

Acquisitive Liberations: A Critical Evaluation of the Use of Human Rights Discourse in Justifying Military Intervention

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Abstract

Military intervention into the affairs of other states has historically been justified by the United States of America with reference to human rights. It is called humanitarian intervention. This article examines the operation of human rights discourse in justifying such intervention. It argues that the conflation of national self-interest and collective self-defence, which is allowed in jus ad bellum discourse and is built into the UN Legal and executive architecture, allows for intervening states to present military actions that afford them strategic gains and commercial opportunity as altruistic acts. Support, weak resistance, or acquiescence to such action by the UN and the press allows for such actions to acquire popular legitimacy, and this article examines how the human rights discourse provides an argumentative framework to articulate such legitimacy. In its critical analysis of analytical tools put forward by Simma and Cassese, the article concludes that the conduct of intervening states post bellum should attract as much legal scrutiny as the initial intervention, and that the use of human rights to justify interventions that are acquisitive in motive undermines the purpose and operations of human rights as a driver for positive change in the world.

Introduction

The purpose of this article is to examine how the doctrine of human rights is used to justify military humanitarian intervention by the United States of America (US hereafter) into other sovereign states, and to critically consider how a set of mixed motives (combining altruism and self-interest) or cloaked motives (self-interest masquerading as altruism) affect the credibility and efficacy of human rights as championed and encoded into law by the United Nations (UN hereafter). I begin by framing the problem as it has been set out by a range of scholars, establishing both a domestic and an international motive for a misrepresentation of the true motives for humanitarian intervention. I then balance one polemical critique of US interventionist and non-interventionist policy from Jean Bricmont¹ with other examinations which examine institutional entrenched thinking in the UN and a statistical analysis of foreign intervention. The essay continues with analysis of how US national interest may be said to be intertwined with humanitarian intervention, with reference to the realist theory of international relations and two of its more prominent American exponents. I also discuss how a contemporary idea of the historic recoupment of war costs from a beaten foe might justify neoliberal US expansion into other territories. The next section deals with the arguments of defence of national interest and collective self-defence that might be deployed as *jus ad bellum* in relation to foreign intervention, and explores why such reasons may not be considered sufficient by US policy-makers. I then deal with the ironies and unfairness present in the United Nations and international justice framework in general, arguing that human rights as a UN project was undermined at its very inception by the “victors’ justice” and apparent hypocrisy of the Security

¹ Jean Bricmont. *Humanitarian Imperialism: Using Human Rights to Sell War*, (Monthly Review Press 2006). 30.

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Council “Permanent Five”, of which the US is one member. The final section in the main body of the essay expands on the reasons for war given by George Bush Jr. and Tony Blair in 2003, and analyses the worth of Simma’s ‘almost legal’ argument² and Cassese’s tests for avoiding exploitative interventions.³ Finally, I will conclude that human rights interventionism can be, and is, misused to thinly veil neoliberal commercial and strategic expansion by the US. I also conclude that the international system is rigged in favour of the US or other powerful states behaving similarly, and that the safeguards that international law affords to check such behaviour are circumvented with relative ease.

Ennoblement through propaganda?

Eliot Cohen wrote in 1986 that the American public ‘pilloried’ officers returning from the Vietnam War as ‘mass murderers, incompetents or both’, and that as a consequence, ‘the military leadership has determined never again to fight a war with public backing of the fullest kind’.⁴ Cohen argues that the military officers’ concern is understandable but misguided, since any conflict that the US engages in is likely to involve political interference, not just armed conflict, and thereby the desired public support will be hard to establish.⁵ I argue a government can hardly expect to generate public support for an armed conflict if it announces that the objective is to gain territory, to secure oil reserves, or to gain influence. According to Bricmont, it follows that cynical aims must be presented as altruistic in nature – there must be an exculpatory

² Ciaran Burke, *An Equitable Framework for Humanitarian Intervention*, (Hart Publishing 2013). 15-16.

³ Antonio Cassese, “Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?” *European Journal of International Law* 1999 25.

⁴ Eliot Cohen. “Constraints on America’s Conduct of Small Wars.” Miller, Steven E. (editor). *Conventional Forces and American Defence Policy*, (Princeton University Press 1986) 294.

⁵ *Ibid* n4, 294.

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narrative.⁶ Emphasising the plight of the target country's citizens and the armed forces' intention to liberate them, remove the despotic leader from power and democratise the country has a far greater chance of gaining public support, since this narrative ennobles the mission and legitimises the glory of its success. I argue that the discourse of human rights is therefore a convenient framework around which to construct and deploy an argument that can justify intervention for more acquisitive or strategic reasons. Indeed, Noam Chomsky sees little value in such discourse, taking the reductive view that 'human rights have purely instrumental value in the political culture; they provide a useful tool for propaganda, nothing more',⁷ and adding 'it is not...that the United States is unique in this contempt for international law... Rather, it is more powerful, and therefore more free to do what it wishes'.⁸ The misuse of the human rights doctrine was clearly observed or anticipated by the United Nations since – as Malcolm Shaw states, unilateral intervention is not favoured, 'primarily because it might be used to justify interventions by more forceful states into the territories of weaker states'.⁹ Anne Orford laments that the 'revolutionary potential of human rights is radically circumscribed when rights become an apology for state violence',¹⁰ which outlines the danger to the efficacy and legitimacy of human rights as a project and as a progression for humanity.

⁶ *Ibid* n1, 30.

⁷ Noam Chomsky, *World Orders, Old and New*, (Pluto Press 1997). 133.

⁸ *Ibid* n7, 221.

⁹ Malcolm Shaw, *International Law*, (Cambridge University Press 2008, 6th edition). 1156.

¹⁰ Anne Orford, *Reading Humanitarian Intervention*, (Cambridge University Press 2003). 187.

Three critiques of intervention policy

In commenting on the 1994 Rwandan genocide, Jean Bricmont opines that 'mainstream discourse uses non-intervention in situations where (intervention) might have been justified...to prepare public opinion to accept other interventions that do take place but in very different circumstances,'¹¹ adding that this is done to overcome public reluctance for their armies to engage in 'foreign adventures.'¹² I take this to mean that the public are led to assume from their government's selectivity, that the decision-makers only choose to intervene when human rights abuses in a situation are particularly severe, and show restraint when they are not. Barnett and Finnemore take a more evidence-based approach, asserting that the UN Secretariat viewed the conflict as a civil war where there was no moral basis for intervention, and did not deviate from that position in spite of evidence of genocide.¹³ Therefore, whilst Bricmont blames an unnamed cynical global elite who have the will and power to influence mainstream discourse through both the presence and the absence of an action, Barnett and Finnemore understand the lack of intervention as an example of 'premature cognitive closure'.¹⁴ Whilst Bricmont's argument at first appears somewhat paranoid and lacking in evidence in its assumption of the willingness of the elite to manipulate popular opinion, the two differing positions can be reconciled by considering that intervention requires the commitment of willing states, and it might be inferred that there was no willingness amongst United Nations Security Council (UNSC hereafter) members or the Secretariat to intervene. Perhaps the strongest evidence to support Bricmont's idea of the cynical manipulation of the human rights discourse to

¹¹ *Ibid* n1, 51.

¹² *Ibid* n1, 52.

¹³ Michael Barnett and Martha Finnemore, *Rules for the World: International Organisations in Global Politics*, (Cornell University Press 2004) 121-123.

¹⁴ *Ibid* n13, 150.

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advance a US neo-colonial agenda is to be found when examining the human rights abuses its government has *not* sought to address, such as in East Timor, Zimbabwe, Rwanda, Sierra Leone and Cote d'Ivoire. Through analysis of collected data regarding foreign interventions conducted by third-party states, Bove, Gleditsch and Sekeris have proven that intervention in oil-rich countries where there is a situation of civil war is 100 times more likely than in countries that do not produce oil.¹⁵ Whilst the authors caution against the cynical acceptance of conspiracy theories about governments' true motives, they nonetheless clearly show that oil-dependent states such as the US and its traditional ally the UK generally only intervene in states that are oil-producers.¹⁶ They also point out that the US has in its foreign policy a history of either supporting or failing to challenge autocratic rulers in some states whilst emphasising democratisation in others,¹⁷ which clearly subverts claims made by George Bush Jr. about wanting to bring democracy to Iraq. Bove, Gleditsch and Sekeris' findings tend to lend the weight of empirical evidence to the polemical, unsubstantiated claims made by Bricmont and – earlier in the essay – Chomsky, although in my view Bricmont's claim that governments use non-intervention as a deliberate policy to give legitimacy to intervention is unlikely. It seems far more likely that they simply choose which countries to intervene in based on what other benefits there may be. In the next section, I will discuss how such thinking is in line with the foreign policy preferences of Kissinger and Weinberger.

¹⁵ Vincenzo Bove, Kristian Skrede Gleditsch and Petros G. Sekeris, "Oil above Water": Economic Interdependence and Third Party Intervention.' *Journal of Conflict Resolution*, Vol. 60(7). (Sage Publications 2016). 1270.

¹⁶ *Ibid* n15, 1270.

¹⁷ *Ibid* n15, 1273.

Humanitarian intervention as a neoliberal Trojan Horse

In acknowledging that oil companies were lobbying the UK government months before the decision to go to war in Iraq, Sir Jeremy Greenstock has said in interview that ‘oil was not a reason for going to war, never was’, but concedes that ‘the fact that (oil) contracts were an interesting part of the new Iraq was something to compete with the Americans for’.¹⁸ E-mails between Hillary Clinton and her confidante Sidney Blumenthal disclosed via the WikiLeaks website in 2016 suggest that within days of the Libyan revolution in 2011, the British and French leaders who had (together with US and Canadian allies) led a UN-authorized coalition to aid the rebels, were impressing upon the newly-installed Libyan government the expectation that their countries’ help be rewarded tangibly with lucrative, favourable oil contracts.¹⁹

It must be accepted that alongside its cost to human life, war entails a huge financial cost, and it might be argued that provided states entering a conflict do so in adherence to the established principles of the *jus ad bellum* doctrine, they have a moral right to recoup the costs of war from their foes – this is established in precedence by both of the World Wars. Since the foes in the global War on Terror are not accountable or identifiable as states, it would be difficult to recoup costs from them, but I argue a war fought in defence of the rights of a country’s oppressed citizens enables the victorious antagonists to justify neoliberal commercial ventures as a recoupment of the costs of war. Coining the term “disaster capitalism”,²⁰ Naomi Klein has persuasively documented exploitative and cynical commercial practices employed by US governments, commercial companies and development agencies in the wake

¹⁸ Sir Jeremy Greenstock, interviewed on BBC HardTalk, 16 July 2016, BBC World Service radio, available at <http://www.bbc.co.uk/programmes/p040kt9y>.

¹⁹ WikiLeaks website, “Hillary Clinton e-mail archive.” *WikiLeaks* 2016. Accessed 06/05/2017. Available at <https://wikileaks.org/clinton-emails/emailid/12900>.

²⁰ Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism*, (Random House of Canada, reprinted 2008)

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of international humanitarian aid in Haiti, and this practice is also documented by Orford.²¹ Since similar practices can be justified in war contexts as a recoupment of costs, it might follow that some exploitation of commercial potential in order to begin to recoup the costs of the venture is also justifiable in the case of humanitarian intervention. However, it must be acknowledged that in order for an intervention to be truly in the spirit of humanitarianism, recoupment of costs through exploitation of the resources of the country to whom aid has been given must be an afterthought and not the primary, or even secondary intention. An international scramble for oil rights and other commercial advantages, whether during an intervention or immediately following it, instantly undermines the nobility of the intervention, and invites cynicism.

The dominant theory of international relations that has been followed by such ubiquitous practitioners of US foreign policy as Henry Kissinger is that of realism, and it is a realist principle that engaging in a war for any reason other than sovereign self-interest is foolhardy. Kissinger strove to end America's 'crusading' and ground its foreign policy in 'national interest',²² and later Caspar Weinberger also conducted foreign policy based on the principle that the US should not enter a war unless doing so was in its national interest.²³ To the realist, a wholly altruistic intervention to protect the human rights of another state's citizens, an intervention which had no attendant strategic benefit to the intervening state, would be an unthinkable act of hubris. If we accept that the violation of another state's sovereign borders to protect its citizens from abuses can be justified by international human rights law, and that the law encourages such an act only when conducted in the spirit of altruism or the collective defence of the rights of fellow human beings, we must conclude that according to realist theory,

²¹ *Ibid* n10, 188.

²² Henry Kissinger, *Years of Upheaval*, (Little, Brown and Company 1981). 981

²³ William Shawcross, *Deliver Us From Evil: Warlords & Peacekeepers in a World of Endless Conflict*, (Bloomsbury Publishing 2000). 102.

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intervention to protect the human rights of another state's citizens is incompatible with prudent foreign policy. However, realism (as described by Richard Ned Lebow) is complex enough to recognise the contradiction that although the international arena is a 'brutal' self-help system, 'power is most readily transformed into influence when it is both masked and embedded in a generally accepted system of norms'.²⁴ Using Lebow's thinking, I therefore argue that it is unrealistic to expect a state whose foreign policy is designed to consolidate its power and influence in the international arena to engage in an expensive altruistic enterprise without the expectation of some return on its investment. In my view the conception of the Universal Declaration of Human Rights had at its core the idea that when the behaviour of humans in a position of power towards humans who are not in a position of power falls woefully and deliberately below a certain agreed level, all other humans are degraded by the act and must rally to remedy the problem and restore the human condition. However, I argue that when the costs of foreign military intervention are borne in mind, asserting such a duty on states appears unrealistic. Those states who volunteer to defend human rights in foreign countries can only prudently do so if by acting, they gain significantly for themselves. When this thinking is considered alongside the compelling statistic for likelihood of intervention in oil-producing countries given by Bove, Gleditsch and Sekeris,²⁵ it is suggested that for foreign policy makers in the US and its coalition partners, restoring the human condition by redressing a perceived evil act is not worth the expense unless that expense is outweighed by commercial or geostrategic opportunity. Pollis and Schwab go further in characterising the relationship between human rights and US foreign policy as symbiotic, an expansion of American values

²⁴ Richard Ned Lebow, 'Realism'. Chapter in *International Relations Theories: Discipline and Diversity*. Dunne, Kurki, Smith (editors), (Oxford University Press 2013, 3rd edition). 59-61.

²⁵ *Ibid* n15, 1270.

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(Manifest Destiny) across the world. They assert 'the financial marketplace, US foreign policy and human rights are all interrelated, increasing (the country's) already enormous power in insinuating its authority and leverage worldwide'.²⁶ This affords an interesting and worrying construction of neoliberalism in the global marketplace as the literal expression of American-ness, and humanitarian intervention as the instrument by which US power-brokers seek to achieve the Americanisation of the world, although the authors' evidence given to support such a sinister idea of US motivation is not persuasive. Rather, the evidence suggests that US foreign policy has shrewdly utilised human rights as a justification for its global strategy, but without conflating the two or purporting that they are part of the same project.

Lawfulness and approval

If the reader accepts the charge that the US and other states have engaged in war that was ostensibly instigated to protect the human rights of subjects of another state but was in fact motivated partly or entirely by the prospect of strategic gain or the maintenance of a preferred status quo, it might at first be supposed that it did so because acting for strategic gain or to maintain a balance of power is unlawful. However, as Yoram Dinstein has pointed out, the doctrines of self-defence and of collective self-defence as those terms are used in Article 51 of the United Nations Charter are sufficiently broad and ill-defined to allow states to justify an aggressive act in order to protect security interests that might be intangible, such as influence, or to prevent a perceived foe from gaining a greater regional influence (such as in the case of the US military intervention into the civil war in Vietnam).²⁷ Dinstein also cites part

²⁶ Adamantia Pollis and Peter Schwab, *Human Rights: New Perspectives, New Realities*, (Rienner 2000). 214.

²⁷ Yoram Dinstein, *War, Aggression and Self-Defence*, (Cambridge University Press 2012, 5th edition). 278-280.

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of the International Court of Justice decision in the *Nicaragua* case – that the US' claim to have acted against Nicaragua to protect El Salvador was not made out because El Salvador had not requested help – as a ratification of a broad definition of acceptable collective self-defence,²⁸ and we can infer that the echoes of this decision lent legitimacy to the US conception of the War on Terror begun in 2001 – taking the fight to the enemy in his hiding places before he attacks again – which although controversial and widely challenged by scholars has never been subject of a legal challenge at the International Court of Justice.²⁹

This gives rise to a question: why deceitfully rely on the human rights narrative when there exists a precedent in international law for the lawfulness of pre-emptive defence and for defence of sovereign interests, including intangible interests? Why not simply invoke the national sovereign prerogative to defend US interests wherever in the world they may be? My view is that there are two factors which taken together provide an answer to that question. Both are questions of legitimacy, the first international and the second domestic. A noble defence of the human rights of oppressed people, no matter how improbable that narrative might seem to some, nonetheless lends a legitimacy (as a “just war”) to the enterprise, which can lead to easier coalition-building and a consensus of approval or acquiescence in the international community, and to approval and patriotic fervour domestically. Chomsky implies that citizens of the US are uncritical of their government’s hypocritical policy of ignoring some articles of the Universal Declaration of Human Rights whilst decrying autocratic states that adopt the same policy,³⁰ and Bricmont states that the US free

²⁸ *Ibid* n27, 282.

²⁹ Mary Ellen O’Connell, “The Legal Case Against the Global War on Terror.” *Notre Dame Law School Scholarly Works*. Paper 648.

³⁰ *Ibid* 7, 219-220.

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press are remarkably 'uniform' in their coverage of foreign policy.³¹ If Chomsky is correct that US citizens do not challenge their government's alleged hypocrisy, and Brimont is correct that the US press are reluctant to publicly challenge foreign policy decisions, it would follow that provided a set of motivations for military action contains at least a veneer of nobility, the boast of a just cause, the action may proceed largely unchallenged by the electorate. Conversely, a war for influence – as touched upon in the Elliot Cohen quote discussed earlier in this article - is unlikely to engender the necessary public backing, since it lacks the necessary heroism. Whilst Dinstein's assertion may hold true in terms of the defence of national interests as *jus ad bellum* being defensible in law, international and domestic opinion and the wish to avoid public condemnation from peer states and the electorate is no doubt a prime motivating factor in the citing of a humanitarian cause for a self-interested action. Christopher Hill states that 'world opinion means something to those that participate professionally in international affairs', adding that such concern demonstrates the internalisation of 'certain common values'.³² It is argued that when the US engages in an intervention which could be said to contain a mix of causes, altruism and self-interest together in the same project, the altruistic part of that mix provides a kind of 'plausible deniability' to the decision-makers to any future charge of aggression. This plausible deniability is as useful when dealing with criticism domestically as it is when dealing with the condemnation of international peers.

³¹ *Ibid* n3, 69.

³² Christopher Hill, *The Changing Politics of Foreign Policy*, (Palgrave Macmillan 2003). 179.

Equality championed by hegemons

The language of human rights is far too easily twisted to justify missions that cloak other objectives, and far from its ideal role as a watchdog against such perverse misuse of the rights encoded in the Universal Declaration of Human Rights, the United Nations has instead enabled such endeavours, such as in the case of the assistance given to the Libyan revolution in 2011. The structure and existence of the UNSC 'Permanent Five' as an 'A-team' of hegemonic powers inevitably consolidates their hegemony, and enables a legitimisation of those states' programmes that other states cannot enjoy. It can be argued that the non-intervention principle that was stated and restated since the inception of the United Nations has not been adhered to as it should, and the enforcement mechanisms for the resolution of disputes (the International Court of Justice) and the prosecutions of war crimes (the International Criminal Court - ICC) at The Hague are relatively weak because they depend on the consent of states to submit to their jurisdiction and judgement. Whilst the ICC is ostensibly independent from the UNSC, under the Rome Statute the UNSC can request a stay of any proceedings intended to be held there indefinitely.³³ Despite its position as global hegemon and its internal and external self-image as champion of freedom and democracy and defender of the weak, the US is nonetheless currently not a signatory to the Rome Statute and therefore does not fall within ICC jurisdiction. A UN resolution denouncing and condemning a state or non-state regime for human rights abuses may be used to justify military intervention on humanitarian grounds (once peaceful means have been exhausted or discounted), yet because member states cannot be obliged to intervene, they are able to 'cherry-pick' which conflicts they wish to involve themselves in. If we accept that significant human rights abuses can justify the

³³ Sandy Ghandhi, *International Human Rights Documents*, (Blackstone's 2012, 8th edition). 156.

violation of a state's sovereign borders and aggressive military action in defence of that state's subjects, the fact that states who present themselves as champions of human rights only intervene in conflicts where there are commercial opportunities or other geostrategic gains to be made significantly undermines the spirit and the efficacy of the human rights project as an endeavour. Furthermore, if conflicts are only being joined or begun by intervening states in order to gain power, the differences in relative power that exist between intervening states and the states who lack the resources to intervene will grow further. Since the concept of equality is the keystone of human rights, such a consolidation of inequality among states through selective intervention motivated by the will to acquire power is (I argue) a perversion of the noble intentions of the Universal Declaration. Since the structure of the United Nations and its organs afford preferential conditions to hegemonic states, such a perversion cannot be punished. I argue that the legitimacy and efficacy of codified human rights is therefore undermined by some of the states involved in the codification process.

Victors' justice and the impunity of powerful states

The grounds given by Tony Blair and George Bush Jnr. to justify entry into Iraq in 2003 included a combination of pre-emptive self-defence (both from Saddam's regime, which was purportedly in possession of chemical weapons, and Islamist terrorism, which the US asserted was linked to Saddam) and humanitarian intervention, together with the self-appointed prerogative to enforce UN resolutions with which Iraq had failed to comply.³⁴ Whatever the truth of the pre-emptive self-defence argument (which is not the business of this article to examine), the human rights argument was marshalled around the idea of Saddam having used chemical weapons against his own people.

³⁴ Alina Kaczorowska, *Public International Law* (Blackstone's 2005, 3rd edition). 432-437.

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Those involved in the decision to wage war were therefore able to use a defence of the Iraqi people's rights to life and to be free from torture as justifications for their actions. The doctrine of human rights can be construed in this context as an enabling framework through which to eschew the non-intervention principle that is central to customary international law (encoded as article 2(4) of the UN Charter),³⁵ and which according to Osterud is 'the supreme norm of the UN... (and) of the international order'.³⁶

Bellamy sets out the four key *jus ad bellum* principles, the first and second of which are "right intention" and "just cause".³⁷ In the case of Iraq, setting out the case for war by reference to human rights allowed the antagonists to satisfy both these criteria. Human rights discourse allows leaders to present themselves as concerned citizens of the world, protecting the weak against their oppressors. War and other interventions into another state's sovereign territory are thus overtly justified by a state or coalition's declared obligation to act as Samaritan, establishing a "right intention" with a "just cause". As Kaczorowska has said, in the case of the Iraq invasion, the US and UK self-authorized war without backing from the UNSC,³⁸ and the UNSC Permanent Five's veto powers and influence over proxy and client states means that they are more able to block any action against them, and thus ensure their international impunity more broadly. The Permanent Five are the "victors" of WWII. I argue that installing themselves at the United Nations' inception as a higher echelon within the organisation, with a right of veto, sets them apart from the other member states in such a way as to render their flagship project of the Universal Declaration hypocritical. A

³⁵ *Ibid* 2, 11.

³⁶ Oyvind Osterud, "Sovereign Statehood and National Self-Determination: A World Order Dilemma" in *Subduing Sovereignty*, Heiberg, Marianne (editor) (Pinter Publishers 1994). 28-30.

³⁷ Alex J. Bellamy, *Just Wars*, (Polity 2006). 122-123.

³⁸ *Ibid* 35, 432.

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power of veto in United Nations Security Council decision-making gives the Permanent Five a greater degree of autonomy than other member states, and helps to ensure their impunity if they are later associated with crimes against humanity. The champions of equality therefore sought to give themselves an advantage over potential competitors, even as they espoused the universality of their values by 'enshrining...protection of human rights...within the normative framework of international law'.³⁹ As Ciaran Burke points out, this rendering of the human rights project, rigged to ensure the impunity of those UN members most likely to abuse its principles, is all the more ironic for the fact that it was 'a favourite excuse of Hitler to put forward mistreatment of minorities as an excuse for military invasion'.⁴⁰ It could be said that as the victors of the most destructive conflict in history, with a unique opportunity to forge a brave new world that ensured Hitler's tyrannical rule could not be repeated by another despot, and to correct the mistakes of the League of Nations, the Permanent Five instead ought to have placed themselves wholly, enthusiastically and inescapably under the jurisdiction of the law they created. Burke cites Bruno Simma's argument that humanitarian intervention is 'almost legal',⁴¹ and we might draw the conclusion that if a powerful state (or coalition of states) engages in such an intervention with a justifying argument that puts their action within touching distance of legality, any international zeal to challenge or prosecute such an action will wither at the root. This principle can be seen in the example of the 2003 invasion of Iraq. Tony Blair and George Bush Jnr's argument that they were enforcing a number of UNSC Resolutions which called on Saddam to surrender weapons and allow inspection could be said to render their action 'almost legal', lacking only the necessary

³⁹ *Ibid* n2, 8.

⁴⁰ *Ibid* n2, 14.

⁴¹ *Ibid* n2, 15 – 16.

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permission from the Security Council to enforce their Resolutions militarily. Add to this their purported horror at the plight of Iraqi citizens living under Saddam's regime, and their will to protect those citizens' human rights, and the argument could be made that the action is within touching distance of being legal and therefore meets Simma's test. Antonio Cassese rightly warns that 'a Pandora's box may be opened' when powerful states learn that they can act in this way with impunity.⁴² The post-invasion commercial exploitation of Iraq's oil industry is made more difficult to accept because Blair and Bush advanced an ethical argument as a justification for bypassing lawful authority.

Given that the UNSC cannot be relied on as a measure of moral justifiability, it may be wise to consider alternatives. Cassese proposes that a humanitarian intervention might be justified without UNSC backing if certain criteria are satisfied. Amongst others, these include the condition that the intervention must be made by a coalition of states, not one state acting unilaterally, and the condition that armed force must be used only to stop the human rights atrocity.⁴³ In my view, Cassese's argument is flawed because although he only allows an intervention in cases of the most egregious abuses, his test does not cater for the conduct of post-intervention peacekeeping and nation-building, during which the self-interest of the intervening states can be more subtly masked. A coalition of states might enter a country ostensibly to prevent the torture and murder of thousands of civilians, thereby protecting their Article 2 and 3 UNDHR rights and satisfying Cassese's test, but can then justify staying as an occupying force to protect those same citizens' economic rights and right to self-autonomy by assuming and handing over control of their industries and natural resources, naturally under conditions favourable to themselves.

⁴² *Ibid* n3, 25

⁴³ *Ibid* n3,. Summarised by Ciaran Burke, *Ibid* 2. 23.

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Indeed, Malcolm Shaw suggests that the expectation of post-intervention peacebuilding is one that has been imposed externally by the UN in order to 'minimise the motives of the intervening powers', but I argue that it presents an even greater opportunity for commercial and strategic exploitation than the initial intervention does, as we see with the case of Libya.⁴⁴ In my view, Cassese's proposal fails to address the latent problem with humanitarian intervention as it is practised by powerful states and coalitions of states, namely that altruism and self-interest, which should be considered as incompatible concepts, are in fact presented as concomitant. As we see from Sir Jeremy Greenstock's interview and Sidney Blumenthal's e-mail (see above), this can be done without any acknowledgement of irony or contradiction.

Conclusion

US foreign policy has unapologetically placed national interest at the top of its agenda, yet human rights abuses provide an opportunity to expand into foreign territory through humanitarian intervention, one which allows for the circumvention of what are inadequate safeguards against such action conceived and enacted by the United Nations. The charge made by Brimont and Chomsky that the US and other powerful states cloak acquisitive foreign adventures in the thin veil of humanitarian intervention is borne out by statistical fact. Such duality in the reasons for going to war allows for leaders to enjoy a plausible deniability when the charge of aggression is made. Furthermore, constructing a pre-emptive defence against any such charge by citing humanitarianism and collective defence as *jus ad bellum* (making it 'almost legal') appears to choke any international will to prosecute the US for transgressions against international law, as does the structural inadequacy and built-in impunity of the UN

⁴⁴ *Ibid* 9, 1158.

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system. Future safeguards that are conceived to prevent humanitarianism being abused as a reason for violating another state's sovereignty will need to consider intervening states' conduct post-invasion rather than simply at the point of invasion.