

RWANADA'S GENOCIDE AND THE THEORY OF STATE SOVEREIGNTY

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Abstract

This paper analyses the principle of state sovereignty and the role it has played in intrastate conflict since the end of the Cold War. The Rwandan genocide is used as a case study to examine the relationship between state sovereignty and human rights. The theoretical and analytical framework used in the paper is based on liberal cosmopolitanism, including the value this normative framework places on individualism. The paper argues that current debates about state sovereignty must be considered in light of a number of key developments that have occurred since Rwanda's genocide, including: current debates about the use of humanitarian military intervention, the adoption of the Responsibility to Protect doctrine, the role of the International Criminal Tribunal for Rwanda, and the role of the International Criminal Court. In order for the international community to move forward in combating future genocides and crimes against humanity, this paper concludes that it is necessary to re-evaluate the doctrine of state sovereignty.

A violation of rights in one part of the world is felt everywhere (70) Immanuel Kant

Introduction

The genocide in Rwanda acted as a significant determinant in forcing a re-evaluation of the principles of state sovereignty and non-interference. Since the Rwanda's genocide, key developments have emerged within the international community that demonstrate a shift in the classical, Westphalian understanding of state sovereignty and its impact on state behaviour. These developments have given hope to liberal cosmopolitans who argue that state borders cannot be an impediment to the protection of human rights. This paper analyses the question: how has the international community re-evaluated its responsibility towards citizens of any country, irrespective of borders, since the Rwanda's genocide, and what are the likely implications for international intervention if similar situations occur in the future?

For over three hundred years, the international community was expected to function on the basis of non-intervention (71) according to the Westphalian notion of state sovereignty and the inherent sacredness attached to national borders. (72) Even today, the principle of non-intervention remain enshrined in the Charter of the United Nations (UN)(73) which was founded after the Second World War to deal with issues of peace and security between sovereign nations (interstate), as opposed to within nations (intrastate).(74) Yet, it is widely believed that the end of the Cold War saw a significant rise in

⁷⁰ Hans Reiss, *Kant: Political Writings*, (Cambridge, Cambridge University Press, 1991), 107.

⁷¹ State sovereignty can be defined as a nation's right to apply its own law and practice over its territory.

⁷² Susan Atwood, "From Just War to Just Intervention," *New England Journal of Public Policy* 19 (2003): 58.

⁷³ J. L. Holzgrefe, "the humanitarian intervention debate," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. by J.L Holzgrefe and Robert Keohane (Cambridge: University Press, 2004), 37.

⁷⁴ This can be seen in the Charter of Chapter 1, Article 2 (4) that prohibits attacks on political independence and territorial integrity of any state, and in Chapter 1, Article 2 (7) that sharply restricts intervention.

intrastate conflict, including genocide, state failure, and crimes against humanity, which would have become more prominent than interstate conflict⁽⁷⁵⁾ Many, therefore, contends that the role of state sovereignty in the post-Cold War era can no longer be understood in its Westphalian sense, if human rights are to be upheld. The international community, however, remains divided on this issue, at both the academic and political level.

This paper will first discuss the Rwanda's genocide, which was a clear case where the international community failed to respond and presumably state sovereignty reigned. Secondly, the liberal cosmopolitan framework will be briefly outlined and used to argue for the importance of individualism, or rather the dignity of the human person, over state borders. Thirdly, four key developments since the Rwanda's genocide will be discussed, that underscore the importance of re-defining state-sovereignty: the humanitarian intervention debate, the Responsibility to Protect doctrine, the International Criminal Tribunal for Rwanda, and the International Criminal Court. Finally, this paper will briefly conclude with recommendations aimed at enhancing the role of the international community in the protection of human rights.

Background and Case Study: the Rwandan Genocide

The 1994 Rwandan genocide was the clearest case since the Holocaust where state borders trumped human rights.⁽⁷⁶⁾ The events that followed April 6th 1994 and the assassination of Rwandan President Juvenal Habyarimana and Burundian President Cyprien Ntaryamira were an extraordinary human tragedy. The assassination of these two presidents acted as the catalyst for a genocide that "caused the violent death of 800,000 people, the movement of over two million Rwandese into neighbouring countries, and the temporary displacement of well over one million people inside Rwanda."⁽⁷⁷⁾

The exact moment when the conspirators first envisioned the genocide may never be known. Some trace it back to an agreement in December 1991, where president Habyarimana set up a commission to produce a report identifying the enemy and to advise on what had to be done to defeat it militarily, in the media, and politically.⁽⁷⁸⁾ The Tutsis were defined as the enemy, along with "anyone providing any kind of assistance to the main enemy."⁽⁷⁹⁾ The report was said to have been written by Colonel Theoneste Bagosora, the mastermind behind the genocide.⁽⁸⁰⁾

The fact remains that there were many clear warning signs before the killings began. As early as October 1990, lists and addresses of Rwandan Tutsis were drawn up.⁽⁸¹⁾ Significantly, arms had been

⁷⁵ Howard Adelman, "Theory and Humanitarian Intervention," in *International Intervention Sovereignty Versus Responsibility*, ed. by Michael Keren and Donald A Sylvan (Portland: Frank Cass & Co. Ltd, 2002), 3.

⁷⁶ Samantha Power, *A Problem for Hell: America and the age of Genocide* (New York: Basic Books, 2002), 361.

⁷⁷ John Borton, "Humanitarian Aid and Effects," in *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*. Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda. 1996. Retrieved: <http://www.reliefweb.int/library/nordic/>

⁷⁸ Linda Melvern, *A People Betrayed: the Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 61.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

stockpiled in secret locations in Kigali by senior figures from the Ministry of Defense.⁽⁸²⁾ These arms were sent from China and funded by Egypt and France, and much of the Western world (through Structural Adjustment Programs).⁽⁸³⁾ From 1990 until the genocide began in April 1994, Rwanda, one of the most impoverished countries in the world, spent an estimated US \$100 million on arms,⁽⁸⁴⁾ becoming the third largest importer of weapons in Africa, behind Nigeria and Angola. ⁽⁸⁵⁾

General Romeo Dallaire, the Canadian commandant of the United Nations Assistance Mission for Rwanda force (UNAMIR), was dispatched to oversee the Arusha Peace Accords.⁽⁸⁶⁾ He was informed by a credible source of the Rwandan government in January 1994 that the rapid arming and training of local militias was taking place in preparation for the elimination of the Tutsi.⁽⁸⁷⁾ In a fax, now known as 'the Dallaire fax,' Dallaire informed the UN that he had reason to believe that a genocide was being planned, and that he was preparing an arms raid on the Hutu cache of weapons.⁽⁸⁸⁾ Dallaire was directed by the UN not to carry out the raid.⁽⁸⁹⁾ As the crisis escalated, Dallaire became aware that what was labeled as a civil war by the international community was in fact ethnic cleansing being perpetrated by the Hutu against the Tutsi.⁽⁹⁰⁾

Throughout the genocide, Dallaire continuously requested both arms raids and UN reinforcements and received neither.⁽⁹¹⁾ Perversely, thousands were killed daily, while the UN mission operating under a Chapter VI peacekeeping mandate was carried out "successfully."⁽⁹²⁾ Under this mandate, peacekeepers were required to remain neutral, avoid combat and use force only if directly threatened.⁽⁹³⁾ Dallaire sought authority for the extension of the peacekeeping mandate to include the use of force, which he believed could have prevented most of the killings.⁽⁹⁴⁾ Evidently, Dallaire did not receive this authorization from the UN.

A number of factors worked to the detriment of halting or averting the genocide. Importantly, the Somali conflict occurred a year prior, where 18 US Rangers had been brutally killed during the battle of Mogadishu in early October 2003. ⁽⁹⁵⁾ The failure of the United States to halt the conflict in Somalia

⁸² Ibid., 65-66.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid., 32

⁸⁶ The Arusha Peace Accords were set up in Arusha, Tanzania and were meant to act as a power sharing deal between the Hutus and Tutsis.

⁸⁷ Samuel Totten, Paul R. Bartrop, "D", In *Dictionary of Genocide* (Westport: Greenwood Press, 2008), 96.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² A Chapter VI mandate only authorized UNAMIR to keep the peace in Rwanda. UNAMIR was unable to use force unless it received authorization from the UN to operate under a Chapter VII mandate, which would essentially escalate the operation to a military intervention.

⁹³ *Power, Hell*, 352.

⁹⁴ Ibid.

⁹⁵ Thomas Mahnken, "The American Way of War in the Twenty-first Century," in *Democracies and small wars*, ed. by Efraim Inbar, (London: Routledge, 2003): 76.

had a direct impact on the action taken throughout the Rwanda's genocide. Rwanda was seen by the international community as another Somalia waiting to happen.⁽⁹⁶⁾

The death of 10 Belgian soldiers in Rwanda was linked to the death of the US rangers. As Power argues, the news of these deaths was taken as proof "that the UN mission in Rwanda had gone from being a Somalia waiting to happen, to a Somalia that was happening."⁽⁹⁷⁾ Consequently, the United Nations Aid Mission in Rwanda (UNAMIR) withdrew many of its peacekeepers and was scaled down to a mere 2,100 soldiers on April 19th.⁽⁹⁸⁾ Two days later, amid press reports of some 100,000 deaths, the UN Security Council (UNSC) pulled out most of the peace-keeping force, ⁽⁹⁹⁾ leaving only 503 peacekeepers in support of Dallaire and the mission.⁽¹⁰⁰⁾ It became unmistakably clear that Rwanda was not high on the international community's list of priorities. Other considerations, in addition to the blatant lack of political will, included the fact that the UN was posting 70,000 peacekeepers in 17 different missions elsewhere.⁽¹⁰¹⁾

France, although hardly neutral in the conflict, eventually intervened on June 22nd under Operation Turquoise,⁽¹⁰²⁾ but continued to maintain friendly relations with the genocidal Hutu regime and to provide financial aid throughout the genocide for weapons purchases by the genocidaires.⁽¹⁰³⁾ In any case, Operation Turquoise was too little, too late, as most of the killings had already occurred. Ironically, it was not France that stopped the genocide, but the Rwandan Patriotic Front (RPF), the Tutsi rebel force led by Paul Kagame.⁽¹⁰⁴⁾ On July 19th, at the end of the genocide, Dallaire was commanding the same 503 soldiers as he had since late April; not a single additional UN soldier had been deployed.⁽¹⁰⁵⁾ What impeded action by the International Community?

Outside Rwanda, most state leaders found the decimation of Tutsi tolerable provided it did not encroach on narrowly defined national interests.⁽¹⁰⁶⁾ One US officer noted, "we are doing our calculations back here, and one American casualty is worth about 85,000 Rwandan dead."⁽¹⁰⁷⁾ However, the delusion that Rwanda did not amount to genocide created a nurturing, justified agenda for inaction.⁽¹⁰⁸⁾

⁹⁶ Astri Suhrke and Howard Adelman, "Early Warning and Conflict Management," in *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*. Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda. <http://www.reliefweb.int/library/nordic/book5/pb025d.html>

⁹⁷ Power, *Hell*, 332.

⁹⁸ *Ibid.*, 368.

⁹⁹ *Ibid.*, 369.

¹⁰⁰ *Ibid.*

¹⁰¹ Power, *Hell*, 341.

¹⁰² Borton, "Humanitarian."

¹⁰³ Power, *Hell*, 380.

¹⁰⁴ *Ibid.*, 380-381.

¹⁰⁵ *Ibid.*

¹⁰⁶ Allison Des Forges, "Justice and Responsibility", *Human Rights Watch*, 1999.

http://www.hrw.org/legacy/reports/1999/rwanda/Geno15-8-05.htm#P1089_339546

¹⁰⁷ Power, *Hell*, 381.

¹⁰⁸ *Ibid.*, 384.

Despite this, the fact remains that the Rwandan genocide was the most straight forward case of genocide since the Holocaust. (109) Specifically, the genocide met the terms of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and presented the international community with options for diplomatic, economic, legal, or military intervention.(110) Yet, the international community avoided labelling the conflict as genocide and instead framed it as an ethnic civil war. By framing the genocide as a domestic conflict, the international community was able to use the principle of sovereignty, enshrined in international law, to justify inaction.(111) If Rwanda had been condemned as genocide by the international community, the Genocide Convention would have demanded action.(112)

Had the international community responded prior to April 6th, the assassination of the Rwandan president, or to Dallaire's calls for reinforcements, many, perhaps most, of those who died may have survived.(113) More fundamentally, the Rwandan conflict occurred during a period when the UN was acting in an expansive, yet highly biased fashion in its operations.(114) Though Rwanda was added to the peacekeeping list in 1993, apart from France, the major powers on the UNSC were uninterested in a small Central African country that was insignificant to their economic or political concerns.(115) Further, the United States was determined not to get involved with another African conflict after Somalia.(116)

Theoretical Framework: Liberal Cosmopolitanism

The role of the international community in instances of mass atrocity is contested, particularly when non-intervention remains a legal norm. However, recently we witness a shift in the interpretation of the principle of non-intervention and a widening of the concept of international security. As Georg Sorensen argues:

"For the first time since Westphalia, great power war is highly unlikely. The current major security threats are domestic conflict in weak states, mass-casualty terrorism and unstable regional security complexes. World order is now about realizing the good life for mankind as a whole."(117)

The incidents of genocide, state failure, and mass human rights violations at the end of the Cold War has forced a shift from a narrow understanding of state security to one that encompasses newer issues. Specifically, human rights have been traditionally thought of as low politics in the bipolar Cold War era.(118)

¹⁰⁹ *Ibid.*, 361.

¹¹⁰ *Power, Hell*, 486.

¹¹¹ *Ibid.*, 359.

¹¹² *Ibid.*

¹¹³ Suhrke and Adelman, "Warning."

¹¹⁴ *Ibid.*

¹¹⁵ Linda Melvern, "The West did intervene in Rwanda, on the Wrong Side," *The Guardian*, Monday April 5, 2004

¹¹⁶ *Ibid.*

¹¹⁷ Georg Sorensen "What Kind of World Order? The International System in the New Millennium," *Cooperation and Conflict* 41, no. 4 (2006): 359.

¹¹⁸ Buzan, "Rethinking Security after the Cold War," 7.

As Sikkink states, the rise of human rights as an international issue in the latter half of the 20th century presents a challenge for international relations theorists.⁽¹¹⁹⁾ Classical theories in international relations do not provide the tools to understand the emergence of human rights as a crucial international issue, nor the impact of human rights ideas and policies upon the state⁽¹²⁰⁾. The classical theories, such as realism, rational choice, and economic group interest theories, have difficulty recognizing the rise of human rights politics, except to dismiss them as insignificant or a political tool to pursue state interest.⁽¹²¹⁾

Liberal cosmopolitanism has evolved as a theoretical framework in international relations and can be traced back to the German Enlightenment philosopher Immanuel Kant. Liberal cosmopolitanism is an alternative to the dominant international relations theories; it aims to contend with global ethics. The theory deals directly with the universality of human rights, defined in the UN Universal Declaration of Human Rights and the contradictory claims of the sovereignty principle stated in the UN Charter.⁽¹²²⁾ Human rights issues offer significant challenges to a system of sovereign states. ⁽¹²³⁾ Thus, liberal cosmopolitanism looks to encompass international human rights norms that question national sovereignty and state rule over society.

Individualism and State Sovereignty

According to Charles Beitz, two essential elements of liberal cosmopolitanism are inclusiveness and impartiality.⁽¹²⁴⁾ Fabre includes individualism, egalitarianism, and universality.⁽¹²⁵⁾ It is understood that "all human beings, regardless of their political affiliation, do (or at least can) belong to a single community, and that this community should be cultivated."⁽¹²⁶⁾ As Held suggests, liberal cosmopolitanism is concerned with "the ethical, cultural, and legal basis of political order in a world where political communities and states matter, but not only and exclusively."⁽¹²⁷⁾

The crux of this normative framework is the moral concern for individuals, as opposed to communities or states,⁽¹²⁸⁾ with each person regarded as equally worthy of respect and

¹¹⁹ Sikkink, "Transnational," 517.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Daniele Archibugi, *Cosmopolitan Guidelines for Humanitarian Intervention, Alternatives. Global Local, Political* 29, no.1 (2004): 8.

¹²³ Sikkink, "Transnational," 517.

¹²⁴ Brian Barry, "International Society from a Cosmopolitan Perspective," in *International Society: Diverse Ethical Perspectives*, ed. by D. R. Mapel and T. Nardin (Princeton: Princeton University Press, 1998), 144.

¹²⁵ Cecile Fabre, *Cosmopolitanism, Just War theory and legitimate authority, International Affairs* 84, no. 5 (2008): 965.

¹²⁶ Kleingeld & Brown, "Cosmopolitanism" *Stanford Encyclopedia of Philosophy*. Stanford University, 2006, par 1. <http://plato.stanford.edu/entries/cosmopolitanism/>

¹²⁷ David Held, "Principles of Cosmopolitan order," In *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005), 10.

¹²⁸ William Smith, "Anticipating a Cosmopolitan Future: The Case of Humanitarian Military Intervention," *International Politics*, 44 (2007): 74.

consideration.⁽¹²⁹⁾ Liberal cosmopolitanism is increasingly concerned with its normative obligations to human rights and global governance, where each person should be guaranteed basic human rights irrespective of race, ethnicity, nationality, religion, and gender.⁽¹³⁰⁾ Each person is said to live in a local community to which they are born, and in a wider community of human ideals, aspirations, and arguments.⁽¹³¹⁾

A set of universal principles in liberal cosmopolitanism can be applied as a basis for upholding each person's protection and equality.⁽¹³²⁾ These principles include: dignity and equal worth; active agency; personal responsibility and accountability; consent; collective decision making about public matters through voting procedures; inclusiveness and subsidiary; avoidance of serious harm; and sustainability.⁽¹³³⁾ As mentioned, liberal cosmopolitanism is essentially a doctrine that is individualistic in that it focuses on how individuals fare.⁽¹³⁴⁾ This does not mean that it displaces the importance of families, communities, and countries.⁽¹³⁵⁾ However, the country is of value only to the extent that it contributes to the wellbeing of individuals.⁽¹³⁶⁾

Liberal cosmopolitanism, perhaps more clearly and forcefully than other theoretical perspectives, stresses the general and basic principle that the key purpose of states and governments is to protect the rights of their people, "rights that all persons have by virtue of personhood alone."⁽¹³⁷⁾ This principal is particularly evident in the Kantian ethical conception and justification of the state.⁽¹³⁸⁾ Based on this principle, liberal cosmopolitans tend to argue that states, which abuse the rights of civilians, undermine the very foundation of their political power; they should therefore not remain shielded by state sovereignty or international law.⁽¹³⁹⁾ Teson, for instance, considers that even sovereign states cannot limit individual freedom; each individual's autonomous freedom trumps state sovereignty.⁽¹⁴⁰⁾ Teson further legitimizes the use of force and intervention in extreme cases involving self-defence or defence of human rights, but only as a last resort.⁽¹⁴¹⁾ Whether such a use of military force, however, could be justified from a Kantian perspective, it remains highly debatable. The Kantian ethical perspective, in fact, emphasizes the importance of good example, not the use of military force.

Valls too, like Teson, argues that individuals have a moral worth that should be respected and protected.⁽¹⁴²⁾ Nation states only have value if they maintain citizens' moral interests and existence;

¹²⁹ Held, "Cosmopolitan," 12.

¹³⁰ Smith, "Cosmopolitan," 74.

¹³¹ Held, "Cosmopolitanism," 10.

¹³² *Ibid.*, 12.

¹³³ *Ibid.*

¹³⁴ Barry, "Cosmopolitanism," 153.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ Fernando Teson, "The Liberal Case for Humanitarian Intervention," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J.L Holzgrefe and Robert Keohane (Cambridge: University Press, 2004), 93.

¹³⁸ *Ibid.*, 96.

¹³⁹ *Ibid.*

¹⁴⁰ Fernando Teson, "Kantian International Liberalism," in *International Society*, ed. David R. Mapel and Terry Nardin (Princeton University Press, 1998), 108.

¹⁴¹ *Ibid.*, 112.

¹⁴² Andrew Valls, *Ethics in International affairs: theories and cases* (Rowman & Littlefield Publishers: 2000): 121-122.

political regimes cannot have immunity when their citizens' wellbeing is not respected.⁽¹⁴³⁾ In other words, sovereignty depends on state behaviour.⁽¹⁴⁴⁾ What is more, the very concept of state sovereignty and national borders rests on the assumption that a social contract exists.⁽¹⁴⁵⁾ In other words, if social standing is not maintained by the state, its political and normative legitimacy is undermined.⁽¹⁴⁶⁾

Social Contract Theory

A contemporary account of the social contract theory is offered by Rawls, though the theory can be traced back to historical works of liberal philosophers such as Rousseau and Kant.⁽¹⁴⁷⁾ Rawls overtly points out in *Law of Peoples*, that there is a significant distinction between peoples and states⁽¹⁴⁸⁾ "just peoples are fully prepared to grant the very same proper respect and recognition to other peoples as equals."⁽¹⁴⁹⁾ Rawls overtly challenges the classical notion of sovereignty by identifying peoples rather than states.⁽¹⁵⁰⁾ Furthermore, Rawls argues that "we must reformulate the powers of sovereignty in light of a reasonable Law of Peoples and deny to states the traditional rights of war and to unrestricted internal autonomy."⁽¹⁵¹⁾

Developments since Rwanda: putting theory into practice

Humanitarian Intervention⁽¹⁵²⁾

As mentioned, the question of how to respond to situations of mass atrocity remains contested. Many scholars and policymakers would argue that humanitarian military intervention is a plausible option in halting or averting injustices. The argument rests that where situations are morally abhorrent, humanitarian military intervention is at least morally permissible to end or halt such situations.⁽¹⁵³⁾ Liberal cosmopolitans value the sanctity of national borders, but they argue that the absolutist notion of sovereignty developed by traditional realists, such as Hobbes, no longer holds such value in the modern era.⁽¹⁵⁴⁾ The value of national borders and sovereignty is a problematic concept unless it is understood as acquiescent to human ends.⁽¹⁵⁵⁾ If injustice occurs within state borders, the state's moral strength

¹⁴³ Tom Farer, "Roundtable: Humanitarian Intervention after 9/11," *International Relations* 9 (2005): 212.

¹⁴⁴ Samantha Power, forward to *Responsibility to Protect: the Global Moral Compact for the 21st Century*, ed. Richard H. Cooper and Juliette Voinov Kholer (New York: Palgrave Macmillan, 2008), vii.

¹⁴⁵ Teson, "Liberal," 93.

¹⁴⁶ Ibid.

¹⁴⁷ Grace Roosevelt, "Rousseau versus Rawls on International Relations," *European Journal on Political Theory* 5, no. 3 (2006): 302.

¹⁴⁸ Ibid., 303.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² This section was researched and constructed simultaneously with another paper, submitted on April 20, 2009 at York University.

¹⁵³ Teson, "Liberal," 96-97.

¹⁵⁴ Ibid., 137.

¹⁵⁵ Ibid., 120.

erodes.⁽¹⁵⁶⁾ Thus, sovereign states must earn the right to be left alone.⁽¹⁵⁷⁾ Hence, the violation of human rights is a betrayal of the sovereignty principle itself.⁽¹⁵⁸⁾

Situations of gross human rights violations include war crimes, ethnic cleansing, crimes against humanity, genocide, mass murder, widespread torture and state failure.⁽¹⁵⁹⁾ Respecting a state's sovereignty in such a situation is to be complicit in human rights violations to the most severe degree.⁽¹⁶⁰⁾ If individuals are denied their basic rights, "and are, for that reason, deprived of their capacity to pursue their autonomous projects, then others have a prima facie duty to help them."⁽¹⁶¹⁾

According to Smith, the liberal cosmopolitan's historical association to Kantian-inspired notions of 'perpetual peace' have encouraged many theorists to defend humanitarian military intervention on cosmopolitan grounds.⁽¹⁶²⁾ As such, liberal cosmopolitans believe that protecting human rights sometimes necessitates violating the principle of non-intervention in the affairs of formally sovereign states, thus violating international law.⁽¹⁶³⁾ Moreover, they support the idea that the classical interpretation of the norm of non-intervention appears to be on the decline, "welcoming the increasing saliency of humanitarian concerns as a legitimate basis for carrying out interventions."⁽¹⁶⁴⁾ However, humanitarian military intervention must be strictly limited to justifiable circumstances.

Justifiable Humanitarian Military Intervention

The use of force for humanitarian purposes rests on several conditions and assumptions for liberal cosmopolitans. Firstly, a moral will must exist within the international community to justify an intervention. The actor carrying out the military intervention, whether it is an individual country, a regional organization (NATO), or the UN, must be willing to sacrifice resources, including soldiers, to protect human beings everywhere, irrespective of borders.

It is necessary to note, secondly, that in certain instances, humanitarian military interventions can be falsely justified. These instances can blur the distinction between legitimate cases of military intervention and those that are pursued to fulfill less worthy foreign policy objectives. In theory, humanitarian military intervention is about a higher moral purpose. In practice, however, the politicization of humanitarian interventions is common and cannot be ignored.⁽¹⁶⁵⁾ For example, it has been argued that the interventions carried out since the 1990's under the 'humanitarian' label have been anything but humanitarian. These interventions have been selected according to the interveners'

¹⁵⁶ Ibid., 94.

¹⁵⁷ Samantha Power, forward to *Responsibility to Protect: the Global Moral Compact for the 21st Century*, ed. Richard H. Cooper and Juliette Voinov Kholer (New York: Palgrave Macmillan, 2008), xi.

¹⁵⁸ Ibid.

¹⁵⁹ Teson, "Liberal," 94-95.

¹⁶⁰ Aidan Hehir, *Humanitarian Intervention after Kosovo: Iraq, Darfur, and the Record of Global Civil Society* (Palgrave MacMillan: Hampshire, 2008), 4.

¹⁶¹ Teson, "Liberal," 97.

¹⁶² Smith, "Anticipating," 74.

¹⁶³ Ibid. 75.

¹⁶⁴ Ibid.

¹⁶⁵ Seybolt, *Success*, 6.

geopolitical interests, and rarely, if ever, mainly according to humanitarian or moral reasons. However, for the purposes of this essay, false legitimizations are not discussed. Rather, the focus is on humanitarian military interventions that are clearly justified on moral and cosmopolitan grounds.

Humanitarian military intervention is justified when it is in response to acts “that shock the moral conscience of mankind.”⁽¹⁶⁶⁾ Though some states may grapple with military intervention for purely altruistic reasons,⁽¹⁶⁷⁾ most liberal cosmopolitans agree that if military responses are to be justified, they should rely on the concept of just war and should remain strictly limited to suitable cases.⁽¹⁶⁸⁾

Just War Theory

The just war theory can be traced back, at least, sixteen centuries ago to Saint Augustine (354-430 c.e.), Thomas Aquinas (1225-1274 c.e.) and more recent writers such as Grotius (1583-1645) and Pufendorf. ⁽¹⁶⁹⁾ Its history may also be traced through the emergence of international law.⁽¹⁷⁰⁾

Liberal cosmopolitans rely on the just war theory and its acceptable conducts of war, known as *jus in bello*, as criterion for a just and legitimate use of military force.⁽¹⁷¹⁾ The theory’s criteria include: just cause, right intention, proportionality, right authority, last resort, and a reasonable prospect of success.⁽¹⁷²⁾ The International Commission on Intervention and State Sovereignty (ICISS), which developed the Responsibility to Protect (seen as the modern version of the just war theory among liberal cosmopolitans), endorses all the above six criteria.⁽¹⁷³⁾ The principles of the just war theory are suitable as a political and moral framework for analyzing the legitimacy of humanitarian military intervention.⁽¹⁷⁴⁾ However, as discussed below, the just war theory acts only as a framework and is not legally binding.

The UN Security Council (UNSC), with the concurrence of five permanent members, must authorize the intervening party under a Chapter 1, Article 2 (7) mandate. This authorization legally allows the intervener to use military force outside of its borders for humanitarian purposes. However, much criticism is directed towards the power of the five permanent members, where any single member can veto a resolution. Ultimately, many humanitarian situations and their outcome rest in the hands of the five permanent members of the UNSC, who no doubt bring various interests and motivations to the table.

¹⁶⁶ Michael Walzer, *Just and unjust wars: a moral argument with historical illustrations* (Basic Books: New York, 2000), 108.

¹⁶⁷ Archibugi, “Cosmopolitan Guidelines,” 2.

¹⁶⁸ Seybolt, *Success*, 6.

¹⁶⁹ Michael Walzer, “The Triumph of Just War Theory (and the Dangers of Success),” *Social Research* 69 (2002): 927.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*, 931.

¹⁷² Seybolt, *Success*, 13

¹⁷³ International Commission on State Sovereignty, “The Responsibility to Protect,” *International Development Research Centre*, 4 (2001): 32. www.iciss-ciise.gc.ca.

¹⁷⁴ Seybolt, *Success*, 14.

Thus, the use of humanitarian military intervention goes to the heart of the legal matters of the sovereign state and remains strongly disputed. This debate became particularly relevant in 1999 after NATO intervened by force in Kosovo without UNSC authorization. It was this case that made clear, in the minds of liberal cosmopolitans, that human security trumped state sovereignty.⁽¹⁷⁵⁾ However, this unauthorized humanitarian military intervention brought about many questions in the foreign policy community about whether human rights and humanitarian concern could ever be a legitimate cause of war.⁽¹⁷⁶⁾

For many liberal cosmopolitans, even in cases unauthorized by the international community, humanitarian military interventions can be justified. Most liberal cosmopolitans agree that individual human rights have greater fundamental value than state sovereignty.⁽¹⁷⁷⁾ Acts that violate widely supported legal norms should not be tolerated simply because the UN Charter does not explicitly provide for military action in certain circumstances. From this point of view, requirement for UNSC authorization of humanitarian military interventions could, in fact, become an obstacle to protecting human rights, where veto power is dominant and powerful member states can choose to act in favour of domestic interests, instead of alleviating mass atrocities in other countries. These liberal cosmopolitans portray the Kosovo case as evidence of the wide gap that exists between what international law upholds and what morality requires.⁽¹⁷⁸⁾ They contend that, since Kosovo, there has been a growing acknowledgment of this gap. They also describe the Kosovo case as a landmark in the development and modernization of international law. In their view, NATO's "illegal" humanitarian military intervention was undertaken not only in response to a humanitarian and moral emergency, but also with the purpose of shaping a more modern and, "morally progressive rule of international law, according to which humanitarian military intervention without Security Council authorization is sometimes permissible."⁽¹⁷⁹⁾ Moreover, they claim that, in the Kosovo case, humanitarian military intervention was initiated to make a moral improvement in the international legal system and to protect human rights.⁽¹⁸⁰⁾ Prior to Kosovo, a proper legal framework addressing modern humanitarian emergencies did not exist, according to these liberal cosmopolitans. Yet, as we mentioned earlier, the Kosovo operation raised many questions, which cannot be ignored: questions of facts and questions of principles. As to facts, was NATO's intervention in Kosovo mainly a humanitarian operation or a most traditional, one could say "Westphalian", form of power-politics, meant to give NATO a strategic advantage in the Balkans? And if the principle of unauthorized humanitarian intervention is recognized and granted legal status, what restraints are there left to the legal interference by Great Powers in the affairs of weaker countries? On the other hand, as former UN Secretary-General Kofi Annan stated at the UN Millennium Assembly in 2000, "If humanitarian intervention is, indeed, an unacceptable assault

¹⁷⁵ Allen Buchanan, "Reforming the international law of humanitarian intervention," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. by J.L Holzgrefe and Robert Keohane (Cambridge: University Press, 2004), 132.

¹⁷⁶ Seybolt, *Success*, 13.

¹⁷⁷ *Ibid.*, 13.

¹⁷⁸ Buchanan, "Reforming," 131.

¹⁷⁹ *Ibid.*, 132.

¹⁸⁰ *Ibid.*

on sovereignty, how should we respond to another Rwanda, a Srebrenica, to gross and systemic violations of human rights that affect every precept of our common humanity?"(181)

Responsibility to Protect

The government of Canada established the International Commission on Intervention and State Sovereignty to respond to this question and formed the Responsibility to Protect doctrine in December of 2001.(182) Responding directly to the concerns of liberal cosmopolitans,(183) the International Commission on Intervention and State Sovereignty developed a new policy and legal framework based on the just war theory outlined above.(184) The Responsibility to Protect was a breakthrough for liberal cosmopolitans and pro-interventionists, and talked not of a right to intervene but of a responsibility to protect individuals,(185) reconceptualising the issue around the victims of the conflict instead of those wielding power.(186)

The Responsibility to Protect questions the sovereignty principle of the UN Charter, and instead outlines the duty of the state to protect the lives and livelihoods of its civilians.(187) If that duty is not upheld, the international community has not only a right but a duty to act, which may include the use of military force as a last resort.(188) The International Commission on Intervention and State Sovereignty supports the notion that there are cases where international security requires states to react, particularly in circumstances that involve the threat of genocide, ethnic cleansing, or other human rights violations.(189) The International Commission on Intervention and State Sovereignty states that:

"State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself....Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect."(190)

The Responsibility to Protect goes further in addressing the international community's responsibility to prevent, react, and rebuild.(191) The most important conclusion of the report is the principle that sovereignty implies a duty, as do most rights.(192) The report has been widely accepted.

¹⁸¹ Human Rights Centre, "The Responsibility to Protect: Moving the Campaign Forward," *University of California*, October 2007, 2. <http://hrc.berkeley.edu/pdfs/R2P-Final-Report.pdf>

¹⁸² Hehir, *Kosovo*, 49.

¹⁸³ Neil MacFarlane, Carolin Thielkling, and Thomas Weiss, "The Responsibility to Protect: is anyone interested in humanitarian intervention," *Third World Quarterly* 25 (2004): 981.

¹⁸⁴ Atwood, "Just," 60.

¹⁸⁵ ICISS, "Responsibility," 11.

¹⁸⁶ Human Rights Centre, "Responsibility," 2.

¹⁸⁷ Seybolt, *Success*, 2.

¹⁸⁸ *Ibid.*

¹⁸⁹ Seybolt, *Success*, 49.

¹⁹⁰ ICISS, "Responsibility," XI.

¹⁹¹ *Ibid.*

¹⁹² Ian Williams, "Righting the Wrongs of Past Interventions: A Review of the International Commission on Intervention and State Sovereignty," *The International Journal of Human Rights*, 6 (2002): 107.

Specifically, at the 2005 World Summit, 192 member states affirmed the Responsibility to Protect.⁽¹⁹³⁾ However, the doctrine has yet to be seriously tested, as some of the largest countries, including the United States, Russia, China, and India, refused to endorse this document.

iii. Duties of Justice: the International Criminal Tribunal for Rwanda and the International Criminal Court

As Brock and Brighthouse suggest, liberal cosmopolitanism entails a thesis about identity and a thesis about responsibility.⁽¹⁹⁴⁾ The latter suggests that contrary to a parochial morality of loyalty, liberal cosmopolitanism highlights the obligations to those we do not know.⁽¹⁹⁵⁾ The central claim of liberal cosmopolitanism is that duties of justice are owed to all the persons of the world.⁽¹⁹⁶⁾ This notion has profound implications for the arrangement and power of sovereign states.⁽¹⁹⁷⁾ As Moellendorf suggests, duties of justice require action, not merely non-interference.⁽¹⁹⁸⁾ In other words, "a proper response to the violation of important liberties requires restraining and perhaps even prosecuting and punishing the violator."⁽¹⁹⁹⁾

Justice refers to the enforcement of rights, laws and norms aimed at holding perpetrators accountable and ending impunity. Duties of justice hold that all persons should be granted justice.⁽²⁰⁰⁾ The ultimate aim for liberal cosmopolitanism is to achieve a more just and humane international order where human rights norms are an integral part of the system.⁽²⁰¹⁾

In November 1994, the UN Security Council established an ad hoc tribunal in Arusha, Tanzania to prosecute Rwanda's perpetrators, known as the International Criminal Tribunal for Rwanda (ICTR). Similar tribunals have also been established for the former Yugoslavia, Sierra Leone, and more recently Cambodia.⁽²⁰²⁾ Remarkably, these ad hoc tribunals, including the one on Rwanda,⁽²⁰³⁾ were set up under the jurisdiction of the UNSC, thanks to a very broad interpretation of the concept of international security and the UN Charter's provisions.⁽²⁰⁴⁾ The creation of these tribunals, notably the one on

¹⁹³ Human Rights Centre, "Responsibility," 3.

¹⁹⁴ Gillian Brock and Barry Brighthouse, *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005), 2.

¹⁹⁵ Ibid. 3

¹⁹⁶ Darrel Moellendorf, "Persons' interests, states' duties, and global governance," in *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005), 148.

¹⁹⁷ Ibid.

¹⁹⁸ Ibid., 149.

¹⁹⁹ Ibid.

²⁰⁰ Charles Beitz, Social and Cosmopolitan Liberalism, *International Affairs* 75, no.3 (1999): 515.

²⁰¹ Andrea Birdsall, "Creating a More 'Just' Order The Ad Hoc International War Crimes Tribunal for the Former Yugoslavia," *Cooperation and Conflict* 42, no.4 (2007): 399.

²⁰² Des Forges, "Justice."

²⁰³ Des Forges, "Justice."

²⁰⁴ The ICTR was established under a UN Article 2(7) mandate, which, as mentioned, means the overriding of state sovereignty.

Rwanda,(205) demonstrates that here the primary emphasis was not placed on state interests, but on the protection of human rights and the interests of humanity as a whole. (206)

The Genocide Convention was enforced for the first time on September 2nd, 1998, almost fifty years after its ratification in 1951.(207) Though the Nuremberg Trials had been set up to try war criminals after the Second World War, the definition of genocide had not yet received consensus and was therefore excluded from the Nuremberg verdicts.(208) Since then, the International Criminal Tribunal for Rwanda issued the world's first conviction for the crime of genocide. (209) Before the tribunal, Jean-Paul Akayesu was found guilty of genocide and crimes against humanity. The International Criminal Tribunal for Rwanda has tried 70 individuals as of 2008, including several high ranking officials of the Hutu government, among them Bagosora, the mastermind behind the genocide, the prime minister, the leader of Radio Mille Collines, and the leaders of various militias.(210) The International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia both signified that impunity would not be tolerated by the international community.(211) However, because the tribunals were ad hoc and established to try crimes committed only within a specific time frame and during a specific conflict, a more permanent criminal court became necessary.

A permanent institution that would try individuals and state perpetrators was developed. The Rome Statute, the statute establishing the International Criminal Court (ICC), was signed by 120 countries in 1998.(212) The International Criminal Court entered into force when the Rome Statute was ratified on July 1, 2002 by 60 countries. (213)The International Criminal Court became the first permanent, treaty based, international criminal court to try perpetrators of the most serious crimes of concern to the international community, such as the crime of genocide.(214)

The criminal, ad hoc tribunals and the International Criminal Court not only act as formal courts of law, but as deterrence to those who believe they are immune to international law and have free reign to kill as they please. This has been most recently proved by the International Criminal Court's arrest warrant of Omar Al-Bashir, the president of Sudan. In addition, Canada completed its first war crimes trial on May 22nd, 2009, convicting a Rwandan man of genocide, crimes against humanity, and war crimes carried out during the Rwandan genocide.(215) This is an unprecedented event for Canada, demonstrating that justice transcends state borders.

²⁰⁵ Birdsall, "ad hoc," 399.

²⁰⁶ Ibid., 405.

²⁰⁷ Power, *Hell*, 486.

²⁰⁸ Ibid., 479.

²⁰⁹ Ibid., 485.

²¹⁰ Ibid., 492.

²¹¹ The International Criminal Tribunal for the former Yugoslavia was established in 1993.

²¹² International Criminal Court, "About the Court," Retrieved: <http://www.icc-cpi.int/Menus/ICC/About+the+Court/>

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Les Perreux, "Munyaneza becomes Canada's first convicted war criminal," *The Globe and Mail*, 22 May 2009. <http://www.theglobeandmail.com/news/national/munyaneza-becomes-canadas-first-convicted-war-criminal/article1148631/>.

The establishment of the ad hoc tribunals and the International Criminal Court have proven to be a significant step forward in international justice. They have allowed the claims of survivors, journalists, and refugees to be heard and verified.”(216) As was true for war criminals during the Nuremberg Trials, the perpetrators of genocide are now being forced to appear before a court of law, where the claims of genocidaires including Serbia’s Slobodan Milosevic and Rwanda’s Theoneste Bagosora, can be formally challenged.(217) Moreover, perhaps most remarkably, state sovereignty no longer shields a perpetrator of genocide from military intervention or courtroom punishment.(218) The duties of justice that have been established and implemented by the international community suggest that individual justice is being taken increasingly seriously over principles of order, such as sovereignty.(219) What’s more, guilty perpetrators are being punished and debilitated, deterring future genocide.(220)

Re-defining sovereignty

Throughout the Rwanda’s genocide, international leaders sat idly by with full knowledge that crimes against humanity and genocide were taking place on a large scale. Inaction by the international community was defended, “on the grounds that state sovereignty trumped the international community’s responsibility to protect the victims.”(221) U.N. Secretary-General Boutros-Ghali admitted that the international community had failed the people of Rwanda by not halting the genocide; Bill Clinton, the archbishop of Canterbury, and the pope conceded.(222)

It is only recently that the international community has come to recognize that there is a role for morality in the international system and the foreign policy of every country.(223) It became evident with the establishment of the International Criminal Tribunal for Rwanda and the creation of the permanent International Criminal Court that the international community would take measures against individuals committing genocide and crimes against humanity.(224) As Gareth Evans, the co-chair of the Responsibility to Protect, and President and CEO of the International Crisis Group states “it is important to recognize not only how far we have yet to go [...] but how far we have actually come.”(225)

If the international community is committed to human rights norms, then it must establish a new way of theorizing and discussing state sovereignty. The theory of sovereignty should not be understood mostly as state control or state rule over society, as perhaps in the classical Westphalian

²¹⁶ Power, *Hell*, 500-501.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Birdsall, “Ad Hoc,” 397.

²²⁰ Power, *Hell*, 480.

²²¹ Des Forges, “Justice.”

²²² Ibid.

²²³ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington: Brookings Institution Press, 2008), 27.

²²⁴ Ibid., 17.

²²⁵ Ibid., 15.

sense, but mainly as state responsibility to its people.⁽²²⁶⁾ The rise of alternative theories in international relations, such as liberal cosmopolitanism, support this discourse. What's more, civilians and state leaders are not only more aware of international human rights violations, but are becoming increasingly critical of insufficient responses by governments.⁽²²⁷⁾

Sovereignty and human rights must not be mutually exclusive. National sovereignty can exist and be respected, on the condition that it promotes human wellbeing. Though states continue to be important actors in the international system, their actions should not be seen as guided by self-interest in an anarchical system, but as actions of members of an international society of states and non-state actors.⁽²²⁸⁾

Another issue that requires attention is that states remain mostly reactive towards genocide and human rights violations. If human rights are to be influential in foreign policy formulation, then the international community must first further re-evaluate the principle of state sovereignty and re-define its meaning, and second, establish a proactive and effective policy towards genocide prevention. This can involve democratic building, and policies of deterrence and pre-emption. This further necessitates a policy of targeted and effective sanctions involving political, legal, economic, and military measures.⁽²²⁹⁾

Generating the political will among state leaders will continue to be the most difficult hurdle in combating genocide and human rights violations.⁽²³⁰⁾ However, as Fernando Teson appropriately states: "rescuing others will always be onerous, but if we forego by law our right to do so, we deny not only the centrality of justice in political affairs, but also the common humanity that binds us all."⁽²³¹⁾

The increase in intrastate conflict requires the international community to implement these recommendations (among others) if it wishes to effectively respond to violations of human rights. Since these recommendations are cosmopolitan in nature, they will likely be dismissed by classical international relations theorists as utopian or irrelevant to state security. However, as Evans notes: "the problems of the world cannot possibly be solved by sceptics or cynics whose horizons are limited by the obvious realities. We need (wo)men who can dream of things that never were and ask, why not?"⁽²³²⁾

Conclusion

This paper has attempted to find out how, since Rwanda's genocide, the international community has re-evaluated its responsibility to protect human rights, irrespective of national borders, and what the likely implications are for international intervention if similar situations occur in the future. In attempting to answer this question, this paper has analyzed the principle of state sovereignty and its

²²⁶ Ibid., 19.

²²⁷ Kathryn Sikkink, "Transnational Politics, International Relations Theory, and Human Rights," *Political Science and Politics* 31, no. 3 (1998): 520.

²²⁸ Birdsall, "Ad hoc," 399.

²²⁹ Neal Riemer, "Scholars against Genocide," in *International Intervention Sovereignty versus Responsibility*, ed. by Michael Keren and Donald Sylvan (Portland: Frank Cass & Co. Ltd, 2002): 169.

²³⁰ Evans, *Protect*, 25.

²³¹ Teson, "Liberal," 54.

²³² Ibid.

role in intrastate conflicts. Rwanda's genocide has been used as a guide for this analysis, since it is a clear example where the classical understanding of state sovereignty ruled. Liberal cosmopolitanism was used as the theoretical and analytical framework because of the value it places on individualism. This paper argued that, since Rwanda's genocide, key cosmopolitan developments have emerged in support of a new perspective on state sovereignty. These include: the humanitarian military intervention debate, the Responsibility to Protect doctrine, the roles of the International Criminal Tribunal for Rwanda and the International Criminal Court.

In our view, the international community has made significant progress in considering human rights norms since the Rwanda's genocide. Yet, with recent world events, such as the cases of Sudan, the Democratic Republic of the Congo, Sri Lanka, and the threat of further intrastate conflict and failed states in other parts of the world, the need to re-define state sovereignty and non-interference is more urgent than ever if, in such situations, state borders and political priorities should no longer be allowed to trump human rights.

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