



ACADEMIC COUNCIL ON THE UNITED NATIONS SYSTEM (ACUNS)
AMERICAN SOCIETY OF INTERNATIONAL LAW (ASIL)



Embracing the Elephant:

Perspectives on Humanitarian Operations



A POLICY BRIEF

Eleventh ACUNS/ASIL Workshop on
International Organization Studies
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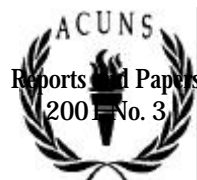


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Foreword

This policy brief is a product of a two-week workshop on “Humanitarian Intervention and the Role of International Organizations” sponsored by the Academic Council on the United Nations System in cooperation with the American Society of International Law. This is the eleventh workshop sponsored by ACUNS and ASIL on International Organization Studies particularly targeted to young scholars. The discussions took place 5-18 August 2001 at the University of Namibia in Windhoek, Namibia, under the leadership of its two directors: Charlotte Ku, Executive Director of ASIL; and Clement Adibe, Professor of Political Science, DePaul University. As with previous ACUNS/ASIL workshops, the participants were chosen through a highly competitive selection process based on the in-depth research and writing they have already undertaken on the topic, in this case “humanitarian intervention.” As we debated the controversial issues before us, having arrived with our own individual perspectives and experiences, the title “Embracing the Elephant” emerged as an appropriate metaphor as we tried to wrap our arms around this mammoth topic. In the end, we felt that we had helped educate each other and enrich the debate on “humanitarian operations,” a broad term which we concluded incorporates both humanitarian assistance and humanitarian intervention.

These young scholars and practitioners, who are academics, international lawyers, political scientists, government officials, international civil servants, and NGO staff members, represent a new generation entering their fields of work. One of the goals of ACUNS is to bring their thoughts, creativity, and dedication into the dialogue on important international issues. In this policy brief, we hope modestly to share with others what we have learned from the workshop and to provide a framework for thinking about the controversial issue of humanitarian operations.

Jean Krasno
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Executive Summary

This policy brief was undertaken in response to the challenges of post-Cold War humanitarian crises and the capacity of the United Nations and other bodies to address human suffering. To start, we found it useful to define commonly used language on humanitarian issues. The term “humanitarian operation” is used throughout the document to describe a range of responses to humanitarian crises which tend to fall on a continuum: humanitarian assistance at one end of the spectrum and humanitarian intervention at the other. “Humanitarian assistance” is the provision of aid with the consent of the host state and other ground-level actors. “Humanitarian intervention” is defined as any operation which is conducted without the consent of the parties. An intervention may or may not take place with UN Security Council authorization.

In the political realm, the complexities of responding to humanitarian crises are compounded by the prominence of intra-state conflicts in an international political system primarily structured to address conflicts between states. Another difficulty lies in the fact that humanitarian operations are at the intersection of ethical concerns and power politics. Decisions by state actors to intervene, or to forego intervention, are subsequently based on mixed motives. Due to constraints on resources, interests, and political will, actions will inevitably be selective, but the interests of those suffering must be kept as a primary goal.

In the legal sense, the concept of humanitarian operations falls under the rubric of international law relating to the use of force by states as embodied in international treaties, including the UN Charter, and in customary international law. Customary law is made by the general and consistent practice of states taken out of a sense of legal obligation. Legal analysis begins with the recognition of the validity of state sovereignty in international relations and state consent is an uncontroversial legal basis for implementing humanitarian operations. However, where the need for humanitarian assistance is great and consent is not forthcoming, post-Cold War state practice has been to carry out such operations with the use of armed force. In the case of humanitarian operations, both international treaty law and state practice have undergone considerable development since 1990, to the extent that existing treaty regimes need to be reassessed and reinterpreted in light of these events.

The revitalized role of the Security Council since the 1990s has put greater pressure on the Council to respond, even though there may be no consent forthcoming. While it is desirable under international law for the Security Council to authorize humanitarian interventions, the Council has not always proven itself willing or able to act. In such cases, states may appeal to the “right” to intervene under customary law or on humanitarian grounds. The legal versus the legitimate right to act needs further debate and analysis; nevertheless, moral

legitimacy should not be held hostage to any lacunae of law or authority.

In operational terms, humanitarian operations involve a number of actors with varying capacities, including the United Nations system, regional organizations, state actors, and non-state actors. Because of the multiplicity of responses and the absence of a centralized response mechanism, no one actor is in control of the operation. Nevertheless, the Security Council should assume a supervisory role, requiring state actors and non-governmental organizations to report their activities to the UN. Single-state action may have the advantage of interoperability and more efficient command and control, however, this may be outweighed by the greater legitimacy conferred upon multilateral operations. International and regional security frameworks need to focus on capacity building and resource development in order to confront these challenges and enhance legitimacy.

Regarding financial resources, UN appeals for funding are rarely met and a disparity exists between fundraising and long-range planning. Many humanitarian operations require long-term engagement but frequently can only be funded in the short-term. Longer-term funding mechanisms with greater flexibility are needed to ensure the sustainability and consistency of humanitarian operations. NGOs add significantly to the resource base by providing relief as well as helping to draw attention to issues and setting agendas. Their capacity to mobilize and sustain public support can drastically affect domestic political and financial support.

In planning long-range strategies, it is important to understand that humanitarian emergencies are frequently the result of internal conflicts. These conflicts are fueled by the proliferation of small arms; therefore, it is essential that arms reduction as well as disarmament, demobilization, and reintegration of combatants take place as soon as possible following an end to conflict. This requires sustained funding and enforcement of regional arms embargoes. Former combatants, particularly children, must be reintegrated into post-conflict society and civilian police and proper justice systems installed. Special assistance must be given to meet the reproductive health needs of women and the nutritional and educational needs of children, who are at risk of being attracted to further violence if their needs are left unattended.

This summary only highlights some elements of the discussion. Further debate and research are needed to enhance our understanding of the challenges of humanitarian operations. The tragedies of Rwanda, Somalia, Bosnia, and Kosovo have fostered a need to reexamine the tools available to respond to human catastrophes. It is our hope that this document will contribute to meaningful debate and present a framework for thinking about humanitarian intervention and assistance.

Part I

The Scope of Humanitarian Operations

The concept of state sovereignty and independence does not exist in a vacuum. Although article 2(7) of the United Nations Charter prescribes non-interference in the internal affairs of other states, safeguarding human rights, once thought to be within the purview of states, is now an integral part of the modern framework of international law and relations. The UN, other international organizations, state actors and non-state actors regularly intrude to some degree into the affairs of other states to address situations of concern *vis-à-vis* human rights. Interventions come in all different shapes and sizes, but generally may be categorized along a continuum of intrusiveness. On the less intrusive end of the “spectrum of intervention” are activities conducted by invitation or permission of the host state or which are non-coercive in nature. On the more intrusive end are actions undertaken with the objective of changing policy within states, with the most intrusive measure being the application of military force.

Humanitarian operation is used throughout this document to describe collectively the various types of operations, conducted within or against states, which have a humanitarian element in their motive or their result. Humanitarian operations encompass a wide range of intrusive activities along the spectrum of intervention, but generally fall into two categories: humanitarian assistance and humanitarian intervention.

Humanitarian assistance is the provision of aid to a host state (the state where the aid is provided) in order to relieve human suffering. Humanitarian assistance operations are intended to be conducted with the consent of the host state and with all ground-level actors as well. Such operations commonly take the form of famine relief, disaster relief, and sanctuary of refugees, providing for the population’s need for food, shelter and health care. While the term can be used to describe relief from natural disasters, this document will focus on humanitarian assistance provided in relief of armed conflicts or other non-natural catastrophes.

A ***humanitarian intervention*** is an operation conducted without the consent of the state concerned and therefore the use of military force is anticipated and in many cases required. Since the end of the Cold War, the United Nations, other international organizations, and state actors have shown greater willingness to use military force against a state for humanitarian purposes. The term “humanitarian intervention,” as used in the broader sense, refers to the use of force to protect a threatened or victimized population, either from local actors

whom the government is unable or unwilling to control, or from the government itself. The concept embraces (1) operations conducted with Security Council authorization under Chapter VII of the Charter, and (2) operations conducted without such authorization. Humanitarian intervention in the narrow sense, i.e. without Security Council authorization, is based on the “right to intervene” under customary law, but this interpretation remains controversial. It is not known how frequently or with what degree of legitimacy the doctrine of humanitarian intervention without UN authorization will be invoked in the future.

It is the level of host state consent that ultimately distinguishes humanitarian assistance from humanitarian intervention. However, the point where the former ends and latter begins is not always clearly defined. Humanitarian operations, like all forms of intrusion, take place in a continuum and operations may not fall neatly into one category or the other. For example, it is conceivable that an operation intended to provide humanitarian assistance may encounter varying degrees of consent from the host state and/or from local actors. Where such consent is lacking, the introduction of armed force may become necessary to create a secure environment and to ensure that the aid reaches those who need it. In other cases, consent of the government may be forthcoming to engage an anti-government force which has committed human rights violations, but such an operation would require the use of force against a non-consenting party. These scenarios serve to illustrate that consent is not always a black-and-white issue and shades of intervention may appear across cases and even within a single state.

Part II

Humanitarian Operations: Political Considerations

In the post-Cold War era, the complexities of responding to humanitarian crises are compounded by the prominence of intra-state conflicts in an international political system primarily structured to address conflicts between states. In addition, civil conflagrations may weaken the state or cause it to collapse altogether, leaving no one to give the consent needed to assist or intervene. These conflicts draw the attention of international actors who demand responses to the human suffering they witness. Added to this context is the revitalized role of the Security Council, i.e. its newly found ability to act and thus legitimate military support of humanitarian operations with or without host state consent. However, despite growing demands on the United Nations to act in the face of great human suffering, it may not always be capable or willing to do so. The difficulty lies in the fact that humanitarian operations are at the intersection of ethical concerns and power politics. Decisions by state actors to intervene are subsequently and necessarily based on mixed motives.

Public opinion plays an increasingly pivotal role in decisions regarding humanitarian operations. Internationally, the growing weight of public opinion has proven favorable in making multilateral interventions more acceptable but has also played a role in condemning the United Nations for acting too late or not at all. Nevertheless, the effect of public opinion has been to integrate the issue of human suffering into the decision-making processes of both state and multilateral bodies. Domestically, there is an emerging tendency among actors within national civil society to view the fulfillment of international moral obligations as in the national interest of the state. Empowered by the growth of democracy, free expression, and interest groups, public opinion pushes governments to respond to the outcries of their citizens in order to maintain the electoral support of their constituencies.

International organizations, regional organizations and state actors may conduct a humanitarian operation to bring relief to threatened populations, but such an operation invariably has political implications. The decision to conduct (or forego) such an operation is the result of a process that assesses both its necessity (massive violations of human rights, threat to global or regional stability, cost of inaction, etc.) and its feasibility (political and military means, existence of a legal framework, cooperation of the main actors involved, etc.). Moral obligations, particularly where violence and the use of force are involved, often conflict with other interests of the state. The will to act may also be thwarted by state actors who perceive their own sovereignty and domestic

control threatened. States that have emerged from colonial rule or are themselves undergoing internal tensions may be particularly sensitive to issues of sovereignty. Nevertheless, if the state is seen as having entered into a tacit “social contract” with its citizens to furnish a safe environment, it may lose its rights to sovereign immunity if it violates that contract.

Factors such as the degree of political will of the interveners, their true motives, public opinion and morality must be taken into account; any of these factors may alternatively work in favor or against the decision to intervene. It is useful to distinguish humanitarian operations as a concept (the question of the appropriateness of action) from the results of a particular event or implementation. As an event, a humanitarian operation can take on other than humanitarian objectives, or the term “humanitarian operation” could even be used as a cover for a more intrusive, disingenuous military operation. To avoid this outcome, it is important to distinguish the interests of the state and its citizens (their empathy for the victims) and the self-interest of a governing regime in taking decisions on humanitarian operations. Greater support must be given to public participation in decision-making to ensure the government is held accountable for its actions, particularly when military force is used. In addition, regional and international participation and legitimation can help mitigate self-interested intervention by a single state. In other cases, humanitarian operations can be half-hearted measures—a means of avoiding more decisive action or escape from hard political choices and value trade-offs. In such cases the operations could worsen the situation. Due to constraints on resources, interests, and will, actions will inevitably be selective, but the interests of those suffering must be kept as a primary goal even if the decision to act is invariably interwoven with political considerations.

It is conceivable that humanitarian action may be illegal under the UN Charter, yet legitimate. International law may not yet be adequate to address all humanitarian crises as they emerge. The “duty” to act as well as the “right” to act are still being debated. Nevertheless, moral legitimacy should not simply be held hostage to any lacunae of law or authority. The relation between legitimacy and legality of humanitarian operations, as well as when a specific operation is legitimate, needs further study. The claim to legitimacy may be genuine on moral grounds or may be used as a tool for making a legally questionable operation acceptable. Legitimacy, or the right to anoint an operation legitimate, can be shared among international organizations, particularly the United Nations and regional entities. The political relationship among these bodies needs to be better articulated. For example, if one body is unable or unwilling to act, when can (or should) other entities assume authority? Once an operation begins, what degree of inter-organization reporting is appropriate? Further

analysis should include an evaluation of regional capacities, impartiality, and an acknowledgement of the growth, e.g. in Africa, of organizations that are building capacities to recognize and address humanitarian needs in their respective regions. The Security Council should take into account this capacity building and encourage a more harmonious relationship among global and regional organizations. A level of trust can and should be strengthened by encouraging an open dialogue on capacity building and resource development directed towards burden sharing.

The political will to respond to humanitarian crises will invariably involve mixed moral and political motives, both domestically and globally. To be successfully implemented, however, humanitarian operations must maintain their focus on alleviating the suffering of victims. If not, governments will ultimately be held accountable by their own publics and international actors.

Humanitarian Operations and International Law

The concept of humanitarian operations falls under the rubric of international law relating to the use of force by states, as embodied in international treaties, including the UN Charter, and in customary international law. Unlike areas of international law which are primarily treaty-based, in the field of humanitarian operations the importance of customary international law asserts itself in a pronounced way. Customary international law is made by the general and consistent practice of states, taken by them out of a sense of legal obligation (*opinio juris*). In the case of humanitarian operations, both international treaties and state practice have undergone considerable development since 1990, to the point where existing treaty regimes need to be reassessed and reinterpreted in light of these events.

Legal analysis of humanitarian operations begins with a recognition of the continuing validity and force of state sovereignty in international relations. One of the main manifestations of sovereignty is the consent of the state inside which the operation takes place. State consent is an uncontroversial legal basis for implementing a humanitarian operation. It is preferable to acquire state consent rather than appeal to a "right of humanitarian intervention" under customary international law, or even to the power of the Security Council to authorize an operation. It is the level of consent, of both the government and the population, that ultimately determines whether force must be used to relieve the crisis. State consent thus provides the legal foundation for the fundamental distinction between humanitarian assistance and humanitarian intervention.

As demonstrated above, the first and foremost element to classifying a humanitarian operation as humanitarian assistance is that it is conducted with the consent or by invitation of the host state (or, more precisely, by the government of the host state). The analysis does not end there, however. In 1986 the International Court of Justice, in deciding the Nicaragua Case, concluded that:

if the provision of "humanitarian assistance" is to escape condemnation as an intervention in the internal affairs of Nicaragua, not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely "to prevent and alleviate human suffering," and "to protect life and health and to ensure respect for the human being": it must also, and above all, be given without discrimination to all in need in Nicaragua, not merely to the *contras* and their dependants.

The formulation of humanitarian assistance quoted above introduces, in addition to consent, two other elements. One is neutrality, i.e. humanitarian assistance granted to all parties of a conflict. Typically - and problematically - this element would serve to curtail humanitarian assistance because in situations such as an intra-state conflict, state consent, if granted at all, may not extend to providing humanitarian assistance to the enemy. The capacity of a government not in *de facto* control of all its territory to offer consent may further complicate the analysis. The other element introduced in the *Nicaragua Case* is that humanitarian assistance should be peaceful. By invoking the “purposes hallowed in the practice of the Red Cross,” it is clear that the Court was conceptualizing situations where the provision of humanitarian assistance occurs without any forcible element. However, where the need for humanitarian assistance is great and consent is not forthcoming, post-Cold War state practice has been to carry out such operations with armed force. Where humanitarian assistance acquires a forcible component, its lawfulness and nature are more properly equated with that of humanitarian intervention.

While it is the lack of consent that characterizes a particular humanitarian operation as interventionist, shades of consent make this concept more ambiguous. It is conceivable that an operation to protect a threatened population could take place with the consent of the target state where, for example, a government finds itself unable to halt mass atrocities. However, it may be more realistic to conclude that it is often the governmental authorities which are the source of the atrocities. As such, consent is unlikely to be obtained. Where consent is forthcoming, the validity of that consent may be open to question in cases where the government no longer holds the degree of control required under international law for consent to be issued. Questions of validity would also apply to a state’s invitation to intervene, or where consent is given under duress or coercion. Most of the time, however, a humanitarian operation involving the use of force is conducted without any illusion of consent to the use of force on state territory or against its government.

Other than the issues surrounding consent, the use of military force is the most important area of focus in evaluating humanitarian intervention under international law. An understanding of the applicable law begins with Article 2(4) of the Charter, which obliges states to “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.” This principle is not conclusive - it is subject to the exceptions of self-defense (Article 51), the UN system of collective security (Chapters VII and VIII), and developments within customary international law.

For the Security Council to authorize a humanitarian operation under Chapter VII, Article 39 requires it to “determine the existence of a threat to the peace, breach of the peace or act of aggression.” The Council has developed a pattern of practices which accords a very wide latitude to such a determination - its resolutions on Somalia (1992) and Haiti (1994) now being classic examples - and this carries constitutional implications in certain quarters because its powers were designed for inter-state conflict, not intra-state.

Chapter VIII of the Charter permits the Security Council to utilize regional arrangements or agencies, with the limitation that no “enforcement action” shall be taken without its authorization (Article 53). It is desirable that such authorization be acquired beforehand, but the practice on this issue remains unsettled, as does the definition of what constitutes “regional arrangements and agencies” for the purpose of Chapter VIII. Taken in this context, the ideal situation would be for the Council to authorize such operations, in which case their legal basis would be under Chapter VII (making it unnecessary to invoke the “right of humanitarian intervention” in customary international law). Since the end of the Cold War the Council has authorized use of force under Chapter VII to facilitate the provision of humanitarian assistance. For instance, in Resolution 770 (1992) it authorized states to take “all measures necessary” to facilitate the delivery of humanitarian relief in Bosnia and in Resolution 794 (1992) it authorized states to create a secure environment for delivery of humanitarian relief in Somalia. On other occasions the Council has shown a preference to act with consent of states to the extent possible and forthcoming, e.g. the case of Albania with Resolution 1101 (1997).

However, the Security Council has on occasion proven itself unable or unwilling to act. The ideal position heralded in some quarters - whereby use of force can only occur upon Security Council authorization - has therefore not materialized. As a result states have resorted to armed force acting unilaterally or through *ad hoc* or established institutions. Examples cover the gamut from short-term (e.g. the NATO intervention in Kosovo in 1999) to long-term operations (enforcement of no-fly zones in northern Iraq from 1991 to the present and the 1990-97 ECOWAS operation in Liberia). These practices and justifications of states to take action independent of the Security Council will continue insofar as the Council remains beset by the political realities and priorities which call into question the coherence of its decisions. The participants of the workshop are divided on whether international law has developed to the point of a “right of humanitarian intervention” under customary international law. Those who feel that sufficient state practice and *opinio juris* now exist take the view that such a right exists in parallel to Article 2(4) of the Charter, or that practice has modified that provision. Those who do

not believe in the existence of such a right are of the opinion that state practice has not sufficiently developed at this stage to assert it.

Parallel to these events it is worthwhile to note some important developments in treaty law: the recent entry into force of the 2000 Constitutive Act of the African Union, of which Article 4(h) grants the Union the right “to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.” Significant treaty developments have also taken place at the sub-regional level. Both ECOWAS (through the 1993 Revised Treaty and the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peace and Security of 1998 (Framework) and 1999 (Protocol)) and the Southern African Development Community (through the 1995 SADC Organ on Politics and Development and the 1998 SADC Protocol) have incorporated provisions for the deployment of military forces in response to such crises as humanitarian disasters, large-scale violence between sections of the population, or threats to peace and security in their respective sub-regions.

Whether states act on the basis of Security Council authorization or by asserting the “right of humanitarian intervention,” it is imperative that in the execution of the operation international humanitarian law be observed in its entirety. In undertaking military action, states remain bound by their obligations under international humanitarian law (*jus in bello*) irrespective of the validity of the operation under the international law regulating the recourse to force (*jus ad bellum*). Additionally, for such operations to remain viable and to retain political and legal support, they must heed the very ideals and standards they seek to uphold. Finally, when the Security Council does authorize (or otherwise gives its blessing to) an operation, it is critical that further attention be devoted to matters of accountability and monitoring, as the reputation and integrity of the United Nations remains at stake throughout the operation.

As a related matter, states have made claims in certain cases of a right to uphold principles of democracy and law and order, indicating that a more ambitious set of practice might develop and take hold with a view to stabilizing human rights and humanitarian conditions in the longer term. The ECOWAS and SADC treaties mentioned above, in addition to codifying permissible examples of humanitarian intervention, provide for the use of force in furtherance of pro-democratic intervention. It is noteworthy that recent experiences in Africa - where interventions have taken place in the Central African Republic (1997), Guinea-Bissau (1998), Sierra Leone (1997 and 1998), and Lesotho (1998) - could be read within this context and are deserving of further study and understanding.

Part IV

Operational Issues: Actors and Capacities

Humanitarian operations involve a number of actors with varying capacities: the United Nations system, regional organizations, state actors, and non-state actors. Because of the multiplicity of responses and the absence of a centralized response mechanism, no one actor can be said to be fully in control of the operation. Consequently there is no standard model for the mandate, rules of engagement, chain of command, joint/combined force structure, or deployment of a humanitarian operation. Each operation must be tailored *ad hoc* to the situation.

Humanitarian assistance

The United Nations system is endowed with a number of specialized agencies and institutions experienced in providing various forms of humanitarian assistance. Its depth of institutional knowledge and broad field presence give it a unique capability to coordinate relief measures such as delivery of food and medical supplies, provision of emergency health care and shelter, or assistance to and protection of internally displaced populations (IDPs) and refugees. However, while efforts to enhance coordination among UN humanitarian activities have increased, at least at the institutional level, further refinement is needed and the concept of a lead agency should be further developed. Furthermore, as the distinctions between conflict management, humanitarian assistance and development aid become less well-defined, agencies should explore approaches to integrating these potentially competing objectives without subordinating any one to the others, and without jeopardizing their distinctive features.

Humanitarian non-governmental organizations (NGOs) can serve as effective partners to the UN system in providing humanitarian assistance. Although NGOs may prefer to operate independently, a cacophony of uncoordinated relief efforts could diminish the overall effectiveness of the humanitarian operation. While NGOs may have many reasons, well-founded or not, for distancing themselves from state actors (especially military forces) and even other NGOs, some degree of communication and coordination between all the actors is vital. In situations where humanitarian personnel themselves are targeted (a growing and disturbing trend), greater coordination between NGOs and other actors, including military forces, is essential to the physical security of the operation. NGOs can work in coordination with other actors without sacrificing their impartiality or their distinct identities. Impartiality does not

necessarily equate to non-interference, however, and any decision to provide humanitarian assistance should take into account the fact that the assistance itself may change the dynamic of the conflict.

In the case of humanitarian situations caused by internal conflict or oppression, NGOs frequently lack a common approach to confronting human rights abuses committed by the government and/or the insurgents. Such situations pose a dilemma: how to provide humanitarian assistance to those in greatest need without creating any appearance of tolerance - even complicity - with the abusers. In addition, NGOs must weigh the benefit of confronting human rights abuses against the potentially negative impact of mission-creep. For example, an NGO whose purpose is to deliver food may be tempted to stray from its original mandate by espousing such goals as promotion of good governance, conflict management and developmental activities, all worthy objectives but beyond its purview and ability.

Funding, and the political backing necessary to secure funding, are key to ensuring the operational effectiveness and sustainability of humanitarian activities. UN system-wide consolidated funding appeals to address complex emergencies are rarely met, impeding the ability of UN agencies to discharge their mandates. Likewise, for humanitarian NGOs, a disparity exists between fundraising and long-range planning, for many humanitarian assistance operations require long-term engagement but frequently can only be funded in the short term, resulting in a less-than-optimal environment to operate. Longer-term funding mechanisms with greater flexibility are needed to ensure the sustainability and consistency of humanitarian operations conducted by NGOs.

Humanitarian intervention

The capacity of the United Nations to execute humanitarian operations involving the use of force is severely limited as it is completely dependent on the willingness of its member states to provide the means. The irony is that states with greater capability to mount an effective operation under UN auspices seem to be less willing to do so and *vice versa*. In addition, a possible consequence of the UN's involvement in a humanitarian intervention is the appearance of partiality, which may compromise its ability later to undertake long-term peacemaking, humanitarian and developmental initiatives. However, whether or not a humanitarian operation is conducted by the UN or by state actors, the Security Council at the minimum can and should, where possible, assume a supervisory role, requiring state actors regularly to report their activities rather than permitting them to operate without oversight.

Since the early 1990s, the international community has with greater frequency relied on *ad hoc* coalitions of the willing as well as regional organizations to undertake operations involving the use of force. Like the UN, regional frameworks are also beholden to the willingness and capacity of their members to contribute funds, personnel and equipment to the operation. However, states seem generally more willing to commit resources to regional security arrangements, where they have a larger stake, than in global security arrangements. Furthermore, a highly developed regional security framework acts as a force multiplier and distributes the burden among several states. Multilateral operations, whether regional or global, are institutionally disadvantaged, however, by their weaknesses in interoperability, command structure and operational control. In addition, their personnel are in danger of conflicting loyalties; national contingents may be under the operational control of the multinational force but are still ultimately accountable to their own contributing states. In terms of pure operational efficiency, an operation conducted by a single state, free of the encumbrances inherent in multilateral operations, is more advantageous. However, the military advantages of unilateral action may be outweighed by the greater legitimacy often conferred upon multilateral operations.

Ad hoc coalitions present even greater challenges to interoperability, for unless the coalition works within an existing regional framework the participants will usually lack the experience of working together. A likely result is that one or a few states dominate the operation. Depending on the international political situation, as well as how they are viewed by local actors in the target state, having one or few states play such a dominant role can be a blessing or a curse.

In principle, states working within existing regional frameworks should have the advantage of greater interoperability and pre-determined combined command structures. When a regional framework has enjoyed the benefits of time, experience and resources to develop a standing, functional structure, the utility of such arrangements in carrying out combined military operations has been proven. Many regional organizations, however, are relatively new and owing to a lack of practical experience have encountered difficulties in converting principle into practice. Command structure, operational control, common and clear rules of engagement, interoperability and sustainability are all critical to the success of any combined military operation. Efforts are underway to develop the capacities of new regional organizations, especially in Africa. While bilateral efforts at capacity building are progressing, state members of regional security arrangements must devote serious effort to developing their multilateral capacities, e.g. in the form of frequent combined military exercises.

NGOs may not have a direct role in carrying out humanitarian interventions, but their capacity in agenda-setting must still be acknowledged. Advocacy NGOs and the media can and do influence state actors' perceptions of a conflict and how to respond. Their capacity to mobilize and sustain public support for a humanitarian operation can so drastically affect the domestic political landscape that a government not predisposed to intervene may find itself doing so to satisfy domestic political concerns. The degree of public and governmental support for a humanitarian operation can have a profound effect on a state's commitment of resources to the operation, and ultimately on its very success.

Some private logistical companies have demonstrated their effectiveness in supporting peace operations. Private logistical companies tend to be based in developed countries, which have the means to conduct military operations but may lack the will to do so directly due to domestic considerations. For states with the will but not the means, these entities can fulfill a vital role in ensuring the success of the operation. Since private companies operate for profit, their activities must still be funded. Their existence presents an opportunity for states to commit financial resources to a situation without exposing themselves to the political and operational risks of direct engagement. Thus private companies may serve as a means for developed states to support humanitarian operations free of the restrictions placed upon them by domestic politics. The use of private, for-profit companies is a double-edged sword, however, because the motive of any private interest is profit and some oversight of their activities within the host state is appropriate. Engaging private security firms, e.g. to undertake military operations which state actors (including international/regional organizations) are unwilling to assume, is a highly controversial proposition and the potential advantages of such endeavors must be carefully weighed against the political, legal and moral consequences.

Long Term Commitments

It is difficult to overestimate the social and economic costs of armed conflict, as well as the immense burden associated with humanitarian operations. The physical and emotional plight of victims is not only a contemporary tragedy but also curtails the affected society's developmental options. If conflict prevention is effective, much of these costs can be avoided; if post-conflict reconstruction is effective, it will in turn serve as a means of conflict prevention. Since humanitarian operations are temporary responses to complex emergencies involving armed conflict, a limited focus on such operations excludes the longer-term vision necessary for positive, pro-active activity by local participants and international actors alike. It is equally apparent that, although bilateral and multilateral development assistance must play a critical role, donor states and organizations have an obligation to consider their impact on relevant state structures and capacity for governance. Development assistance can, in cases where it is pursued for short-term commercial or strategic purposes, contribute to conflict, foster dependence, limit the growth of local associational networks, and intrude on cultural traditions. It is essential, therefore, that international actors avoid false expectations and demonstrate sensitivity to local concerns before embarking on projects intended to limit conflict and promote social healing after warfare.

One of the principal causes of protracted internal conflict is the exclusion and marginalization of certain sectors of society, particularly disadvantaged and minority groups. It is important that governments foster an atmosphere conducive to the empowerment of disaffected groups within society, discouraging violent responses and promoting respect for fundamental human rights. International actors can encourage this process with assistance for developing the legal and institutional capacity for democratic recognition of individual and collective rights. In the long term, state institutions will only be politically legitimate if they demonstrate their willingness to achieve transparency and accountability in the governance process. Optimally this will apply at an early stage to post-conflict political transitions, and the United Nations and regional organizations can help with voter education, election monitoring, and political leadership training.

Fundamental to good governance is the pursuit of a sound and fair legal system. Regardless of the socio-economic system and particular governmental structures in place, all states can pursue justice and citizen equality, including gender equality. Local human rights groups can be supported in this effort, and

international actors can articulate their opposition to conditions where citizens are not treated fairly by legal authorities. Providing relevant human rights education is a key role for both the United Nations and non-governmental organizations.

Since most internal conflicts are fueled by the proliferation of small arms, it is essential that arms reduction as well as disarmament, demobilization, and reintegration (DDR) of combatants take place as soon as possible following a conflict. This entails the determined effort by surrounding states and the international community to enforce regional arms embargoes, as well as to provide credible support to ensure that a DDR is sustainable and well funded. However, the insecurity of both governmental and opposition forces can seriously obstruct this goal. Additionally, a lack of economic opportunities available to ex-combatants poses a significant challenge to their reintegration into society in the long term. A comprehensive approach to DDR is necessary to achieve a lasting peace.

Similarly, the proliferation of anti-personnel land mines can pose a disproportionate threat to the safety of the non-combatant population, long after the conflict is over. An active demining campaign, with emphasis on reducing the effects of non-self-neutralizing mines, is essential to any short- and long-term strategy for communal rehabilitation. It is insufficient for such rehabilitative measures to be limited to simply removing the mines themselves, for casualties of land mines may require long-term medical treatment and the loss of mined tracts of land otherwise available for economic development (i.e. farming and manufacturing) will have a long-term effect on the recovery of the region as a whole.

Health concerns, especially those relating to vulnerable groups, including women and children, cannot be ignored. The rehabilitation of injured combatants and civilians is essential to the resumption of normal social relations. Treatment for traumatized victims of violence may include various therapeutic approaches, preferably those suitable to the cultural traditions of the local population. When large-scale sexual violence has been used as a military strategy, testing for HIV and other sexually transmitted diseases, treatment programs, and prevention education are necessary facets of recovery. Internal conflicts may result in high numbers of forced pregnancies, orphaned children, and single mothers. In post-conflict situations, special assistance must be given to meet the reproductive health needs of women and the nutritional and educational needs of children and adolescents, who are at risk of being attracted to further violence if their needs are left unattended.

More generally, former combatants, particularly children, must be reintegrated into post-conflict society, with a return to civilian policing and appropriate

criminal prosecutions (with the possibility of amnesty for children).

Development agencies and educational institutions must play a key role, and the experiences of both national and international criminal tribunals can be instrumental. It is suggested that, where possible, national legal institutions and local initiatives (acting within the rule of law) must take steps to bring war criminals to justice, but joint UN-national courts also hold promise and, for especially difficult cases, the nascent International Criminal Court could help diminish the expectation of impunity and deter acts of genocide, crimes against humanity and war crimes.

One of the gravest humanitarian emergencies associated with conflict is the plight of refugees and IDPs. This can exacerbate internal conflict and create dangerous adjustment difficulties in states hosting large refugee settlements. It is difficult for many states to achieve the type of refugee protection promised by the various international refugee conventions, and the international community should increase its support for the UNHCR and other organizations in the refugee relief field. However it is also important to continue to advocate the UNHCR's emphasis on repatriation as the ultimate goal of refugee protection. IDPs can present a more severe problem in cases where states deny their existence and reject offers of aid. Any long-term peace settlement should provide for the safe return and rehabilitation of displaced persons.

The international community must meet the challenges posed by internal conflict and grave human rights violations with a concerted and sustained response. Clearly it is necessary, yet insufficient, to focus on the immediate legal, political, and operational aspects of humanitarian operations. Though the guiding principles offered above are highly demanding of national governments, international organizations, and non-governmental actors alike, the cost of failure to take preventive and effective post-conflict reconstruction measures is demonstrably greater.

Part VI

Policy Recommendations

In summary, the following conclusions and recommendations emerged from the workshop:

- (a) Conformity with the UN Charter, which requires that states seek and obtain Security Council authorization under Chapter VII before engaging in humanitarian intervention, is desirable in order to place the legal validity of an intervention on the firmest possible ground, while enhancing legitimacy.
- (b) Though opinion is divided on whether a right of humanitarian intervention exists in the absence of Security Council authorization, there is nevertheless substantial state practice for some scholars and practitioners to support the notion that the legal justification for humanitarian intervention is rooted in customary international law. Further study of state practice in this area is needed.
- (c) Whether action is taken with Security Council authorization or with reference to the right of humanitarian intervention: (1) the Security Council must adopt a mandate defining the objectives of the operation; and (2) states must observe the provisions of international humanitarian law and the law of armed conflict, be held accountable, and report to the Council.
- (d) Further research and analysis needs to be undertaken to understand the relationship between legality and legitimacy in regards to humanitarian operations.
- (e) Efforts to build regional security frameworks and to articulate regional-global relationships should be intensified and should include an evaluation of and appreciation for capacity building already taking place in conflict-prone regions, particularly in Africa. An open dialogue on capacity building and resource development with the goal of burden sharing should be undertaken.

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- (f) Given that the will to act inevitably involves mixed motives, greater support must be given to broaden participation in decision making on humanitarian operations at the local, regional, and global levels in order to mitigate disingenuous interests. Despite political and resource constraints on action, the interests of those suffering from humanitarian crises must be kept as a primary goal.
 - (g) To ensure the success of a humanitarian operation, the UN and contributing states must commit sufficient manpower, logistical, and financial resources to the operation and accept the risks associated with such a commitment.
 - (h) In order to achieve greater efficiency, as well as for their own security, non-state actors involved in humanitarian operations should coordinate their activities with any international organizations and state actors (including military forces) which may also be present in the area of operations.
 - (i) A robust commitment to long-term strategies like disarmament, reintegration of ex-combatants, economic development, and good governance must be built into plans for humanitarian operations and integrated into broader political policies.

Concluding Remarks

The tragedies of Rwanda, Bosnia, and Kosovo have fostered a need to reexamine the tools available to respond to human catastrophes. As people witnessed the massive killings in Rwanda, many were left with a nagging sense of collective guilt as assistance and intervention came too little and too late. Even when the international community was willing to act in Somalia, Bosnia, and Kosovo, our sometimes fumbled efforts demonstrated that we still did not understand what strategies to use and what effects those actions would have. In his address to the United Nations in the fall of 1999, Secretary-General Kofi Annan challenged policy makers, scholars, and other international actors to think deeply about seeking solutions to the dilemmas of how, when, and who should respond to these human tragedies. The 2001 ACUNS/ASIL workshop took up this challenge and produced this policy brief in order to share our observations with others. In so doing we have examined some of the political, legal, operational, and long-term perspectives on humanitarian operations. It is our hope that substantially greater research will be done to enhance scholarly and practical understanding of this elephantine issue. While we cannot resolve the many questions we have raised, we hope that this document will contribute to meaningful debate and present a framework for thinking about humanitarian intervention.

Workshop Directors and Participants

Participants in the ACUNS/ASIL Workshop on International Organization Studies attended in their personal capacities. The ideas and opinions expressed in this policy brief do not necessarily reflect those of the institutions with which the participants are associated.

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