

‘Wars aren’t what they used to be!’

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Dr Tom Frame, Bishop to the Australian Defence Force
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After years of violence and unrest, the Indonesian government agreed to a ballot being held in September 1999 to determine whether the East Timorese people wanted to remain within Indonesia or seek independence. When it became clear the East Timorese had voted overwhelmingly for independence, pro-Indonesian militia, encouraged and supported by the TNI, went on a rampage across the country, killing hundreds of people with pro-independence sympathies and wantonly destroying public and private property. Pictures of the death and destruction being inflicted upon East Timor were relayed across the world. The international community was appalled by the brutality of the militias and the indifference of the Indonesian authorities to the devastation. Following some heated diplomatic exchanges between Jakarta and Canberra, an Australian-led international force - INTERFET - operating in accordance with UN resolutions, arrived in Dili to restore order. Australia contributed over 5,500 personnel. INTERFET was universally commended for creating the conditions in which the people of East Timor could pursue independence and democracy after nearly a quarter of a century of oppression and intimidation. The Australian led armed intervention also revealed a growing sentiment within international relations: national sovereignty is no longer absolute.

In this lecture, I want to consider the moral standing of national sovereignty, the conditions in which it might be overridden, the circumstances in which is morally obligatory to do so, and the ethical dimensions associated with the conduct of armed interventions.

In my first lecture I drew some comparisons between the moral status of the individual and the state. I noted that by equating personal autonomy to national sovereignty, the right of states to independence, self-determination and non-interference is upheld within international law and custom. This is reflected in the United Nations’ Declaration on the Principles of International Law.

UN member states are reminded of 'the duty not to intervene in matters within the domestic jurisdiction of any State in accordance with the Charter'.

No state or group of states has the right to intervene directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic or cultural elements are in violation of international law. No state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it advantages of any kind. Also no state shall organise, assist, foment, incite, or tolerate subversive terrorist or armed activities towards the violent overthrow of or civil strife in another state.

But are there any circumstances in which armed intervention without the consent of the host nation might be justified?

To return to the previous analogy, in a democratic society individuals are at liberty to live their personal lives as they see fit, free from hindrance or interference. Why place such an emphasis on autonomy? Because individuals must be free to make and learn from their own mistakes; individuals have different preferences and desires, values and virtues; and, there are many valid and reasonable ways in which to live. This principle is upheld with respect to nations. The Thirty Years War, which ended when the 'Peace of Westphalia' was signed in the towns of Munster and Osnabruck on 30 January 1648, established the principle of 'each his own area, to each his own religion'. Thereafter, non-interference in the internal affairs of other states became a European diplomatic custom. What a neighbouring state did inside its own borders was their business.

But this principle has been challenged if not eclipsed over the last 15 years. Civil wars, rebellions, uprisings, human rights abuses, ethnic cleansing and genocide have become increasingly common.

Their origins and conduct can be summarised under two headings: greed and grievance.¹ In the first, one group feels that it has been denied a just share in the wealth of the nation-state or that government policies have diverted wealth from one identifiable group to another. In the second, a section of the population believes it has a social, ethnic, political or religious grievance to which the government is either the perpetrator or is indifferent to its resolution. This may be contemporary or historical. Greed and grievance can co-exist and may be related or compounding factors. Those based mainly on history are likely to be about revenge or vengeance. Greed can also be manifest in criminal behaviour as either corruption or theft.

When the level of greed or the extent of the grievance becomes acute – whether real, imagined or manufactured - a rebel organisation emerges and a formal organisation evolves. With time, the rebel group either challenges the economic status quo [such as the ‘rage of the poor’ exploited by Fidel Castro in Cuba or where the richer region of Eritrea seeks to secede from the poorer state of Ethiopia] or it redresses the grievance. This may involve a direct threat to the authority of the government or a challenge to the dominant group or interest. It might involve the seizure of political and military power or acquisition of economic resources, or be expressed in a secession movement in which the rebels opt for self-government within a new and independent nation-state. Rebel groups cannot survive without internal cohesion. Diversity is a liability rather than an asset especially in relation to ethnicity, language and religion. These are often the original source of grievance because they lead to social discrimination, economic disadvantage and political exclusion. [An example is the conflict in Sri Lanka where the Tamil Tigers claim to represent the interests of the 12% of citizens who are Tamils]. Rebel groups usually have limited recruitment bases coupled with a narrow outlook and specific objectives. Not surprisingly, their memberships rarely exceed 5000 people although they will invariably claim support far beyond their numbers.

As the greed or grievance is frequently a matter of perception and is rarely the subject of independent arbitration, governments usually act to preserve their authority and to protect the civil order.

¹. Paul Collier and Anke Hoeffler, ‘Greed and Grievance in Civil War’, Policy Research Working Paper No. 2355, World Bank Development Research Group, May 2000.

This often takes the form of aggressive military actions designed to crush the rebel group and its support base. The situation is made more complicated when a sympathetic diaspora contributes to the rebellion or its suppression by physical involvement or financial support. The overseas Irish community, particularly in the United States, has been a crucial source of material support for the IRA. The diaspora become more involved through sympathy with family and kin represented by the rebel group or those loyal to the government, or through a sense of solidarity because they themselves feel subjugated in their new home.

This means that civil wars, rebellions and uprisings are always brutal and destructive. In addition to expanding grievances fuelled by history, loyalties are strained. Families and kinship groups are divided. The increase of intra-state violence is particularly disturbing as we now know that soldiers who have had friends and relatives injured or killed in 'civil war' are much more likely to kill indiscriminately and commit war crimes. Each individual who is injured or killed becomes a focal point for further violence on the part of their family and friends. Every act of violence eats away at the fabric of society like a cancer, spreading and reproducing itself in ever-expanding cycles of horror and destruction. This has been the tragic outcome in places like Cyprus, Zaire, Sudan, Nigeria, Rwanda and Bosnia.

According to the principles enshrined in the Treaty of Westphalia, no outside party should intervene. But is this a moral issue requiring a moral rather than political response? This leads to the crucial question: is national sovereignty a moral or political commodity? And having given an answer, when then need to ask the supplementary question: is it really absolute? To return to the analogy briefly, individuals are free to live their lives without hindrance or interference in liberal democratic societies unless or until they act in certain ways that harm others or themselves. Most liberal democratic societies insist that some behaviours - domestic violence, child abuse, drug addiction and mental incompetence - impose a duty on other individuals or on society as a whole to intervene in that individual's life. Let me offer an example implying a positive duty to act. A group of people watch an individual being beaten to the point of death. No one intervenes. We deem the action a murder and the instigator of the beating a murderer. What of the observers? Were they facing an ethical problem demanding from them an ethical response?

First, they observed a person in real and dire need at the hands of some who had not entitlement to act in such a manner. **Second**, because of their proximity, they were aware that the need was dire and that the person was facing serious injury if not death without intervention. **Third**, they had the capacity and capability to do something about the person's need. **Fourth**, their intervention was the last resort without which the person would, and eventually did, lose their life. We would conclude that the observers had a certain right to intervene that carried with it a duty to do so. In the same way that observance of individual autonomy and independence is suspended or over-ridden in these circumstances, are there grounds for sustaining the analogy and arguing that state sovereignty, like personal autonomy, is neither absolute nor inviolate? And in relation to what sort of behaviour might sovereignty be overridden? In terms of the 'rights v. duties' approach to ethics, does a nation have a duty to intervene? If so, what is the basis? Does this right confer a duty to do so? What criteria need to be satisfied before intervention is justified?

The word 'intervention' requires an explanation if not some justification. How is 'intervention', with its positive connotations, different from 'interference', with its negative tenor? Interference is involvement in something from which one is properly or justifiably excluded. It is akin to meddling and intruding in an unwanted manner notwithstanding the character of one's intentions. Jeff McMahan defines intervention as 'coercive external interference in the affairs of a population organised in the form of a state'.² I would hold to a similar definition but would replace the word 'interference' with 'participation'. To my mind, intervention implies a sense of consent or authorisation, that the person intervening is entitled to do so although this does not exclude the possibility that the intervention might be resented or resisted. One state can intervene in the internal affairs of another with its consent (such as the Australian-led regional stabilisation force deployed to the Solomon Islands) or with the consent of some other legitimate authority (such as the United Nations). Of course, intervention need not be military. It might be political, diplomatic, social or economic with pressure applied to weaken an oppressor's grasp on power or to lessen one belligerent parties' capacity and willingness to fight another.

². 'The ethics of international intervention', in K. Kipnis and D.T. Meyers (eds), *Political Realism and International Morality*, Boulder, 1978, p. 78.

A nation can engage in propaganda (such as in Saddam's Iraq) or assist a regime's opponents (such as the CIA's support for the Bay of Pigs invasion in Cuba). To count as intervention, it must have a coercive element although it need not be violent.

But when is intervention in the affairs of a sovereign state justified? Some argue when the government has lost political legitimacy, no longer enjoys a popular mandate, and maintains power by some illegitimate or morally dubious means (such as Mugabe's Zanu PF party in Zimbabwe). But it is a little more complicated than that. According to Michael Walzer, the state is the combination of a political community and a particular government. Its rights are also those of the citizens within its boundaries. Therefore, nationhood and sovereignty 'fit' the government and the community it governs. They are regarded as being coincident. The 'fit' can be general rather than precise. No political system or government perfectly accords with the community subject to it.

There is also the possibility that a government might be regarded as illegitimate by those subject to it but considered legitimate in the international realm. An example is Burma where the government is internally illegitimate but externally legitimate (in the sense that it has been recognised by the UN). Although some of its citizens might revolt against the government, call for free and fair elections, or engage in public protests and civil disobedience, does this give other states the right to interfere in internal Burmese affairs? Inasmuch as this is a political rather than moral crisis, probably not. Nor do similar circumstances create a right to intervene when an internally legitimate government is replaced by an externally illegitimate one (such as In Fiji where Dr Bavandra's Labour Government was deposed by a military coup led by Colonel Sitiveni Rabuka and the Socialist Government of Salvador Allende in Chile was overthrown with assistance from the CIA and supplanted by a military junta led by General Augusto Pinoche).

When, then, is intervention justified? Walzer outlines three instances. First, where there is no 'fit' between the government and the community, evidenced by gross violations in human rights, ie., India in East Pakistan (Bangladesh).

Second, instances of 'secession' where there are two distinct communities but one government. In these situations one group demonstrates that it is not represented by, or is actively excluded from, government or is the victim of the customs/decisions of the ascendant group, ie., Bosnia's withdrawal from the Yugoslavian federation. Third, to redress an imbalance created by the participation of another party, ie., Vietnam or Korea where the Chinese supported the North and the United States backed the South, but only to the extent required to restore the balance. The third situation is the most problematic. Would Australia, for instance, have acted in favour of Rabuka if the New Zealanders had intervened in support of the Indo-Fijians?

But how much or how little homogeneity in political community can, does and ought Walzer to expect? He may be too open to secession. What if one community with access to natural resources secedes for the purpose of hoarding those resources (such as the Biafrans in Nigeria). Wasserstrom and Luban argue that Walzer is too concerned with state's right and not enough with individual citizens while others think he is not clear enough on the nature of the 'fit' between community and government. Tony Cody says the two senses of legitimacy – internal and external - are probably too far apart and seem unrelated in Walzer's thinking. The Vietnamese invasion of Kampuchea in 1977 might be considered just because Pol Pot's Government had turned on the Cambodian people. Therefore, its complete internal illegitimacy terminated its external legitimacy and the Vietnamese may have been justified in invading (but probably not occupying) the country. But do massive internal breakdowns of law and order, whether as a result of government or rebel action, or even severe breakdowns, justify intervention? Charles Beitz would argue that they do.

the State's right to sovereignty should be limited by whether or not its institutions exhibit an appropriate degree of domestic justice. Where they fail to do so, other states might take action to effect a change of behaviour via international organisations, compliance mechanisms, and sanctions, to force morality.³

³. Charles Beitz – *Political Theory and International Relations*, Princeton University Press, Princeton, 1979, p. 58

There may be circumstances in which intervention seems to be justified but there are several difficulties and dilemmas to be faced. In relation to legitimacy, regimes may not be considered as illegitimate or as without support internally as external entities allege when differences in religion, culture and custom are accepted. In relation to human rights abuses, there are wide variations in the interpretation of laws and conventions concerning the protection and promotion of human rights. There is also the dark side of altruistic intervention: the tendency towards the kind of paternalism reflected in the imposition of what the intervening group would want if they were in the position of those they seek to help. Henry Kissinger once remarked: 'I don't see why the US should stand by and let Chile go Communist just because of the stupidity of its own people'.⁴ In instances where there is an imposition of partisan political will as part of the intervention, such as the recent Iraq war, the intervening force can quickly take on the aspect of conquerors. The Tanzanian invasion to Uganda to depose Idi Amin is another example. History reveals that the consequences of using force are always unpredictable and often lead to escalating violence, such as the Soviet invasion of Afghanistan in 1980.

Given this likelihood, interventions which do not have universal consent or which are resisted, ought, like wars, to be evaluated in the light of just war criteria. There is a requirement that all other alternatives must have been exhausted. Like wars, armed interventions must have a reasonable hope of success (the anti-futility clause) while there must be a proportional benefit from resorting to force (an anti-militarism provision). Intervention must be limited to specific objectives and be brief. Again experience shows that this rarely proves to be the case. Many long and indecisive wars have been started by interventions that were intended to be short and decisive. Interventions requested by a group or faction within a state should be treated with particular caution. Even a government's action in inviting foreigners into a country to solve domestic problems – such as American military advisers in the Philippines or the Australian stabilisation force in the Solomon islands – reveals that the state's internal political and legal processes have failed or are inadequate for dealing with conflict. The nation clearly lacks the capacity for self-determination. It is open to manipulation from without and coercion from within.

⁴. Henry Kissinger, *White House Years*, Weidenfeld and Nicholson, London, 1979.

These situations can also mask third party interventions to prop up ailing or unpopular regimes, such as the Soviets who supported Dr Najibullah in Afghanistan or the Americans who backed AVM Ky in South Vietnam. Invitations are helpful but they do not remove some serious political difficulties.

Despite the complexities and the uncertainties, are there situations in which moral responsibilities are so compelling that overriding national sovereignty is clearly justified? In his speech at Chatham House on 28 January 2000, the British Foreign Secretary Robin Cook said intervention in the affairs of a sovereign state was justified ‘... when faced with an overwhelming humanitarian catastrophe and a government that has demonstrated itself unwilling or unable to halt and prevent it, the international community should act’. In Kosovo, NATO acted for the first time in its history in defence of human rights rather than oil or land. A similar responsibility arguably existed in relation to recent humanitarian catastrophes in Rwanda, Somalia, Cambodia, Sierra Leone, and East Timor.

In the wake of a series of genocidal intra-state conflicts, there has been a most significant shift in attitudes towards the claims and pretensions of the modern political state and the relative value we accord national sovereignty. Whereas previously, national sovereignty was an impenetrable barrier to intervention, it is no longer considered a ground for inactivity. The former UN Secretary General, Javier Perez de Cuellar, remarked back in 1991: ‘We are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defence of the oppressed in the name of morality should prevail over frontiers and legal documents’. The incumbent UN Secretary General, Kofi Annan, concludes that military interventions which pursue the positive humanitarian goals of the UN Charter are, in fact, more justifiable than inactivity in the face of gross injustice and genocide. He states:

As we have seen in Bosnia and Herzegovina and elsewhere, of all UN activities, military interventions in international armed conflicts are particularly fraught with vexing choices and questions. But we also saw in Rwanda in 1994 ... inaction has grave perils of its own ... It seems to me far better to accept the risk of error or failure than to remain on the sidelines; there is no purity in the abstract, and only disgrace and worse in retreat toward some imaginary safe harbour.

However, there is no stated, or even asserted, right in the UN Charter to intervene in a state's internal affairs on specifically moral or humanitarian grounds. Indeed, there are prohibitions on such action. Article 2(7) of the UN Charter states: 'Nothing ... shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter'. The turning point was Northern Iraq in April 1991 when the UN determined that the suffering of the Kurds at the hands of Saddam Hussein and their flight into Turkey. As this situation was described as a 'threat to peace', the UN Security Council could overcome the restriction of Article 2(7). Resolution 688 authorising action in Northern Iraq was closely followed by Resolutions 770 authorising UN military protection for humanitarian convoys in Bosnia and Resolution 794 authorising similar action in Somalia. There is presently, however, no consensus as to whether a right to intervene in the affairs of a sovereign state to prevent 'human rights abuses' - starvation, rape, massacre and torture - exists in law. This is despite a UN Genocide Convention being signed in 1948.

Although the specific criteria for armed intervention have yet to be determined, the UN has sponsored nearly 60 "peacekeeping" missions since 1948 of which over 50 have been mounted since 1988. More than 120 countries have participated with the provision of military or civilian personnel. Many are best described as armed interventions. And so, there is now less frequent talk of going to war but much more discussion of "peace operations" – the synonym for armed intervention. These include: peacemaking, peacekeeping, peace-enforcing, peace monitoring, sanctions enforcement, preventive deployments and international policing.

But there is a political, strategic and moral cost to intervention. There have been debates over whether the UN now tends to over-reach its mandate by interfering in matters that do not involve threats and breaches of international peace and security with the concomitant allegation that the UN has not always acted in a politically or diplomatically neutral manner. It is apparently acceptable for the UN to intervene in the affairs of a weak or disintegrating nation-state like Bosnia or Rwanda but not in the internal affairs of a strong one, such as Russia, during its operations against the Chechnyans in 1994-95 despite appalling human rights abuses.

Notwithstanding this lack of clarity, moral motivations have prompted, and will continue to prompt, armed interventions. But as strategist Colin Gray notes: 'A pragmatic problem with *Moralpolitik* is that it is characteristically unyielding to suggestions of compromise. When policy success is morally defined, the stakes in conflict become absolute. If we permit, let alone dignify by treaty, even some fraction of behaviour we have proclaimed morally intolerable, our entire policy is compromised'.

Australia has been party to these global shifts in attitude. Since 1993, peace operations have imposed a substantial demand on the Australian Defence Force personnel and resources. Large ADF contingents were deployed in 1993 to Cambodia where the country had to be cleared of mines and completely rebuilt following Pol Pot's genocidal rule and to Somalia where a battalion-level contingent (principally 1RAR) supported the delivery of humanitarian aid in the Baidoa area. A medical contingent formed the bulk of the deployment to Rwanda following the civil war and genocide in 1994 with another group despatched to Bougainville after 1999 in an effort to bring an end to protracted fighting between the PNG Government and the BRA.

The involvement of countries, such as Australia, in armed interventions must not, of course, be merely to end violence but to build a more just order in countries that seem to be the breeding grounds for terrorism. Military force and armed intervention is very much subordinate to a larger political solution. The root causes of violence are varied and profound. They include the availability of guns and drugs, and the prevalence of racism and sexism together with the dissipation of the family. These are just some of the factors that diminish respect for human life. If there is a pervasive cause, I would nominate poverty because poverty breeds instability, instability breeds fanaticism, fanaticism breeds hatred, and hatred breeds terrorism.

This kind of holistic approach to violence and conflict is consistent with Immanuel Kant's view that there is a clear link between the domestic constitution of states and international order. Kant believed that the most peaceful kind of world is one based on a confederation of democratic states because democracies are less inclined to do bad things than authoritarian or despotic regimes.

But this is some way, of course, from asserting that democracies have a right and duty to promote their convictions elsewhere by means of force. We must recognize the political, humanitarian and moral limits of our intervention and guard against the unwelcome intrusion of ideology. As Hedley Bull has argued: 'Particular states or groups of states that set themselves up as authoritative judges of the world common good, in disregard for the views of others, are in fact a menace to the international order, and thus to effective action in this field'.

It is very easy, of course, for the rhetoric of powerful states to be distorted into crusading ideology more dangerous than any military hardware. There are safeguards: an unfettered press, freedom of information, fair elections, democratic government, bureaucratic accountability, public education and an irreverent culture. We must avoid the pretensions of the state (rather than the government) and its tendency towards undisputed moral value. For this reason, I am troubled by Established Churches, Islamic states and theocratic nations in which it is too easy for the state to accrue divine pretensions.

Thankfully, there appears to be an emerging consensus about when action is required. Gross violations of human rights including ethnic cleansing and genocide appear to justify armed intervene; military coups, election rigging and political disenfranchisement do not. For this consensus to develop, an ethically responsible "international community" with moral authority centred on shared values rather than competing interests is needed. It must be supported by internationally agreed constitutional mechanisms authorising armed intervention when required. But there must also be further deliberation in establishing the criteria and conditions by which a particular armed intervention or peace operation is justified ethically. The present lack of clear principles and a framework for action fuels the opposing ideologies of withdrawal, also known as isolationism, and engagement, or internationalism.

In this series of lectures, I have tried to outline the peculiar circumstances and the particular challenges facing Australia in this new millennium. Our experience is not that of the United States or Britain. Yet, we tend to read books on war and ethics written in Britain or America. The moral difficulties and ethical dilemmas that we face are unique.

The experience of comparable nations in terms of size and prosperity, such as Canada, New Zealand and South Africa, offers no guide to Australia. Canada shares a border with the world's only superpower; New Zealand is distant from the major trade routes; South Africa's neighbours have unstable governments.

The great powers have special rights and duties with respect to international order. But do countries such as Australia – as middle powers - have rights and duties with respect to international morality? There is the notion that middle powers can be trusted to exercise their diplomatic influence and military power in the interest of international society and are capable of being both less selfish than great powers and more responsible than small states. I think there is something in this. For the sake of our nearer neighbours, we need to be quite clear about our ethical duties and moral responsibilities. When it comes to the use of military power, there is no place for uncertainty or confusion.