

From Kosovo to Kabul and Beyond

Human Rights and International Intervention

New Edition

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List of Abbreviations

AFP	Agence France-Presse
CGG	Commission on Global Governance
CNRT	National Council for Timorese Resistance
ECHO	European Community Humanitarian Office
EU	European Union
ICC	International Criminal Court
ICFY	International Conference on the Former Yugoslavia
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IICK	Independent International Commission on Kosovo
IMF	International Monetary Fund
MSF	Médecins sans Frontières
Nato	North Atlantic Treaty Organisation
NGO	non-governmental organisations
OSCE	Organisation for Security and Co-operation in Europe
RFE/RL	Radio Free Europe/Radio Liberty
RUF	Revolutionary United Front of Sierra Leone
UKFAC	United Kingdom House of Commons Foreign Affairs Committee
UKSCD	United Kingdom House of Commons Select Committee on Defence
UNAMIR	United Nations Assistance Mission for Rwanda
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNITAF	Unified Task Force
UNMIK	United Nations Mission in Kosovo

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For my wife Bonnie, Harvey (known as bump at the time of the first edition), and his baby brother Oliver.

1 Introduction: 'The Idea of our Time'

Human rights is the idea of our time, the only political-moral idea that has received universal acceptance' – Louis Henkin, *The Age of Rights* (1990), p. ix.

The terrorist attacks on Manhattan and Washington on 11 September 2001 set in process a chain of responses that have made human rights intervention the leitmotif of a new ethical order in international affairs. The bombing of Afghanistan, launched on 7 October, was announced by President Bush to be an action of 'generosity of America and our allies' in the aid of the 'oppressed people of Afghanistan' (2001b). The US Defense Secretary, Donald Rumsfeld, argued that the military action was in line with previous US-led interventions in Kuwait, Northern Iraq, Somalia, Bosnia and Kosovo 'for the purpose of denying hostile regimes the opportunity to oppress their own people and other people', adding that: 'We stand with those Afghans who are being repressed by a regime that abuses the very people it purports to lead.' (2001)

Far from stressing US national interests in responding to an attack on its major symbols of economic and military dominance, the US establishment and the coalition of supporting states stressed the ethical and humanitarian nature of the military response, which included the dropping of food and medical provisions. On the first night of the military campaign a leading US senator noted on *Larry King Live*:

This is the first time in contemporary military history where a military operation is being conducted against the government of a country, and simultaneously, with the troops carrying out the mission, other troops are trying to take care of the innocent victims who all too often are caught in harm's way. (Solomon, 2001)

As Senator Warner remarked, the dropping of humanitarian aid at the same time as cruise missiles marked a turning point in the pre-

sentation of international intervention. American military planners also firmly rejected the Powell doctrine of the use of overwhelming military force to carry out a clear and limited political objective. The assault on Afghanistan had no clearly limited political objective and no exit strategy (M.R. Gordon, 2001). Western leaders stressed that they were going to be committed for the long term and would secure a post-war 'government of stability' in the interests of the people of Afghanistan and the region (Wintour and White, 2001). For many commentators, the Bush Republican administration's response to the attacks in the United States symbolises the transformation of international politics since the Cold War, highlighting the consensus of support for a new ethical and morally-committed world order, established on the basis of protecting and promoting human rights.

Today, it would appear that the idea of human rights is universally accepted. Governments and international institutions claim human rights as one of the essential pillars of the international system, and they are proclaimed in the same breath as peace, democracy and the rule of law as a universal value of the highest order. But the concept of human rights is not merely accepted by policy-makers and governments, it is also seen to denote a radical and transformative approach to international society. The discourse of human rights appears to go beyond the liberal democratic framework and aspire to a broader normative project of human progress, which celebrates the universal nature of humanity. This radical aspiration is reflected through the development of a human-centred approach to global questions, putting the value of human dignity above the search for economic gain or the narrow interests of particular national governments. This approach is seen as a progressive development from the divisions of the Cold War period, in which geo-political competition between the West and the Soviet bloc led to the downplaying of questions of individual and group rights.

This chapter seeks to establish the radical attraction and claims of the human rights approach and briefly considers the transformations of the international order, since 1990, which substantiate the view that the discourse of human rights has shaped, and to a large extent transformed, the international sphere. The consensus in favour of the process of prioritising a human rights approach is highlighted as well as the limited nature of critical appraisals of this shift in international policy focus. Following this, there is a consideration of the reasons for this transition in international relations and the consequences of displacing previous mechanisms of international

regulation. Finally, the framework of the material to be considered in the following chapters is set out.

ETHICAL ASPIRATIONS

The concept of human rights is seen by many commentators as establishing a radical framework for progressive change in international relations because it contains within it three powerful and interrelated ideas. First, there is the idea of universality, on the basis that in an increasingly globalised world promoting human rights concerns is in the interests of us all. Second, the idea of empowerment, because unlike politics, which is often seen to legitimise the power of a government or elected elite, human rights are seen to redress the balance and provide support for the claims of individuals, oppressed minorities or socially excluded groups. Third, the idea of a human-centred approach, based on ethics and morality rather than an adherence to grand political schemas connected to the politics of Left or Right.

The popular use of the concept of human rights has coincided with a growing belief that we are living in a global community, where our interests are closely connected to those of others who may not live in the same state or even on the same continent as us. As the British Prime Minister, Tony Blair, stated, after the terrorist attacks on the Twin Towers and the Pentagon:

Round the world, September 11 is bringing governments and people to reflect, consider and change ... There is a coming together. The power of community is asserting itself. We are realising how fragile are our frontiers in the face of the world's new challenges. Today conflicts rarely stay within national boundaries. Today a tremor in one financial market is repeated in the markets of the world. Today confidence is global – either its presence or its absence ... [T]his interdependence defines the new world we live in. (2001b)

International responses to the attacks have highlighted the developments analysed in the report by the United Nations Commission on Global Governance (CGG), *Our Global Neighbourhood*, which suggested that international policy-making is increasingly posed in relation to global concerns of war, poverty, the rights of children, women and minorities, and the environment (CGG, 1995). The concept of universality, inherent in the human rights approach,

reflects the shift in political focus towards global concerns and away from the constrictions of the territorially-bound nation-state.

Human rights are considered to be universal in two respects. First, and most importantly, because the subject of human rights is the universal citizen not the political citizen defined by the nation-state. The discourse of human rights 'inaugurates a new kind of citizenship, the citizenship of humanity' (Pieterse, 1997:72). For Michael Ignatieff, the lesson of 11 September was that in a globalised world, the global rich and powerful have a duty to assist the poor and disempowered, not just out of altruism but also self-interest. The events of 11 September, therefore, 'collapsed the justification for keeping national interests safe from infestation of talk of values' (2001). As Nicholas Wheeler writes: 'The notion of common humanity/human solidarity is diametrically opposed to the statist paradigm which is predicated on the contention that state leaders and citizens do not have moral responsibilities or obligations to aid those beyond their borders.' (1997:10) The prioritisation of universal concerns over the national is sustained by the claim that the globalised nature of central issues, from international terrorism and drug trafficking to ozone depletion and HIV/AIDS, means that we should be concerned with the needs of others no matter how far away they are or how different their lives.

Second, the idea of universality is a very powerful one because support for human rights is, in fact, universal. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, has been approved by virtually all governments representing all societies. As Louis Henkin states:

Human rights are enshrined in the constitutions of virtually every one of today's 170 states – old states and new; religious, secular, and atheist; Western and Eastern; democratic, authoritarian, and totalitarian; market economy, socialist, and mixed; rich and poor, developed, developing, and less developed. (1990:ix)

This international acceptance of human rights supports the position that they do, in fact, constitute a moral community of humankind, not confined to any political system, democratic or not. Therefore commentators argue that, because human rights cannot be bound territorially or to any social system, in any hierarchy of rights, human rights are at the top and in this sense 'trump' all other claims (Evans, 1997:125).

The idea of empowerment has also been a very forceful focus for the human rights concept. Human rights are seen as a protection against inequality and the domination of the powerful over the weak. David Forsythe asserts: 'It cannot be stressed too much that ... the idea of human rights is a defense against abuse of power everywhere.' (2000:219) As Mary Kaldor argues, 'many non-Western states are sources of stark oppression and denial of democracy' and the non-state orientated approach of the human rights movement can 'facilitate the representation of the weak and powerless in the non-West' (1999a:223). For Jack Donnelly: 'Human rights is the language of victims and the dispossessed.' (1998b:20) Helena Kennedy QC argues:

The time has come to uncouple the law from the state and give people the sense that the law is theirs. Human rights are the privileged ground where we can bring the law back to the common conversation of humankind. (2000:xv)

The idea of human-centred rights putting people first, regardless of the sectional interests of big businesses or political parties, derives more from the spheres of morality and ethics than that of politics. For many commentators, the moral aspirations behind human rights claims gives them a legitimacy which cannot be gained merely through the institutional practices of state-based politics. In fact, some advocates would argue that campaigning on the basis of human rights is the opposite of a political approach, because it is about principles, not about making compromises, and about protecting minorities, as opposed to enforcing the power of majorities. Where politics is seen to be about the expression of self-interest and the competition of views, human rights is regarded as an expression of altruism and the collective values of a moral community, the articulation of 'an underlying moral consensus' (Kennedy, 2000:xiv). Putting people before profits and politics has been a powerful idea and is widely seen as a refreshingly positive view of human potential and human progress. In the view of Zbigniew Brzezinski, former US national security adviser, 'human rights is the single most magnetic political idea of the contemporary time' (cited in Forsythe, 2000:33). For the *New York Times*, the 'great flowering of the idea of universal human rights ... is among the most important political legacies of this century' (1999). Mary Robinson, the UN High Commissioner for Human Rights, speaks for many in

her belief 'that the growth in the human rights movement is one of the most hopeful, optimistic developments of our time' (1999).

CHANGE SINCE 1990

Since 1990, these aspirations appear to have been guiding the reshaping of the international order. World leaders, like former US president Bill Clinton and the UK Prime Minister, Tony Blair, greeted this shift away from the Cold War domination of political and ideological competition with enthusiasm. Bill Clinton claimed that under his administration the United States 'has made human rights a cornerstone of our foreign policy', while Tony Blair argues that the prioritisation of human rights has led to 'a new internationalism based on values' (Apodaca and Stohl, 1999:186; Blair, 1999d). The development of a new ethical and moral foreign policy has also been welcomed by government critics in the media, by international relations academics on both sides of the Atlantic, and by leading non-governmental organisations (NGOs) campaigning on human rights issues, like Oxfam, Amnesty International and Human Rights Watch.

For many commentators, this shift in approach, already well underway before the events of 11 September 2001, reflects an adherence to the original aims of the UN, established at the end of the Second World War, to ensure that the international community would stand up to governments or political groupings who sought to oppress minorities or to deny the rights of their citizens. They assert that during the Cold War human rights were deprioritised, as the geo-political divide between the West and the Soviet bloc led to the ideologically-driven protection of brutal client regimes. With the end of superpower rivalry there appeared to be no reason why the international community could not once again focus collectively on the prevention of abuses by governments. This shift in approach to the international order, therefore, questioned the institutions and practices that had developed during the 50 years of the Cold War.

There is a general consensus today that the old basis of international policy-making and the institutions of its enforcement are outmoded and unwieldy. For example, the UN Security Council seems to be emasculated by its mechanisms which rely on political unanimity between its members, ensuring that the five big powers in 1945, the United States, Russia, the United Kingdom, France and China, have a veto on policy even today, which they are willing to manipulate for their own ends. Even more importantly, for many

commentators, the UN appears to be held back by its antiquated historical focus on nation-states as the main actors in the international order. Leading human rights advocates regularly suggest that 'the [UN] Charter's bias towards sovereign independence is anachronistic when the real evils are civil war and state-sponsored terrorism' (G. Robertson, 1999:382).

The speed with which the Cold War framework has been brought into question and recast since 1990 is startling. Every international conference on human rights seems to break new ground, focusing on new issues which, it is agreed, should no longer be seen purely within the purview of the nation-state, advocating the establishment of new institutions to monitor rights concerns, or giving support to new mechanisms of policy enforcement. Similarly, every international crisis since the early 1990s has appeared to set key international precedents for the developing framework of human rights enforcement. International institutions, such as the UN, the Organisation for Security and Co-operation in Europe (OSCE) and Nato, were granted new powers and the old rules governing the relations between international institutions, nation-states and citizens have been adjusted to take human rights concerns into account. These changes will be briefly illustrated using the central interrelated ideas of the human rights concept, those of universality, empowerment and the human-centred approach.

Universality

Protections for the human rights of the 'global citizen' have been developed through the extension of 'universal justice'. The planned establishment of the International Criminal Court (ICC), *ad hoc* tribunals for war crimes in former Yugoslavia and Rwanda, and UN and Nato actions in Somalia, Bosnia, Kosovo and East Timor, in the 1990s, highlighted new developments in international law and the granting of new powers of intervention awarded to international institutions and states active in human rights promotion. The radical nature of this shift is demonstrated by the fact that the teachings of the civil rights leader Reverend Martin Luther King are today held up by the US State Department as a guide to international action. His declaration that 'injustice anywhere is a threat to justice everywhere' is used to confirm the moral and political need for an activist foreign policy in the interests of all (Wagenseil, 1999:13). The shift towards the universality of rights by the world's sole remaining superpower is evident in the US State Department's annual Country

Reports on Human Rights Practices. The first report, in 1977, ran to 137 pages, the last report of the twentieth century, the largest ever, covered 194 countries, totalling 6,000 pages (USDoS, 2000).

The prioritisation of human rights issues has transformed the language and institutional practices of international relations. International bodies, from the UN and Nato to the International Monetary Fund (IMF) and World Bank, whose mandates may seem to be unrelated to human rights, have integrated these concerns and acted on them in ways unthinkable ten years ago (Bradlow and Grossman, 1995). Today the language of human rights infiltrates every discussion on international themes. For example, discussions about economic development, in UN committees, take the form of human rights debates over the priority of 'economic or developmental rights' in relation to civil and political rights. As one experienced commentator remarks: 'Today, practically no state can afford not to participate in some form of human rights diplomacy.' (Müllerson, 1997:5) Even the states at the critical end of many human rights resolutions, such as Russia, China, Cuba, Syria and Libya, argue that they are upholding human rights principles and are supportive of international action on the issue. They in turn raise human rights criticisms of the United States and other Western states regarding responses to poverty, institutionalised racism, prison conditions and aggressive militarism (see, for example, UN, 1996; 1999b).

In the field of international human rights interventionism, the shift in policy practices has been institutionalised in an *ad hoc* manner through the UN Security Council, which, since 1990, has empowered itself to consider humanitarian emergencies as a threat to international peace and security (Weller, 1999a). In 1991, the Gulf War to defend Kuwait was followed by the international community's attempt to protect the human rights of the Kurds and Marsh Arabs through a 'safe haven' policy. With the UN Security Council's support, the US-led coalition established aerial exclusion zones in northern and southern Iraq, denying the government control over its own territory. Iraqi aircraft entering the zones, formally within Iraqi airspace, were considered hostile and shot down (Weller, 1999b:94–5). Iraqi sovereignty was also undermined by UN sanctions preventing Iraq from developing 'weapons of mass destruction' as well as from trading freely with other states. The international regulation of Iraq, in which sovereignty was subordinated to human rights concerns, was subsequently seen as a legal precedent for universal human rights-based intervention. This was acted upon

the following year when the UN authorised unilateral United States intervention in Somalia to protect humanitarian food convoys. In Bosnia in 1993, the UN authorised a multilateral military intervention to protect humanitarian aid and, in 1995, a Nato force, in its first combat action since it was founded, was mandated to impose a peace settlement. The international military action against Yugoslavia over the Kosovo crisis in 1999 was widely greeted as the first international military intervention against a sovereign state for purely human rights purposes (Klug, 2000b:2). As Tony Blair asserted, this was a war fought 'not for territory but for values' (1999b).

As the role and remit of international institutions has been strengthened, international action under human rights mandates has been reactive as well as of a long-term nature. This was demonstrated with international institutions acquiring powers of long-term administration over Bosnia in the Dayton peace settlement. These administrative powers were later extended on an indefinite basis and, in 1999, the UN acquired formal powers of administrative regulation in Kosovo and East Timor. Through this process, the role of the UN Security Council has been fundamentally transformed from being a policeman of international security, concerned with the welfare of states, to a supranational 'government and administration body' supporting the human rights of citizens in complex political emergencies (Thurer, 1999).

Empowerment

The new focus on human rights has been held to have a radical and empowering impact. For many commentators the shift in policy perspectives is seen to represent the influence of grass-roots civil society movements on the international agenda. At the 1993 UN World Conference on Human Rights in Vienna, some 3,000 representatives of over 500 international NGOs attended, virtually outnumbering the representatives of states (K. Boyle, 1995). At the UN World Conference on Women's Rights in Beijing, in 1995, there were around 35,000 participants mainly from NGOs (Korey, 1999:166). Many human rights advocates have also suggested that the reason for this transition has been the influence of ordinary people, creating a 'people's politics' in which 'a campaigning mass movement is putting pressure on democratic governments to practise what they preach' (G. Robertson, 1999:115).

It is often argued that one of the main achievements of the human rights movement has been the new legal protections put in place to

protect minorities from persecution or oppression. International justice was once more on the agenda, and 'a start was at last made to capitalise on the Nuremberg legacy', through The Hague and Arusha tribunals for war crimes in the early 1990s (G. Robertson, 1999:xv). For many commentators, the tribunals marked an important change in international relations, as 'the seeds of a new resistance to evil have been planted' (Urquhart, 2000). In September 1998, the Rwandan tribunal sentenced Jean Kambanda, former prime minister and head of the Rwandan government, to life imprisonment for crimes against humanity. This precedent was in turn used by the UK House of Lords which, in March 1999, ruled that General Pinochet had no sovereign immunity and could be extradited to be tried for crimes against humanity. This was the first time a former head of state had faced criminal proceedings for breaches of international law while in office, in a foreign court (Bianchi, 1999:255). A few months later, the indictment of a sitting head of state, Slobodan Milosevic, for crimes against humanity was greeted as confirmation that there had been 'a revolution in international law' (Moghalu, 1999).

Today, it appears that both international and national courts can indict presidents and elected leaders if they are held to have abused their citizens' human rights. The empowerment of the vulnerable individual or group against government repression is seen as a major transformation in power relations. International institutions and new treaty bodies now have the power to prevent or punish abuses which, during the Cold War, would have been protected by sovereign immunity. As Michael Ignatieff notes: 'Taken together, these changes amount to a revolution: they enfranchise the individual against the state for the first time in international law.' (2000b:201)

The Human-Centred Approach

The human rights approach to international policy-making has struck a chord with many commentators, academics and activists because of its radical rejection of the ideology and politics of the Cold War era. The focus on protecting individuals, rather than operating on the basis of the needs of governments, challenges the international framework developed since 1945. At the 1993 UN international conference in Vienna the UN Charter was widely construed to mean that human rights should take precedence over sovereignty. By the end of the 1990s, with UN protectorates estab-

lished in Kosovo and East Timor and the indictment of Yugoslav President Slobodan Milosevic for war crimes, international relations were no longer seen to be dominated by the need for interstate consensus. Although human rights had been a concept of international agreements since the Second World War, before the 1990s the promise of concerted action on the issue had never been fulfilled. At its September 2000 Millennium Summit the UN confirmed the need for people-centred reforms of the institution and affirmed the rejection of its previous 'state-centred' framework (UN, 2000b). The change in approach on behalf of the international community has been greeted by human rights advocates as marking a new historical period for human rights: 'the age of enforcement' (G. Robertson, 1999:xvi).

This new consensus behind international policy shifts in the 1990s suggests that international activism in support of human rights is likely to shape the international political framework of the new century. For many commentators, this radical shift at the end of the 1990s meant that a century marked by world war and genocide ended on a positive and hopeful note. This optimism is based on the belief that international policy based on human rights can make the twenty-first century safer and more just than the preceding one. As Bernard Kouchner declared:

Can we dream of a 21st Century where the horrors of the 20th will not be repeated? Where Auschwitz or the mass exterminations that took place in Cambodia under the Khmer Rouge, and later in Rwanda, and the killings in Kosovo, cannot happen again? The answer is a hopeful yes. (1999)

This optimism appeared to be fully justified in the international response to the World Trade Center and Pentagon attacks, where finally international society seemed willing to take on the 'moral responsibility' for tackling human rights abuses wherever they might occur (Blair, 2001b; Woollacott, 2001). This brave new world of human rights regulation has been hailed as an era of 'post-international politics' where states and fixed boundaries will no longer dictate whose rights will be protected and whose will not (James Rosenau, cited in Mills, 1997:289).

LIMITED CRITIQUE

The application of human rights aspirations, in the policy practice of NGOs, the foreign policy of states and regional institutions, from

the European Union to Nato, and in the activities of the UN, has not been without its detractors. Commentators across the board, from academics to journalists, state officials and NGO practitioners, have raised a large body of criticism.

This criticism has originated largely within the human rights discourse itself. The policy-makers and institutional actors have been criticised for failing to act on behalf of human rights in some areas of the world, or when they have acted, have been criticised for being too slow to respond or for merely taking half measures. Much of this criticism has also been focused on the low level of institutional change in the international sphere, for example: the UN Security Council composition and power of veto; UN Charter restrictions on international intervention; the slow development of the International Criminal Court; the lack of institutional integration of NGOs in international decision-making; and the remaining outdated privileges of state sovereignty.

As Alex de Waal has noted, 'to date most sociological study of humanitarian action implicitly accepts the axioms of the humanitarian international'. Statements by human rights NGOs, states and international institutions acting in the name of human rights are often taken at face value as if the nobility of aim confers immunity from sociological analysis or political critique. Waal sums up the strength of consensus by analogy: 'It is as though the sociological study of the church were undertaken by committed Christians only: criticism would be solely within the context of advancing the faith itself.' (1997a:65)

No Questioning

Despite the rapid nature of the transformation of the language and powers of international institutions, there has been little critical consideration of this change. The radical challenge of human rights to the post-war international framework has been accepted in essence, with discussion focusing on the nature of the required institutional changes and the speed with which they are possible.

It is becoming increasingly clear that the human rights discourse is rewriting the international law books and policy-making procedures from the starting point of ethics and universal values, and in so doing, is challenging the previous frameworks of legal and political rights at both international and domestic levels. As Jack Donnelly notes, the discourse of human rights implicitly recognises 'a new kind of accountability' (2000:128). The shift away from forms

of accountability linked to the nation-state opens up a series of theoretical and practical alternatives that did not appear possible during the Cold War period. Where the nation-state was previously seen to be solely responsible for the protection of the rights of its citizens, and state sovereignty upheld as the first principle of international society, today the global citizen is seen to require a more global or cosmopolitan political framework of rights protection. As the International Criminal Tribunal for the former Yugoslavia (ICTY), at The Hague, held in the *Tadić* case: '[it] would be a travesty of law and a betrayal of the universal need for justice, should the concept of State sovereignty be allowed to be raised successfully against human rights' (cited in Bianchi, 1999:261).

There has been little discussion of the new forms of international law, which would need to be developed and legitimised once the former political equality of sovereign states is replaced by a legal framework that prioritises individual rights in the international arena. Another area, which has received little discussion, is the impact of these changes on the domestic political framework of states, particularly those subject to international regulation, once the political framework is determined by the universal ethics of human rights priorities. Just as the recasting of international law assumes a different starting point, so do domestic forms of human rights-based regulation: 'Democracy and human rights have very different, and often competing, theoretical and moral foundations.' (Donnelly, 2000:154) The challenge of the human rights discourse to the existing framework of international law and political decision-making is clearly a fundamental one, yet the broader consequences seem rarely to be considered. Most critical discussion is focused on particular crisis situations, and the response made to them, and tends to assume that the wider long-term consequences of a shift to a human rights-orientated world must be entirely positive.

The lack of a critical consideration of the broader consequences of the prioritisation of the human rights framework may be because the arguments have already been played out and the old political framework consciously rejected. It may be that this was justified because of its failure to meet the new demands of universality, or inability to protect or empower minorities, or to provide a human-centred and progressive framework of social relations. Yet, a study of the academic literature on human rights seems to bear little evidence of such a conscious level of consideration. For many com-

mentators, the human rights framework appears to be justified as a *fait accompli* because governments and international institutions have already accepted it. Richard Rorty, for example, argues that human rights are so well established that 'the question whether human beings really have the rights enumerated in the [1975 OSCE] Helsinki Declaration is not worth raising' (1993:116). Jerome Shestack puts the issue more forcefully, arguing that theoretical debate is now redundant because the arguments have 'been overtaken by the fact that human rights have become hegemonic and therefore essentially global by fiat' (1997:568).

For academic or intellectual investigation into this fundamental international change, it is perhaps even more concerning that many commentators argue that critical discussion of the human rights framework itself is unproductive and dangerous. Louis Henkin asserts that seeking theoretical or philosophical justifications for human rights claims would be 'disruptive and unhelpful' (cited in Mutua, 1996:629). Mary Midgley acknowledges that for academics there may be uncertainties about the central justification for human rights, but warns that academics should not take an approach that is 'predeterminedly destructive'. Instead, they should be positive about the 'mysterious' power of the human rights concept which has emerged as a result of the 'immense enlargement of our moral scene' (1999:160–1).

As Richard Rorty has observed, 'human rights culture' is now 'a fact of the world' (1993:115–34). Indeed, former US secretary of state Madeleine Albright proclaimed that 'the concept of human rights reflects the very principle of civilization itself' (cited in Wagenseil, 1999:4). Human rights are seen in many respects to be beyond debate. As the UN General Assembly President noted, in December 1998:

The quest for the basis of human rights to which philosophers, jurists and politicians devoted their interest and concern in the past has ... lost its significance. We can affirm today that human rights, beyond the theoretical concepts that justify the sacred and inviolable character of human rights, must be recognized and protected simply because this is what all humankind believes and desires, and because this has been the express will of the international community as reflected in the Universal Declaration. (UN, 1998)

From Kosovo to Kabul

The strength of the international consensus on human rights was highlighted by the Kosovo war and the international responses, both to Nato claims during the war and to the revelations after the war, which revealed a very different picture of the nature of the conflict. For many human rights advocates, the Kosovo war marked the beginning of the new age of human rights enforcement. Tony Blair expressed a much wider perception that this was a war fought not for self-interest but 'over the values of civilisation' (1999c). Similarly, the intervention in Afghanistan was presented as a war over civilised values on behalf of the 'world community'. Despite the fact that the Nato bombing campaign over Kosovo, conducted from high altitude, resulted in many targeting errors, the general opinion at the time was that the war was likely to be remembered 'not for its military and political misjudgements, but as the first war waged for ethical principles alone' (G. Robertson, 1999:387).

During the Kosovo conflict, the human rights consensus seemed particularly powerful to those who sought to question the policies forwarded by the advocates of rights intervention. Kirsten Sellars noted that questioning the altruistic motives behind the Kosovo bombing campaign was regarded as 'heresy': 'The consensus rules that anything done in the name of human rights is right, and any criticism is not just wrong but tantamount to supporting murder, torture and rape.' (1999:11) The use of available facts to challenge the case for war, found relatively little support or media space in this climate of consensus. This was true whether the issue at hand was the manipulation of the Rambouillet talks by US officials, to cut short peace negotiations by demanding Nato freedom of manoeuvre across the entire Federal Republic of Yugoslavia; or the fabricated stories during the bombing campaign of alleged evidence of planned genocide and fake German Defence Ministry documentation of 'Operation Horseshoe' (UKFAC, 2000c:par. 65; par. 93). For critical factual coverage of the conflict many people turned to non-Western media sources, where strongly researched articles were published in many countries, including Russia, China, India, Greece, Egypt and Israel (Hammond and Herman, 2000). It seemed that the facts on the ground mattered less to the Western advocates of intervention than the principle that a stand must be made on the side of the human rights cause.

This would appear to be confirmed in the responses of commentators to the revelations, in the years since the Kosovo war, that the

claims of mass slaughter or genocide of Kosovo Albanians, which were the media focus during the bombing campaign, were an exaggeration. In August 2000, the ICTY put the preliminary body count of Serbs and ethnic Albanians that died in the civil conflict at between 2,000 and 3,000, raising doubts over the alleged 'proportionality' of the Nato military response of 12,000 high-altitude bombing raids, including the use of cluster bombs and depleted uranium munitions over heavily populated areas and destruction of much of the civilian economy of the region (UKFAC, 2000c). The leading British liberal broadsheet, the *Guardian*, editorialised in response that, yes, Nato may have 'lied' about its bombing campaign, and yes, massacre claims may have been 'exaggerated' and 'manipulated': 'Yet the sum of all these criticisms does not change the central issue. Was intervention needed?' (2000d) What the *Guardian* sought to defend was that 'the principle of intervention was right' rather than the practice of it or its outcome. It appears that once the discussion of international relations revolves around 'principles' rather than 'practices' the existing consensus on human rights activism can all too easily sidestep factual criticism.

This confidence in the justice of the cause of the Nato bombers, and of the principle they were seen to be acting on, reflected a profound transformation in the perception of international priorities. In fact, the most common criticisms of the Nato campaign, from human rights activists, were that it should have been launched earlier or that it should have been extended (against US opposition) to send troops in on the ground and to the Nato occupation of Serbia itself. Back in 1990, few people would have imagined that, within the decade, the international human rights community would be advocating the military occupation of independent countries on human rights grounds, the establishment of long-term protectorates, or the bombing of major European cities on a humanitarian basis. The clamour of support for military activism in the cause of human rights highlighted that Kosovo would, indeed, set a precedent for action on 'ethical principles' in the future. This precedent was to be trumped in spades in October 2001 when the world's biggest military power carpet bombed one of the poorest regimes on earth, with the open intention of removing its government. To the accompaniment of columnists and government advisers welcoming 'the new age of empire', George Bush's Republican administration declared that it would go further than Bill Clinton's Democratic administration in its pursuit of

'nation-building' in the cause of aiding the Afghan people (Cooper, 2001; Ferguson, 2001; *Washington Post*, 2001).

The Kosovo war was a catalyst in the shift away from the interstate framework of international relations, established at the end of the Second World War. It demonstrated the capacity of the human rights discourse to challenge and erode the Cold War framework of international law. The Nato attack clearly breached two central provisions of the UN Charter: Article 2(4) that 'all members shall refrain ... from the threat or use of force against the integrity or political independence of any state'; and Article 2(7) which prohibits intervention in matters essentially within the domestic jurisdiction of any state, subject to Security Council action under Chapter VII. The right of self-defence was not applicable as no Nato country was threatened by instability within Kosovo, and the Security Council did not invoke Chapter VII. The 78-day bombing campaign against Yugoslavia was an assertion by Nato countries of a right to intervene and to wage war without UN Security Council approval on the 'higher' grounds of human rights protection. The US-led intervention against Afghanistan demonstrated the shift towards a unilateral right of intervention with the outright rejection of the subjection of US force to any limitations from the UN Security Council (Sciolino and Myers, 2001; MacAskill, 2001a). The framework established in the Kosovo conflict was regularly used to legitimise the war against Afghanistan. Western government officials made comparisons with the justness of the cause of the military action in Kosovo, comparing the Taliban to Slobodan Milosevic and portraying the bombing campaign as part of a necessary strategy for bringing humanitarian assistance to the people of the decimated region (Straw, 2001b; Webster, 2001b).

In challenging the post-war framework of the UN Charter system, the Kosovo war and action against Afghanistan have underlined some of the differences between the developing human rights framework and previously accepted mechanisms of international and domestic regulation. Both military actions have raised the issue of the (re)definition of humanitarian action, with the conflation of military action and humanitarian aid (considered in Chapter 2). The support for the bombing campaigns across the political spectrum brings up questions about the reasons for the policy shift away from defending national interests towards an ethical foreign policy based on defending ideas and values (considered in Chapter 3). The lack of criticism of the wars from international relations academics,

including many of those based at departments of 'Peace Studies', also raises questions about the transformation of international relations theory and the growing acceptance of a normative or moral basis for political policy-making (Chapter 4). Debate in the field of international law over the legality of the bombings and the increased calls for extended international tribunals presents questions about the changing nature of international justice and its relationship to international law (Chapter 5). Both conflicts have also sustained a debate on the right of military intervention and highlighted the growing acceptance of war as a 'lesser evil' to address 'human wrongs' (Chapter 6). Some of the broader theoretical concerns generated by the retreat from the principle of state sovereignty, as well as the increasing role in international policy-making of *ad hoc* 'coalitions of the willing' and the new consensus in favour of intervention to replace 'hostile' governments with international administrations are considered in Chapter 7.

FRAMEWORK

In this book I do not intend to present a history of the human rights movement, or of the development of international institutional powers. Neither do I wish to focus too much on a legal discussion about interpretations and developments in international human rights and humanitarian law. This work deals with the political basis for, and the political consequences of, ethical foreign policy and the developing human rights framework of regulation. It develops an analysis of why the ethical agenda of human rights has become widely accepted since 1990 and indicates areas in which there appear to be limitations or at least important questions over the implications of this shift in approach. The chapters that follow take a critical and questioning approach to both the aspirations and the ideas of human rights campaigners as well as to their positive claims regarding the international institutional changes outlined at the start of this chapter.

These criticisms are not based on more traditional critiques of human rights-based international policies. It is not the aim of this work to uncover the double standards involved in 'ethical foreign policy'. The economic and geo-strategic motivations, and limitations, behind decisions of whether, and how, to penalise selective human rights abuses have been discussed by many commentators who accept that ethical policy aims are inevitably blunted by *realpolitik* concerns of powerful nation-states (see, for example, Forsythe,

2000). Neither are the following chapters concerned with developing what could be categorised as an archetypal Left or 'anti-imperialist' critique of declarations of concern for human rights as a cynical cover for government intervention with the aim of economic exploitation of a particular region or as part of an inter-imperialist competition for power with other major states (for example, Chomsky, 1998; 1999).

This book attempts to develop a critique of human rights regulation that relies neither on the imputation of any 'hidden agenda' of Great Power motivations, nor on the bungled conduct or problematic outcome of particular 'humanitarian' interventions. A consideration of the broader political consequences of the theory and practice of the human rights discourse demonstrates the necessity for a more critical approach; one that can expose the elitist assumptions behind the human rights 'movement' and reassert the contemporary relevance of the universal values of political equality and democracy.

The first two chapters seek to establish the background to current debates on international policy-making. This chapter has outlined some of the claims of human rights advocates and has indicated the depth of the international consensus in the name of the human rights cause. Chapter 2 charts the development of the human rights discourse prior to 1990 and considers the shift in focus of the work of humanitarian NGOs and UN bodies through the extension and institutionalisation of long-term Western assistance in conflict resolution and development. It analyses the reworking of humanitarian ideas through the human rights discourse and emphasises how the shift from needs-based to rights-based aid provision has paved the way for today's conception of 'humanitarian militarism'.

The next two chapters attempt to establish an alternative framework for understanding the human rights discourse. Chapter 3 considers the shift in government and international institutional approaches towards ethical foreign policy, which prioritises human rights concerns. It examines why this shift occurred in the 1990s, and why the transformation of priorities has been so rapid. It also analyses whether governments have been pressurised to pursue these issues or whether ethical policy appeals directly to government interests. The chapter goes on to raise questions over the accountability of ethical policy-making. Chapter 4 considers the changing nature of international relations theory and the focus on normative analysis. This chapter looks at the differences in approach to rights

and the human subject between the human rights discourse and classical liberal democratic theory, drawing out the consequences of these differences for new forms of international regulation supported by campaigning human rights advocates.

Chapters 5 and 6 analyse the impact of the human rights discourse at the international level, focusing on the challenge to the UN interstate framework and its priorities. Chapter 5 considers the development of international justice and the changing nature of international law. It establishes the historical context in which state sovereignty and the rights of sovereign equality were grounded and highlights the importance of the human rights critique of state sovereignty, considering the implications of this for weaker states. The human rights advocates' claims that the shifting international framework is an extension of international law are critically considered against concerns that the era of international law as the final arbiter of interstate relations may have passed. Chapter 6 extends the foregoing analysis to a consideration of the restrictions on the right of states to go to war. It looks at the arguments put against the UN framework of non-intervention and considers why world peace is no longer given such a high priority by human rights campaigners. The chapter also considers the potential for conflict between the goals of peace and of human rights promotion and the impact of UN peacekeeping reforms, which pursue the people-centred human rights approach.

The final two chapters turn to the wider political consequences of accepting the human rights framework. Chapter 7 considers the impact of the human rights critique of the political sphere, and the concept of political equality in particular, on relationships between major powers and non-Western states, at the level of interstate relations more generally and within the domestic political sphere in the West. Chapter 8 concludes the work, drawing out the political consequences of the human rights discourse from its initial starting assumptions about human potential and capacity for progress.

2 Human Rights-Based 'Humanitarianism'

There are those who say that we should halt the bombing to allow more food convoys in. I understand the concerns that lie behind these calls. But a pause in the bombing would only prolong the suffering of the Afghan people. The only things that can help the Afghan people are an end to the civil war, an end to this kind of regime and the start of reconstruction. – British Foreign Secretary, Jack Straw, 22 October 2001.

The human rights-based humanitarianism of the twenty-first century is very different in both content and form from the practice and principles of the nineteenth-century founders of the modern humanitarian movement. Until the 1980s the international promotion of human rights issues and the call for a more active humanitarian policy was a marginal cause of aid and campaigning NGOs such as Amnesty, Save the Children, Christian Aid and Oxfam (Armstrong, 1986). For the Left, the non-political stance of these groups, formally neutral in the struggle to liberate the developing world from Western imperialism, was condemned as predominantly conservative. For the Right, the neutral position of humanitarians was equally galling as NGO campaigns highlighted questions of Western economic domination and support for repressive regimes during the Cold War. Since the end of the Cold War, leading Western governments and political parties of both the Left and the Right have declared their support for human rights-led foreign policy activism and the profile and influence of campaigning humanitarian and human rights NGOs has been transformed.

The transformation of humanitarianism from the margins to the centre of the international policy agenda has been achieved through the reinterpretation of humanitarian policy and practice and its integration within the fast-growing agenda of human rights. The new international discourse of human rights activism no longer separates the spheres of strategic state and international aid from humanitarianism, but attempts to integrate the two under the rubric of 'ethical'

or 'moral' foreign policy. As the humanitarian NGOs have been integrated into policy-making forums, the policy-makers have increasingly claimed to be guided by humanitarian principles. Today, there is a uniting of international institutions and NGOs in terms of both assumptions and staff. Commentators, like Alex de Waal, have noted the ease with which staff have crossed over between NGOs and international institutions and the 'marked convergence towards a common culture' (1997a:65).

The human rights NGOs, in conjunction with leading foreign policy strategists, have established a rights-based humanitarian consensus, the 'new humanitarianism', which has succeeded in redefining humanitarian policy. The universal principles, which defined the early humanitarian internationalists, are now widely criticised by their NGO successors as the language of universal humanitarianism has been reworked to pursue human rights ends. Today's humanitarians are concerned with long-term human rights outcomes rather than short-term humanitarian necessity. This transformation has led to the displacement of neutral humanitarian aid by more interventionist economic, political and military strategies of humanitarian assistance devoted to long-term strategic objectives. The 'new humanitarians' assert that their ambitious strategic ends inevitably clash with their earlier principles, which developed in an age when it was necessary to obtain consent from the states in which they operated and when the opportunities for more long-term involvement were limited (Duffield, 2001:31). Today, not only is this more interventionist approach seen as a legitimate response to the complex problems of aid provision, it is predominantly understood to be non-political and ethically guided.

This chapter is concerned with the process through which the core ethics of humanitarianism have been transformed, and an analysis of some of the consequences of this change. This chapter is not concerned with NGOs *per se*; it does not attempt to present a history of the rise of the humanitarian NGO movement, nor of the growing integration of non-governmental organisations into the policy-making and implementation of the major international institutions, such as the UN, OSCE and World Bank. The intended focus is the shift in the politics of humanitarian interventionism as advocated by non-governmental organisations during and after the Cold War. The following sections consider the non-political approach of traditional non-state humanitarian organisations and chart the development of more rights-based humanitarian NGOs, which have

facilitated the mainstreaming of rights-interventionist policies. The chapter concludes by looking at how human rights-based humanitarian intervention has led to more coercive forms of 'humanitarian aid' and the growing acceptance of 'humanitarian militarism'.

HUMANITARIAN UNIVERSALISM

The traditional humanitarian values were seen as separate and distinct from the world of policy-making, peace and war. Beyond the conflicts of politics, humanitarian intervention sought to emphasise the universal nature of humanity, striving to reduce human suffering through famine relief, medical aid, the protection of prisoners of war, and so forth. These concerns, and the interventions motivated by them, were conceived as operating outside the sphere of politics. Humanitarian action strove to avoid interference with state-level geo-political competition as well as domestic political issues. Humanitarians were concerned neither with the rights or wrongs of national liberation, nor issues of economic redistribution, justice or democracy: this was the stuff of politics, not humanitarianism. Their sphere of involvement was focused on the protection of a basic level of human dignity in times of war or natural disaster.

The organisation that over the last century has most epitomised the values of humanitarian universalism has been the International Committee of the Red Cross (ICRC). The Red Cross movement was founded by Jean-Henri Dunant after witnessing the slaughter at Solferino in 1859 when the battle between France and Austria claimed 6,000 lives in one day with little concern for the sick and wounded. In 1864, sixteen governments met in Geneva, twelve of which signed the Geneva Convention, for wartime access to battle zones for neutral field hospitals, ambulances and medical staff. In 1901, Dunant won the first Nobel Peace Prize. By the First World War, the ICRC had become the largest humanitarian organisation in the world, responsible for monitoring the Geneva Convention, which codified the laws of war and the ground rules for the treatment of prisoners. The ICRC was not established as a pacifist or anti-war body, it made no claims to be able to solve humanity's problems, merely to reduce some of the suffering.

In 1965 the ICRC codified its work according to seven fundamental principles of humanitarian action: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. Independence, voluntary service and unity relate to the inner integrity of the movement itself. Humanity, impartiality, neutrality

and universality were held to be the underlying principles of any humanitarian intervention. The principle of humanity was based on the desire to assist the wounded and suffering without discrimination, recognising a common humanity and that 'our enemies are men'. The principle of impartiality was based on the desire to assist without discrimination except on the basis of needs, giving priority to the most urgent cases of distress. The principle of neutrality bound ICRC workers from taking sides in conflict or engaging in political or social controversies. The principle of universality claimed that the ICRC approach was the same the world over on the basis that the humanitarian values were shared universally. The principles of humanity, neutrality, impartiality and universality were predicated on separating the humanitarian from the political (Warner, 1999).

The avoidance of politics was essential to the definition of humanitarianism. Cornelio Sommaruga, as President of the ICRC, in his speech to the UN General Assembly in November 1992, made this clear: 'Humanitarian endeavour and political action must go their separate ways if the neutrality and impartiality of humanitarian work are not to be jeopardised.' (Cited in Warner, 1999) Jean Pictet, one of the ICRC's leading thinkers, warned that 'Red Cross institutions must beware of politics as they would of poison, for it threatens their very lives' (cited in Minear, 1999). As Michael Ignatieff notes, humanitarianism was at the core of the ICRC's non-political outlook: 'It made no distinction between good wars and bad, between just and unjust causes, or even between aggressors and innocents.' (1998:119)

Amnesty International, founded in 1961 with the aim of working for the release of 'prisoners of conscience', similarly pursued a universal campaign for the rights of political prisoners, regardless of whether they were persecuted by US- or Soviet-backed regimes. The politics of the prisoners were irrelevant, what mattered was that they were held captive for their religious, political or other consciously held beliefs or by reason of their ethnicity, gender or language. As well as working for the release of political prisoners, Amnesty also campaigned against capital punishment and the use of torture or inhuman punishment in all cases, not just for political prisoners. Amnesty was not concerned with the rights or wrongs of the politics or beliefs of the prisoners but with all prisoners receiving a minimum of universal standards of treatment.

The UN also established institutions solely for the purpose of humanitarian aid, such as the UN Relief and Rehabilitation Admin-

istration 1943–47, the UN International Children's Emergency Fund (UNICEF) in 1946 and the UN High Commissioner for Refugees (UNHCR) in 1950. The mandates of these institutions were explicitly humanitarian, not political. Private charity organisations were also involved in famine relief, many having been founded in response to the First and Second World Wars. Save the Children was established in the aftermath of the First World War. Oxfam was founded in 1942, initially as the Oxford Committee for Famine Relief, providing relief for the famine victims in German-occupied Greece where the Allied blockade had cut the country from its peacetime food supplies. This universal approach was a direct challenge to the British government policy of blockade, and the Oxford Committee was prevented from sending aid until 1943. These relief aid charities, like the ICRC, saw themselves as filling the gaps in humanitarian provision that temporarily, in the aftermath of war, could not be met through the political system. By the end of the 1940s the major relief charities established themselves in a more permanent role, addressing not only wartime distress but also international suffering in the developing world.

During the Cold War, the work of relief charities achieved a high profile precisely because of their universalist approach and political neutrality. They played an important role in providing aid where the international geo-political divide meant that leading Western states were not willing to assist those in need. The Biafra crisis in 1968 was one of the first examples of humanitarian aid NGOs mobilising in the face of British and international disapproval. In the 1970s, NGO relief intervention was repeated in Bangladesh, Ethiopia, the West African Sahel and Cambodia after the defeat of the Khmer Rouge government. In all these cases the NGOs campaigned against the lack of official institutional intervention. While the major powers pursued the *realpolitik* of the Cold War, humanitarian non-governmental organisations showed up the gaps in humanitarian provision. Cambodia was an example of this. With the refusal of Western powers to recognise the post-Khmer Rouge government and the absence of aid from international institutions, NGOs were able to play a dominant role. Their non-governmental nature meant that they could function despite political pressure. As Ben Whittaker notes, these cases demonstrated that Oxfam and other NGOs could 'operate where huge governments and international bodies were stymied as politically hamstrung' (1983:11).