has
promised to do something very specific-- to take the
risks associated with combat, if necessary, in providing
for the common defense of the United States.

In agreeing to take on such a responsibility, have
our soldiers (or any soldiers) relinquished their own
basic rights in the name of their cause? Is the soldier
excluded from the basic rights of security and
subsistence simply because he or she volunteered to
"protect and defend the Constitution of The United
States"? I think not. However, when discussing basic
human rights in the context of justifying humanitarian
intervention, the implication is clear. Humanitarian
intervention requires a use of force, which necessarily
carries with it the risks associated with combat. The
price for subsistence rights, for example, then, could
conceivably be the life of the soldier seeking to secure
it. Is this a fair trade, from the soldier's standpoint?
A policy requiring our military to risk their lives in
the name of securing the basic rights of those outside
our borders blatantly violates Shue's priority principle.

The priority principle provides a hierarchical
layout of the sacrifices to be made by one person for the
sake of another's basic rights. The principle he puts

forth is the following:

1. the fulfillment of basic rights takes priority over all other activity, including the fulfillment of one's own non-basic rights;
2. the fulfillment of non-basic rights takes priority over all other activity except the fulfillment of basic rights, including the enrichment of culture and the satisfaction of one's own preferences; and
3. the enrichment of cultures takes priority over the satisfaction of preferences in ways that do not enrich culture.⁵²

There is not a mention of sacrificing one's own basic human rights for those of another because, on Shue's account, doing so is permissible, but not required. "One is required to sacrifice, as necessary, anything but one's basic rights in order to honor the basic rights of others."⁵³ This principle is a vital key in support of the argument that a soldier's rights should share equal ground with the rights of those for which an intervention is staged. In expecting the members of our military to stage humanitarian interventions, are we not effectively expecting them to sacrifice their basic rights in order to protect another's basic rights? In Somalia, for example, the US Marines trade their rights to security that the Somalis might exercise their rights to subsistence.

⁵²Shue, Op. Cit., p. 118.

⁵³Shue, Op. Cit., p. 114. See also p. 38 of this text.

Shue's priority principle does not take into account the number of Somalis that might be saved by the death of one soldier. This may be important on utilitarian grounds; however, from the perspective of rights it is irrelevant. If rights are the foundation of one's morality, they can not be undermined by utilitarian considerations. Regardless of the number saved, no one's universal basic rights may be sacrificed, against her will, for any reason.

The fact that the Marines enlisted freely, as opposed to having been drafted or otherwise forced to serve, is of little relevance; once you become a member of the armed services, your freedom to pick where you will serve, or what causes you might wish to support, vanishes. You go wherever, and do whatever, you are ordered to do, or you face punitive consequences. The fact that forfeiting your rights to security to participate in a humanitarian intervention was not what you originally signed up to do is of little significance. You are expected to "do your duty," which in today's world has seemingly unlimited connotations. If strict adherence to the letter of the oath was all that faced the soldier, a question of rights violations would not arise; he would be doing the job for which he volunteered. However, someone who may have enlisted three years ago to defend the Constitution could very

well find himself aiming an M-16 with one hand, and dispensing food to Somalis with the other.

Since respecting and protecting basic human rights is a universal moral duty, then perhaps performance of this duty does not deserve the negative light it was given above. What could be so bad about being the brawn behind such an endeavor? Is it not a more noble role for our military than, say, remaining in a perpetual state of training while waiting for a viable threat to our Constitution to arise somewhere?

The most powerful answer to this involves an appeal back to the argument delineating the role of our government, and hence the role of our military. It was argued previously that the performance of the government's positive, strictly moral duties should not be forced upon its citizens. The members of the military are also, and by law necessarily, citizens of the state. Thus the performance of such moral duties should similarly not be forced upon the members of a state's military. Assigning the role of humanitarian intervention to the military is in effect forcing the members of the military to carry out the government's positive moral duties as a secondary addressee. For the individual military member who might not wish to fulfill these duties, punishment is swift and harsh. The consequences of defying what might seem to be a minor

military order can result in a prison sentence in times of peace, and worse in times of war.

The military falls under its own judicial system, with its own laws and punishments, which restricts the behavior of the soldiers much more stringently than that of ordinary citizens. Under the Uniform Code of Military Justice, or UCMJ, "insubordination" is a crime, as well as "conduct unbecoming of an officer," "public display of affection," "absent without leave," "dereliction of duty," and the list goes on. Lying is a crime, as is defying the direct order of a superior.⁵⁴ Since all military members have at least one superior, the President, all military members who are ordered to participate in a military operation and subsequently refuse have committed a crime, and are subject to scrutiny under the UCMJ. Correspondingly, as the restrictions placed on the actions of military members are greater than those placed on civilians, so are the punishments which attach to the crimes under the military system. Thus the military member is seldom faced with a

⁵⁴The UCMJ addresses the dilemma a soldier may face if given an unjust order, stating that such orders are a crime in themselves and not to be obeyed. However, this directive is primarily aimed at specific orders given in specific instances, not at questioning the justice of the battle into which one's squadron might be ordered. Getting out of combat requires a plea of "Conscientious Objector," which is to be granted only at the discretion of the court, and carries with it the inevitable consequence of resignation.

choice; choices are made at a level beyond his reach and thrust upon him from above.

Patriotism

A stringent legal system, however, is not the only method used to effect a sense of duty among soldiers. The most powerful tool that motivates a successful military is the problematic concept of patriotism. Patriotism, however, does not cross territorial boundaries.

The conventional view of military service encompasses the idea that "every member of the nation (has) the right to claim protection from *some* members of the nation," i.e. the military.⁵⁵ It is the duty of the members of the military to protect their compatriots. National patriotism limits the scope of what is expected of the soldier and defines precisely what her duty entails. The duty of the soldier is limited to the protection of the state, and the citizens within that state. By joining society, the citizen gives up some of her freedom for some protection. The military is a part of the forces which provide that protection.

From a psychological standpoint, it is easy to see why such a limited scope is necessary. It would be difficult to find sane individuals who would voluntarily

⁵⁵Shue, Op. Cit., p. 133.

sign up to risk their lives in the line of duty if "the line of duty" were not defined, and if a specific cause could not be named. This is not to say that there are not "specific causes" outside of nationalism worth risking one's life for, but that the specific cause for which a soldier fights is very precisely, and very convincingly, defined.

Patriotism is instilled in the minds of every recruit who enters military basic training in the United States. A soldier's responsibilities are presented as eminently significant and noble. Love-of-country becomes a value so omnipotent that defense-of-country at all costs, *the ultimate cost*, is not a burden, but an honor. The enigmatic concept of "patriotism" is hard to define and even more difficult to conceptualize. It is most clearly illustrated through example. Consider the words of American Revolutionary Patriot Nathan Hale, who in 1776, as he was being hung by the British, said, "I regret that I have but one life to give for my country." This mindset epitomizes the power of the concept. Nathan Hale is a hero in military history books; his views are heralded as the ideal military attitude.

Actions also amply illustrate the power of patriotism, as is seen through an analysis of the motivations behind the bloodshed of World War II. In the Nuremberg Trials. For example, the officers of the Third

Reich cited the loyal fulfillment of their orders, in the name of patriotism, as the only defense for the atrocities they committed. On the side of the Allies, after the British had been forced to evacuate Dunkirk by an overwhelming German force, Churchill's patriotic speeches inspired them to regain their bearings, persevere, and eventually win the Battle of Britain against enormously disproportionate odds:

We shall not flag or fail. We shall go on to the end. We shall fight in France, we shall fight on the seas and oceans, we shall fight with growing confidence and growing strength in the air, we shall defend our island, whatever the cost may be, we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills; we shall never surrender.

In the face of death, patriotism becomes the absolute religion which guides the soldier, provides incentive, and allows him to endure. When the use of force is mandated, a military unit endeavoring in a struggle devoid of patriotism would be rendered impotent. Again, Churchill:

Upon this battle (of Britain) depends the survival of Christian civilization. Upon it depends our own British life, and the long continuity of our institutions and our Empire... Let us therefore brace ourselves to our duties, and so bear ourselves that, if the British Empire and its Commonwealth last for a thousand years, men will still say: "This was their finest hour."

Patriotism, as described, sounds like a pretty scary concept, perhaps even dangerous in its strength. This is because it *has to be*. One must never forget what it is

that a soldier is asked to do: to kill and be killed. This is asking a lot.

It is difficult to imagine where a soldier, who enlists and reenlists for patriotic reasons, will find the genuine motivation to risk his life in an intervention for purely humanitarian purposes. The motivational force provided by patriotism is absent. From where will his inspiration come?

I suppose one could give a patriotic argument for humanitarian intervention by saying that such an endeavor promotes the good of the country by helping the country meet its global obligations fully and fairly, by helping the country to be a good one. The problem here lies in a collapse of the distinction between the country's own good and the altruistic good the country may seek to effect. There is a difference between protecting and promoting the good of a specific entity-- the Constitution, or embodied, the country-- and protecting and promoting the good of that entity's aspirations. Patriotism does not address the latter; a patriotic appeal is an appeal for action on behalf of the country's own good, not on behalf of the good the country may wish to promote.

A patriotic justification of the operation must, then, be sufficiently distorted so that self-interest is at its roots, instead of genuine humanitarianism. For

example, one might say that "humanitarian intervention" is needed in order to keep the oppressed from initiating a mass exodus out of the oppressing state, and thereby disrupting the peace of the surrounding area, and ultimately the world.⁵⁶ This type of argument, however, does not address humanitarian intervention as defined here. A military operation with selfish aims is not a humanitarian intervention at all.

If a patriotic rationale is not used, and if the soldier is to participate freely in a humanitarian intervention, from where will a sense of duty, necessary to the fulfillment of such a responsibility, come? It certainly cannot be expected of the individual soldier as his role is defined and indoctrinated today.

The decision to act on one's moral obligations to respect and protect the basic human rights of others should be a choice which is made freely. Like other moral choices, bringing these obligations to fruition should not be a forced issue, but one made in full conscience. Clearly, once one has enlisted in our armed forces today, the subsequent decisions made by the individual soldier are not entirely made freely, and therefore should not include the fulfillment of such moral obligations.

A reconstruction of our military legal system, as

⁵⁶See Adelman, Op. Cit.

well as a revision of the military oath and a concise description of what military service entails, is necessary before the soldier can be said to have made a free and conscious decision to participate in humanitarian intervention.

From here, the only logical conclusion which can be drawn is that humanitarian intervention should not be a mission of the United States military, at least not as the military is organized and defined today. However, since there exists a universal obligation to intervene for humanitarian purposes when warranted and when able⁵⁷ (and the United States is certainly able) this conclusion requires either that the definition of humanitarian intervention depicted previously be revised, or the role of the military be redefined. Considering the state of world affairs as we enter the 21st century, the latter would be the most appropriate action to take, if it is indeed possible.

What would such a military look like? Changes must be made at the most rudimentary levels before new policy is introduced. Beginning with the Oath of Office, a reconstruction might read something like this:

I (state your name), having been appointed an officer in the United States (Air Force, Army, etc.) do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic,

⁵⁷See pp. 33-38.

that I will bear true faith and allegiance to the same. Further, I swear that I will support and defend the basic human rights of others, world-wide, in the same spirit with which I am committed to the United States Constitution. I take this obligation freely, without any mental reservation or purpose of evasion. I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

Immediately the problem surfaces as to which duty should take priority should a conflict of interest arise. If a soldier, or more appropriately, the Commander-In-Chief, finds herself ignoring human rights violations so she can properly defend the Constitution, or vice versa, what should she do? Appealing once again to Shue's Priority Principle, it seems that having a working constitution is a luxury when held in comparison with the basic rights of security and subsistence, thus mandating that she protect human rights. On the other hand, on the national level, security is having one's own working constitution. In other words, defending the Constitution equates to protecting the security rights of the state's citizens. The simple solution of writing a restrictive clause into the Oath, for example, "when it is in my country's best interest to protect the human rights of others..." or something similar, only serves to complicate the problem further. Implicit in the clause is the idea that the basic human rights of compatriots will in all cases outweigh the basic rights of foreigners. As was shown previously, if this is the case, humanitarian

intervention cannot be justified.⁵⁸ Once again, we are faced with conflicting basic rights, a problem which appears to have no definitive answer.

Suppose however, that an Oath could indeed be written, and a duty delineated, that does not harbor a potential and devastating conflict; the rest of military indoctrination would still be in need of revision. Although patriotism would play some role in motivating troops, that role would need to be sufficiently minimized so that national interests are not seen as always and invariably coming before everything else. National interests must take their place either beside, or behind, the global interest of protecting human rights. Then we must ask ourselves from where this unprecedented confidence in the inherent goodness of others, which allows us to suddenly, after millions of years of human history, feel safe in letting go our guard, has come from: Is it the result of real social evolution, or simply the pomposity of being citizens of the world's only remaining Superpower? I certainly am not ready to take this pernicious leap. And what will take the place of patriotism as the troops' motivator? Of course, a globally accepted right-based moral theory would do the trick, but this takes us on yet another unnavigable journey.

⁵⁸See pp. 17-18.

From here it seems that the global protection of human rights should not be a role for our federal military (yet) for two reasons. First, it blatantly contradicts the original duty of the military-- to support and defend the Constitution, i.e., our own right to security. And second, it blatantly contradicts the plural moral views of our times by imposing a global right-based view on those who are tasked with carrying out the intervention, a view which has yet to be accepted.

Perhaps there should be a new and completely volunteer division created within the military, or one that at least utilizes military training, whose primary, or only, mission is to train for and carry out humanitarian interventions. The members would be acting with full knowledge and acceptance of the risks involved, and for the purpose of effecting humanitarian ends. This sort of solution alleviates the conflict-of-interest problem, because defending the Constitution would still be the role of the regular military, and not be part of the responsibilities this organization would be tasked with. The second problem, the imposition of a global right-based view on those tasked with the intervention, is alleviated by the fact that the members of this organization volunteered for just such a task. The moral views espoused by such a force, then, are not forced upon

its members. Expecting them to embrace their duty with unfaltering fervor becomes much more palatable than when this duty is imposed on a select few who originally signed up to do no such thing. As we wait for policy to develop, however, humanitarian intervention must be redefined to exclude the notion that the force used must be a federal military. Humanitarian intervention would thus be stated as follows:

Humanitarian Intervention occurs when a use-of-force is employed by an outside state, or other outside entity, to protect otherwise helpless people against violations of the basic rights of security and subsistence.

In the wake of Somalia, and in the process of defending the idea that basic human rights command a universal duty of respect and protection, it seems almost contradictory to assert that humanitarian intervention should not be a role for our United States military. However, the arguments I have presented cannot support any other conclusion.

CHAPTER IV

CONCLUSIONS

This paper argued in favor of two changes in the standard definition of humanitarian intervention, and against humanitarian intervention as a current role for the United States military.

All people, whether politicians, ordinary citizens, military members, or those innocently caught in the cross-fire of internal political conflict, have the right to security and the right to subsistence. As the Somalia case illustrates, being a member of a legitimate state is not necessary in order for these rights to be claimed. They accrue to each person individually. From there they can transfer to the state of which the individual is a member, thereby giving that state rights. Hence, the first change to the standard definition of humanitarian intervention deletes the idea that intervention as such must be an act *against* a state. Rather, it is against an oppressor generally.

That the rights to security and subsistence are basic, universal, and deserving of protection, is based primarily on the argument that security and subsistence must be present in order for any other rights to be

enjoyed. Security is the right not to be beaten, raped, murdered, or otherwise physically violated. Subsistence is the right to breathe, drink, eat: basically to survive, or to try to survive. Because these rights must be present in order for any other rights to be enjoyed, they are integral parts of every other right. This is important in establishing why the rights of security and subsistence command a universal duty of respect and protection. Humanitarian intervention is the ultimate manifestation of this duty.

The second change reflects the argument that the force used in staging a humanitarian intervention need not necessarily come from the employment of a federal military. More strongly, it was argued that the force used in staging a humanitarian intervention *should not be* the employment of federal military troops. This conclusion was the result of several interrelated arguments.

First, military members are also individuals, necessarily citizens, and hence can make claims to the rights of security and subsistence themselves. A military member's security is sacrificed when he becomes involved in a humanitarian intervention.

Second, because the organization of our military, although voluntary, does not generally allow for individuals volunteering to perform specific tasks, any

currently enlisted soldier could find herself involved in a humanitarian intervention, even if it is against her will.

Third, the specific duty of our military members is to protect the Constitution. Although the soldier acknowledges and accepts some risk when he volunteers, the scope of this risk is, or should be, limited to combat operations in the defense of his country's security.

Fourth, in asking the members of the federal military to regard universal human rights as at least, if not more, important than national security, some amount, possibly all, of that security is potentially given up. Such an unprecedented move in the history of nations, without the foundation of even a globally accepted rights-based morality (much less globally accepted political institutions,) would be at least bold and reckless, if not fatal to the political freedom and rights we now enjoy.

Finally, and in my view most important, politicians as well as philosophers tend to think of military men and women as something less than human, a resource available to be used for whatever cause is politically enhancing or philosophically idealistic. Politics and idealism change, but a dead soldier remains dead.

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