

**Humanitarianism and (In)Humanitarian Intervention: Purposes, Compatibility, and Implications**

by

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## Abstract:

Humanitarianism and humanitarian intervention are not conceptually or operationally compatible. By developing a history of the concept of humanitarianism, and by developing a list of the purposes of humanitarian intervention based on statements made by members of the United Nation Security Council and their guests in relation to the intervention in Libya in 2011, I will establish that they are not a part of the same tradition, and they have wildly different purposes. Humanitarianism is a part of the Dunantist tradition, and is committed to the imperative to alleviate suffering that is ongoing, not to prevent suffering. Humanitarianism is dynamic and adaptive, and sensitive to relationships of paternalism and structures of power. Humanitarian intervention, on the other hand, is a part of the Wilsonian tradition of aid and is related to the perpetual peace project. It is motivated by a concern for national security and the desire to prevent any threat from causing suffering at home. I will argue that political humanitarian groups that incorporate human rights into their mandates are also a part of this tradition and act as force multipliers of state action. Humanitarian intervention is not sustainable. It has not been successful in achieving its stated goals of protecting civilians, nor of achieving an alleviation of suffering, and is, therefore, losing supporters. Furthermore, the conflation of humanitarianism with humanitarian intervention has served to endanger humanitarian workers and clients.

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## Chapter 1 – Introduction

On 22 February 2011, Revolutionary Colonel Muammar Gadhafi of the Libyan Arab Jamahiriya appeared on television in Libya to address the protests across Libya. He described protestors as rats, and hirelings, and implied that they were all young teenage men on drugs. He said that he would be a revolutionary leader until his death, that he had no position from which to resign. He encouraged his supporters: “Get out of your homes, go out to the streets, secure the streets, seize the rats, do not be afraid of them.” He declared that he, “and the millions will march in order to cleanse Libya, inch by inch, house by house, home by home, alley by alley, individual by individual, so that the country is purified from the unclean” (“Muammar Gadhafi...” 2012).

Gadhafi’s comments came in response to many weeks of peaceful turned violent protests. Protesters began a series of economically themed protests in early January 2011 in Derna, Benghazi and Bani Walid (Chorin 2012, 188). After protests of the 15 February 2011, arrest of human rights lawyer, Fathi Terbil, were met by the state with extreme violence, and in commemoration of the fifth anniversary of youth riots in Benghazi, protesters declared 17 February 2011 the Day of Rage and called for an end to the Gadhafi regime. Protests spread to more eastern cities.

By the end of February, people were camping at the Tripoli International Airport to leave the country; food and medical supplies in Tripoli were dwindling. Gadhafi had lost control of large parts of the country including most of the eastern half (Chorin 2012, 203 -204). On 24 February 2011, the International Federation for Human Rights released a statement declaring that “it is reasonable to fear that (Gadhafi) has... decided to largely eliminate, wherever he still can, Libyan citizens who stood up against his regime and, furthermore, to systematically and indiscriminately repress civilians” (quoted in Hehir 2013, 288).

On 26 February 2011, the United Nations Security Council (UNSC) adopted Resolution 1970 imposing an arms embargo on Libya and freezing the assets of key members of the Libyan Leadership in response to the violent repression by the Gadhafi regime of anti-regime protesters in Benghazi. The resolution stated that the UNSC was currently operating under Article 41, measures not including force (UNSC 2011d, 2) and referred the case to the International Criminal Court (ICC) (UNSC 2011d, 2).

Given the lack of reaction from the Gadhafi regime to the sanctions imposed by Resolution 1970 and the persistence with which the regime was using violence to suppress protesters, on 17 March 2011, the UNSC passed Resolution 1973 imposing a no-fly zone over Libya. The vote passed with ten votes for, and five abstentions (Brazil, China, Germany, India, Russian Federation). The resolution authorized member states “to take all necessary measures to protect civilians and civilian-populated areas under attack or threat of attack,” short of occupation and stressed the need to find a political solution (UNSC 2011g, 3).

From 22 March 2011 to 31 October 2011, the North Atlantic Treaty Organization (NATO) and partners engaged in Operation Unified Protector. This operation involved three objectives:

- enforcing an arms embargo in the Mediterranean Sea to prevent the transfer of arms, related materials and mercenaries to Libya;
- enforcing a no-fly zone to prevent aircraft from bombing civilian targets;
- conducting air and naval strikes against military forces involved in attacks or threatening to attack Libyan civilians and civilian populated areas (NATO 2015, para. 10).

The UNSC-sanctioned and NATO-commanded intervention into Libya in 2011 was hailed by some as the first Responsibility to Protect (R2P) intervention (Keating 2013, 162; Nossal 2013, 123) and a triumph of the norm of prioritizing individual over state rights (Dembinski and Reinold 2011, i). With Resolution 1973, the UNSC authorized the imposition of

a no-fly zone over Libya because the internal conditions in the state were deemed a threat to international peace and security (UNSC 2011g); in other words, the Libyan government was failing in its responsibility to protect the Libyan people. While the intervention in Libya was not the first for ostensibly humanitarian purposes, the intervention was the first UN-authorized intervention undertaken into a context of intra-state conflict, without the consent of the state in question.

Nonetheless, the UN authorization was warily given, and any pretense of Security Council consensus quickly evaporated. Most pointedly, NATO was accused by Russia and China of exceeding their mandate to encourage regime change. These accusations began after the NATO airstrike on 30 April 2011 targeting Gadhafi's youngest son's home during a family gathering and killing Gadhafi's son and three grandchildren. NATO's claims to have been targeting a military command and control building on the same compound were unconvincing to Russia and China.

When NATO ended its mission in October 2011, Libya was in the hands of the opposition National Transitional Council (NTC) and Col. Muammar Gadhafi was dead. NATO described its mission as having been a success (NATO 2015, para 1). Today, however, Libya is nearly a failed state. The Presidential Council, established in March 2016 through the UN-brokered Libyan Political Agreement (LPA) of December 2015 is attempting to form a bridge between the two major competing parliaments in Tripoli and Tobruk, yet continues to struggle to unify Libya under a single government.

Success in reaching the primary goal of the intervention as stated in UNSC meeting records and resolutions – to protect civilians – has been limited. Without a strong, central government capable of maintaining a monopoly on violence, Libyan civilians have not been well

protected, and their human rights continue to be limited. As of December 2016, Freedom House lists Libya as “Not Free.” Human Rights Watch reports that various warring groups continue to practice “arbitrary detention, torture, unlawful killings, indiscriminate attacks, disappearances, and the forceful displacement of people” (Human Rights Watch 2017, para 1).

The UNSC also achieved limited success in fulfilling its mandate, to maintain international peace and security, in Libya. In the absence of a strong or unified government, and amid infighting between competing parliaments and militia groups, Libya became an Islamic State (ISIS) stronghold for much of 2015 and 2016. Without strong central government, ISIS could grow and train new recruits in Libya, increasing their ability to act as a threat to international peace and security. Only recently, in December 2016, have regime and international forces pushed ISIS out of Sirte.

The collapse of the Libyan state as a consequence of perceived NATO overreach has caused some to ask if the NATO members truly intervened for their stated humanitarian reasons or whether regime change was always the plan. Or, put in “Responsibility to Protect” (R2P) terms, did NATO have just cause and/or the right intention (Bachman 2016, Gillin 2015, Walzer 2011, Zenko 2016). Failure to meet the goals of the intervention, to protect civilians, has prompted others to ask if the intervention in Libya was truly humanitarian because, in the end, it may have caused more harm than good – and may never have had a reasonable chance of success (Gillin 2015, Kuperman, 2013, Pattison 2011).

More interestingly, I ask, can a humanitarian intervention, that is, “military action taken by a state, group of states or non-state actor, in the territory of another state, without the state’s consent, which is justified, to some extent, by humanitarian concern for the citizens of the host state,” (Hehir 2013, 25), *be* humanitarian, even if it *is* taken on for its stated purposes, and even *if*

it is successful in achieving its goals? Or more simply, is “humanitarian intervention,” in its militarized form, conceptually incompatible with the humanitarian imperative to alleviate suffering? Has the experience of the Libyan intervention exposed this incompatibility as well as the reality of diminishing room for humanitarian action in the face of brutal conflicts elsewhere in the world?

The classical humanitarianism represented by organizations such as the International Committee of the Red Cross (ICRC) – neutral, impartial, confidential, and apolitical in action and appearance – stands opposite the spirit of doctrines like the R2P. It has had few adherents in the post-Cold War period. One of them, David Rieff, describes humanitarianism as being in crisis – such that neutrality and the apolitical nature of humanitarian work are being questioned even by the workers themselves (Rieff 2002, 24). This is due in part, he says, to the nature of the work of the humanitarian: “humanitarianism is by definition an emblem of failure, not success. The disaster has already happened; the famine has started; cholera is raging; or the refugees are already on the move” (Rieff 2002, 21). He quotes an unnamed ICRC official: “the job of the humanitarian is to bring a measure of humanity, always insufficient, into situations that should not exist” (Rieff 2002, 19).

According to Rieff, humanitarians take the view that the types of situations that require a humanitarian response will always happen, prompting those involved in the provision of aid to wonder if there is a way to prevent these kinds of disasters, a political path that would make their work less necessary. For many groups this means, “incorporat(ing) human rights analyses into their programs, training their people in the laws of war, and generally coming to view their own enterprise as part of a larger process of ‘peace-building...’ and social reconstruction” (Rieff 2002, 22).

Rieff recognizes that humanitarian action based strictly on the principles of neutrality and impartiality has exacerbated crises – that is, contributed to suffering rather than alleviated suffering. It can support the war effort of warlords; it can create a culture of dependency, and it can be used politically when it is directed to certain places and encouraged not to go other places by funding, or as a containment strategy, so that more expensive intervention is not necessary (Rieff 2002, 23). The humanitarian community does act self-critically, however, and is doing its best to “do no harm,” even though such a standard is an impossible one (Rieff 2002, 23). To this end, there has been a shift in the field towards ending inappropriate projects in which more harm is being done than good.

Michael Barnett describes this type of humanitarianism as Do No Harm, humanitarianism, an update from more classic forms that did not consider the harm they may be unintentionally inflicting (Barnett and Snyder 2008, 150). He describes classical humanitarianism as modest; it cannot do much, but what it can do, it does well (Barnett and Snyder 2008, 147). He describes it as having a consequentialist logic and being concerned for maintenance of a neutral humanitarian space that is safe for workers and clients alike (Barnett and Snyder 2008, 147). “Do no harm,” humanitarianism, *comme* Mary Anderson, “anticipate(s) and tr(ies) to prevent the unintended consequences of aid, but... aim(s) to remain neutral and apolitical” (Barnett and Snyder 2008, 149). This new brand of aid, “examines how much harm is caused by aid, (and) when perverse incentives for local actors cannot be eliminated, the organizations... end the project (Barnett and Snyder 2008, 150).

Over against this “Do No Harm” humanitarianism, Barnett identifies two new and more politicized strands: Back a Decent Winner and Peacebuilding humanitarianisms (Barnett and Snyder 2008, 146). The non-governmental organizations which tire of the classic

humanitarianism and turn to incorporate human rights, peace-building, and/or social reconstruction into their mandates participate in these types of humanitarianism. They accept or desire partnerships with states and participate in pursuing state goals. They are “force multipliers” (Lischer 2007, 109). Governments and non-governmental organizations which take part in these types of humanitarianisms are not just concerned with symptoms like the old humanitarians; they are interested in causes (Barnett 2011, 167) and the prevention of future crises.

Back a Decent Winner humanitarianism aims for stability (Barnett and Snyder 2008, 154). A “cheap peace” is sought due to the high costs involved in seeking a “liberal peace” (Barnett and Snyder 2008, 154). The most egregious harms are quelled, and international stability is maintained (Barnett and Snyder 2008, 155).

Peacebuilding humanitarianism attempts to attack root causes, change structures, and instill particular values into a population, such as a commitment to democracy and respect for human rights (Barnett and Snyder 2008, 150). Barnett suggests that this variety of humanitarianism has appeal because the actors feel that they are making change and really doing something – ushering in the “end of history.” He calls this the “new humanitarianism,” and asserts that it has not seen much success (Barnett and Snyder 2008, 151). The comprehensiveness that makes it so appealing to the liberal democrat is also its fault: peace builders do not have the legitimacy, experience, nor resources to build a liberal democracy from the ground up; donors do not have the will to maintain long, expensive projects for purely humanitarian reasons; and the process puts the nation being built under immense stress (Barnett and Snyder 2008, 152-153).

The turn to politicize humanitarianism is, for Rieff, a mistake. Respect for human rights is the current most often touted solution to preventing humanitarian emergencies but “while legal rights can go a long way toward securing and improving the situation of immigrants and racial minorities in the West,” Rieff says, “they are unlikely to help the victims of a genocide” (Rieff 2002, 14). Furthermore, without an international community capable of enforcing its rulings, through the UNSC or otherwise, the Universal Declaration of Human Rights and other such well-intentioned documents are meaningless, and Rieff sees no prospect for the emergence of a meaningful international community (Rieff 2002, 18).

Rieff spent time in Bosnia between 1992 and 1995. He was profoundly changed by the lack of international action he witnessed in response to what he believed could only be described as a slaughter (Rieff 1996, 17). He explains his initial feelings that, as a reporter, if he and the rest of the media could just tell people what was going on, they would help (Rieff 1996, 9). He described the Bosnian cause as one of multiculturalism – the Bosnians wanted nationhood based on citizenship rather than ethnicity or religion (Rieff 1996, 10). These were the same values espoused by the UN and its founding documents (Rieff 1996, 10). If any nation would receive a purely humanitarian response, it was Bosnia; yet even in the face of a slaughter against those who shared their values, the UNSC would not act. For Rieff, this was a display of the “impotence and sterility,” of the UN peacekeeping apparatus (Rieff 1996, 20).

Rieff described the Bosnians and himself as learning through UN inaction that “there was no world order, old or new” (Rieff 1996, 21). No one would help Bosnians to defend their sovereignty that should have been guaranteed by the Charter (Rieff 1996, 21). Altruism in the international community on the part of states did not exist.

Rieff declared, “the honor of the world was redeemed in Bosnia by those who worked for the NGOs, the non-governmental aid organizations, the International Committee of the Red Cross, and the office of United Nations High Commissioner for Refugees. They worked there without any hidden agendas and steadfastly refused to accept the idea that interests of the great powers from which they derived so much of their funding compelled them to carry out the political agendas of those powers” (Rieff 1996, 191).

Rieff states that it is naïve to think that states would be willing to give up power to the UN to create an international community capable of enforcing human rights law or the Charter. States, or people within states, will not push effectively for states to act purely altruistically (Rieff 2002,19). He cites reactions to 9/11 as evidence; these deaths registered for the “West” in ways that deaths in the “poor world” do not. Deaths in the “poor world,” he says, take on an unavoidable quality. They are lamentable but hardly unexpected (Rieff 2002, 6). We continue to empathize more easily with “us” than “them.” The history of individual states working alone has led and will continue to lead to doctrines like the “white man’s burden,” discussions of “standards of civilization,” and neo-imperialism (Rieff 2002, 57).

The politicization of humanitarianism, Rieff says is also dangerous. Often, military action simply does not work. In Rwanda, in Bosnia, and elsewhere, the UN’s “presence has also cost lives by raising in people who might have succeeded in fleeing and saving themselves the false confidence that they would be protected” (Rieff 2002, 13). It has also made the work of the humanitarian more dangerous. Humanitarian space has been compromised. Humanitarian workers are now often the targets of attack (Rieff 2002, 27).

In this thesis, I will argue that humanitarianism and humanitarian intervention are not conceptually or operationally compatible. They are not a part of the same tradition, and they

have wildly different purposes. Humanitarianism is a part of the Dunantist tradition, which is committed to the imperative to alleviate suffering that is ongoing, not to prevent suffering. Humanitarianism is dynamic and adaptive and sensitive to relationships of paternalism and structures of power. Humanitarian intervention, on the other hand, is a part of the Wilsonian tradition of aid and is related to the perpetual peace project. It is motivated by a concern for national security and the desire to prevent any threat from causing suffering at home. I will argue that political humanitarian groups that incorporate human rights into their mandates are also a part of this tradition and act as force multipliers of state action. Humanitarian intervention is not sustainable. It has not been successful in achieving its stated goals of protecting civilians, nor of achieving an alleviation of suffering, and is, therefore, losing supporters. Furthermore, the conflation of humanitarianism with humanitarian intervention has served to endanger humanitarian workers and clients.

In chapter two, I will develop a working definition of humanitarianism by way of a narrative explanatory framework *comme* John Ruggie. I will trace the branching off of political forms of humanitarianism from the classic variant. So-called classic humanitarianism has not been static. It has been self-reflective and has shown a capacity to learn from its mistakes in order to do less harm and maintain a commitment to the humanitarian imperative to alleviate suffering. Humanitarianism has been and is adaptable to changing circumstances including the changing nature of war.

In chapter three, through an analysis of UNSC transcripts and Resolutions regarding Libya in February through April of 2011, I will elucidate the normative understandings of the purposes of humanitarian intervention at the time of the intervention into Libya. Humanitarian

intervention is first and foremost for the protection of civilians, but should also seek justice, promote human rights, and serve to maintain international peace and security.

In chapter four, I will make my argument that humanitarian intervention and humanitarianism are not conceptually compatible. Humanitarianism is concerned only with fulfilling the imperative to alleviate suffering. As with an ethic of care, humanitarianism is committed to interrogating relationships of paternalism and inequalities in access and power; and to a rejection of an ethic of justice.<sup>1</sup> The purposes of humanitarian intervention, justice, promoting human rights, and maintaining international peace and security, are related to ensuring future security and stability in the inter-state system, not primarily to alleviating the suffering of current victims. States which engage in humanitarian intervention do so, at least in part, out of a concern for the future protection of their own citizens.

Furthermore, the operational overlap between humanitarian organizations such as the ICRC, politicized humanitarian and force-multiplying organizations such as Médecines Sans Frontières (MSF), and formal political entities, such as states or IGOs, all acting in the name of humanitarianism, results in the perversion of humanitarian space. Humanitarians have experienced more difficulty in gaining and maintaining access to populations requiring their

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<sup>1</sup> It is useful to make use of the language of an ethic of care in relation to humanitarianism because of the common commitments of humanitarianism and an ethic of care. Given the frequency with which humanitarianism is discussed in relation to liberal interventionism, the work that ethic of care literature has already engaged into interrogate the dissimilarities between liberal thinking and an ethic of care can be useful to a discussion of caring practices more generally.

Humanitarianism, is not, however, revolutionary in its ambitions. While ethic of care literature and thinkers have addressed questions of structural inequality and how we might create new structures based on care and equality rather than control, and hierarchy; humanitarianism, in its defeatism, is cognizant of structures of power but takes international structure as a reality in which to work and does not seek to cause transformative change. Humanitarianism action seeks only to alleviate suffering that is already occurring, and humanitarian law seeks only to put some limit on the conduct of war.

assistance, and an increase in the level of danger they face when doing their work. Humanitarian work can only be pursued in the cracks of the dominant international organizational system; it cannot seek to change the system. Its co-option by political projects evaporates humanitarian space and inhibits the ability of the humanitarian to pursue the humanitarian imperative and to meet the needs of as many individuals as possible.

Rieff posits that, “it is certainly possible that the more politicized view of aid will prevail. It is also possible that modern (politicized) humanitarianism will cease to exist” (Rieff 2002, 27). The conceptual incompatibility between state-led humanitarian intervention and civil society-led humanitarianism makes the term humanitarian intervention a contradiction in terms. The project of humanitarian intervention, therefore, is wrought with internal incongruities. The case of intervention into Libya is a primary example of the ways in which humanitarian intervention can fail. The intervention did not seek to alleviate current suffering – it was therefore not humanitarian in its intent. It did not protect Libyan civilians from future/ongoing suffering and did not improve international peace and stability – it therefore failed at its stated purposes. Humanitarian intervention may, indeed, be meeting its end. In the absence of humanitarian intervention, humanitarian space may become greater for the humanitarian.

## Chapter 2 – Humanitarianism to Humanitarian Intervention

To compare humanitarianism to humanitarian intervention, it is necessary to establish what is meant by the term humanitarian, and how humanitarian intervention came to be a branch of its evolution. To do so, I will use abductive reasoning, *comme* John Ruggie’s narrative explanatory framework: “deductively derived hypotheses that shape the initial design of inquiry but quickly prove insufficient (will be) supplement(ed) with inductively derived insights: verisimilar and believable to others looking at the same event” (Ruggie 1998, 94). I will “articulate a ‘coherence structure’” and will organize events and statements in such a way that emphasizes how one event can be understood to affect another (Ruggie 1998, 94).

### The History of an Idea

The story of humanitarianism usually starts in 1859, in the immediate wake of the Battle of Solferino in Lombardy. The battle had left 6000 dead, and 40 000 wounded (J.C. Chenu in Bugnion 2012, 1301). Both sides were ill-equipped to tend to their wounded, and the services available in the nearby town of Castiglione were limited (Bugnion 2012, 1301).

The Swiss businessman, Henry Dunant, had arrived in Castiglione the day of the battle with hopes of gaining a meeting with the French Emperor, Napoleon III, to ask for some land (Boissier 1974, 6) to keep afloat his failing business in Algeria (Bugnion 2012, 1302).

Witnessing the suffering of the soldiers in the aftermath of the battle, Dunant stayed on “three days and three nights tending to the wounded and dying” (Bugnion 2012, 1303).

Dunant had no medical training (Boissier 1974, 7), and likely did not succeed in saving even one life (Ignatieff 1998, 105); but Dunant and the volunteers he mobilized involved themselves in more than medical care. Dunant provided “the thirsty something to drink, took note of the last words of dying soldiers, and sent (for)... cloth, material for dressings, herbal teas,

fruit, cigars, pipes, and tobacco” (Bugnion 2012, 1303). He encouraged the volunteers to treat Austrian soldiers the same as those from France or Piedmont (Bugnion 2012, 1303).

When Dunant gained an audience with the French at their army headquarters in Cavriana, he pleaded unsuccessfully for his company but also asked if the Austrian doctors held as prisoners of war could be released to treat their wounded soldiers (Bugnion 2012, 1304). The French obliged (Bugnion 2012, 1304). The International Committee of the Red Cross identifies this moment as the establishment of the principles, first, of impartiality, treating all who are in need without discrimination as to nationality, race, religious beliefs, class or political opinions; and second, of neutrality, that is, not engaging at any time, in any way, in controversies of a political, racial, religious or ideological nature (Bugnion 2012, 1304).

Dunant wrote of the battle and the horrors he witnessed in the aftermath in a manuscript entitled, “A Memory of Solferino,” published in 1862. He described soldiers who had fought, endured, and sacrificed for their countries, who were then deserted once they were wounded (Bugnion 2012, 1305). Dunant concluded with two questions:

Would it not be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers...

On certain special occasions, as, for example, when princes of the military art belonging to different nationalities meet at Cologne or Châlons, would it not be desirable that they should take advantage of this sort of congress to formulate some international principle, sanctioned by a convention inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded in different European countries? (Dunant in Bugnion 2012, 1306)

Dunant circulated the manuscript to “sovereigns, government ministers, army generals, writers, and well-known philanthropists” (Bugnion 2012, 1306). One such copy landed in the hands of Gustave Moynier, a lawyer, and Chairman of the Geneva Public Welfare Society (Bugnion 2012, 1307-1308). Moynier presented Dunant’s ideas to the Society Executive where

they were met with little enthusiasm. The executive responded that as an organization with local interests and few resources, they were not the vehicle for the type of work that Dunant's idea would require (Bugnion 2012, 1308-1309). Moynier, not discouraged, moved to have Dunant's proposal submitted for consideration to the general congress (Bugnion 2012, 1309). The general congress proceeded to appoint Dunant, Moynier, Dr. Louis Appia, Dr. Theodore Maunoir, and General Dufour to a drafting committee (Boissier 1974, 11) to create what would become the "birth certificate of the International Committee of the Red Cross," then the Permanent International Committee for the Relief of Wounded Soldiers (Bugnion 2012, 1309, 1311).

The drafting committee first met in February 1863. They desired to establish a volunteer force of nurses who would be available to follow armies into battle with the consent, negotiated in peace time, of all belligerents (Bugnion 2012, 1313). The nurses would care for all without distinction, and would be identifiable, and therefore kept safe, by a distinctive sign (Bossier 1974, 12).

The draft was circulated, and invitations to attend a conference in Geneva on October 26, 1863, were sent to various governments and welfare societies throughout Western Europe (Bugnion 2012, 1314). Dunant, in the interim, traveled to Berlin and unilaterally circulated a pamphlet that discussed the necessity of governments extending neutral status to "the wounded, ambulances, hospitals, medical corps and officially recognized voluntary relief services" (quoted in Bugnion 2012, 1316). The committee, Moynier in particular, felt that Dunant's circular was premature and unlikely to gain traction with governments, jeopardizing their ability to have the rest of their recommendations supported (Boissier 1974, 13).

The 36 members in attendance at the Geneva International Conference to Study Ways of Overcoming the Inadequacy of Army Medical Services in the Field, represented 14 governments

and various civil society organizations (Bugnion 2012, 1316). The Conference adopted ten resolutions based on the draft, including a resolution to have the National Committees endeavor to contact their home governments to establish peacetime relationships, and three recommendations based on Dunant's Berlin circulation in favor of neutrality (Bugnion 2012, 1318-1320).

Upon request of the Geneva Committee, and with the diplomatic support of France, the Federal Council of Switzerland invited the states of Europe, the Ottoman Empire, the United States, Brazil, and Mexico to a Diplomatic Conference in Geneva in August 1864 (Bugnion 2012, 1323). The Conference was attended by 16 states, 12 of whom signed the First Geneva Convention on August 22, 1864, "for the amelioration of the condition of the wounded in armies in the field" (Ignatieff 1998, 106).

This was the beginning of the institutionalization of humanitarian law. The first weapons limitations treaty followed in 1868 with the St. Petersburg Declaration, limiting the use of explosive projectiles (Best 1994, 18). Later, The Hague conventions in 1899 and 1907 detailed a set of regulations regarding the Laws and Customs of War on Land (Ignatieff 1998, 110), and the second Geneva Convention *for the Amelioration of the Condition of the Wounded and Sick in Armies at Sea*, in 1906 extended the protections in the first Geneva Convention to those on the water. Collectively, "grave breaches" of the Geneva Conventions, and contraventions of The Hague Conventions would come to be called war crimes.

The ICRC after the Franco-Prussian War (1870-71) expanded its activities to include detention monitoring (Forsythe 2005, 23). The ICRC was based in Geneva and was made up only of Swiss nationals, whose independence from the state was modest but deliberate and did not go unquestioned (Forsyth 2005, 25, 34). The ICRC struggled to cooperate with the various

Red Cross and Crescent national societies that existed; certain societies were more closely tied to government, and others squabbled with the ICRC over jurisdiction and control of leadership roles (Forsythe 2005, 26). The ICRC worked to protect their role as the armed conflict specialists while national societies worked with refugees, and in response to national disasters (Forsythe 2005, 26).

### Institutionalization of International Humanitarian Law

International Humanitarian Law blossomed in the late 19<sup>th</sup> and early 20<sup>th</sup> century. Geoffrey Best describes International Humanitarian Law as having a “two-faced illusion whose active aspect invites civilian war lovers to imagine that they can have their belligerent cake and eat it, (and) whose passive aspect encourages war-haters to hope that when war happens, civilians will not be hurt” (Best 1994, 45), making it popular to war-makers and pacifists alike. Michael Ignatieff argues that these new rules may have made war even more likely, lulling those who might have otherwise been against it into a false sense that war could be less barbaric (Ignatieff 1998, 111).

The body of international humanitarian law would grow, especially after World War II, to include the four Geneva Conventions (1864-1949) and Additional Protocols (1977)<sup>2</sup>; the

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<sup>2</sup> The First Geneva Convention, “The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field,” ensures protection and medical care for those who are hors de combat (out of combat); the 1949 version extends these protections to Wounded and sick soldiers; medical personnel, facilities and equipment; wounded and sick civilian support personnel accompanying the armed forces; military chaplains; and civilians who spontaneously take up arms to repel an invasion.

The Second Geneva Convention, “The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea,” extends the protections of the first Geneva convention to those at Sea.

The Third Geneva Convention, “The Geneva Convention Relative to the Treatment of Prisoners of War,” sets out guidelines for the treatment of POWs and covers Members of the armed forces; Volunteer militia, including resistance movements; and Civilians accompanying

Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols (1954); The Biological Weapons Convention (1972); The Conventional Weapons Convention and its five protocols (1980); the Chemical Weapons Convention (1993) and The Ottawa Convention on anti-personnel mines (1997) (ICRC 2004, 1).

Ignatieff describes the Geneva conventions as a warrior's code: "those that fight each other bravely will be bound together in mutual respect; and . . . if they perish at each other's hand, they will be brothers in death" (Ignatieff 1998 112). Ignatieff calls a warrior's code an ethic of responsibility, particular to each culture, which for Europeans meant differentiating between combatant and non-combatant (Ignatieff 1998, 112). The Geneva Conventions, Ignatieff argues, were an attempt to write down the European warrior's code, and extend its protections to

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the armed forces. They must be treated humanely, adequately housed and must receive sufficient food, clothing and medical care. Its provisions also establish guidelines on labor, discipline, recreation and criminal trial.

The Fourth Geneva Convention, "The Geneva Convention Relative to the Protection of Civilian Persons in Time of War," protects civilians in conflict zones. The 1977 Additional Protocol I further details these protections, and Additional Protocol II extend some protection to civilians in intra-state conflicts.

Common Article 3 of the conventions states that, "Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat (out of the fight) by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria;" and prohibits, "at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages;(c) outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

all (Ignatieff 1998, 113). By developing the Geneva Conventions, the rules would no longer apply only to battles within some conceived of in-group, but to all signatories.

After WWII, with the signing of the Charter of the United Nations and the Statute of the International Court of Justice, it became possible to inflict punishment for transgressions of international law. The Court was given the authority to enforce IHL in addition to other elements of International Law as codified at the United Nations if a violation was committed by one state against another state and brought to the court by one of the states party to the conflict. If the armed conflict was internal, then the court can provide only advisory opinions on only those issues brought to it by the UNSC (ICJ n.d.).

A precedent for trying individuals, not only nations, responsible for violations of IHL was set by the Nuremberg and Tokyo trials (beginning in November 1945). These trials made possible real consequences for breaking international law. Before this, there was little – only “everything from an anguished conscience to rule-book pedantry” – to hold actors to IHL (Best 1994, 63). The Nuremberg trials were *ad hoc*, and no permanent court existed to try violations. Only crimes that took place across national borders were tried at Nuremberg; those violations that occurred within states were tried in national court systems, preserving the right of states to have a monopoly on judiciary power inside their own borders (Carey et al. 2003, 323). Best notes that the Nuremberg and Tokyo trials made no distinction between The Hague side of IHL and Geneva side – the first concerned with methods and means, and the second concerned with the protection of victims (Best 1994, 183).

The Holocaust exposed certain deficiencies in international law. Most notably, a state that murdered its own citizens did not violate any law (Best 1994, 64). This gap prompted the invention of a new category of crimes to be tried at Nuremberg - crimes against humanity (Best

1994, 64). Best describes crimes against humanity as a “halfway house” between international humanitarian law and human rights (Best 1994, 67), a theoretical predecessor to documents such as the Universal Declaration of Human Rights.

Best places the advent of crimes against humanity as the start of international human rights law (IHRL), an entirely different body of law with different purposes (Best 1994, 71). Where IHL understands war as inevitable, and as an institution of international society, IHRL is tied to the project of perpetual peace; and the normalization of peace and criminalization of war as “aggression.” Best describes projects like the League of Nations, and later the UN as attempts to end all wars (Best 1994, 54): if every state could be a liberal democracy, then all wars could end. This meant that all states should represent their population (be self-determined) and adhere to a rights-based framework (be democratic – and liberal). To establish a state with a rights-based framework meant that “respect for the justice implicit in the idea of rights was a necessary precondition of the peace that alone enabled them to be fully enjoyed” (Best 1994, 55).

Two *ad hoc* tribunals in the 1990s were the first to try crimes committed in intra-state conflicts. The International Tribunal on Rwanda established in 1994 was the first *ad hoc* tribunal to consider crimes committed during a primarily intra-state conflict. Although the 1949 update to the Geneva Conventions made any armed conflict, interstate or otherwise, subject to the Geneva Conventions (Best 1994, 142), it was not until Rwanda that international tribunals were used to try domestic violations (Carey et al. 2003, 232). UNSC Resolution 827 in May 1993 established the International Criminal Tribunal for the Former Yugoslavia (ICTY), an *ad hoc* committee devised to prosecute “persons responsible for serious violations of international humanitarian law” in the *interstate* conflict between Bosnia and Herzegovina and Serbia (UN 1993, 1). When civil conflict erupted in Kosovo, a province of Serbia, in early 1998, the ICTY asserted its

jurisdiction over the province (IICK 2000, 69) and the UNSC passed Resolution 1207, calling upon the Yugoslav authorities to comply with requests of the ICTY. Only once the ICTY asserted its jurisdiction over Kosovo did it become the second court to consider crimes of a primarily *intra-state* conflict.

In 2000, with the signing of the Rome Statute, the International Criminal Court came into being. While its jurisdiction is not universal, it only extends over the 124 states (as of November 2016) party to the statute, and their nationals, the UNSC can extend this jurisdiction if they refer a case to the court. The court has the authority to rule on matters related to genocide, war crimes, and crimes against humanity. The United States, China, and India have not signed or ratified the Statute.

### Politicizing Humanitarianism

Throughout this period of institutionalization of IHL and IHRL, the humanitarians continued their work. During the Cold War, the ICRC struggled to cooperate with communist states, particularly the USSR. The organization was seen as an extension of the liberal West (Forsythe 2005, 53). Near the end of the Cold War, however, the ICRC had managed to cultivate cooperative relationships and gain access to some Asian and Eastern European States including a large post-conflict relief program in Cambodia (1979) and a detention monitoring program in Poland (1981) (Forsythe 2005, 54). During the Cold War, the ICRC notably had an extended presence in Israel and Palestine; it was instrumental in facilitating communication during the Cuban Missile Crisis; and visited political detainees in South America (Forsythe 2005, 56, 62, 81).

The break from “traditional humanitarianism” towards a political variant is usually pinpointed in 1971 when Medicines Sans Frontiers was formed in a split with the ICRC. The split was due to disagreement over the role of the ICRC in Biafra (1969-70) (Foley 2008, 18).

In the Biafran crisis, the ICRC offered its services when the Republic of Biafra proclaimed its independence from the Federation of Nigeria, and Nigeria responded militarily to quash the secession movement (Desgrandchamps 2012, 1413). Prior to the Nigerian-Biafra War (1967-1970), the ICRC had little experience in Africa or, indeed, in conflicts that did not involve Europeans, due, certainly, in part to systemic racial prejudice (Desgrandchamps 2012, 1413). The ICRC’s material and human resources were being stretched thin (Desgrandchamps 2012, 1411). It was splitting resources after a string of large responses: it was in Hungary and Austria tending to refugees of the 1956 Hungarian uprising against communism followed by Soviet invasion; it was in French Algeria visiting detainees during the civil war (1954-1962); it was in Cuba during the Cuban Missile Crisis (1962) playing an important role in negotiation and agreeing to act outside its mandate to inspect Soviet ships for nuclear weapons; it was affirming its opposition to the breaking of IHL through use of chemical weapons in Yemen (1967); it was educating in Israel about the Fourth Geneva Convention after the Six-Day War (1967); and it was pushing for the humane treatment of non-war detainees in Greece under a military junta created after a coup in Athens (1967-1974) (Forsythe 2005, 59-63). The ICRC struggled to gain consent for their activities in Biafra and decided in late 1969 that it could no longer maintain an expensive airlift (Desgrandchamps 2012, 1414).

The ICRC appeared “amateuris(h)” (Desgrandchamps 2012, 1414). They made public appeals for funding without properly informing belligerents beforehand, hired an outsider to command the mission, and did not take seriously the need to be, and appear to be, neutral

(Desgrandchamps 2012, 1415-1416). A lack of a clear chain of command, and a lack of communication between the field office and headquarters in Geneva too made negotiations with all parties to the conflict, and supply chain management problematic (Desgrandchamps 2012, 1418).

The ICRC refused to denounce the actions of the Nigerian government (Desgrandchamps 2012, 1426). For a group of French doctors, among them Bernard Kouchner (co-founder of MSF), this was unacceptable (Brauman and Tanguy 1998, para. 8). The founders of MSF refused to self-censor, and would not support war crimes. They did not feel that this was part of humanitarian neutrality (Calhoun 2008, 92). MSF desired to act as witness and felt that doing humanitarian work should include advocating for the reduction of conflict (Calhoun 2008, 92). Additionally, the doctors felt that the incredible mass of diplomatic and administrative procedures that the ICRC followed was detrimental to the efficient provision of medical aid to those in need (Brauman and Tanguy 1998, para.2).

ICRC had faced similar criticism after WWII for its decision to act only with the consent of the governing authorities. The ICRC remained silent regarding what it knew of forced deportations and labor, as well as the extermination of Jewish and other people in German-controlled territory (Ignatieff 1998, 130-131). At that time, the ICRC decided that a public appeal would be of little use, and would endanger its access to POWs (Ignatieff 1998, 131).

The consequence of the Biafran crisis was that the ICRC renewed its commitment to working within established governing structures. Where MSF seeks to act without borders, the ICRC acts within them. The ICRC, for the safety of its staff and clients, and to gain and maintain access to clients, does not enter a region without consent and does not provide services that it is not asked to provide. The ICRC adheres strictly to the principle of neutrality; it does not seek to

change or affect the established order, or bear witness to crimes it knows are occurring. The ICRC seeks only to alleviate suffering that is actively occurring. MSF, on the other hand, is the embodiment of a trend in the field to “speak out” and operate “without borders” (Desgrandchamps 2012, 1410) in opposition to the ICRC’s strict policy of confidentiality and consent.

During the Bosnian war, the ICRC struggled with whether to facilitate the transport of Muslims to Croatia, outside of the war zone where they would be safe, but also out of Bosnia so that Bosnia would be ethnically cleansed of Muslims (Ignatieff 1998, 133). Their decision to remain committed to strict neutrality and to facilitate the safe transport of refugees allowed them to be in place when the Croat-Muslim offensive pushed 600 000 Serbs back into Serbia, creating a huge number of Serbian refugees when “perpetrator was suddenly transformed into victim” (Ignatieff 1998, 135).

While the ICRC and other classic humanitarian agencies have been criticized for their conservatism, they do have the capability to be self-reflective and learn from past mistakes. The decision of the ICRC to condemn the use of chemical weapons in Yemen as a breach of IHL without naming a perpetrator, after their lack of condemnation for the use of chemical weapons during the Holocaust is an early example of this. The ICRC and The Federation of Red Cross and Red Crescent Societies, who at times struggled to cooperate, signed the Seville Agreement in 1997 that provided greater clarity of the role of each organization in the field (Forsythe 2005, 124). The agreement came after unsuccessfully implemented agreements regarding cooperation between the ICRC and the National Societies in 1969, 1974, and 1989. The Seville Agreement further clarified the role of each constituent part and defined the lead role of the ICRC in field operations, and curtailed ICRC control situations involving refugee and displaced persons,

giving more control to the Federation and the National Societies (Forsythe 2005, 124).

Cooperation has appeared, at least, to have markedly improved from the 1970s and 1980s (Forsythe 2005, 124-128).

In consultation with the Steering Committee for Humanitarian Response,<sup>3</sup> the International Committee of the Red Cross has detailed a 10-point code of conduct for activities in the field that has been adopted by many participants in the SPHERE project. The SPHERE Project was prompted by the increase in numbers of refugees in the 1990's particularly in the Great Lakes region in Africa after the Rwandan Genocide (SPHERE Project n.d.) and "the influx of relief agencies that were operating according to varying standards" (Barnett 2005, 730). Its core principles are as follows:

1. The humanitarian imperative comes first.
2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone.
3. Aid will not be used to further a particular political or religious standpoint.
4. We shall endeavour not to act as instruments of government foreign policy.
5. We shall respect culture and custom.
6. We shall attempt to build disaster response on local capacities.
7. Ways shall be found to involve programme beneficiaries in the management of relief aid.
8. Relief aid must strive to reduce future vulnerabilities to disaster as well as meeting basic needs.
9. We hold ourselves accountable to both those we seek to assist and those from whom we accept resources.
10. In our information, publicity and advertizing activities, we shall recognize disaster victims as dignified human beings, not hopeless objects. (ICRC, 3-5)

This code of conduct aims to reduce the harm that can be caused by humanitarian aid, and limit any risk of developing paternalistic relationships between a savior and victim.

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<sup>3</sup> SCHR includes Care International, Caritas Internationalis, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, International Save the Children Alliance, Lutheran World Federation, Oxfam, World Council of Churches, and Médecins Sans Frontières. MSF left after stage 3, due to its reservations about the implication signing on to such a document would have on their commitment to "bearing witness."

Humanitarianism is based on the view that all humans are essentially equal, but are differentiated by the circumstances they encounter.

The first point refers to the nature of humanitarian work. The humanitarian imperative is to help – it is ameliorative rather than transformative. Sarah Kenyon Lischer suggests that adhering to this imperative means that organizations must pull out of a conflict zone when they believe that they are doing more harm than good (Lischer 2003, 104). Humanitarian organizations should hope for their own demise, that they will no longer be needed. They should not continue inappropriate projects so that they can continue to receive funding and continue to exist. In Zaire, then, she suggests, where humanitarian organizations were supporting *genocidaires* and their supporters in the refugee camps during after the Rwandan genocide, humanitarian organizations should have ended their projects and pulled out (Lischer 2003, 108).

The third and fourth points reflect the perceived importance of neutrality. This, for Lischer, means that a humanitarian organization should not accept conditional funding from governments or other donors. In 2003, USAID required that any groups receiving their funding and operating in Iraq must display the USA flag, or risk being replaced (Barnett 2005, 2005, 731). Lischer cites New York-based International Rescue Committee as an example of an organization that has refused a government contract to provide aid in Iraq if it ties their activity too closely to US policy goals (Lischer 2007, 108).

The fifth point, to respect culture and custom, and the sixth point, to build disaster response on local capacities, represent a call for increased sensitivity to distinct local conditions. The professionalization of humanitarian aid provision has been widely criticized as resulting in standardized, generic policies that ignore the situation on the ground (Bebbington 2005, 941; Goodhand 2002, 852). Local expertise can help the organization understand local political

particularities and avoid transportation through certain territories that allow theft by rebel groups, or require negotiating with, and thereby legitimizing, local warlords (Seybolt 1996, 4).

Furthermore, by failing to build disaster response on local capacities, a humanitarian group can create relationships of paternalism, or fail to be accepted into a community that is suffering.

Lack of local expertise, Jonathan Goodhand argues, can also fuel tensions (2002, 852), and make point seven, the commitment to involve program beneficiaries in the management of relief, impossible. In the CONCERN-managed refugee camp Lumasi in Ngara, Tanzania, after the Rwandan Genocide in 1994, lack of knowledge of the regional diversity of the refugees' place of origin resulted in tension within the camps (Pottier 1996, 410). Distribution of food was managed by commune leaders who could divert aid and cheat the system (Pottier 1996, 411) Food was diverted by experienced campers, mostly from the North of Rwanda who arrived earlier, and campers with less experience from Southern Rwanda received little. The Southerners generally blamed the Northerners for the perpetration of the genocide and this misuse of food aid intensified regionalism (Pottier 1996, 410).

Points seven, eight and ten echo Johan Pottier's sentiment that self-reliance should be encouraged from the beginning of any humanitarian project so that refugees maintain their self-worth and dignity (1996, 416). While relations of care can and do become paternalistic, and can result in domination, oppression, injustice, and inequality (Robinson 2011, 5), articles seven, eight, and ten work to safeguard against this. The clients of humanitarian agencies should not be stripped of their agency before they are allowed to receive services. Social reconstruction should be a first priority as it not only preserves the dignity of those receiving aid, but it also improves the perceived legitimacy of the organization (Lischer 2007, 111).

The classic humanitarian project has been self-critical and adaptive, modifying their actions in response to lessons learned from past mistakes and to changing circumstances. Classic humanitarianism continues to be carried out by the ICRC and other organizations despite the existence of politicized organizations who advocate for particular value systems (liberal democracy, human rights) acting in the name of humanitarianism and infringing on the neutrality of humanitarian space. Since the 1990's, this space has been increasingly contested by the existence of not only politicized non-governmental organizations such as MSF but also by governmental organizations - both states and inter-governmental organizations - all acting in the name of humanitarianism.

### The Era of Humanitarian Intervention

While the interventions by Tanzania in Uganda (1978), India in East Pakistan (1971), and Vietnam in Cambodia (1970) are often cited as examples of "humanitarian intervention," they were taken on by single states for the purpose of self-defense, and a concern for spill-over effects. Any humanitarian effects were secondary. It was not until after the end of the Cold War that formal concerns for the suffering of civilians during an event that is considered to be a threat to international peace and security were raised by states within the United Nations Security Council. Throughout the coming decades of humanitarian intervention, the ICRC continued to work, often in the same locations as armed humanitarian mission troops, as well as in areas inaccessible to state or IGO forces, or to politicized humanitarian groups.

The first UN-authorized intervention to consider the suffering of civilians came in the aftermath of the First Gulf War (1990-1991), in which Iraq invaded and annexed Kuwait, provoking a US-led campaign to drive Iraq out of Kuwait. Resolution 688, which authorized the establishment of safe havens in Northern Iraq (1991), was the first to mention the well-being of

citizens within the warring state (Jackson 2003, 262) in its rationale. Also significant is that the resolution authorized the UN to cross Iraqi borders, without consent, for humanitarian reasons.

The ICRC was already present in Iraq when Iraq invaded Kuwait on 2 August 1990, working as a neutral intermediary during the Iran-Iraq war (1980–88) and in its aftermath (Forsythe 2005, 102). The Iraqi position towards the ICRC fluctuated between cooperation and indifference (Forsythe 2005, 102). When Iraq launched its offensive into Kuwait, in part in an effort to mend relations with Iran, Saddam Hussein sought out the ICRC to facilitate the repatriation of Iranian POWs (Forsythe 2005, 102).

The ICRC stated publicly that it considered the Iraqi offensive into Kuwait an international armed conflict and that Kuwait represented occupied territory falling under the purview of the Fourth Geneva Convention, a claim vehemently denied by Iraq, which considered Kuwait a province of Iraq. The ICRC was subsequently denied access to Kuwait (Forsythe 2005, 103). The ICRC had struggled to coordinate with the national societies and the International Federation of Red Cross and Red Crescent Societies for much of its history, and that remained true in Iraq/Kuwait (Forsythe 2005, 104) (the Seville Agreement was signed in 1997). When Iraqi forces were expelled, Kuwait officials allowed the ICRC to enter but offered only minimal cooperation (Forsythe 2005, 107). The ICRC witnessed but chose not to speak publicly about the IHL violations they discovered in Kuwait (forced deportations of Palestinian leaders who had sided with Hussein, poor conditions for POWs) or Iraq (“brutal repression of Iraqi Kurds in the north and Iraqi Shi’ites in the south”) (Forsythe 2005, 107).

A year after the UNSC authorized intervention into Kuwait and Iraq, in 1992, the UNSC authorized a mission in Somalia to prevent food aid intended to aid those suffering from being pillaged by local militias. The mission was justified in the UNSC by reference to the threat the

crisis posed to international peace and security (Jackson 2003, 265). The mission was extended beyond this mandate after the death of UN soldiers, and the UN became deeply involved in a civil war (Jackson 2003, 265). The mission, led by the US, was pulled out after the deaths of 18 soldiers and the widely televised dragging of their bodies through the streets of Mogadishu.

The ICRC had begun working in Somalia in 1977 in detention monitoring and was active in the region when clashes between rival militias garnered international attention in 1991/92, despite the murder of a Belgian staff member in late 1991 (Forsythe 2005, 116). The ICRC, which does not typically speak publicly about their work, played a role in drawing international attention to the conflict, quietly financing the travel of some 700 journalists into the region (Forsythe 2005, 116).

The ICRC in partnership with the Somali Red Crescent Society (SRCS) was able to gain more access to all regions of Somalia than any other NGO or IGO because of its relationships with local authorities (Forsythe 2005, 116). The ICRC, however, experienced many economically motivated, independent attacks, causing it to hire armed guards for the first time from local militias to protect their convoys from looting (Forsythe 2005, 119). The ICRC, in the first deal of its kind, agreed to work with the UN and American forces deployed to Somalia to distribute aid along ICRC channels, originally with the approval of major clans in Somalia (Forsythe 2005, 118). The UN forces proved insufficient, however, and the ICRC continued to hire private armed guards (Forsythe 2005, 119).

In 1994, in response to a series of kidnappings for ransom, expatriate ICRC delegates were relocated to Nairobi (Forsythe 2005, 120). Transport of aid was delegated to local Somali clans identified by the SRCS, a strategy that proved extremely successful (Forsythe 2005, 120). The ICRC's involvement in Somalia, however, was criticized due to the behavior of certain

delegates who became socially involved with female clan members, somewhat compromising the appearance of the ICRC as neutral (Forsythe 2005, 120).

In 1994, the UN did not respond to the civil conflict resulting in the Rwandan genocide in which 800 000 people were slaughtered in 100 days. The ICRC had maintained a permanent presence in Rwanda since 1990. During the genocide, they stayed and “helped about 50,000 Tutsi, at the price of not denouncing the genocide that claimed perhaps 800,000 lives” (Forsythe 2005, 122). Philippe Gaillard, head of the ICRC's delegation in Rwanda (1993-1994) stressed the importance of neutrality: “Humanitarian neutrality means first to be on the side of the victims, of ALL the victims. But when the victims belong to the same category, then their executioners start to look at you with suspicion.” (Gaillard 2004).

The ICRC were not, however, silent. They did not use the term genocide. Instead, they spoke to the media about, “systemic carnage,” and reported their estimate of numbers killed to the BBC and others (Gaillard 2004). Refusal to use the term genocide appeased the Americans and others who were refusing to use the term, and the Kigali government which was supporting the *genocidaires*, but the ICRC's comments increased public awareness of the crisis and therefore funding for the humanitarian organizations working in Rwanda (Gaillard 2004). Gaillard describes the work of reporting as effective for gaining awareness and soliciting funds, but mostly ineffective on, and potentially detrimental to, their work on the ground, save for one instance:

On 14 April, in the presence of the Rwandan armed forces, militiamen killed six wounded civilians who were on their way to our hospital in a Red Cross ambulance. The Radio-Television Libre des Mille Collines announced that the Red Cross was transporting "enemies of the Republic disguised as fake wounded".

...At our request the ICRC headquarters issued a strong press release which was immediately broadcast everywhere by the BBC and Radio France Internationale, among

others... (causing) the Rwandan Government (to become) aware of the considerable deterioration of their image (Gaillard 2004)

The Red Cross's inconsistent relationship with the Kigali government kept most of their staff safe from the *genocidaires*, "with the exception of some Rwandan female nurses working in conjunction with the ICRC" (Forsythe 2005, 122). In Rwanda, MSF was forced to abandon their commitment to denouncing human rights violations, agree to the ICRC's terms of engagement, and display the Red Cross emblem in order to continue their work in the country (Forsythe 2005, 123).

Perhaps the most complex and sustained involvement in a crisis during this time by IGOs, NGOs, and the ICRC was in the former Yugoslavia. In 1993, the UN established safe areas during the Bosnian War (1991-1995) with consent from the Bosnian government. Like in Iraq, the stated purpose for the establishment of safe areas was humanitarian; unlike Iraq, the establishment of safe areas was consented to.

The ICRC had been active in Yugoslavia since the late 1980s and was engaged at various levels throughout the break-up of the Federation, particularly in the area of detention monitoring (Forsythe 2005, 110). Serbia initially allowed the ICRC to monitor only those prisoners who had already been convicted; those being interrogated were off limits (Forsythe 2005, 110). Within a few years, the ICRC had negotiated full access to all prisoners, although many went "missing" (Forsythe 2005, 110-111).

The ICRC in Bosnia, again, faced challenges in working with the National Societies. The Bosnian Serb Red Cross, in particular was closely tied to politicians and in some cases provided protection to Muslims and Croats only after extorting payment from them (Forsythe 2005, 111). During the Bosnian War, the ICRC was faced with the choice between facilitating transport of

Bosnians out of Serb-controlled areas, that is, facilitating ethnic cleansing, or seeing those civilians be killed (Forsythe 2005, 109). It chose to facilitate transport.

The ICRC suspended its activities around Sarajevo for seven months following the May 1992 murder of ICRC Head of Delegation for Bosnia, Frédéric Maurice. Maurice was killed, “when his convoy, although clearly marked with the Red Cross emblem and following a route agreed upon in advance by the belligerents, was intentionally fired upon” (Forsythe 2005, 112). The ICRC compiled a detailed list of the more than 7000 men and boys that went “missing” at the massacre in Srebrenica and continues to be active in Bosnia today in the areas of family reunification and missing persons tracing and unexploded mine education.

In 1999, NATO intervened in Kosovo without UNSC sanctioning or the consent of the Former Yugoslavia (Serbia). The conflict was entirely domestic and was designated as such in the independence agreements with Slovenia and Croatia, and in the Dayton Agreements ending the Bosnian War which described Kosovo as a constituent part of Serbia (Jackson 2003, 278). NATO intervened due to the humanitarian emergency in Kosovo; they stated that a humanitarian emergency and the flow of refugees that it caused were a destabilizing force and therefore constituted a threat to international peace and security (Article 2, NATO 1999). Furthermore, in the words of the British prime minister, Tony Blair, NATO could not fail to act as it would give “the next dictator” little reason to find threat of force from “our” (US and UK) forces credible (Blair 1999). Immediately after the bombing campaign started, Russia brought a draft resolution to the UNSC asking for the UNSC to condemn the actions of NATO. It did not pass. The bombing campaign lasted 78 days; the intensity of violence increased during that time and invoked accusations of war crimes against NATO members for bombing civilian infrastructure. Until 2008, the UN-administered Kosovo, and to this day, Kosovo remains a disputed territory.

The ICRC in Kosovo, like in Bosnia, was involved in documenting missing persons and restoring family links. When the Republic of Serbia approached the ICRC in March 1998 to engage in a fact-finding mission regarding events in the territory, the ICRC refused, stating that “acting as a fact-finding commission does not lie within the scope of its mandate. The ICRC believes that taking on such a quasi-judicial task could jeopardize its primary humanitarian duty to assist and protect the victims of armed conflict or internal strife” (ICRC 1998). The ICRC withdrew its expatriate staff from Kosovo on March 29, 1999, not returning until May 24, 1999, citing the deteriorating security situation in the country. In the interim, they continued to work with refugees in Montenegro, the Former Yugoslav Republic of Macedonia and Albania.

Throughout this period of interventions, the ICRC, MSF, and others were operating. Interventions, political humanitarianism, and classic humanitarianism existed in the same spaces, although in some cases only the classic humanitarian could maintain a presence. Because of the mixed results of intervention, after a genocide in Rwanda, a genocide in Bosnia, and an unclear end to hostilities in Kosovo, there was a resurgence in discussions of *jus ad bellum*, and the permissible reasons for going to war at the UN. In 2001, the International Commission on Intervention and State Sovereignty (ICISS), made up of members of the UNGA, published their report on the Responsibility to Protect (R2P), largely in response to the intervention in Kosovo but also due to the increasing frequency with which members of the international community were intervening – or being asked to intervene – in the affairs of other states. The ICISS 2001 Report on the Responsibility to Protect tries to bring “humanitarian intervention,” within the law. It states that sovereign states have the responsibility to protect their own populations from “avoidable catastrophe – from mass murder and rape, from starvation,” and that if states are unable or unwilling to, the responsibility falls to the “broader community” to protect those

people. Importantly, the responsibility of the broader community is conceived not as a right, but as an obligation. R2P is a reframing of rights discourses to a discourse of responsibility.

The foreword of the 2001 Report describes the range of opinions regarding the use or lack of use of the “new activism” of humanitarian interventions in Rwanda, Somalia, Bosnia, Kosovo: “for some... (it) has been a long overdue internationalization of the human conscience; for others, it has been an alarming breach of an international state order dependent on the sovereignty of states and the inviolability of their territory. For some, again, the only real issue is ensuring that coercive interventions are effective; for others, questions about legality, process and the possible misuse of precedent loom much larger” (VII).

The Report names the UNSC as the most appropriate body for authorizing a military intervention, with the alternative being the UNGA in an Emergency Special Session under the “Uniting for Peace” procedure (XII-XIII). A regional or sub-regional group can act under Chapter VII (XIII), but only until the UNSC rules on the subject, as has always been the case under the Charter. Thakur and Weiss have argued that R2P fills a normative gap between the competing norms of human and state rights (Thakur and Weiss 2011, 136).

The 2001 Report mentions the willingness of the UNSC during the crisis in Somalia and of the Economic Community of West African States (ECOWAS) during the crises in Liberia (1990), and in Sierra Leone (1997) to define domestic situations as threats to international security (Article 2.25); and it points to “fundamental natural rights law,” the Charter, the UDHR and the Genocide Conventions, and the body of International Humanitarian Law as supporting the duty, or responsibility of the international community to protect populations. After the 2001 ICISS Report was released, Ann Orford described it as having “the capacity to change practice into promise, deeds into words” (Orford 2011, 2). Orford sees R2P as a continuation of the

expansion of the powers of the bureaucracy of the UN to become more than an intergovernmental institution and to take on powers in its own right derived from the people of the world, rather than from states (Orford 2011, 2-10).

The Report is based on very particular assumptions. It rests on the premise that an international community exists with certain shared normative understandings about what is morally right and wrong – at least egregiously wrong. More specifically, the Report assumes the agreement of the international community that “mass murder,” “rape,” and “starvation,” constitute avoidable catastrophes and are so wrong that they require a response from the international community.

The 2001 R2P principle received much pushback; the non-aligned movement, in particular, was fundamentally against any right to intervention (Weiss 2006, 745). The principle that was eventually adopted by the UNGA in 2005 has been described as “R2P-lite” (Weiss 2006, 750). It included important changes from the 2001 Report. Now, only in four instances (genocide, war crimes, ethnic cleansing, and crimes against humanity) does the international community have a responsibility to act, leaving much room for states to quibble over labeling and to act selectively. This would result in a *de facto* right of the international community to act, providing a framework to do so legally, but no longer imposing a strong responsibility. Given that R2P locates legitimate decision making at the UNSC, without reform to the Permanent Five and Veto systems, the power of the great powers over humanitarian intervention was reinforced. The 2009 World Summit document detailing the responsibility to protect continued the conventions of “R2P-lite.”

At the same time as the 2001 report was being released, the US experienced the September 11<sup>th</sup> terrorist attacks that killed nearly 3000 people, prompting the commencement of

President George W. Bush's War on Terror. In 2001 the US, UK, and others declared war against Afghanistan, the nation harboring terrorists responsible for the attack.

In 2003, in continuation of the "War on Terror," the US, with the UK, led a coalition of the willing into Iraq based on a false intelligence report that Saddam Hussein had weapons of mass destruction. When the pretense for invasion was revealed to be false, the US emphasized the humanitarian grounds for intervening (Bellamy 2014, 217).

In the battle for hearts and minds, the US took on many humanitarian activities in the region: building wells and schools, as well as providing immediate short-term aid (Williamson 2011, 1037). The US military was heavily criticized for using white vans and non-military uniforms while distributing aid (Lischer, 2007, 106) as it confused the role of military and civil society and rendered all humanitarian organizations as potential military members/political actors who are legitimate targets (Lischer 2007, 100-101, 104).

Through both conflicts in Afghanistan and Iraq, the ICRC struggled to gain and maintain access to those detained by the US and its allies (Forsythe 2005, 133). The ICRC spoke publicly regarding their concerns regarding the conditions of detention in Guantanamo Bay, Iraq and elsewhere, and the lack of American concern for IHL (Forsythe 2005, 138).

The ICRC in Afghanistan experienced at least two bombing attacks by US forces on warehouses in 2002 and the death of one delegate in 2004 (Forsythe 2005, 140). After killing five MSF workers in June 2004, Al Qaeda proclaimed that all "western-based aid agencies were enemies" (Forsythe 2005, 21). In June 2004, MSF pulled out of Afghanistan citing the deteriorating security situation. In October 2004, MSF worker Margaret Hassan was kidnapped in Baghdad; and in November 2004, MSF announced that they were withdrawing from Iraq. The UN headquarters in Iraq was attacked killing more than 20 people; and ICRC headquarters in

Baghdad was bombed in October 2003, killing two ICRC staff members (Forsythe 2005, 147). The ICRC, which had kept a continual presence in Iraq after the First Gulf War, was forced to relocate expatriate staff to Jordan (Forsythe 2005, 147) but decided to continue its work remotely. In January 2005, an ICRC employee was murdered, prompting the ICRC to reduce its activities in Iraq for several months (Mattli and Gasser 2008, 159).

After the beginning of US President George W. Bush's "War on Terror," and an increase in rhetoric of being with us or against us, humanitarian work became dangerous in a way it had not been before. When an organization is there to help everyone, they are also helping the other side. If you need less help than the other side, humanitarians become an obvious target. Humanitarianism depends on both parties recognizing that there is a need for humanitarian aid and that each party may be in the position of needing more aid than the other side in the future. It also requires each party to recognize a difference between those who are fighting and those who are not. This line becomes less clear in a total war situation when civilian resources and labour support the war effort, or when the target of attack is the morale of the opposing side.

Pierre Hazan and Jean-François Berger quote the President of the International Federation, Juan Manuel Suarez del Toro, who describes this trend as the, "growing politicization of humanitarian aid and the erosion of respect for our independent and impartial work, with the corollary of increasingly frequent attacks on our staff" (in Hazan and Berger 2004, para 2). The reason for this, according to Pierre Kraehenbuehl, ICRC director of operations, is that, "when states exploit humanitarian aid by using it as a tool for conflict management and as an instrument to promote their own interests," they confuse the role of the humanitarian and make all appear as legitimate targets (in Hazan and Berger 2004, para 2). Per Michel Cagneux, head of the ICRC's security unit, new wars may be fought by actors who "are

caught in an unequal struggle and have no hesitation in resorting to non-conventional methods of warfare such as attacks on humanitarian organizations, considered to be 'soft targets'" (quoted in Hazan and Berger 2004, para 4).

## Conclusions

In this chapter I have shown that humanitarianism is a dynamic tradition that has adapted to changing circumstances and learned from its mistakes to refine its principles and commitments. Classic humanitarianism is cognizant of the relationships it builds and the hierarchies of power it contributes to. It does this in order to Do No Harm in its mission to follow the imperative to alleviate suffering. The move by MSF in the 1970's to bear witness to atrocities is a political venture that departs from the humanitarian principles of neutrality and impartiality in support of a rights-based, liberal democratic framework.

Throughout the era of humanitarian intervention, there have been incidences of refusal to allow for the entry of humanitarian organizations into conflict zones, and in an increase in danger for humanitarian workers and the clients of humanitarian organizations. The three types of action, humanitarian, political humanitarian, and state-led humanitarian intervention, now exist in the same spaces that were once populated only by the neutral, impartial, Classic humanitarian.

In the next chapter, I will turn to the intervention into Libya in 2011 to examine statements given by states at the UNSC to determine their stated purpose for intervention. This will serve to define humanitarian intervention so that it can be conceptually compared to humanitarianism in the fourth chapter.

## Chapter 3 – The Libyan Case and the Purpose of Humanitarian Intervention

In this chapter, I will begin by providing pieces of Libyan history relevant to understanding the context in which the protests in Libya began and in which the UNSC decided to authorize action. Then, by examining UNSC Resolutions and meeting records on the topic of Libya between February 22 and March 17, 2011, I will identify the purposes stated by members of the UNSC and their guests for the intervention into Libya in 2011. By identifying the stated purposes of a particular humanitarian intervention, I will identify the normative purposes of humanitarian interventions as understood in 2011.

In 2011, the UN authorized the imposition of a no-fly zone over Libya calling the internal conditions a threat to international peace and security (UNSC 2011g) and accusing the Libyan government of failing to fulfill its responsibility to protect the Libyan people. The conflict was domestic, and Revolutionary Chairman Colonel Muammar Gadhafi did not consent to the intervention. This was the first intervention authorized by the UNSC in which the state being intervened upon had an identifiable sovereign who did not consent to intervention.

On 10 March 2011, the ICRC announced their position that Libya was indeed experiencing a civil war, and called for Libyan authorities to allow the ICRC into the Western half of the country and to allow the ICRC to visit detainees (Schorno in Block 2011). The opposition forces in the East were allowing the ICRC to maintain access, but the Gadhafi regime was not allowing humanitarian organizations any access to the Western regions under its control (Schorno in Block 2011).

## Background

Libya is the fourth largest country by area in Africa but has a population of only 6 million (34<sup>th</sup> largest); 90% of Libya is inhospitable to agriculture and therefore has only sparse human settlement (Chorin 2012, 13). The region is overwhelmingly Sunni Arab with an 8% Berber minority and a strong tribal element. There are at least 140 tribes in Libya (Chorin 2012, 150).

Italy took control of Libyan territory from the Ottomans in 1912, and occupied it until 1947 (Hehir 2013, 283). Italy lost control of the territory to Britain and France in WWII (Hehir 2013, 283). WWII destroyed much of Libya; it was of instrumental value as part of the sea route to the Suez Canal (Chorin 2012, 23). Prior to the discovery of oil in 1958, the country lacked good access to water, leaving it relatively weak and unable to fight foreign forces (Chorin 2012, 15).

The Federal Kingdom of Libya was established in 1951 under King Idris, a largely pro-Western monarch (Hehir 2013, 294). There was discontent among the public with King Idris; he was seen as letting capitalism and foreigners in.<sup>4</sup> Many blamed him for the high rate of unemployment, the establishment of a new bourgeois class, and the increasingly clientelistic economic practices in the country (Chorin 2012, 27). It was in this environment that Colonel Muammar Gadhafi staged his “bloodless” coup in 1969. Gadhafi nationalized banking and insurance systems, and spent sizable funds on healthcare and education (Chorin 2012, 36-37). The governing system became more centralized, and private property was abolished (Chorin 2012, 40).

Once Gadhafi took power, he began to purge those members of the revolution that he feared were disloyal, and tried to weaken tribal ties by splitting tribal groups into different

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<sup>4</sup> By 1970, American companies were producing 90% of Libyan oil (Chorin 2012, 26)

administrative jurisdictions (Chorin 2012, 35). Imams and other intellectuals who did not fall into line were arrested, were executed or would “disappear” (Hehir 2013, 284). The first anti-Gadhafi protests occurred in March 1975 in Benghazi. In the same year, Gadhafi experienced an attempted coup from his inner circle (Chorin 2012, 39). He additionally faced a 1993 coup attempt by the Warfalla tribe, and two assassination attempts in 1995 and 1998 (Chorin 2012, 53).

For much of his time as leader, Gadhafi enjoyed strained relations with much of the world. He was a supporter of Idi Amin Dada in Uganda, which made him unpopular with his neighbors (Chorin 2012, 41). He portrayed himself as “the ‘African King of Kings’ and the ‘Imam of the Muslims,’” which was met with derision from Africans and Muslims alike (Hehir 2013, 285)

His relationships with the USA and Europe were similarly strained. Gadhafi aligned himself with “Fidel Castro, Yasser Arafat, and Gamal Nasser, and supported... Polisario in Morocco, the IRA in Northern Ireland, and various groups in Latin America,” provoking the US to accuse him of being a terrorist supporter (Hehir 2013, 285). The US cut diplomatic ties with Libya in 1981 in response to an attack on the US Embassy Chancery in 1979 (Chorin 2012, 43). Most US oil holdings had been nationalized in the 1970s, but trade between Libya and the USA and Europe continued to increase due to the relative ease of transporting oil from Libya, rather than from Gulf states (Chorin 2012, 44). In 1981 the US shot down two Libyan aircraft that challenged its warplanes over the Gulf of Sirte (Libyan declared territorial water). In 1986, the US bombed Libyan military targets in response to Libyan involvement in the bombing of a Berlin disco frequented by US military personnel.

In 1988, a Pan-Am airliner was bombed over the Scottish town of Lockerbie. In 1992 the UNSC passed resolutions 731 and 748 imposing sanctions and instructing Libya to disclose information and take responsibility for the bombings, remit the two suspects and cease support for international terrorist organizations (Chorin 2012, 49, 52). In 1999, Libya gave up its citizens for trial and UN sanctions were lifted, but the US and EU chose to maintain sanctions. The Lockerbie bombing suspects were tried in 2001, one being sentenced and the other acquitted.

Gadhafi was influential in the creation of the African Union in 2000 from the Organization of African Unity (Chorin 2012, 56). He opened Libyan borders to Africans to live and work in Libya. Ethan Chorin argues that his intention was to scare Europe into lifting sanctions due to the threat that refugee flows entering their continent through Libya would pose (Chorin 2012, 61, 57). This policy was widely unpopular domestically. Libyans tended to feel Arab first and African second, and did not like the African-centric policies (Chorin 2012, 57).

In 2003, Gadhafi signed a deal with the United States to end sanctions against Libya. Many thought such a deal would be impossible. Gadhafi agreed to abandon his weapons of mass destruction, to compensate the victims of the 1988 Lockerbie bombing (for which he admitted responsibility but not guilt (Chorin 2012, 67)), and to share intelligence with the United States in service of the “War on Terror.” In exchange, US sanctions would be lifted, allowing Libya to sell oil more freely and attract foreign investment (Chorin 2012, 2).

Diplomatic relations between the USA and Libya continued to thaw until 2009. In September 2009 Gadhafi chastised the US in the General Assembly for violating the sovereignty of member states (Chorin 2012, 160). The 2010 WikiLeaks scandal leaking documents of how the US felt about Gadhafi were taken as a personal insult (Chorin 2012, 170). Diplomatic relations between the US and Libya effectively froze (Chorin 2012, 171).

## Uprising and Intervention

Beginning in 2004 after sanctions were lifted, the youth and the diaspora through social media began to push for domestic change in Libya (Chorin 2012, 149). The regime mostly fought back with violence but also showed some willingness to reform. Gadhafi's son Saif, in 2007, spoke of creating a new constitution. He reached out to the Berber minority, who wanted recognition of language and culture, for the first time (Chorin 2012, 151-152). Any reforms that did occur that were advocated for by Saif, however, did not long appease the Libyan people.

Beginning in January 2011, youth-led, economically themed protests began in Derna, Benghazi, and Bani Walid. These coincided with a *Wikileaks* that described the lavish lifestyle of the Gadhafi children. Gadhafi canceled all soccer matches fearing they would be a site of protest as they had been in Egypt (Chorin 2012, 187-189).

On 15 February, a human rights lawyer, Fathi Terbil, who was pursuing a class action lawsuit against the state on behalf of the families of some 1200 political prisoners killed in the Abu Salim prison in 1996, was arrested (Shalgham in UNSC 2011c, 4). Peaceful protests of his arrest on 15 and 16 February were met with violent repression causing many casualties. On 17 February, named the day of rage by protesters, on the fifth anniversary of youth riots in 2006, Saif Gadhafi released 110 political prisoners (Chorin 2012, 191-193).

Protests spread to more Eastern cities, and on 18 February, two police officers were hanged by protesters. That afternoon, 450 people in a funeral procession were killed by regime forces when, as an act of defiance, they passed by the Katiba compound of Gadhafi loyalists (Chorin 2012, 193).

Protesters broke into the local headquarters of the interior ministry and discovered a document detailing an attack planned against them for the morning of 19 February (Chorin 2012,

195). Saif Gadhafi gave a speech in Tripoli on the afternoon of February 20, stating that he was now aligned with his father and accused outside forces of agitating the population (Chorin 2012, 197). On 22 February, Gadhafi made his infamous appearance on Libyan television in which he called the protesters rats that he encouraged his supporters to “seize” (“Muamar Gadhafi...” 2012).

On 26 February 2011, the UNSC adopted Resolution 1970 imposing an arms embargo on Libya and freezing the assets of key members of the Libyan Leadership in response to the violent repression by the Gadhafi regime of anti-regime protesters in Benghazi. The resolution stated that the UNSC was currently operating under Article 41, measures not including force (UNSC 2011d, 2) and referred the case to the ICC (UNSC 2011d, 2).

The National Transitional Council (NTC) proclaimed itself to be the representatives of Libyans at the Benghazi courthouse on 27 February, then made an official proclamation on 5 March at the Tibesi Hotel in Benghazi. On 8 March 2011, NATO deployed airborne early warning and control aircraft to the region, and on March 10, moved ships into the Mediterranean Sea to increase the monitoring effort.

On March 17, 2011, the UNSC passed Resolution 1973 imposing a no-fly zone over Libya with 10 votes for, and 5 abstentions (Brazil, China, Germany, India, Russian Federation). The resolution authorized member states “to take all necessary measures to protect civilians and civilian-populated areas under attack or threat of attack,” short of occupation and stressed the need to find a political solution (UNSC 2011g, 3).

NATO vessels began intercepting the flow of arms into Libya via the Mediterranean Sea and NATO aircraft began enforcing the no-fly zone and destroying military targets “involved in attacks or threatening to attack Libyan civilians and civilian populated areas” (NATO 2015, para.

10) by way of a bombing campaign. Anti-regime forces showed some initial success but were pushed back by the better equipped Gadhafi forces. Cracks in the NTC were obvious from as early as late March and the NTC military chain of command remained unclear (Chorin 2012, 246). On 31 March, NATO took sole command of the military intervention in Libya.

In July 2011, the International Contact Group on Libya formally recognized the National Transitional Council (NTC) as the legitimate government of Libya. In August, Col. Gadhafi went into hiding after rebels attacked his compound in Tripoli. His family fled to Algeria.

On 6 October 2011 NATO announced its decision to end the operation in Libya as soon as conditions permitted. Gadhafi was captured and killed by a local militia on 20 October after being forced to flee his compound by NATO bombing. On 21 October, NATO announced a preliminary decision to end the operation at the end of the month. The NTC declared Libya liberated, and announced plans to hold elections. NATO reaffirmed their decision to end their operation on 28 October and, on 31 October, concluded their final flights over Libya.

### [The Purpose of Intervention: Themes in Discourse](#)

The events in Libya provoked much discussion at the UN and elsewhere. The UNSC passed two Resolutions in February and March of 2011, 1970 and 1973, affecting Libya.

UNSC Resolution 1970 was unanimously adopted (UNSC 2011d, 2). It stated that the Council “deplore(s) the gross and systemic violation of human rights, the repression of peaceful demonstrators, express(es) deep concern at the deaths of civilians, and reject(s) unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government.” It further supported the Arab League, African Union, and Organization of the Islamic Conference statements that the events in Libya constitute “serious violations of human rights and international humanitarian law” (UNSC 2011d, 1). The resolution

“express(es) concern at the plight of refugees... (and at) the shortage of medical supplies;”  
 “stress(es) the need to hold to account those responsible for attack;” and is, “mindful of (the  
 UNSC’s) responsibility for the maintenance of international peace and security” (UNSC 2011d,  
 1-2)

UNSC Resolution 1973 passed with ten votes for, and five abstentions (Brazil, China, Germany, India, Russian Federation). The resolution reiterated support for resolution 1970; condemned the escalation of violence, particularly against journalists and members of the media; and emphasized the need for the return of humanitarian agencies to Libya (UNSC 2011g, 1). The resolution “express(es) (the UNSC’s) determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel” (UNSC 2011g, 1). The resolution, “reaffirm(s) its strong commitment to the sovereignty, independence, territorial integrity, and national unity of the Libyan Arab Jamahiriya,” and “determin(es) that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security” (UNSC 2011g, 2). There were no vetoes, and no votes against, effectively giving permission to the states voting in favor of the resolution.

The African Union and the League of Arab States supported the resolution but made statements emphasizing the importance of maintaining the territorial integrity and unity of Libya (AU 2011a, 2) (UNSC 2011d, 4).

Those Security Council member-states that abstained from voting stated their reasoning as a suspicion that the ways in which the intervention would be carried out did not primarily, or did not in any way, serve the fundamental purpose of intervening – to protect civilians. Some expressed concern that no intervention that involved the use of force should be considered

because it would not be effective; and/or was against international law (The Charter of the UN) and therefore could not also be used to uphold international law (International Humanitarian and Human Rights Law).

Brazil's decision to abstain from voting for resolution 1973 was based on the position that the resolution was worded in such a way that it, "contemplates measures that go far beyond that call (for a no-fly zone); and that the use of force, "may have the unintended effect of exacerbating tensions on the ground and causing more harm than good to the very same civilians we are committed to protecting" (UNSC 2011f, 6). For China, the resolution was in violation of the Charter of the United Nations and did not respect the "sovereignty, independence, unity and territorial integrity of Libya" (UNSC 2011f, 10). China did not accept the use of force in international relations as legitimate, but did not veto the resolution because of its respect for the desire of the Arab League for the imposition of a no-fly zone (UNSC 2011f, 10).

The representative from Germany expressed support for sanctioning but was unconvinced that military action would yield favorable results (UNSC 2011f, 5). Military force could cause large-scale loss of life; and could be ineffective, drawing the interveners into a "protracted military conflict that would affect the wider region" (UNSC 2011f, 5). For India, the decision to abstain was based on its stated principled position against any resort to the use of force (UNSC 2011f, 5). India's representative stressed the importance of respect for "sovereignty, unity and territorial integrity" (UNSC 2011f, 6). The representative from Russia expressed concern that the resolution allowed for large-scale intervention beyond the imposition of a no-fly zone, that could destabilize the region ((UNSC 2011f, 8).

While the means were debated, the purpose of UNSC intervention was not. The members of the UNSC and the guests allowed to speak at the UNSC agreed that the purpose of

intervention was first and foremost to “protect” civilians. This refers to the protection of their bodies from harm, in line with international humanitarian law, as well as protection of their human rights from grave abuses. Other purposes for intervention include maintaining peace and security, enforcing international law, and ensuring perpetrators are brought to justice. Furthermore, the members of the UNSC agreed that the purpose of intervention was not to allow for secessionist movements.

### The International Community as a Moral Community

Many actors referred to an “international community” and the sense of shared morality in this community. While Resolution 1970 does not mention the “international community” (UNSC 2011e), many states did in the meetings in which this resolution was debated and adopted.<sup>5</sup> The wording used by states at the UNSC places the “international community” standing alongside the Libyan people, or as speaking to the Libyan authorities. This positions humanitarian intervention within the “familiar heroic narrative” described by Ann Orford, “in which international institutions are the bearers of progressive human rights and democratic values to local peoples in need of those rights and values in the post-Cold War era” (Orford 2003, 36).

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<sup>5</sup> The representative from the UK stated that the “international community” was determined to stand with Libyans (UNSC 2011d, 2); the representative from South Africa described the international community as having joined the people of Libya (UNSC 2011d, 3); the representative from the US stated that the, “international community must speak with one voice,” in condemning the acts in Libya (UNSC 2011d, 3); the representative from Russia called on “Libyan authorities to comply with the demands of the international community,” (UNSC 2011d, 4); the representative from Colombia described the demands in the UNSC resolution as demands made by the international community (UNSC 2011d, 5); the representative from France described the international community as giving a “message” to Libyan authorities (UNSC 2011d, 5); the representative from Germany said the “international community will not tolerate the gross and systemic violation of human rights by the Libyan regime,” (UNSC 2011d, 6); and the representative from Gabon stated that they are, “ready to associate themselves with other measures that the international community may adopt,” (UNSC 2011d, 6).

Of the states that insisted that the international community was standing alongside Libyans, there was much talk of the future of Libya being decided by the people of Libya. At the UNSC, the representative from the UK said that the international community was, “stand(ing) with the people of Libya (in) defend(ing) their right to determine their own future” (UNSC 2011d, 2). The representative from the US referred to the “ability (of Libyans) to shape their own future,” as a universal right (UNSC 2011d, 3).

Many states adhered to this norm that sovereignty rests in the will of the people. When Resolution 1970 was adopted, for example, the representative from the United States declared that Colonel Gadhafi had lost legitimacy in the eyes of his people and that he should choose to leave (UNSC 2011d, 3). Denying that the incumbent sovereign is, in fact, sovereign can make it possible for outsiders to justify their support for a specific group that the outsider wants to be sovereign, without any clear indication as to which might have the most support from the people.

#### Humanitarian Concerns are Not Enough for Intervention

Some debate at the UNSC regarding whether to intervene in Libya centered on the conditions under which the UNSC should involve itself in a civil conflict. Members agreed that the UNSC, charged with the maintenance of international peace and security, should become involved in civil conflicts if there was spillover outside of Libya’s borders. The members of the UNSC, however, did not agree about whether humanitarian concerns in and of themselves were enough to justify intervention.

Humanitarian concerns were spoken of as discrete from peace and security issues. The African Union Peace and Security Council expressed concern over the situation in Libya because it represented a threat to peace and security in the country and the region, and separately expressed concern over the humanitarian situation in the country (AU 2011b, 1).

Refugees, in particular, were described both as a peace and security concern at certain times, and as a humanitarian emergency at others. Secretary General Ban-Ki Moon stated that, “fundamental issues of peace and security are at stake... in Libya” (UNSC 2011c, 2). He mentioned, “the growing crisis of refugees and displaced persons,” and that some 37000 have fled but that many more are thought to be “trapped” inside Libya (3). He reaffirmed the importance that states “including Europe” keep their borders open (3). His statement was made in reaction to states, particularly those in Europe, closing their border because of the security threat that they believed the flow of refugees posed. The representative from Bosnia and Herzegovina described the situation in Libya as a threat to international peace and security due to the threat of escalation and spillover (UNSC 2011d, 6). He also mentioned the plight of the refugees and internally displaced persons who are in immediate need of humanitarian assistance (UNSC 2011d, 6).

Repeated reference to the threat of spill-over and the danger posed by the flow of refugees is evidence that the norm that the UNSC must act in response to threats to *international* peace and security and that the UNSC has little role to respond to *intranational* crises persists. Non-intervention, as guaranteed in the Charter of the United Nations, has not lost its significance.

#### Sovereignty of Land, Violability of Air

The members of the UNSC agreed that the Council should not authorize a violation of sovereignty, but there was disagreement over what constitutes such a violation. There was agreement that the UNSC could impose sanctions for the purpose of affecting domestic conditions. At the meeting in which Resolution 1970 was passed, there was uniform support for

the imposition of sanctions (UNSC 2011d). No one stated or implied that sanctions are a violation of sovereignty.

The language of the Responsibility to Protect is present in the resolutions, but the central tenet of R2P – that if a sovereign fails to protect her population, then she is not a sovereign – is not. The press release from the February 22 closed meeting of the UNSC states that the UNSC “called on the government of Libya to meet its responsibility to protect its population” (UNSC 2011b, 1). Resolution 1970 “recall(s) the Libyan authorities’ responsibility to protect its population” (UNSC 2011e, 2); Resolution 1973 “demands that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians” (UNSC 2011g, 3). The UN Human Rights Council reaffirmed that “all States have an obligation to protect the rights to life, liberty and security of person,” and that it is “the responsibilities of all States... to respect human rights and fundamental freedoms for all” (UNHRC 2011, 1). But nowhere does a UN body make a statement saying that Libya has lost its sovereignty or that the international community has a responsibility to intervene to protect civilians.

UNSC control over Libyan airspace by way of a no-fly zone did not invoke many accusations of violating sovereignty. The hesitation of certain members to allow for Resolution 1973 to pass was based on Article 4 of the resolution, authorizing member states, “to take all necessary measures... to protect civilians... excluding a foreign occupation force of any form on any part of the Libyan territory.” (UNSC 2011g, 3) This authorization of “all necessary measures” invoked concern that it could be used to justify more than the imposition of a no-fly zone – in particular, a full-scale bombing campaign aimed at a particular political outcome. China took the firmest stance, stating that the resolution was in violation of the Charter of the

United Nations (UNSC 2011f, 10): states do not have the right to intervene in matters that are primarily the domestic jurisdiction of a state (Article 2(7)), or to use force or the threat of force in international relations (Article 2(4)).

The Council of the League of Arab States called on the UN to enforce a no-fly zone, and establish safe areas in Libya (League of Arab States 2011, 2), which would require a boots-on-the-ground, Bosnian style intervention. The establishment of safe areas was not included in the Resolutions and foreign occupation is explicitly ruled out in Resolution 1973. The ground, therefore, held a more inviolable sovereign character than the airspace.

### Justice

There was near-uniform support at the UNSC for referring the events in Libya to the ICC. A press release issued after the 22 February 2011 meeting included the following point: “The members of the security council stressed the importance of accountability. They underscored the need to hold to account those responsible for attacks, including by forces under their control, on civilians” (UNSC 2011b). Only the representative from India expressed reservations regarding the representativeness of the ICC – though, at the time of intervention, only 5 of 15 members, and only 2 of 5 Permanent members were signatories of the Rome Statute (UNSC 2011d, 2). The ICC has jurisdiction over the territory of a signatory to the Rome Statute, over nationals of a state that is a signee, and over situations that the UNSC has referred to the ICC. The court investigates only the subject areas crimes against humanity, war crimes, and genocide. Libya was not a signatory to the Rome Statute, yet no member of the UNSC questioned the legality of referring, or described the extending of the jurisdiction of the ICC over, the events in Libya as a violation of sovereignty. Universal jurisdiction had become quite uncontroversial.

The representative from the UK called referral to the ICC a practical outcome of the demand for accountability (UNSC 2011d, 2). The representative from Nigeria expressed

satisfaction that the resolution addressed the need for respect for international humanitarian and human rights law (UNSC 2011d, 3). The representative from the US stated that Libyan leaders would be held accountable (UNSC 2011d, 4). The representative from Portugal, too, stated that, “impunity will not be tolerated” (UNSC 2011d, 5). The representative from France described impunity as no longer an option, and said that the ICC, “once again finds justification for its existence” (UNSC 2011d, 5). The representative from Bosnia and Herzegovina expressed support for the referral to the ICC and for holding perpetrators responsible (UNSC 2011d, 6). The representative from Brazil reiterated his country’s enthusiastic support for the ICC and belief that the jurisdiction of the ICC should be universal (UNSC 2011d, 7)

The representative from Colombia called referral to the ICC, “most appropriate,” and called impunity a barrier to reconciliation (UNSC 2011d, 5). The representative from Germany stated that the unanimous referral to ICC showed that the international community would not tolerate impunity and described the referral as a “clear warning to those who perpetrate systemic attacks against their civilian population that they will be held accountable” (UNSC 2011d, 6).

These statements point to two distinct purposes for pursuing justice: first, to hold the perpetrator accountable to his victims so that they may move forward on a path of reconciliation; and second, to punish the perpetrator to such an extent that other potential perpetrators are too fearful to engage in the same acts. The second purpose disregards current victims to focus on future ones. It aims to mitigate the chances that another crisis will develop that could affect more victims, but also could have spillover, and destabilizing effects in other places. The second purpose of justice aims to assure future international peace and security, and aims to maintain international law as a system of order.

## Conclusions

The purposes of the intervention into Libya that were agreed upon by the majority of members of the UNSC were to “protect civilians,” to maintain peace and security, to enforce international law, and to ensure perpetrators were brought to justice. Definitions for each of these purposes were not uniform, but broadly speaking, the purpose of intervention involves concern for more than just the civilians in the conflict. The intervention was also based on a concern for the peace and national security of states that are not the state being intervened upon, and for upholding the legitimacy of international law so that it continues to hold meaning for would-be international law breakers who could create a crisis that could threaten national security.

The Libyan case illustrates that state action is tied to state interests and cannot be disassociated with them. It would be impossible to separate the humanitarian from the political in the case of humanitarian intervention. If a state is inclined to act, it is for more than purely humanitarian reasons. In part, this is because the state as an institution is tasked with serving its citizens. States which had little interest in either intervention or non-intervention in Libya (those who abstained from voting) did not make a vote against the intervention but expressed fear that the interveners would act beyond the mandate. Should another intervention come to the table at the UNSC, states which previously saw little reason to block an intervention in the form of a no-fly zone into a state of little strategic interest to them, may see a reason to do so post-Libya. The intervention into Libya did not protect civilians *comme* the hope of the R2P doctrine; no liberal democratic state where human rights are respected exists in Libya today. Nor did it result in the brokerage of a peace deal between warring parties to prevent escalation and spill-over *comme* 20<sup>th</sup>-century peacekeeping. Instead, Libya became an ISIS stronghold in the aftermath of the

intervention. The intervention in Libya appeared to be another mission by the NATO members to forcefully oust an unfriendly regime.

The purpose of humanitarian intervention is not purely humanitarian, nor can it be. This does not, however, preclude states from speaking the language of humanitarianism. This places the neutral, impartial humanitarian into the same space as non-neutral, self-interested actors.

## Chapter 4 – Humanitarianism v. Humanitarian Intervention

Using Amy Stoddard’s three traditions informing modern “humanitarianism,” I will establish that humanitarianism is a part of the Dunantist tradition, and that humanitarian intervention is a part of the Wilsonian tradition. The Dunantist tradition of humanitarianism has shown willingness to adapt, learn, and reform in response to mistakes made and to changing circumstances. It is conscious of institutional structures of power and is careful to avoid relationships of paternalism.

I will argue that humanitarian intervention, with its emphasis on maintaining peace and security, enforcing international law, and ensuring perpetrators are brought to justice, fits squarely within a Wilsonian tradition of aid, and not within a humanitarian, Dunantist tradition. Furthermore, politicized humanitarian organizations that contain within their mandate the promotion of human rights also belong to the Wilsonian tradition.

The two traditions are not compatible. The implication of conflating these two traditions is a decrease in access to clients for humanitarian organizations and an increase in danger for humanitarian workers and their clients.

### Three Traditions Informing Modern “Humanitarian” Action

Amy Stoddard identifies three discrete traditions that inform modern “humanitarian” action: the religious, the Dunantist, and the Wilsonian (in Macrae and Harmer, 2003, 27). Stoddard describes the religious tradition as being linked to the virtues of charitable service and compassion, and, although somewhat abandoned in the contemporary period, of having roots in missionary work and in the colonial project (in Macrae and Harmer 2003, 27).

Dunantist humanitarianism was no doubt influenced by the religious tradition. Henry Dunant enjoyed an upper-class, Calvinist upbringing (Dunant and Durand 2012, 7). In his youth, he was active in a solidarity movement between Christians and Jews; he became a member of the

Geneva-based organization, League of Alms, that brought “spiritual and material comfort and aid to the poor, sick, and afflicted”; he visited the city prisons to aid in the rehabilitation of inmates; and he was extremely active in the Young Men’s Christian Union, a counterpart to the YMCA formed in England (Dunant and Durand 2012, 7-8).

Humanitarianism, however, is often tied to more secular intents. Henry Dunant describes the impetus for his humanitarian pursuits in Castiglione as being based on a temporal, “moral sense of the importance of human life; the human desire to lighten a little the torments of all these poor wretches, or restore their shattered courage” (Dunant and Durand 2012, 73).

In his memoir, Dunant expresses despair that the soldiers, who had fought for their flags and had done their jobs, could not even have a drink of water once they could no longer participate in their vocation (Dunant and Durand 2012, 40). Dunant describes these men as having been made murderers at the age of 20 (Dunant and Durand 2012, 31). He does not ruminate on the justness of the decisions of those commanding troops to go to war; he focuses instead on the impact of combat on the people who are engaged in the fighting.

Dunant describes the work that he and his team of volunteers engaged in: providing food and drink to the hungry and thirsty, cleaning and covering open wounds, and cleaning the surroundings of the wounded to provide them some dignity (Dunant and Durand 2012, 62). Dunant describes the volunteers as tending to the loudest first; he claims to have done his best to provide for the most needy first (Dunant and Durand 2012, 63). He recorded last words (Dunant and Durand 2012, 66), and distributed blankets (Dunant and Durand 2012, 67).

Dunant explicitly describes the horrors of war, of the state of and treatment of the wounded, and of the (lack of) regard for the corpses (Dunant and Durand 2012, 19-20). He describes the loyalty and willingness of the soldiers to sacrifice themselves for their flags –

fighting even after they were first wounded (Dunant and Durand 2012, 28). He speaks in admiration of the dedication and bravery of the soldiers, stopping to praise their valiance (Dunant and Durand 2012, 36). Dunant describes the canteen women, who themselves would often be wounded while they made their way through the battlefield to bring water to the wounded who lay dying (Dunant and Durand 2012, 32).

When the battle finally ended, the wounded who were collected arrived in waves to town where their wounds would be dressed by a too small contingent of doctors, they would be given some nourishment, and sent away to larger centers (Dunant and Durand 2012, 38). Dunant expresses anguish at his perception that those who were in the worst condition were left behind to die alone in the now quiet battlefield (Dunant and Durand 2012, 38). Dunant did not care which warring party was in the right, or who was the aggressor. Dunant's motivations to help the men he saw was based on a feeling that these men, regardless of their previous role as a fighter, deserved care now that they were not engaged in the fight.

The Wilsonian tradition, named for US President Woodrow Wilson, seeks to use aid for political ends (Stoddard in Macrae and Harmer 2003, 27). Wilson argued that aid money could be used to further national (American) interests and instill good (American) values of democracy and human rights in the rest of the world for the purpose of creating American allies, and to decrease the likelihood of political polarization that could cause an international security threat (Stoddard in Macrae and Harmer 2003, 27). This tradition is a state-led tradition and therefore explicitly and intentionally political and is not a part of a classical humanitarianism.

Karl Schonberg identifies several major themes in the Wilsonian tradition: "the moral superiority and universal applicability of democracy, the fundamental dignity and rights of all human beings, the common interest of all states in peace and equality under international law"

(Schonberg 2006, 6). Wilsonian thinking is based in the Liberal tradition of thinkers such as Locke, Mill, Kant, and Jefferson (Schonberg 2006, 3); it adheres to a democratic peace theory. Wilson considered the spread of democracy as necessary to ensure the security of his own state; non-democratic states were immoral, and prone to aggression; and could, therefore, be expected to act immorally and aggressively in their international relations (Schonberg 2006, 4).

Wilson described the object of his pursuits as two-fold: “to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of the purpose and of action as will henceforth ensure the observance of those principles” (Schonberg 2006, 3). Schonberg describes Wilsonianism as experiencing the liberal tension between, “hatred of war and the desire for justice” (Schonberg 2006, 4). Michael Howard describes this as the “liberal dilemma:” war is an “unnecessary aberration from normal international intercourse and... in a rational, orderly world wars... can be abolished,” and wars “may have to be fought either to ensure the liberation of groups suffering under alien oppression, or to ensure the survival of those societies in which the liberal ethic has achieved dominance” (Howard 1986, 3).

For the liberal, “the maintenance of ‘peace’ may involve the continued toleration of injustices against which the liberal conscience is the first to revolt,” in nations with friendly autocrats to maintain international stability (Howard 1986, 3). In the Wilsonian tradition, justice and the use of force take precedence over peace because of the inherent good of justice and its ability to mitigate the chances of future conflict (Schonberg 2006, 4). This means accepting that violence can be a means to a moral end (Schonberg 2006, 4).

Schonberg describes Wilsonianism as, “a reflection of the President's belief in the liberalism of American society and government, and assumption that this system could be

globalized through the force of American arms and the self-evident justice upon which these institutions were built” (Schonberg 2006, 4). Wilson believed that democratic states should involve themselves in international affairs because peace and stability are inherently linked. For Wilson, enforcement of peace sometimes required force, because a “threat to security anywhere was... a threat to American interests” (Schonberg 2006, 6).

The humanitarian project is different from the Wilsonian tradition in that it does not seek to fix the world in some kind of transformative way. It does not purport to have the answers as to what will produce a world in which there is the least possible amount of suffering. While advocating for adherence to international humanitarian law that states that civilians and others who are not or no longer engaged in fighting should not be targeted is a part of the humanitarian mandate, engaging in the active “protection” of civilians does not factor into the role of the humanitarian. Defeat is an important feature of humanitarianism. Humanitarians are there to pick up the pieces, as many as they can – not to prevent the creation of new pieces. Dunant described this feeling:

The feeling one has of one’s own utter inadequacy in such extraordinary and solemn circumstances is unspeakable. It is, indeed, excessively distressing to realize that you can never do more than help those who are just before you – that you must keep waiting men who are calling out and begging you to come (Dunant and Durand 2012, 72-73)

The Dunantist tradition, named for Henry Dunant, stresses impartiality, neutrality and independence (Stoddard in Macrae and Harmer 2003, 27). It holds as an ideal to be strictly apolitical. Organizations that come from this tradition take as their mandate the humanitarian imperative – to alleviate suffering – and not more. Where the Wilsonian tradition is intimately tied to particular political goals and a particular understanding of “the good life,” that can easily result in colonialism and imperialism, the Dunantist tradition is not. There is no tension in the

Dunantist tradition, as there is in the Wilsonian tradition, between “war and the liberal conscience.”

The focus in the Wilsonian tradition on justice is also not compatible with humanitarianism. Virginia Held describes an ethic of justice as being “focuse(d) on questions of fairness, equality, individual rights, abstract principles, and the consistent application of them... (while) an ethic of care focuses on attentiveness, trust, responsiveness to need, narrative nuance, and cultivating caring relations (Held 2006, 17). While in the area of law, Held suggests that the focus should be on justice and not care; but in the realm of individual relationships, the focus should be on care (Held 2006, 17). Humanitarianism similarly focuses on care.

Eric Dachy highlights the refusal of humanitarians to focus on an ethic of justice in his discussion of the ICC; humanitarian organizations argued against the creation of the ICC because humanitarian and justice concerns are not compatible (Dachy 2004, 314). Humanitarian organizations can be compelled to testify, making it harder for them to gain entry to populations in need because the sovereign does not want to be testified against in the future (Dachy 2004, 315). The ICRC, for example, has obtained a formal exemption from testifying at the ICC; they were granted a similar exemption by the ICTY (Dachy 2004, 318). A desire for justice does not meet the purposes of humanitarian action. Dachy admits that for human rights groups, like Human Rights Watch, it is a logical continuance of their work to cooperate with the ICC (Dachy 2004, 323). For humanitarian groups, it is not.

Though it cannot be developed at length in this thesis, the connection to be drawn to an ethic of care extends further. Joan Tronto describes an ethic of care as emerging from what is often thought of, although never tested, as women’s morality: loosely about caring, nurturing, sustaining human relationships, and an “overriding value of peace” (Tronto 1993, 1). Fiona

Robinson admits that relations of care can and do become paternalistic, and can result in domination, oppression, injustice, and inequality (Robinson 2011, 5). An ethic of care safeguards against this possibility in that it requires the care giver to “nurture, listen, and respond with patience and attentiveness” (Robinson 2011, 6).

Humanitarianism also engages in this kind of self-reflection. Humanitarian organizations such as the ICRC have moved towards Do No Harm humanitarianism and have engaged in initiatives such as the SPHERE project because of their attention to the paternalistic relationships that can arise in aid work. They actively work to mitigate the chances that they are doing harm.

While ethic of care literature sometimes advocates for an up-ending of current structures of power, humanitarianism does its best to work within them in order to maintain access to as many individuals in need of care as possible. In the current environment of contested humanitarian space and expanding IGO influence, however, continuing to push for a neutral space in which to perform acts of care could become similarly revolutionary.

### Conclusions: Humanitarian Intervention, Humanitarianism, and Implications

Humanitarian intervention, in the form in which it existed in 2011, fits squarely within a Wilsonian conception of the purpose of aid. The conception of an international community which can act as savior, and an emphasis on international peace and security (stability) and on upholding international law and pursuing justice to move towards a liberal democratic peace are all themes that belong to the Wilsonian tradition and are not compatible with the Dunantist tradition. There remains an important role for humanitarians to fulfil. I see no prospect for a liberal peace and no end to occasions in which humanitarian aid will be needed by people who find themselves in situations in which they are suffering. Linking humanitarianism to armed intervention serves to make it more difficult for humanitarian organizations to gain access to

those in need of humanitarian assistance, and more dangerous for humanitarian workers to provide care for those in need of humanitarian assistance.

## Chapter 5 - Conclusions

Humanitarian intervention can be and has been seen as an attempt to spread liberal values. Aidan Hehir suggests that, “an intervening party that declares its actions to be ‘humanitarian’ is explicitly attempting to legitimize these actions as non-partisan and moral, and hence inherently justified, rather than selfish and strategic, and hence necessarily contentious” (Hehir 2013, 16).

The ICISS in their 2001 report did not use the term humanitarian intervention (Hehir 2013, 17, 122), due to concerns raised by the humanitarian community about the militarization and politicization of a term that describes their ideally apolitical work (Hehir 2013, 17). UN General Secretary Kofi Annan in 2000, too, made a call for the preservation of the term humanitarian (Hehir 2013, 17). Cornelio Sommaruga, President of the ICRC (1987-1999), said to the UNGA in 1992, “it is dangerous to link humanitarian activities aimed at meeting the needs of victims of a conflict with political measures designed to bring about the settlement of the dispute between the parties” (Sommaruga in Lu in Hehir 2013, 17).

Gaining and maintaining access has become more difficult for the ICRC due to this perception of states and non-state parties that humanitarian NGOs are part and parcel of the humanitarian intervention project. Sarah Collinson and Mark Duffield describe this as the narrative of shrinking humanitarian space (Collinson and Duffield 2013). They suggest that the expansion of the aid industry, and the overlap in operational mandates, has, “blurred the lines between the many different types of contractors and service providers involved” (Collinson and Duffield 2013, iii). Those groups competing with humanitarian mandates can be NGOs from the Wilsonian tradition, such as human rights organizations, which are pushing for change in a specific direction and act as force multipliers, or state actors. In Afghanistan and Iraq in the early 2000s, the US military was heavily criticized for using white vans and non-military uniforms

while distributing aid (Lischer, 2007, 106) as it confused the role of military and civil society and renders all humanitarian organizations as potential political actors who are legitimate political targets (Lischer 2007, 100-101, 104).<sup>6</sup>

Consent has been increasingly difficult to secure for all international NGOs due not only to the advent of humanitarian intervention causing an overlap in jurisdiction, but also to the establishment of the ICC and the push for justice that has become a part of humanitarian intervention. When operational mandates overlap, it becomes more difficult for a humanitarian organization to convince a sovereign state that the organization does not have a political agenda, and will not act as a force multiplier by publicly advocating for particular political ends, by reporting back to an intervener, or by bearing witness against them in court (the ICRC has special status at the ICC that omits them from having to give testimony).

The ICRC has a strict policy of entering an area only with consent. The ICRC maintains their strict adherence to the requirement of consent in order to gain access to more in need populations, and to safe-guard their own people and assets. Yet, incidents of the ICRC not

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<sup>6</sup> Recent efforts to collect and aggregate data regarding violence against humanitarian workers, such as the Aid Worker Security Database, are an unreliable measure of the increasing danger faced by humanitarian workers. Violent attacks on humanitarian workers have steadily increased in absolute numbers in the last decade, but the number of humanitarian workers too, has increased. It has quadrupled in the last 25 years (Hoelscher et al. 2015, 2). The interpretation of such data is mixed regarding whether there exists a true increase in rate of violent attacks due to the “denominator issue” (Fast 2010, 369). Data was not collected or aggregated until the 1990s, and data collection initiatives have made use of media reports and other forms of reporting that use varying definitions of important concepts such as humanitarian worker and serious violent incident. The most reliable data available does, however, record a marked increase in number and rate of attacks after 2006 (Fast 2010, 377).

Fabrice Weissman suggests that this quantitative data must be supplemented with qualitative investigation. The lack of data, “does not mean... that the rise in insecurity is a myth or that the concerns expressed by aid actors are irrational... the relative stability in the victim rate since 1997 may conceal a worsening security environment compensated by better protection measures and/or the withdrawal of aid organizations from the most dangerous areas” (Weissman 2016, para 29).

receiving consent are increasing; and even when only entering with consent, an increase in violence against humanitarian workers has forced the ICRC to pull out of certain locations.

Peter Maurer, President of the ICRC (2012-Present), described to the UNSC in August 2014 that it is not only the number of combat zones that has changed, but also the social and political environment in which these combat zones exist that has contributed to the level of danger faced by humanitarian workers:

While conflicts may not necessarily be more violent than in the past, workers are more exposed. The fragmentation of armed groups — many of which have unclear command structures — the easy availability of small arms, the intertwining of a variety of motives (i.e. economic) and the outsourcing of security tasks to private military and security companies are all realities that have changed the environment in which we operate. The resurgence of religious fundamentalism and the spreading of terror and violence, fueled or aided by new and far-reaching social media, have brought new figures to the fore, and they are redrafting the rules to fit their shifting agendas.

Because of such changes, what we euphemistically call security incidents have been multiplying. Because of the risks involved, the number of organizations able, allowed or willing to work in conflict environments had shrunk dramatically over the last decade. The calls for humanitarian action were ever less likely to be answered” (UNSC 2014, 4).

Maurer blamed the increasing danger on a decreasing respect for international law amongst states and non-state actors who may not be aware of or care about their obligations; the blurring of lines between military, political, and humanitarian activities; and lack of networking with local authorities (UNSC 2014, 4).

With danger on the rise, there has been a move by certain organizations towards other “corners” of the “security triangle” of acceptance, protection, and deterrence. When acceptance cannot be acquired, organizations implement strategies of “protection (reducing vulnerability)” and, “deterrence (presenting a counter-threat)” (Stoddard, Harmer, and Haver 2006, 3). Increased danger makes a commitment to an ethic of care model that pays attention to power structures more difficult.

A shift towards the protection corner manifests as a strategy of “remote management,” resulting in the “growing physical and social detachment of many international aid personnel from the societies in which they work” (Collinson and Duffield 2013, iii). Maurer describes the UN as using a more centralized command structure, while the ICRC uses a more decentralized one that maintains in-the-field, rather than remote, management who might better be able to identify and make clear the mandate of the humanitarian organization to local authorities (UNSC 2014, 5). A shift towards the deterrence corner manifests as a strategy of “bunkerization” in which there is a “withdrawal of many international aid personnel into fortified aid compounds, secure offices and residential complexes, alongside restrictive security and travel protocols, (Collinson and Duffield 2013, iii).

These two strategies create an environment wherein local members of the organizations, or local organizations sub-contracted by the international aid provider, are put in more dangerous situations. This reduces the aid provider’s control of their supply chain and “weaken(s) strategic engagement and decision-making, undermine(s) acceptance and compromise(s) the ability to effectively report on and monitor programmes” (Collinson and Duffield 2013, iii). More importantly, this results in particular power imbalances and hierarchies within the aid community (Collinson and Duffield 2013, iii).

The humanitarian community has taken steps to mitigate these risks. The ICRC Safe Access project details four interconnected considerations that increase access and make the work of the ICRC safer for their staff, volunteers, and clients, and keep the ICRC closer to the acceptance corner of the security triangle. *Access* should be negotiated with all relevant authorities during (relatively) peaceful times so that the *perception* of the organization can be controlled and maintained (ICRC 2013, 40). The *perception* of the organization amongst

community gatekeepers should be prioritized due to its impact on *acceptance* (ICRC 2013, 41). The organization must be and appear to be neutral and impartial. Much of this work should be and is done by the National Society before the ICRC ever becomes a part of the scene (ICRC 2013, 41). The organization must be *accepted* by the community and its stakeholders to maintain a level of *security* (ICRC 2013, 42). When the organization can operate in a more secure environment, the organization can better pursue their mandate to alleviate suffering (ICRC 2013, 43). The organization does not have to pull out of the area due to violent attacks against them; volunteer numbers are higher; volunteer retention is higher; and volunteer burnout is lower. This reduces training costs for new volunteers and staff; and highly trained volunteers and staff who have knowledge of the local context are retained making the workforce overall more experienced and capable.

My analysis has shown that humanitarianism is not conceptually compatible with humanitarian intervention. Humanitarian intervention is a part of the human rights project to manage risk and maintain national security. Furthermore, the state is fundamentally unable to act in a way that is self-sacrificing or unselfish given its mandate to protect its citizens; therefore, it is not an appropriate vehicle for humanitarianism initiatives. The conflation of these two projects and the existence of political forms of “humanitarianism” – Peacebuilding, Back a Decent Winner – endangers both humanitarian workers and their clients in need of humanitarian assistance.

Michael Barnett accuses all humanitarianism of adhering to a narrative of progress and the civilizing mission he sees as inherent in the work of the humanitarian (Barnett 2011, 30-32). Barnett has identified the Liberal humanitarianism of the Post-Cold War as having a focus on human rights and root causes (Barnett 2011, 32). It is the “new humanitarianism” of

peacebuilding; the “end of history,” is being sought and humanitarian agencies are directly and willingly being used for those political ends (Barnett 2011, 31).

While I do not disagree with Barnett’s critiques of “new humanitarianism,” I do disagree that political varieties should be considered under the same conceptual umbrella as “classic,” and “do no harm” humanitarianism. Political types of humanitarianism, are a perversion of humanitarianism; they forsake the fundamental principles of the tradition and therefore, cannot be said to be a part of it.

Barnett accuses David Rieff of having a romanticized view of humanitarianism and of “attempt(ing) to redraw the boundaries of humanitarianism so that it is devoid of power and politics,” (Barnett and Weiss 2008, 10). It is specifically this brand of humanitarianism that I believe is the only humanitarianism that can exist. Even Barnett admits that while this form of humanitarianism is modest, what it can do, it does well (Barnett and Snyder 2008, 147). It exists within borders, in the cracks of the nation-state system. If not the nation-state system, it would exist in the cracks of another system. There will remain a need for the humanitarian, and there will remain individuals willing to take on the work of caring and of alleviating suffering.

Humanitarian intervention is not an option for humanitarian state action. When the “moral obligation of the more fortunate to assist the less fortunate ...that is normative in all major world religions,” (Rieff 2002, 57) is politicized, it ceases to be a project of care and becomes a project of raising standards of civilization, and of imperialism. It removes the humanity from humanitarianism.

Humanitarian intervention, furthermore, has failed in its pursuit of stability and democratic peace. I believe that David Rieff is correct in positing, “that modern (politicized) humanitarianism will cease to exist” (Rieff 2002, 27). The ways in which humanitarian

intervention is talked about in the case of Libya is consistent with Barnett's "Back a decent winner" humanitarianism; concerns for justice to maintain international peace and stability were consistently at the forefront of UNSC debates. The way in which NATO exceeded their mandate is consistent with a continued desire for "peacebuilding" humanitarianism; and the way that NATO and the UN pulled out of Libya, only for Libya to become a failed state, is consistent with the distaste Barnett identifies for the cost of a peacebuilding ventures *comme* Iraq and Afghanistan.

We witnessed the end of humanitarian intervention in the intervention in Libya. Lack of international response to Syria is evidence of that. And in this space, there may be room for a renaissance and expansion of classic/do no harm humanitarianism. In this revival of the neutral humanitarian actor, we may also see an increase in the ease with which humanitarian organizations and workers can enter the battleground where they are so needed. Humanitarianism has adapted to changing contexts to continue to alleviate suffering in the least harmful way possible and will continue to do so in the current age of intra-state conflicts and increasing global connectedness.

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