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The American University in Cairo
School of Global Affairs and Public Policy

**THE VIOLENCE IN OUR HUMANITY: PRINCIPLES, ACTION,
AND THE EROSION OF STATE SOVEREIGNTY**

A Thesis Submitted by
Rasheed Habib Idou
To the Department of Law

Spring 2022

**in partial fulfillment of the requirements for
the LL.M. Degree in International and Comparative Law**

The American University in Cairo
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DEDICATION

This thesis is dedicated to my siblings, Rashad, Rasha, and Rashed, of whom I could not be prouder.

I love you.

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First and foremost, I would like to express my deepest gratitude and appreciation for my research supervisor, Professor Thomas Skouteris, without whose confidence, support, guidance and patience this project would have not been possible.

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THE VIOLENCE IN OUR HUMANITY: PRINCIPLES, ACTION, AND THE
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Rasheed Habib Idou

Supervised by Professor Thomas Skouteris

ABSTRACT

The past two decades have witnessed an increasing number of armed conflicts, both inter- and intra-nationally, and an even more increasing number of multilateral military interventions without UN Security Council authorization. Central to the discussion of these interventions are the themes of humanitarianism and state sovereignty. The aim of this thesis is to investigate the relationship between humanitarian imperatives and principles of sovereignty within the context of armed conflict to better understand the tensions that have led to the current global outcomes. In so doing, it identifies how humanitarian principles, imperatives, and actions have affected the contemporary conception of state sovereignty and, subsequently, facilitated for the circumvention of the long-standing principles of sovereign equality and freedom from intervention. Equally as important, this thesis provides an accessible tracing of contextualized historical events that have led to the current state of affairs. Through a critical study of primary sources, discussions, and critiques from within the humanitarian field, legal scholarship, and political science, the research reveals how actors driven by moral principles of *humanity* have perpetuated mechanisms and systems and facilitated the creation of doctrines and legal regimes that undermine the notion of sovereignty. This thesis surveys the histories of specific humanitarian organizations and regimes and places them within their relevant geopolitical contexts. Subsequently, it pinpoints the four most pivotal moments of interaction between humanitarianism and sovereignty, and outlines how they facilitated for the militarization of humanitarianism, the legitimation of intervention, and the erosion of state sovereignty.

KEY WORDS: International Law, Sovereignty, Humanitarianism, Human Rights, Humanitarian Intervention, Responsibility to Protect

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I. Introduction

Imagine being woken up at the break of dawn as a four-year-old by a loud boom. Imagine the sound repeating over and over and your mother running into your room with a concerned look on her face. That is one of the most vivid memories I have from my childhood. It was on that day that I became aware that a part of my country, Lebanon, was occupied, and that the occupier, Israel, uses its fighter planes to bomb areas around the country or to simply break the sound barrier over Lebanese airspace as a tool of intimidation. On that day, I became aware of war.

Approximately a decade later, in 2006, war made another appearance in my life. In July 2006, Hizballah conducted an operation at the Lebanon border against an Israel Defense Forces (IDF) patrol, capturing two personnel and sparking a war. During the war of 2006, I witnessed firsthand the effects of war on civilian populations. I saw most of my neighborhood razed to the ground; I saw casualties and injured persons in the streets; I was displaced from my home; I lost several friends; and I survived a bombing by a mere few minutes. At that time, it did not make any sense to me how Israel's destroying my country's infrastructure; methodical and systematic targeting of roads, bridges, and tunnels; and displacement of thousands of civilians could be a legitimate response to a relatively small-scale operation on an IDF patrol, especially since all news outlets available to me at the time either spoke about International Humanitarian Law or carried humanitarian calls or pleas to end the war. It did not make any logical sense to my 15-year-old brain how things so seemingly well established as International Humanitarian Law and humanitarian organizations could fail, and more specifically, fail me. Years passed, and the 2006 war became a distant memory to me.

Shortly before I started my graduate studies, I took a job in the field of news media. Most of my work assignments revolved around the ongoing conflict in Syria, which began as a civil uprising in March 2011 and quickly escalated into a multipartite armed conflict. As my work covered more and more reports about the ever-complicating situation in Syria, civilian casualties, the use of internationally prohibited weapons, the displacement of millions, and the military involvement of several countries and entities, the question of legitimacy that I had in 2006, especially in light of the similar humanitarian calls and pleas, resurfaced and began to nag at me again. Hence, armed conflict seemed like the most logical jump off point for my graduate thesis. However, as many international law students, scholars, and practitioners can attest, things are never as straightforward as they seem. As I began my

research into the laws of armed conflict, I was confronted by a plethora of binaries, nuances, and thresholds to consider, far more than can be sufficiently handled in a graduate thesis, so I decided to pursue the law. However, the law did not lend itself any easier to understanding; the status of the two 1977 Protocols Additional to the Geneva Conventions of 1949, for example, remains in question. The law led me to the topic of the classification of armed conflict as a central issue in determining the relevance and applicability of the law. The different considerations, criteria, and rules that regulate international and non-international armed conflict and their nuances made that endeavor even less realistic than the one before. However, as I researched further, I found that regardless of the classification of the armed conflict, there seemed to be a binary that applied across the board, that of proportionality and necessity. This binary led me down a research tangent that revolved around the tension between state and the individual and, ultimately, to the tension between sovereignty and humanitarianism. I chose humanitarianism. More specifically, I wanted to answer the question of how has the intercourse among humanitarianism, international law, and principles relating to sovereignty contributed to the erosion of the latter? Put simply in one anti-climactic word, the answer is: incrementally.

The first obstacle in tackling topics relating to humanitarianism is the game of definitions. This is the case because humanitarianism is a disambiguation, and there are perhaps as many varied humanitarianisms as there are humans. Hence, attempting to define it in this thesis, ontologically, would be as effective as emptying out the ocean using a sieve. For the purposes of clarity, and, equally as important, brevity, this thesis will adopt the definition that humanitarianism is what humanitarians do. But given the wide array of humanitarianisms, it follows that there is as wide an array of humanitarians. What do they humanitarians aspire to do? Some humanitarians work to provide aid and relief to persons affected by natural disasters or armed conflict, while others are more concerned with transforming "the structural conditions that endanger populations." They achieve this goal by working on "development, democracy promotion, establishing the rule of law and respect for human rights, and post-conflict peace building."¹ Additionally, as Michael Barnett and Thomas G. Weiss note

For many in the contemporary age, to be a humanitarian is to respond to the suffering of others regardless of their identity, to act selflessly, to do what can be done to save lives, and to place humanity

¹ MICHAEL BARNETT & THOMAS G WEISS, HUMANITARIANISM IN QUESTION: POLITICS, POWER, ETHICS 3 (2008).

above all other considerations. Stated differently, it rebels against a world that typically orbits around interest, politics, and power and communicates through violence, destruction, and bloodshed."²

A search for commonalities among the different strands of humanitarianism and types of humanitarians can lend a helping hand in deducing a definition or, more accurately, a description of who humanitarians are. As such, surmised from the descriptions above, humanitarians can be described as principled actors drawing on existing moral and normative discourses to affect a change in the status quo. Their moral duty to act, as will be discussed in the following chapters, originates from their "humanity" and their cosmopolitan belief that "each person is of equal moral worth and a subject of moral concern."³ This description of the humanitarian, then, proposes four specific points of consideration and discussion: a status quo, principled actors, discourse, and a change.⁴ Although this definition and these points of discussion can still encompass a wide range of humanitarianisms and humanitarians, this thesis is only concerned with humanitarians responding to armed conflict or organized violence and calling for international action.

Even within these definitional parameters of humanitarianism, this study, of course, is not without limitations. Firstly, this thesis cannot, nor does it claim to, offer any insight about the psychology of humanitarianism and/or the humanitarian actor, where moral and humanitarian principles stem from, or where the impulse for action originates; Secondly, this thesis cannot provide a solution or a better alternative to address mass atrocities from a humanitarian standpoint; Thirdly, due to time and pragmatic considerations, this thesis does not and cannot account for all the systems of compliance created under and stemming from similar notions of humanitarianism; and finally, it cannot thoroughly examine all instances in which humanitarian claims have undermined state sovereignty; more specifically the principles of sovereign equality and non-intervention.

Within the previous definition of humanitarianism, and aware of its limitations, this thesis will provide a brief account of how the seemingly innocuous notion of humanitarianism came to undermine the longstanding principles relating to state sovereignty; namely sovereign equality and freedom from intervention. To do so, it will identify and focus on four specific "moments" in history in which humanitarianism and sovereignty have

² *Id* at 6.

³ *Id* at 12 and 43.

⁴ This thesis will use the word change for its dictionary definition of causing something to be different. It does not intend to imply or make any references to theories of change or progress in international law.

interacted in the manner mentioned above.⁵ It will provide a short survey of how the champions of these four moments talk about them, supplement those narratives through a more discerning and contextual revision, examine the principles and discourses at play in each of those moments, and finally, assess the impact that they have had on state sovereignty in international law. The four moments of concern for this thesis are: The founding of the ICRC, the human rights movement and the founding of Amnesty International and Medecins Sans Frontieres, post-Cold War security and development, and the post-September 11 War on Terror. Though not exhaustive, these moments, as will be demonstrated in the following chapters, were selected because they are illustrative. They are clearcut examples of how moral humanitarian principles and claims, through their interaction with international law and foreign policy, came to undermine state sovereignty. The four moments came about in opportune times as global politics were experiencing a paradigm shift and international morality was changing. The four moments were triggered by events seemingly acceptable in the past but no longer in congruence with the tastes of the time. As a result, these four moments contributed to the creation of new doctrines, practices, and regimes that have had an immense impact on global politics, international relations, and international law.

Chapter I, *Civilizing War and the Founding of the ICRC*, will discuss the founding of the International Committee of the Red Cross as the first international humanitarian organization concerned with the provision of aid and relief in armed conflict and as the cornerstone for the formalization and codification of the laws of war. Chapter II, *Humanizing War and the Humanitarian NGO*, will discuss how the precedence set by the creation of an international humanitarian organization allowed for the marriage of the language of humanitarianism and human rights and the creation of a rights-based humanitarianism. Chapter III, *Militarizing Humanitarianism*, will discuss how human rights instruments as vocabulary contributed to the redefinition of state sovereignty as a result of the notions of Humanitarian Intervention and the Responsibility to Protect. Finally, Chapter IV, *Democratizing States and Liberating Humans*, will discuss how the foreign policies and

⁵ For a more in depth analysis or critique of humanitarianism and humanitarian imperatives see Antonio Donini, *The far side: the meta functions of humanitarianism in a globalised world*, 34 *DISASTERS* S220–S237 (2010); S. Neil MacFarlane & Thomas Weiss, *Political interest and humanitarian action*, 10 *SECURITY STUDIES* 112–142 (2000); Thomas G. Weiss, *The Politics of Humanitarian Ideas*, 31 *SAGE PUBLICATIONS, LTD.* 11–23 (2000); Antonio Donini, *Through a Glass, Darkly: Empire and Humanitarianism*, in *CAPITALIZING ON CATASTROPHE : NEOLIBERAL STRATEGIES IN DISASTER RECONSTRUCTION* 29–44 (Nandini Gunewardena & Mark Schuller eds., c2008); and Roberto Belloni, *The trouble with humanitarianism*, 33 *REVIEW OF INTERNATIONAL STUDIES* 451–474 (2007).

military interventions by the United States and its allies in the aftermath of 11 September 2001 put the final nail in the coffin of state sovereignty and non-intervention.

II. Civilizing War and the Founding of the Red Cross

A. Overview

The first moment in this study of the interaction of humanitarianism and sovereignty is represented, for the purposes of this thesis, by the creation of the Red Cross. The state of affairs before the creation of the Red Cross saw the sovereign as absolute in power and in freedom of conduct. Furthermore, morally, Europe was experiencing a paradigm shift as a result of the Enlightenment and the notions of civility. The event, represented by the creation of the Red Cross, is said to have been triggered by the experience of Henri Dunant of the Battle of Solferino. Through the medium of his book, Dunant reported on scenes of pain and suffering that were inaccessible before to the European elite. Coupling his appeal to his audience's pathos with rhetoric of Christianity and civility Dunant called on European governments to restrict their own conduct vis-à-vis enemy combatants at war. As a result, the Red Cross was founded, the Laws of War were codified, and new rules of customary international law were created. Another effect, essential for the purposes of this study, was the creation of the first international humanitarian non-governmental organization with a mandate to affect state conduct and international legislation. This is as will be demonstrated throughout this thesis the first step toward undermining the principles of state sovereignty, namely sovereign equality and non-intervention. It set the precedent for moral actors to intervene in the affairs of the sovereign, though with consent, and staked the claim for humanizing armed conflict.

B. Christianity, Civility, and Henri Dunant:

Humanitarianism as it is seen and understood today owes a great deal of its existence to Henri Dunant and the founding of the Red Cross, which later became what is now known as the International Committee of the Red Cross. This moment in the history of humanitarianism formalized the conduct of war, institutionalized humanitarian action, and set the foundations for its guiding principles. The majority of literature on humanitarianism and its development claims that for centuries before the founding of the Red Cross, which later became what is now known as the ICRC, religious guidelines, historical traditions, and bilateral treaties shaped the way in which wars were waged, discriminated between "civilized" and "barbaric" behavior, and prescribed the victors' treatment of the defeated.⁶ But Henry Dunant's experience of the battle of Solferino came to change that. Dunant's humanitarian activism

⁶ MICHAEL N. BARNETT, *EMPIRE OF HUMANITY: A HISTORY OF HUMANITARIANISM* 76 (2011).

ultimately led to the founding of the ICRC and the adoption of the first Geneva Convention, which became the foundation for what later came to be known as the law of war.⁷

According to the ICRC,

What was to become the International Committee of the Red Cross met for the first time in February 1863 in Geneva, Switzerland. Among its five members was a local man named Henry Dunant who, the year before, had published a book (*A Souvenir of Solferino*) calling for improved care for wounded soldiers in wartime.⁸

And by the end of 1863, "the committee had brought together government representatives to agree on Dunant's proposal for national relief societies, to help military medical services." Shortly thereafter, the represented governments adopted the first Geneva Convention, which "obliged armies to care for wounded soldiers, whatever side they were on, and introduced a unified emblem for the medical services: a red cross on a white background."⁹

As the ICRC notes, although its role was to coordinate among the state parties at first, "it gradually became more involved in field operations, as the need for a neutral intermediary between belligerents became apparent." To ensure its neutrality, the ICRC developed seven fundamental principles to provide the "ethical, operational and institutional framework" for its work; humanity, impartiality, neutrality, independence, voluntary service, unity, and universality. This, in brief, is how the ICRC tells the story of its founding. Whether by design or not, this narrative provides very little context and background information about one of the major characters, Henry Dunant. It simply mentions his authoring of a book. However, as demonstrated below, having a better understanding of Henry Dunant's character and position reveals the ICRC and its humanitarian project in a different light.

Although the ICRC's self-described history mentions Henry Dunant and his book, it sheds very little light on the status quo before its founding and omits very significant information about Dunant's character; two very important factors for this study. Fortunately, other detailed accounts fill in the gaps and provide the required context for identifying the status quo, principles, and change that motivated Dunant's intervention. Dunant was a principled actor who drew on the preexisting discourses of Christianity, civility, and cosmopolitanism to affect the change of the status quo of the conduct of war.

Notwithstanding the fact that the criteria for who qualified as a human at the time of Dunant's intervention might have been very different to those of the modern era, the research

⁷ For an elaboration on the relationship between law and war see generally DAVID KENNEDY, *OF WAR AND LAW* (2006).

⁸ ICRC, *History of the ICRC* (Oct. 31, 2021, 8:00 AM), <https://www.icrc.org/en/document/history-icrc>.

⁹ *Id.*

shows that Dunant's moral sensibilities, based in Christian principles, were the driving force behind his intervention. His book, *A Memory of Solferino*, capitalized on the horrific imageries of war while utilizing the discourse and vernacular of Christianity and civilization to compel the Christian European states into compromising a portion of their sovereign prerogatives in the conduct of war.

In 1859, Henry Dunant, "a devotee of Christian pietist philanthropy" and "enthusiastic volunteer" who as a youth "joined a charitable society whose members visited and gave small allowances to the city's [Geneva's] poor and sick and distributed moral tracts to prisoners,"¹⁰ witnessed the battle of Solferino between French and Austro-Hungarian troops. In Solferino, Dunant witnessed the impact of war on soldiers as well as civilians. Having seen the suffering of the wounded troops from both armies who had been brought to "an improvised field hospital" in a church, he took it upon himself to do "what he could to relieve their misery."¹¹ Believing that he was "an instrument of God,"¹² Dunant set out to share his account of the Battle of Solferino, and subsequently wrote *A Memory of Solferino*.¹³

Dunant's memoir was peppered with stories of military courage and accounts of valiant "wellborn[s]"¹⁴ who were wounded in the battle, but most importantly, although it provided a narrative different to that which was popular in Europe, his account of suffering caused by war "reflected the views of the nineteenth-century bourgeoisie." Dunant's experience of the battlefield incited his "romantic imagination"¹⁵ as he wrote detailed accounts of suffering. His memoir provided a factual account that countered the tales of victory and glory and boiled war down to soldiers being "sacrificed and then abandoned to suffer until they died."¹⁶ As Barnett notes, "whole passages described churches that are turned into hospitals or morgues and hallways that become assembly lines for amputations performed without anesthesia."¹⁷ Most importantly, however, was that in his memoir, Dunant emphasized the notions of humanity and fraternity that were spread among those tending for the wounded. In one of the most sensationalist passages of his book, he recalls that the women of Castiglione:

¹⁰ JOHN F. HUTCHINSON, *CHAMPIONS OF CHARITY: WAR AND THE RISE OF THE RED CROSS* 57-59 (1996).

¹¹ *Supra* note 6 at 60.

¹² *Id* at 57, 76-79.

¹³ See generally *Supra* note 10, Chapter 4. Also see HENRY DUNANT, HENRY DUNANT & HENRY DUNANT, *A MEMORY OF SOLFERINO* (Repr ed. 1986).

¹⁴ *Supra* note 6 at 63

¹⁵ *Id* at 62.

¹⁶ *Supra* note 6 at 78.

¹⁷ *Id*

Seeing that I made no distinction between nationalities, followed my example, showing the same kindness to all these men whose origins were so different, and all of whom were foreigners to them '*Tutti fratelli*' [all are brothers] they repeated feelingly. All honor to these compassionate women, to these girls of Castiglione! Imperturbable, unwearying, unfaltering, their quiet self-sacrifice made little of fatigue and horrors and of their own devotion.¹⁸

Dunant's memoir was not intended as a mere account of the horrors of war and the suffering that it brings on soldiers and civilians all the same, it was intended as a call for action, a call for all humankind to follow in the footsteps of himself and the women of Castiglione, and hence, he proposed the formation of "relief societies" in time of "peace and quiet" so that the necessary and appropriate care could be given to those wounded in time of war. Dunant saw wars as unavoidable, and thus, those relief societies were his pragmatic solution to what he perceived to be a persisting problem.¹⁹

As Barnett notes, Dunant was not the first to sound the horn for regulating war and providing relief, However, his call met with the response that it did because it delivered "the right message at the right time."²⁰ Barnett explains that

the first push for to regulate war began in the seventeenth century and was the product of advances in military technology that made war more brutal; moral and legal discourse regarding civilized behavior (among Christians); and arguments in favor of international norms to create a stable and just order among (European) states.²¹

Dunant's calls piqued the interest of the Genevan Society of Public Utility, which in February 1863 established an exploratory committee comprising Dunant and four other deeply religious Genevan citizens, one of whom was Gustave Moynier. Moynier was a Calvinist who "believed that the Calvinist elite had a special role to play in the world" and who was driven by the possibility of charitable organizations stimulating Christian notions and civilizing the lower class.²² While the five Genevans were driven by their Christian morality, they had to confront the fact that they could achieve nothing without the blessing of states. Exercising their right to sovereignty, states were at first weary of Dunant's propositions but later yielded when they realized that this project can be used to legitimize war.²³

Subsequently, governments met to discuss Dunant's proposals. However, many of the proposals were rejected by military leaders on the basis that civilian involvement in war zones might undermine military operations and the war effort. As such, only one of Dunant's

¹⁸ *Id* at 68.

¹⁹ *Id* at 70.

²⁰ *Id* at 78.

²¹ *Id.*

²² *Id* at 79.

²³ *Id.*

proposals passed unchanged, which was the creation of "an international convention that grants special protection to the wounded and those caring for them, regardless of whether they were uniformed or civilian," the first Geneva Convention of 1864.²⁴

The Convention provided that states could voluntarily establish national Red Cross societies that were distinguished by a Swiss emblem, the red cross. As is the case with all international conventions and treaties, state participation in the first Geneva Convention was voluntary and only motivated by state interest.²⁵ Within this narrow scope of application, what is now known as international humanitarian law started, and the ICRC was founded to help develop, protect, and shape it.

The Geneva Convention and the creation of the ICRC were a monumental milestone in the history of humanitarianism in warfare. The former regulated the conduct of warfare and the latter monitored it and aided in ensuring that troops were afforded with the humanitarian treatment that the Conventions guaranteed them.²⁶ Despite the significance of the formation of the ICRC, its relationship to states has, since its inception, been a complicated one. It was concerned with one of the state's most important functions and jurisdictions, security; It was not a state institution, but it required the compliance and endorsement of states to achieve its objectives. Therefore, the ICRC strove to establish itself as an entity independent from the state through principles and symbolisms.²⁷ However, as was the trend at the time, with the militarization of society, the Red Cross societies were pulled into the state;

States increasingly treated national Red Cross societies as part of the war effort, and the Red Cross societies, desirous of being accepted by their governments, accommodated. Far from articulating and aspiring to cosmopolitanism, they developed a patriotic nationalism as they reminded citizens of their duty to help their soldiers at the front. Red Cross societies begin providing support to the troops, running blood drives, delivering food to soldiers going off to war, staffing recovery hospitals, and encouraging citizens to donate to the war effort.²⁸

While the ICRC was heavily influenced by nationalist and patriotic discourse within Europe, its outlook toward the non-European world was heavily influenced by what it had assumed to be exclusively Christian and civilized values.²⁹ Therefore, while it was optimistic about European societies' being accepting of its charitable mission, the ICRC was surprised that the

²⁴ *Id.* at 80

²⁵ *Id.* Barnett explains that reciprocity among states was a main motivator for their adopting the Geneva Convention and endorsing the involvement of the Red Cross in the war effort.

²⁶ *Id.*

²⁷ *Id.* at 81.

²⁸ *Id.*

²⁹ *Id.*

Muslim Ottoman Sultan would accept the Geneva Conventions under the stipulation of adopting the red crescent in the stead of the red cross.³⁰ After granting the Ottoman Sultan his request, the ICRC began rethinking its mission outside of Europe, expanding and establishing Red Cross societies around the world. The ICRC hoped that its growing popularity will aid it in "universalizing the laws of war and diffusing Christian notions of charity," which Moynier had hoped "would 'humanize' the 'savage peoples' by rescuing them from their 'brute instincts.'"³¹

This historical account as given makes it clear that the birth of what is now known as modern humanitarianism, international humanitarian law, and the ICRC -- the organization that is at the vanguard of Dunantist humanitarian action -- came about in a very specific historic, political, and social context that is far removed from the idealistic and romanticized,³² and framed narrative that the ICRC employs in its public relations. Dunantist humanitarianism and its first sanctioned institution were created by a European Christian bourgeoisie that saw in the "humanization" of war an opportunity to bring Christian values to the common people of Europe and to civilize those outside it. The project was further advanced with the consent of the sovereign states that also saw an opportunity in this development to legitimize their wars and supplement the war effort. Most importantly, the founding of the ICRC set the precedent for allowing civilian actors to intervene in the affairs of the state, though with its consent, in matters relating to war. Furthermore, this first act of institutionalization and formalization set the stage for the remaining three moments to be discussed in the chapters to follow.

C. Setting Principles of Humanitarian Action:

Having a longstanding tradition of humanitarian work and being accepted by states as a neutral actor, the ICRC became a beacon for humanitarianism. As such, its capacity expanded to include the codification of international humanitarian law and acting in its capacity, be it advisory or as a specialist. Vital to its popularity, acceptance, and authority was the ICRC's ability to adapt from its originally Christian values to more secular and humanitarian ones, and to separate its work from politics. Cornelio Sommaruga, President of the ICRC, in his speech to the UN General Assembly in November 1992, made this clear: 'humanitarian

³⁰ *Id* at 82

³¹ *Id*. The account above highlights several problematic aspects in the conception of modern humanitarianism and points to the stark differences between the narrative provided by the ICRC itself and that provided by outsiders researching its history. Although that is not the crux of this thesis, I would be remiss not to mention it.

³² Read sanitized.

endeavour and political action must go their separate ways if the neutrality and impartiality of humanitarian work are not to be jeopardized.³³ As a result, until the late 1990s it enjoyed the exclusive reign over defining what qualified as humanitarian action. To do so, the ICRC had to found its work in humanitarian principles that define and guide its work. The seven fundamental principles of the ICRC's work are: humanity, impartiality, neutrality, independence, voluntary service, unity, universality.³⁴ However, only four of these principles became the core of all humanitarian action that followed; humanity, impartiality, neutrality, and universality. The four principles are reflected in the work of later established institutions such as the UN Relief and Rehabilitation Administration (UNRRA 1943-47), the UN International Children's Emergency Fund (UNICEF 1946), and the UN High Commissioner for Refugees (UNHCR 1950).³⁵

The ICRC describes the principle of humanity as being, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples[;]

The principle of impartiality as its making

no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress[;]

The principle of neutrality as “not tak[ing] sides in hostilities or engag[ing] at any time in controversies of a political, racial, religious or ideological nature[;]” and the principle of universality as stemming from its being a movement “in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.”³⁶ These principles, at least in form if not content, are also reflected in the work of other humanitarian NGOs such as Médecins Sans Frontières.

The ICRC, viewed uncritically and outside the context of its founding, is a seemingly logical candidate for praise and admiration for its humanitarian work. However, its founding and founding principles based in the same religious morality that aided in bringing about

³³ David G Chandler, *The Road to Military Humanitarianism: How the Human Rights NGOs Shaped A New Humanitarian Agenda*, 23 HUMAN RIGHTS QUARTERLY 678–700 at 679 (2001).

³⁴ For further elaboration on the fundamental principles of the ICRC see Jean Pictet, *The Fundamental Principles of the Red Cross*, 19 INT. REV. RED CROSS 130–149 (1979).

³⁵ *Supra* note 33 at 680.

³⁶ Fundamental Principles of the Red Cross and Red Crescent Movement, (2016),

<https://www.icrc.org/en/document/fundamental-principles-red-cross-and-red-crescent> (last visited Oct 31, 2021).

colonialism, as demonstrated above, set the stage for the erosion of state sovereignty. The seemingly innocuous inception of the ICRC gave birth to the institution of the humanitarian non-governmental organization and formalized the intervention into the domain of the sovereign. Try as it may to reshape and represent itself as a secular organization, by sanitizing and attempting to secularize its guiding principles, the ICRC formalized them. In so doing, the ICRC created the first legal "humanitarian" regime in which actors other than the sovereign state can intervene in and during armed conflict. As the next chapter will demonstrate, the redefinition of humanitarian principles by other actors represents the second moment in this study on the road to the erosion of state sovereignty.

III. Humanizing War and the Humanitarian NGO

A. Overview

The second moment in this study is represented by the founding of Medecins Sans Frontieres. However, the infrastructure for that moment was laid earlier by champions of the human rights project. In the wake of decolonization and in a rush toward self-determination, new states championed the human rights project as part of the argument that self-determination was a human right. Furthermore, with the growing credibility and attractiveness of the human rights vernacular, the founding of Amnesty International as the human rights watchdog and primary critic of governments for human rights abuses set the precedence for openly criticizing sovereign states for what used to be considered within their domestic purview. This elevation of human rights on the international moral agenda led to the schism among Red Cross humanitarians and the cognitive dissonance that resulted in the creation of MSF. The trigger event, similar to Dunant's Solferino, for MSF was the Biafran War. Appalled by results of coordinating with an oppressive government to provide aid to civilians in need of relief saw a group of Red Cross humanitarians making the deviation from the principles of the Red Cross and choosing advocacy for victims over the provision of emergency aid. In so doing, the MSF marked the clear paradigm shift where rights trumped needs and the prevailing humanitarianism was more concerned with notions of development and good governance than with solutions to immediate problems. In short, this second moment highlights the point in history where human rights preceded humanitarian needs in the economy of international morality.

B. Liberalism, Human Rights, Amnesty International

After World War II, the relatively longstanding tradition of Dunantist humanitarianism since the founding of the Red Cross in 1864, dominated the humanitarian field. However, with the conception of liberal projects, such as the Universal Declaration on Human Rights, a new type of principled actor and humanitarian emerged. This event was born out of a disenchantment with the ICRC model which approached the sovereign with deference, to the detriment of aid and relief provision at times. Credited with pioneering this new strand, Médecins Sans Frontiere introduced what some researchers and scholars have termed as solidarist humanitarianism; humanitarianism in solidarity with those whom the humanitarian aims to serve. However, any discussion of the history and/or impact of the founding of MSF would be lacking without first the mention of the first international human rights non-governmental organization in 1961, Amnesty International.

Shortly before the end of World War II, Western states started working actively to shape international law in preparation for the end of the war. As Samuel Moyné notes

There were both British and American projects, beginning around 1941, to outline the future importance and shape of international law, which would need to be revised in order to play any role once peace came around. One American revived an already forgotten interwar proposal for an international declaration of rights[.]

And after the end of World War II and the establishment of the United Nations, this proposed bill of rights saw the light. It is what we now know as the Universal Declaration of Human Rights (UDHR). Presented as the culmination of state consensus because it was endorsed by both the Western and Eastern Blocs, the UDHR created a seemingly unproblematic set of vocabulary of rights owed to all of humanity.

During the Cold War and in the wake of decolonization, the world witnessed a barrage of new intra-national conflicts and civil strife. Rather than the earlier distinction between civilized and uncivilized states, a new binary emerged: the liberal and the non-liberal state.³⁷ Relying on the democratic peace theory, a new brand of humanitarianism led by Western liberal states, emerged and did not suffice with providing aid and relief to victims of humanitarian crises, rather it wanted to address their root causes.³⁸ To the adherents of this new strand of humanitarianism the root causes of the suffering that they aimed to alleviate were seen as the sovereign state's failure or inability to provide their citizens with the rights they were owed.

Armed with the belief that it was "possible and desirable to transform political, economic, and cultural structures so that they liberated individuals and produced peace and progress,"³⁹ this new humanitarianism made social change its goal and found in the human rights movement the means to do so. The language of this humanitarianism spread throughout liberal societies, and as a result

In 1961, British lawyer Peter Benenson was outraged when two Portuguese students were jailed just for raising a toast to freedom. He wrote an article in *The Observer* newspaper and launched a campaign that provoked an incredible response. Reprinted in newspapers across the world, his call to action sparked the idea that people everywhere can unite in solidarity for justice and freedom.⁴⁰

³⁷ See generally MARK DUFFIELD, *GLOBAL GOVERNANCE AND THE NEW WARS: THE MERGING OF DEVELOPMENT AND SECURITY* (2 ed. 2014).

³⁸ This new humanitarianism was not, in fact, new. Rather, it was a revival of the Wilsonian humanitarianism attributed to US President Woodrow Wilson.

³⁹ Michael Barnett, *Humanitarianism Transformed*, 3; *PERSPECTIVES ON POLITICS* 723–740 (2005).

⁴⁰ Amnesty International, *Who We Are*, <https://www.amnesty.org/en/who-we-are/> (last visited Mar 23, 2019).

Benenson's letter and the response it received gave birth to Amnesty International and what the latter describes as an "extraordinary social change." Since its founding, "Amnesty has grown from seeking the release of political prisoners to upholding the whole spectrum of human rights." Working in solidarity with "anyone and everyone whose freedom and dignity are under threat," Amnesty claims that its work "protects and empowers people - from abolishing the death penalty to protecting sexual and reproductive rights, and from combatting discrimination to defending refugees and migrants' rights."⁴¹

This genesis narrative has been repeated in one form or another in many historical accounts of the organization.⁴² However, not many of these accounts investigate this narrative or test how it holds up against the facts. More importantly, this narrative fails to place the birth of Amnesty International within its historical context and shed light on Benenson's character and the principles that guided his humanitarianism.

C. Human Rights, Benenson, and the Founding of Amnesty International

Although the claim that Peter Benenson wrote his appeal "The Forgotten Prisoners" in the *Observer* on 28 May 1961 is true, Amnesty International was conceived and its work started earlier. In his thoroughly investigative account and archival research, Tom Buchanan sheds a very much needed light on the early history of Amnesty International and its founder.⁴³

Born in 1921, Benenson had a mother of Russian Jewish origins and a father who was a former British military officer. He received his education at elite schools that afforded him a certain level of connection to his country's ruling elites, such as Prime Minister Harold Macmillan, for example. Before World War II broke out, Benenson took an interest in the Spanish Civil War and founded a relief committee. During the Second World War, he rescued Jewish children from Nazi Germany before joining the army, serving in military intelligence, studying law, then becoming a barrister.⁴⁴

Buchanan notes that "in the late 1950s there was an increasing interest on the British Left in the question of political imprisonment, especially under right-wing regimes in Spain,

⁴¹ *Id*

⁴² *See generally* EGON LARSEN, *A FLAME IN BARBED WIRE: THE STORY OF AMNESTY INTERNATIONAL* (1st American ed. 1979); JONATHAN POWER, *AGAINST OBLIVION: AMNESTY INTERNATIONAL'S FIGHT FOR HUMAN RIGHTS* (1981); JONATHAN POWER, *LIKE WATER ON STONE: THE STORY OF AMNESTY INTERNATIONAL* (2001); and DAVID WINNER, *PETER BENENSON: THE LAWYER WHO CAMPAIGNED FOR PRISONERS OF CONSCIENCE AND CREATED AMNESTY INTERNATIONAL (PEOPLE WHO HAVE HELPED THE WORLD)* (1991).

⁴³ Tom Buchanan, 'The Truth Will Set You Free': *The Making of Amnesty International*, 37 *JOURNAL OF CONTEMPORARY HISTORY* 575-597 (2002).

⁴⁴ *Id* at 577, 578.

Portugal, and Greece." Hence, as a member of the Labor Party, Benenson was a major player in the founding of Spanish Democrats' Defence Fund Committee, which sought free trials for opponents of the regime of Francisco Franco and provide their dependents with relief.⁴⁵ This leftist interest in political imprisonment was a political tactic aimed at embarrassing "otherwise powerful repressive regimes" that were "seeking to be identified with the West."⁴⁶ Moreover, this support bolstered the will of the internal opposition in countries such as Spain and allowed for the creation of "international solidarity in the western democracies."⁴⁷ However, Benenson was displeased with these efforts due to their being polarized as a result of the Cold War. In addition, although the United Nations had created the Universal Declaration of Human Rights in 1948, the vocabulary of human rights at the time was not yet pervasive.⁴⁸ Hence, the founding of Amnesty International came within the specific context of the Cold War, the increasing numbers of political prisoners in Eastern Bloc countries, and a non-existent human rights regime.

Most importantly, as Buchanan notes, very specific and fundamental changes in Benenson's professional and personal life were major influencers on the creation of Amnesty International. In 1960, two years after converting to Catholicism, Benenson moved to Italy to convalesce following his diagnosis with coeliac disease. His newfound religious devotion and time for reflection were major contributors to how he viewed the world and his role in it. In one of his correspondences, he wrote

[T]he quest for an outward and visible Kingdom [of God] is mistaken. . . . The attempt to construct a just society by altering the external framework is, I am sure, doomed to failure. Look on the Socialist Parties the world over, ye mighty, and despair. When each citizen is individually on the road to the Kingdom, then I believe that there will be a just society on earth without need for the intervention of Parliament. And if only a few of our leading citizens trod that path, then I believe that we would be nearer the goal than if 51% of electors voted for laws designed to promote social justice.⁴⁹

This religious devotion and want to create a "movement for spiritual transformation" drove Benenson's desire to create AI. In November 1960, having returned to London, Benenson set out to manifest the ideas and thoughts he had conceived while in Italy and to determine the form of his movement by discussing it with his friends and acquaintances. Having established contact with the *Observer*, Benenson wrote to his friend and "collaborator" Eric Baker to tell him of his plan. He wrote

⁴⁵ *Id* at 578, 579.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Quoted in *Id.*

I am working on a scheme to make this year (the anniversary of US Civil War & Emancipation of Serfs in Russia) an occasion for launching a general appeal for an Amnesty for all political prisoners everywhere. The appeal will be made on 11th November to link up with the idea of the Armistice. The *Observer* is offering its centre supplement on 12th November for the occasion, & I am finding a great deal of goodwill everywhere for the scheme. If you know of any people willing to undertake a little work on their own in this connection, I wd. [sic] be grateful. I am compiling a list of all pol. [sic] prisoners in each country for publication on Amnesty Day, and am looking for people who would undertake the responsibility of getting as much information about one or more countries, thus dividing the labour into compartments.⁵⁰

Among Benenson's friends and acquaintances was the *Observer's* David Astor, who "had a particular interest in civil liberties in former British colonies," and most importantly, Peter Archer who later became the British Solicitor-General. It was Archer's suggestion that Benenson's movement and campaign reach their conclusion on 10 December, the anniversary of the UDHR, hence establishing the first explicit connection to human rights.⁵¹ Originally, Benenson was keen on armistice as the title of his movement. After all, he was "calling for an armistice in the Cold War -- a unique worldwide opening of the prison doors for those jailed for their beliefs." However, not to antagonize the British Legion, the name armistice was dropped, and Amnesty was chosen instead.⁵² The secret behind Amnesty's success was not just that it emerged at an opportune time. Rather, it was calculated and designed as a campaign that can cultivate mass support. Amnesty staffers noted Peter Benenson's "remarkable charisma and energy in the initial phase of Amnesty's work;" he "could never stop making the revolution."⁵³ Benenson was successful because

while too eclectic in his thinking to be seen as a profound intellectual, his true genius lay in fashioning memorable (often religious) symbols and images. Thus, 1961 was not any old year - it was the anniversary of the emancipation of the serfs in Russia and the outbreak of the American Civil War. If 1861 marked the freedom of the body from bondage, 1961 would mark the freedom of the mind. For the famous Amnesty symbol, the candle in barbed wire [...] Benenson had supplied the idea of the Chinese proverb 'Better light a candle than curse the darkness' (but also insisted on the candle as a Catholic symbol). [...] many of the eye-catching ceremonies were inspired by Benenson's ideas. For instance, for the first Human Rights Day at St Martin-in-the-Fields, celebrities Cy Grant and Julie Christie were tied together and their bonds burnt through by the 'Amnesty candle', lit by the resistance heroine Odette Churchill. The candle was then burnt during a vigil, surrounded by exiled former prisoners of con- science. Under Benenson's guidance, Amnesty consistently favoured thought-

⁵⁰ Quoted in *Id* at 584-85.

⁵¹ *Supra* note 44 at 584.

⁵² *Id.*

⁵³ *Id* at 587.

provoking tableaux such as this rather than the mass protests and direct action associated with contemporary campaigns[.]⁵⁴

It was not enough for Benenson to launch his publicity campaign with the *Observer* article. Rather, he and Baker lobbied politicians and figures. In the letter they circulated, they sounded the horn about the emergence of "worrying trends in world politics."⁵⁵ In his correspondence with the British Prime Minister at the time, though affirming Amnesty's not having any links to the government, he opined that that should not get in the way of "having private understandings, or for its [the campaign's] ultimate objectives from being those of Her Majesty's Governments."⁵⁶ As Buchanan notes, "Benenson also acknowledged his 'friendly contacts' with the 'Research Information Department' of the Foreign Office prior to the launch of the appeal (presumably a reference to the Information Research Department (IRD), the anti-communist propaganda unit set up during the early stages of the Cold War)."⁵⁷ Amnesty's campaign was based around several human rights (e.g. freedom from torture, freedom of speech, and right to asylum), but freedom of religion was the most central to Benenson's vision. As Buchanan remarks, "[t]his was made explicit in *Persecution 1961* in which he [Benenson] defined Amnesty as an 'international movement to guarantee the free exchange of ideas and the free practice of religion.'⁵⁸ To Benenson, Amnesty represented a new "muscular Christianity" that mobilized "lay idealism." With time, the religious rhetoric was absorbed into "the generic concept of 'Prisoner of Conscience.'"⁵⁹

In brief, the whole purpose for the founding of Amnesty is best described in Benenson's own words

To me the whole purpose of AMNESTY (using the movement in its broadest sense) is to re-ignite a fire in the minds of men. It is to give to him who feels cut off from God a sense of belonging to something much greater than himself, of being a small part of the entire human race. If, God willing, this fire stays alight, then each one with the spark burning inside of him will use it in his own way . . . my work consists of trying to hand on the spark in many different shapes, in altered ways, to diverse people. What they do next, they must decide themselves . . . if the spark of AMNESTY has any power, it is to convince each of us that everything is in his power.⁶⁰

Amnesty set the precedents of openly criticizing sovereign states and their governments for violations of human rights. Furthermore, Amnesty's work laid the foundation for the creation

⁵⁴ *Id.*

⁵⁵ *Id.* at 588.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 591.

⁵⁹ *Id.*

⁶⁰ *Id.* at 594.

of new systems of monitoring and accounting for human rights violations, identifying states "in violation," and bringing their actions to the attention of the general public in the form of systematic reporting.⁶¹

D. The Human Rights NGO

The success and traction that Amnesty International gained contributed to the further proliferation of human rights vocabulary and discourse among and within liberal states, liberal actors, and young post-colonial states looking to emulate the West and Europe. As a result, human rights language, and indeed human rights concerns, became more commonplace in global politics and the relationship between the lack of human rights and human suffering became a strong point of discussion among humanitarians.

Born out of this period in which human rights vocabulary had become common, some members of the ICRC became disenchanted with its deferential approach to the sovereign state. Seeing the sovereign state as the cause of human suffering and a barrier to the enjoyment of human rights, which these humanitarians deemed as necessary, they became critical of state conduct and vocal in their criticism. This deviation from the traditional ICRC approach, later called *témoignage*, or bearing witness, resulted in the creation of a splinter group that was spurred on by the and famine in Biafra resulting from the armed conflict between Biafran secessionists and the Nigerian Government.⁶² This new faction found itself struggling to lend credibility to the claim of neutrality and impartiality as defined by the ICRC as its open criticism of governments and their practices and its mobilization for humanitarian action regardless of the consent of the sovereign state was seen as political.

Consequently, MSF worked on redefining the principles of its humanitarian action and justifying its introduction of bearing witness as apolitical, neutral, and impartial because it was founded in a humanitarian claim. While MSF adopted three of the seven guiding principles of the ICRC its interpretation of those principles was more complex adding onto impartiality, independence, and neutrality, MSF instituted bearing witness and transparency

⁶¹ For more on the role of monitoring and reporting as a form of assessment relating to humanitarian action, see MARK DUFFIELD, *GLOBAL GOVERNANCE AND THE NEW WARS: THE MERGING OF DEVELOPMENT AND SECURITY* 81 (2014).

⁶² DAVID CHANDLER, *FROM KOSOVO TO KABUL: HUMAN RIGHTS AND INTERNATIONAL INTERVENTION* 30 (New ed. 2006).

and accountability as new guidelines for humanitarian action. Defending its working principle of bearing witness, the MSF says

Neutrality is not synonymous with silence. Our proximity to people in distress implies a duty to raise awareness of their plight to ultimately help improve their situation. We may seek to bring attention to extreme need and suffering, when access to life-saving medical care is hindered, when are teams witness extreme acts of violence, when crises are neglected, or when the provision of aid is abused.⁶³

In so doing, MSF established the precedents for a rights-based humanitarian action, and indeed a rights-based humanitarianism, that was no longer only concerned with the provision of aid and relief to the victims of conflict but also with the behaviors of states and their compliance with what it considered to be universal principles.

By creating the space for rights-based humanitarianism MSF allowed for a more broad reexamination of humanitarian efforts and humanitarian principles. More importantly, because of its focus on alleviating the root causes of human suffering in conflict. To the rights-based humanitarian NGO the root causes of said suffering were attributed to the state's unwillingness or inability to provide their peoples with their human rights. As a result, some NGOs abstained from the provision of aid on the basis that it would unfairly privilege one party to the conflict over the other or prolong the conflict altogether. Hence,

With the new merging of politics and humanitarian action however, the provision of assistance is restricted to countries believed to be following the correct policies. Non-conforming countries may be excluded from development assistance. Impartiality means that humanitarian response should be guided by need alone, and that there should be no distinction between 'good' and 'bad' beneficiaries. Yet by subordinating humanitarian objectives to political and strategic ones, some victims are seen as more deserving than others, and impartiality is forgone. The principle of independence contradicts the coherence agenda, since many humanitarian agencies remain dependent on money from donor states. A lack of independence makes impartial action more difficult. The loss of perceived neutrality under the coherence agenda compromises humanitarian immunity and threatens access to victims. It may jeopardize the security and independence of aid personnel. As a consequence of the loss of perceived neutrality, humanitarian aid personnel may be exposed to security risks and may sometimes even be deliberately targeted because of their activities.⁶⁴

⁶³ *Id.* Although Amnesty's work to raise awareness preceded that of MSF, MSF was the first humanitarian aid organization to incorporate raising awareness into its mission.

⁶⁴ Mark Duffield, Joanna Macrae & Devon Curtis, *Editorial: Politics and Humanitarian Aid*, 25 *DISASTERS* 272 (2001).

This reconceptualization of humanitarian principles further entrenched privileging rights over needs, paving the way for a more robust advocacy and support for human rights in the form of ethical and moral argument.

E. The Universality of Human Rights and State Sovereignty

Although the Declaration of Human Rights was qualified as universal, its final form was not the result of automatic consensus but of extensive negotiations among the state representatives who drafted it.⁶⁵ These negotiations and the resulting formulations and reformulations deprived the UDHR of any substantial legal value. Rather, its final formulation, at the time, was viewed by international lawyers and jurists as a mere declaration of norms.⁶⁶ Even though human rights were included in the UN Charter, they "were reduced to embellishment - a fact that international lawyers were well positioned to understand."⁶⁷ Article 56 of the Charter, for example, made the UN Economic and Social Council the "steward" of the human rights mentioned in the former's preamble, but did not assign them any legal weight. Furthermore, one of the main criticisms of the UDHR was that it left "[T]he task of protecting the individual against the sovereign State, and the world powers in particular, has been trustingly left with the representatives of the very powers whose discretionary power is to be curtailed."⁶⁸ As a result, international lawyers dismissed the UDHR as a legally empty document.⁶⁹

However, the dawn of decolonization came and lent credence to not only the UDHR but also supplementary instruments such as the ICESCR and ICCPR. This was possible due to the United Nations' framing self-determination as a prerequisite for the enjoyment of the rights enshrined in those instruments. However, it was not until the 1970s that human rights began to take on a legal status. Dissident movements within the Soviet Union and the latter's involvement, aided by the efforts of rights NGOs, such as Amnesty International, in Chile

⁶⁵ For a detailed account of the negotiations and proceedings of the drafting of the UDHR, see William A. Schabas, *The Universal Declaration of Human Rights: the travaux préparatoires* (2013), <https://www.cambridge.org/gb/academic/subjects/law/human-rights/universal-declaration-human-rights-travaux-preparatoires?format=WX&isbn=9781107015500>.

⁶⁶ For a critical review of the history and development of human rights and international human rights law See SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* (1. Belknap Press of Harvard Univ. Press paperback ed. 2012).

⁶⁷ *Id* at 181

⁶⁸ *Id* at 189

⁶⁹ *Id* at 186

after the coup mounted by Pinochet demonstrated the possibilities that a human rights regime could allow for.

In February 1974, the Soviet Union and its allies, which normally had little use for UN human rights activities, brought charges against Chile before the UN Human Rights Commission for violations of the most fundamental provisions of the international human rights instruments for the protection of the security of the person – the prohibitions against arbitrary arrest and detention, torture, and disappearances. The charges were based largely on documentation supplied by NGOS, led by Amnesty International and the International Commission of Jurists (ICJ), which had been gathering information about conditions in Chile since shortly after the coup.⁷⁰

In its responding to the Soviet charges against Chile, the Commission set the precedent that the UN had refused to before and demanded that a sovereign state, Chile, adjust its behavior.⁷¹ It was only after the Soviet Union and some South American states employed the language of human rights to combat the liberal policies of the West that the United States saw the missed opportunity and, after the end of the Cold War, it mobilized to shape and define the legal regimes relating to human rights and their applications.⁷²

With the ICRC laying the foundation for an ecosystem of humanitarian and relief organizations, the UDHR provided the vernacular necessary for the creation of the human rights NGO. In turn, the growing influence of the human rights NGO and the converging vocabularies led to the creation of the rights-based humanitarian organization. This move toward a rights-based humanitarianism meant that humanitarianism was no longer exclusively interested in providing relief to victims of armed conflict. Rather, the rights-based organization was concerned with the conduct of states and parties to armed conflict and their human rights records. As a result, allowing the victims of armed conflict to remain without assistance for fear of supporting illiberal regimes became defensible, and suffering justifiable. Additionally, the rising influence of human rights language, norms, and organizations paved the way for the creation of legal human rights regimes that further limit the sovereign's domestic conduct. Consequently, emboldened by the momentum that the human rights movement gained, states incorporated the human rights vernacular into their foreign policy arsenal and used it as an extension of their politics. As the following chapter will demonstrate, the move toward utilizing the legal frameworks of human rights for the

⁷⁰ ABRAM CHAYES & ANTONIA HANDLER CHAYES, *NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* 254 (2009).

⁷¹ *Id.* at 255.

⁷² *Id.* at 269.

extension of politics and foreign policy created the space for the notion of militarized humanitarian intervention.

IV. Militarizing Intervention and the Responsibility to Protect

A. Overview

The third moment in this study takes place after the end of the Cold War. With communism no longer in competition, the Western liberal project went into full swing. This saw the globalization of the world economy and a focus by the United Nations and institutions on issues relating to human rights as relating to international peace and security. Furthermore, the genocide in Rwanda highlighted the horrific ends of armed conflict that could be reached when international action is not taken. Hence, the trigger event for the third moment is the conflict in Kosovo. With the results of institutional collapse and governmental failure clearly demonstrated in Kosovo after the collapse of the Soviet Union and the atrocities that were committed in its wake, the NATO undertook an illegal military operation under the guise of humanitarian intervention. Without any regard for international law or international institutions that are authorized to sanction the use of force. This marked jump from the principles of non-intervention and the legitimate uses of force would not have been possible had the language of human rights and humanitarianism not met with the success that they did after the end of the second World War. This doctrine of humanitarian intervention allowed for the militarization of humanitarian aid and gave rise to the notion of the responsibility to protect.

B. The Cold War, The Humanitarian NGO, and Development

As demonstrated in the two previous chapters, the founding of the ICRC, Amnesty, and MSF set the stage for post-Cold War humanitarianism; the ICRC set the precedent for the creation of a humanitarian non-governmental organization, Amnesty brought the language of "universal" human rights into discussion, and MSF built on that vocabulary to redefine the principles of humanitarian action, and consequently, introduce the notion of the "subsidiarity of sovereignty."⁷³ This new rights-based humanitarianism was now "concerned with long-term human rights outcomes rather than short-term humanitarian necessity."⁷⁴ This process of redefinition, of course, did not happen in a political vacuum; the *realpolitik* of the Cold War largely contributed to elevating and bolstering the status of the humanitarian NGO.

The genesis of the rights-based humanitarian movement is attributed to the varied responses of NGOs during the Biafran famine of 1968. Although famine in some instances can be the result of natural disaster the Biafran famine was the result of armed conflict; the

⁷³ DAVID CHANDLER, FROM KOSOVO TO KABUL: HUMAN RIGHTS AND INTERNATIONAL INTERVENTION 31 (2005)

⁷⁴ *Ibid* 21

Biafran independence war against the federal government of Nigeria. The Biafran famine exemplified the devastating effects of the stalemate caused by the politics of the Cold War. Biafran secessionists received no political support from the West, the East, or other African states. This was a result of all the latter's concern over destabilization caused by redrawing state borders.⁷⁵

Central to bringing the Biafran famine to international notice was the role of news and journalism. The general public, which concerned itself with human rights, was confronted with images of starved children. As journalist Frederick Forsyth remarks,

Quite suddenly, we'd touched a nerve. Nobody in this country [Britain] at that time had ever seen children looking like that. The last time the Brits had seen anything like that must have been the Belsen pictures...People who couldn't fathom the political complexities of the war could easily grasp the wrong in a picture of a child dying of starvation.⁷⁶

These horrific images led to the British government being accused of complicity in "genocide by starvation" as a result of its support for the Nigerian leadership in the form of arms shipments. Furthermore, they contributed to the creation of a narrative involving helpless and innocent victims in the third world suffering the consequences of the despotism of their governments. Working to find longer-standing solutions to the crises at hand, than emergency relief, NGOs engaged in advocacy on behalf of the victims. This move contributed to the erosion of the principles of Dunantist humanitarianism by placing them below the goal of achieving human rights and fighting against third world authoritarian regimes. Longer-standing solutions according to these NGOs required longer-term involvement. Weary of third world states and their ability to develop on their own these NGOs took it upon themselves to do the work.

Many aid agencies became dissatisfied with the limited impact of relief aid on the plight of people in the developing world. In order to address the problems of the developing world, the more radical NGOs turned to development, and argued for a long-term involvement in the South rather than short-term emergency aid.⁷⁷

The work required, according to these rights-based NGOs, involved building the capacity of the affected communities, empowering victims, and creating a civil-society that would later carry on the work.⁷⁸ Armed with the vocabulary of human rights, (i.e. ICESCR and ICCPR) and their skepticism of non-Western regimes, these NGOs could not trust their governments

⁷⁵ Cited in *Id* at 29.

⁷⁶ Cited in *Supra* note 1 at 29.

⁷⁷ *Supra* note 74 at 32.

⁷⁸ David G Chandler, *The Road to Military Humanitarianism: How the Human Rights NGOs Shaped A New Humanitarian Agenda*, 23 HUMAN RIGHTS QUARTERLY 687 (2001).

to do the work necessary for their citizens' enjoyment of their social, economic, civil, and political rights.^{79 80}

Consequently, relief NGOs shifted their efforts from providing aid to providing "means of development."

the international NGOs developed the concepts of 'capacity-building', 'empowerment' and 'civil society' as they argued the need for a long term involvement in society and a sphere of influence independent from the developing world state.⁸¹

As a result of this move toward a focus on development, Western governments found an opening, though narrow, for extending the reach of their foreign policies. They saw in development a way of safeguarding their political interests and security. As U.S. President Richard Nixon boldly stated, "the main purpose of American aid is not to help other nations but to help ourselves."⁸² Consequently,

The 1970s and 1980s saw the direct government funding of NGOs like Oxfam, Christian Aid and the Catholic Fund for Overseas Development, the integration of international humanitarian NGOs in international institutions and their growth in numbers and influence.⁸³

To ensure the efficacy of their involvements, Western states encouraged rights-based humanitarian NGOs to find and/or establish local partnerships, which allowed for the direct funding. As a result, "[t]hese Southern 'partners' allowed Western donors to create parallel structures of aid and relief distribution which further acted to undermine the already weak and under-resourced state structures" and establish new power dynamics between Southern states and their populations.⁸⁴

Nevertheless, the changes that humanitarianism experienced in the period after World War II had no effect on the legal regimes governing its relationship to state sovereignty. On the contrary, despite the growing popularity of and support for human rights and rights-based humanitarianism, in the economy of international law, sovereignty trumped humanitarian action. This can be deduced from the United Nations General Assembly Resolution on the Inadmissibility of Intervention in the Domestic Affairs of States.⁸⁵ Though not binding, the

⁷⁹ See generally International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights and [First] Optional Protocol, G.A. Res. 2200A (XXI), U.N. Doc. A/RES/2200 A (XXI) (Dec. 16, 1966).

⁸⁰ *Supra* note 79 at 689.

⁸¹ *Supra* note 74 at 33.

⁸² *Id.* at 32-33.

⁸³ *Id.*

⁸⁴ *Id.* at 34.

⁸⁵ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, G.A. Res. 2131, U.N. Doc. A/RES/20/2131 (Dec. 21, 1965).

Resolution reflected the opinions of sovereign states regarding human rights. The omission of human rights exceptions to the inadmissibility of intervention can only be understood as a clear statement of the subordination of human rights to state sovereignty. The end of the Cold War, however, ushered a period for redefining several legal regimes and relationships, most important of which to this study is the emergence of the doctrine of humanitarian intervention.

C. Post-Cold War Humanitarianism: Human Rights, International Peace and Security, and Humanitarian Intervention

As noted above, human rights did not hold any legal weight despite the proliferation of their vocabulary as a result of the work of rights-based humanitarian NGOs. It was not until the era of decolonization that human rights began to feature in international law. This was a result of the post-colonial states' framing of self-determination as a human right despite its being omitted from the UDHR, and Soviet and South American efforts in using the human rights language to combat the influence of the West, more specifically, the United States.⁸⁶ Consequently, as human rights began to gain more credence on the international stage, the United States found an opportunity to reframe its own foreign policy and shape the legal regimes that it anticipated would follow. In addition, the explosion of new states, self-determination wars, and intra-state conflicts after the dissolution of the Soviet Union compelled the United Nations, and more specifically, its Security Council to redefine threats to international peace and security. This redefinition allowed for military intervention as provided for under Chapter 7 of the U.N. Charter. Furthermore, the blurring of the lines between the law of war and human rights law resulted in the creation of what is now known as international humanitarian law, further making the language and vocabulary, though not synonymous, interchangeable. Most importantly, the NATO intervention in Kosovo and the international inaction in Rwanda resulted in the U.N and international law's having to confront the perceived failure of the Westphalian model. State sovereignty and the principle of non-intervention were seen as the culprits and accomplices in the horrific outcomes of both conflicts. This is best represented in U.N. Secretary General Kofi Annan's speech at the turn of the century on the subject of humanitarian intervention. From an international law perspective, it was the International Commission on Intervention and State Sovereignty's

⁸⁶ For a detailed and critical reading of human rights in history *see* SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* (1. Belknap Press of Harvard Univ. Press paperback ed ed. 2012).

work on humanitarian intervention that put the second-to-final nail in the coffin of sovereignty.⁸⁷

D. Decolonization, Self Determination, and Human Rights

The 1960s did not only witness the decolonization of states but also a “decolonization of international law” of sorts.⁸⁸ The United Nations’ framing of self-determination as a prerequisite to the enjoyment of human rights for the peoples of the post-colonial states fueled the human rights’ ascension to legal applicability. However, with decolonization came a new set of international problems. The young states did not have the systems, infrastructure, and funding necessary to afford their citizens their full social and economic rights. This led the United Nations to redefine threats to international peace and security as those stemming from issues relating to “underdevelopment.” As such, the United Nations refocused its efforts on development as a way of mitigating, and in some instances preempting, intrastate conflict. Previously, threats to international peace and security according to the U.N. involved conflicts between states that have international repercussions. Now, the same threats were defined as conflicts within states and among various social and political groups. In so doing, the U.N. brought intrastate conflict into the domain of the Security Council and closer to the latter’s capability of authorizing the use of force under Chapter VII.

This development-focused approach, however, did not stand the test of time. In 1998 the inability of development and humanitarian agencies and NGOs to mitigate the conflict in Kosovo left the world at a loss for what can be done within the legal and humanitarian systems and frameworks of the time to put an end to the human suffering. This, gave birth to a doctrine of humanitarian intervention championed by NATO as a “coalition of the willing.” Neither NATO nor international lawyers had any illusions about the illegality of the military interventions in Kosovo. However, by framing the issue in terms of ethical and moral imperatives, they were able to legitimize it.⁸⁹

After the fact, the international law bar found itself faced with the task of devising a legal regime that would prevent another Kosovo from happening. Hence, the International Law Commission on State Sovereignty and Intervention was established to examine the law and codify a form of legal interventions in the event of the Security Council’s inability to take or authorize action in similar crises. Finding no basis for military humanitarian intervention

⁸⁷ See generally International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, U.N. Doc. A/5/303

⁸⁸ *Supra* note 87 at 196.

⁸⁹ See generally *Supra* note 74.

or the use of force for humanitarian ends, the Commission flipped the question on its head. It undertook the task of redefining sovereignty as the state's responsibility to protect.⁹⁰ In its report, the Commission opined that in the event that the Security Council is unable to intervene to mitigate or end intrastate conflicts the international community as a whole has a right to react as a final resort. However, the Commission's report did not allude to any claims of the existence of an international customary law rule that provides for such an intervention.

We did not argue in our report that there is now a sufficiently strong basis in principle and practice to claim the existence of a formal new principle of customary international law. But we did argue that the 'responsibility to protect' is an emerging international norm, or guiding principle of behavior for the international community of states, which may well become customary international law if further consolidated in state and intergovernmental organization practice.⁹¹

The danger in the Commission's assertion of the existence of an international norm that allows for the use of force in such cases was that it set the precedence for tacitly legitimizing these interventions since norms are considered a source of international law according to the Statue of International Court of Justice. Furthermore, although that international norms require state practice and *opinio juris* to ascend to the status of customary law it is within the prerogative of the ICJ and international tribunals to make the assertion that there exists sufficient *opinio juris* and state practice for humanitarian intervention and/or the responsibility to protect to be recognized rules of international customary law.

Such an assertion by an international court or tribunal is not unprecedented. For example, in the aftermath of the war crimes in the former Yugoslavia, the international tribunal for the former Yugoslavia used the same juristic maneuver to apply the rules of international law applicable to international armed conflict to an intranational one.⁹² As Meron highlights,

Through a process of osmosis or application by analogy, the recognition as customary of norms rooted in international human rights instruments has affected the interpretation, and eventually the status, of the parallel norms in instruments of international humanitarian law. The influence of processes followed in the human rights field on the development of customary law by humanitarian law tribunals is well-known. The jurisprudence of the Hauge Tribunal for the former Yugoslavia (ICTY) and the

⁹⁰ For a more elaborate reading and critique of the notion of the responsibility to protect, see ANNE ORFORD, INTERNATIONAL AUTHORITY AND THE RESPONSIBILITY TO PROTECT (2011). Also, for a similar critique of the notion of humanitarian intervention, see ANNE ORFORD, READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW (2003).

⁹¹ Joelle Tanguy, *Redefining Sovereignty and Intervention*, 17 ETHICS INT. AFF. 144 (2003).

⁹² See *Prosecutor v. Tadic*, Case No. IT-94-1-I, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 70 (Int'l Crim. Trib. For the Former Yugoslavia Oct. 2, 1995).

Tribunal for Rwanda affords a wealth of material showing how criminal tribunals applying humanitarian law are informed by human rights law.⁹³

Practically, the ICTY's verdict in the Tadic case removed internal or intrastate armed conflict from the exclusive purview of the sovereign state, protected from intervention by the principle of state sovereignty, and internationalized it using human rights and humanitarian principles. As such, now, states presenting themselves as champions of humanitarian and human rights ideals can intervene in the domestic affairs of other sovereign states as long as they can present their intervention as stemming from ethical and moral considerations rather than political ones. One of the most important maneuvers in achieving that end is not to act unilaterally. Rather, states can establish "coalitions of the willing" and/or utilize the systems and mechanisms of regional organizations to distance themselves from culpability or accusations of using force for political ends. This, as will be demonstrated in the chapter below paved the way for military interventions in Afghanistan and Iraq after the 11 September 2001 attacks.

After the end of World War II, the notion that human rights were essential to development, and development to international peace and security ranked human rights high in the economy of international concerns. This led to the creation of several regimes to ensure compliance with the liberal project, such as International Criminal Law.⁹⁴ In addition, the conflation of human rights and the humanitarian principles governing the conduct of war and armed conflict and the seemingly interchangeable vocabulary used by human rights NGOs allowed for both systems to merge into one; International Humanitarian Law.⁹⁵ This new project of International Humanitarian Law built on the infrastructure and credibility of humanitarian action and the human rights movement to further encroach on the domain of the sovereign state. Aided by court pronouncements such as that of the *Tadic* case and military interventions sanctioned by the UNSC, humanitarian and human rights claims were, for all intents and purposes, placed higher than state sovereignty in the hierarchy of international law principles. Tipping the scales in favor of morality rather than legality created the

⁹³ Theodor Meron, *The Humanization of Humanitarian Law*, 94 AM. J. INT. LAW 244 (2000).

⁹⁴ See generally Lawrence Douglas, *From the Sentimental Story of the State to the Verbrecherstaat, Or, the Rise of the Atrocity Paradigm*, in THE NEW HISTORIES OF INTERNATIONAL CRIMINAL LAW (2019); David S. Koller, *The Faith of the International Criminal Lawyer*, 40 N.Y.U. J. INT'L L. & POL. 1019–1070 (2007); and RONEN STEINKE, *THE POLITICS OF INTERNATIONAL CRIMINAL JUSTICE: GERMAN PERSPECTIVES FROM NUREMBERG TO THE HAGUE* (1st ed. 2012).

⁹⁵ For an elaborated discussion of the conception of International Humanitarian Law see A. Alexander, *A Short History of International Humanitarian Law*, 26 EUROPEAN JOURNAL OF INTERNATIONAL LAW 109–138 (2015).

necessary environment for militarizing humanitarian intervention. With human suffering previously justified by the rhetoric of right-based humanitarianism, it allowed for illegal interventions such as those in Kosovo and Afghanistan to be defended and legitimized on the moral humanitarian grounds upheld by the coalitions of the willing, but more importantly, the able.⁹⁶

⁹⁶ See generally Jarat Chopra & Thomas G. Weiss, *Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention*, 6 ETHICS INT. AFF. 95–117 (1992); David S. Koller, *The Faith of the International Criminal Lawyer*, 40 N.Y.U. J. INT’L L. & POL. 1019–1070 (2007); RONEN STEINKE, THE POLITICS OF INTERNATIONAL CRIMINAL JUSTICE: GERMAN PERSPECTIVES FROM NUREMBERG TO THE HAGUE (1st ed ed. 2012); and Amir Pasic & Thomas G. Weiss, *The Politics of Rescue: Yugoslavia’s Wars and the Humanitarian Impulse*, 11 ETHICS INT. AFF. 105–131 (1997).

V. Democratizing States and the War on Terror

A. Overview:

The fourth and final moment on the path of this thesis' study of the interactions between humanitarianism and sovereignty brings us to the growing trend in state practice of undergoing military interventions justified in whole or in part by humanitarian (read moral) imperatives and a self-assumed responsibility. The US invasion of Afghanistan and Iraq following the September 11 attacks come to mind as the primary examples. However, these interventions are not exclusive to the United States, its allies, or the West. In fact, the world stage of armed conflict has recently witnessed the involvement of new players such as Turkey's involvement in Syria and Libya, and, arguably, the recent Russian offensive in Ukraine.

Similar to the previous three moments discussed above, this form of militarized intervention did not come about in a vacuum. The end of the Cold War and the collapse of the Soviet Union brought with them a period in which western doctrines and ideals proliferated the fields of politics and international relations. The democratic peace theory and the rapid globalization and liberalization of the world economy brought the fields of human rights and development together as tools of institution or nation building. After all, the United Nations had equated underdevelopment to a threat to international peace and security as was the case with Kosovo. Inaction, such as was the case in Rwanda, was no longer an acceptable scenario, and the September 11 attacks only seemed to prove it. This has led to the militarization of the doctrine of the responsibility to protect that came out of the debate on humanitarian intervention, and in some cases to its use as a tool for regime change.

After the end of the Cold War and the dissolution of the Soviet Union, Western states were well positioned to lead the charge in the human rights field using their moral and economic powers. As a result, they used the human rights vocabulary in their foreign policy to name and shame foreign states and governments in violation, an activity provided for in the practices and reports of humanitarian NGOs. This, of course, was most apparent in the NATO intervention in Kosovo, which went unopposed by the international community. Emboldened by the experience of Kosovo, the West went on to engage in similar interventions in Iraq and Afghanistan. In highlighting the effects of these interventions on human rights, Tanguy cites Michael Ignatieff as saying: "'Since the end of the Cold War, human rights have become the dominant moral vocabulary in foreign affairs,' observes

political and human rights analyst Michael Ignatieff, adding pertinently that 'the question after Sept. 11 is whether the era of human rights has come and gone.'⁹⁷

Notions of humanitarian interventions and the responsibility to protect, born in the aftermath of the conflicts in Yugoslavia, Kosovo, and Rwanda, as demonstrated in the above chapter led to a trend of legitimizing, advocating for, and supporting the use of force and intervention in the domestic affairs of sovereign states in the guise of human rights. However, the world and its politics after 11 September 2001 were no longer the same as the ones from before the turn of the century. The attacks on the World Trade Center jarred the liberal school from its drunken stupor after celebrating the long-held thesis of the end of history with the end of the Cold War. The sobering reality that non-state actors can now cause cross border devastation and threaten the security of the Western states brought back the long-forgotten reality of power relations in the state of nature. It was no longer the Eastern Block, or the non-liberal state, or rogue state that posed the threat. Terror was seen as the new reality in a state of war of everyone against everyone. Knowing that a bold and blatant claim of a legitimate and legal use of force in retaliation would not stand the scrutiny of international law, the United States and its allies utilized the vocabulary of humanitarianism, human rights, democratization, and international peace and security to legitimate their invasion of Afghanistan in 2001 and Iraq in 2003.

B. Military Humanitarianism

In the wake of September 11, The UNSC passed a resolution condemning the attacks on the United States, calling them terrorist and describing them as a threat to international peace and security. In its third paragraph, the resolution called on states to "work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable."⁹⁸ The wording of the previous paragraph was not unique to the resolution. In fact, it was an echo of United State's position, made clearest in the famous presidential speech that divided the community of states into two groups: supporters and enemies. In his speech, US President George W. Bush's said

Our response involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. We will starve terrorists of

⁹⁷ Joelle Tanguy, *Redefining Sovereignty and Intervention*, 17 ETHICS INT. AFF. 147 (2003).

⁹⁸ S.C. Res. 1368, SCOR, 4370th Meeting, U.N. Doc. S/RES/1368 (2001), (12 September 2001).

funding, turn them one against another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. *Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists.* [...] From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.⁹⁹

Armed with the "inherent right of individual or collective self-defence in accordance with the [UN] Charter," and backed by the wording of the third paragraph, the United States then communicated its demands to the Taliban without providing proof of Osama Bin Laden's involvement in the September 11 attacks;¹⁰⁰

Deliver to United States authorities all the leaders of Al Qaida who hide in your land. Release all foreign nationals, including American citizens, you have unjustly imprisoned. Protect foreign journalists, diplomats, and aid workers in your country. Close immediately and permanently every terrorist training camp in Afghanistan, and hand over every terrorist and every person in their support structure to appropriate authorities. Give the United States full access to terrorist training camps, so we can make sure they are no longer operating. These demands are not open to negotiation or discussion. The Taliban must act and act immediately, They will hand over the terrorists, or they will share in their fate.¹⁰¹

This was the initial position that the United States pursued at the outset of its military operations in Afghanistan in 2001. However, in November 2001, while addressing the United Nations, President Bush's speech describing the Taliban regime and Al Qaida said

They promote terror abroad and impose a reign of terror on the Afghan people. Women are executed in Kabal's [*sic*] soccer stadium. They can be beaten for wearing socks that are too thin. Men are jailed for missing prayer meetings. The United States, supported by many nations, is bringing justice to the terrorists in Afghanistan.¹⁰²

However, this represented a marked change from the initial rhetoric. It painted the military operations in Afghanistan not as ones of legitimate self-defense but as humanitarian missions to liberate a population from their oppressive regime. In a state of the union address, President Bush went on to outline the characteristics of the US policy in Afghanistan and to respond to accusations of imperialism. He said

We have no intention of imposing our culture. But America will always stand firm for the non-negotiable demands of human dignity: the rule of law; limits on the power of the state; respect for women; private property; free speech; equal justice; and religious tolerance. America will take the side of brave men and women who advocate these values around the world, including the Islamic world, because we have a greater objective than eliminating threats and containing resentment. We seek a just and peaceful world beyond the war on terror.

⁹⁹ President Declares "Freedom at War with Fear," <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html> (last visited Oct 31, 2021).

¹⁰⁰ HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS, 163 (Jennifer M. Welsh ed., 2004).

¹⁰¹ Quoted in *Id* at 167.

¹⁰² *Id.*

Hence, justifying its invasion of Afghanistan, and later Iraq, the United States presented its military interventions "as bringing 'rights' to those who did not have them in the form of humanitarian relief as well."¹⁰³ As a result, the US military and the militaries of its allies were not the only actors in this campaign. Humanitarian NGOs, now more aligned with Western government and policies, played an important role in it, and the US did not spare them. While addressing such NGOs, US Secretary of State Colin Powell was quoted as saying

More than ever, governments and intergovernmental organizations must work in partnership with NGOs if compelling problems are to be effectively addressed. As I speak, just as surely as our diplomats and military, American NGOs are out there serving and sacrificing on the front lines of freedom. You are providing food and shelter to refugees and to the internally displaced, helping to build vibrant civil societies and creating the conditions for sustainable development, sustainable growth. [...] And I want you to know that I have made it clear to my staff here and to all of our ambassadors around the world that I am serious about making sure we have the best relationship with the NGOs who are such a force multiplier for us, such an important part of our combat team.¹⁰⁴

It is this intermarriage of foreign policy, framed within a narrative of humanitarianism; humanitarian NGO efforts to hold states and governments accountable for human rights violations; and the doctrine of the war on terror that have allowed for undermining the principles pertaining to state sovereignty to a point beyond recognition.

Today, some 20 years after the intervention in Afghanistan and Iraq, the Taliban has taken over the country again; the United States and its allies overtly toppled and replaced a regime in Iraq; and the War on Terror discourse found another home for itself in Syria, Libya, and Yemen at the expense of millions of civilians who have either been killed, injured, or displaced. Similarly, relying on a rhetoric of a responsibility to protect and an imperative to liberate peoples from their oppressors, on 24 February 2022, Russian President Vladimir Putin announced launching a military operation to protect Donbas and to combat "Nazification" in Ukraine. Parallels in rhetoric can be drawn between that of the United States vis-à-vis the invasion of Afghanistan and that of Russia vis-à-vis the military intervention in Ukraine. The meeting minutes of the 8974th meeting of the UNSC, cite Vassily Nebenzia of the Russian Federation as claiming that

Ukraine, actively armed by a host of States, is still harbouring a delusion that it can achieve a military solution in Donbas with help from Western sponsors. Otherwise, it is difficult to explain the significant intensification of shelling and acts of diversion on the territory of the two republics. The OSCE Special Monitoring Mission recorded almost 2,000 violations of the ceasefire regime, including nearly

¹⁰³ *Supra* note 100.

¹⁰⁴ The Avalon Project : Secretary Colin L. Powell Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations; 8:55 a.m. EDT; October 26, 2001, , https://avalon.law.yale.edu/sept11/powell_brief31.asp (last visited Oct 31, 2021).

1,500 explosions. Donetsk and Luhansk residents remain sheltering in basements and refugees continue to flow into the Russian Federation. The nature of provocations by Ukraine's armed forces has not changed.¹⁰⁵

He goes on to explain that

“the tragedy of Ukraine” started after the illegitimate coup in 2014, when the new Government, instead of engaging in dialogue with the Russian-speaking citizens of Ukraine, brought guns and planes upon them. The Russian leadership decided to recognize the republics to ensure peace and security. For Western countries, the people in Donbas are only pawns in a geopolitical game aimed at weakening the Russian Federation. “For us, these are women, children, the elderly who have been hiding from Ukrainian shelling and provocations for eight years,” he said. The root of the current crisis lies in the actions of Ukraine itself, which sabotaged its obligations under the Minsk Package of Measures. Last week, there was hope that Kyiv would rethink and carry out what it agreed to in 2015. But Ukraine was not ready for dialogue with the two republics or for steps to grant Donbas the special status provided for by the Minsk agreements. Instead, Ukrainian provocations against Donbas intensified, and the leaders of the two republics turned to Moscow with a request for military support, in accordance with bilateral cooperation agreements concluded simultaneously with their recognition. He described this as a logical step — as well as a consequence of actions taken by Ukraine's regime. During the current meeting, President Putin announced a special military operation in Donbas. Details are yet to come, but the aim is to free people in that area from genocide conducted by Ukraine.

A brief survey of military interventions since the end of the Cold War, especially after the September 11 attacks and the invasion of Afghanistan, demonstrates that sovereign equality and freedom from intervention as principles of international law have been made to cede to national interests presented partly or in whole under the guise of humanitarian imperatives. The growing trend in state practice toward militarized humanitarian interventions goes to suggest that a new era of international law is unfolding. Though currently improbable it would not be impossible to imagine that given the appropriate international environment, both politically and morally, a properly motivated court or tribunal, such as in the Tadic case could pronounce that there exists sufficient state practice and *opinio juris* reflected in the discourse of responsibility, humanity, and human rights to constitute a new rule of customary international law. Such a pronouncement, unlikely as it may seem today, would return the global order to the days prior to the formation of the United Nations where might dictates the law and laws build empire.¹⁰⁶

¹⁰⁵ Russian Federation Announces ‘Special Military Operation’ in Ukraine as Security Council Meets in Eleventh-Hour Effort to Avoid Full-Scale Conflict | Meetings Coverage and Press Releases, <https://www.un.org/press/en/2022/sc14803.doc.htm> (last visited Apr 7, 2022).

¹⁰⁶ For an elaborate discussion and detailed case studies on the idea of humanitarian imperialism see JEAN BRICMONT, JEAN BRICMONT & JEAN BRICMONT, HUMANITARIAN IMPERIALISM: USING HUMAN RIGHTS TO SELL WAR (2006).

VI. Conclusion

For centuries after the Treaty of Westphalia, state sovereignty reigned supreme among the principles of international law, and sovereign states were free from the interventions of others in their domestic affairs. However, the current international landscape, which was shaped in part by the interaction between humanitarianism, international law, and state sovereignty, reveals that the Westphalian model is no more.

The incremental and complementary changes that were brought on by discourses of civility and humanity slowly chipped away at the borders of what was permitted. Private actors working together with their governments or governments that aligned with their principles and ethics created a space in which interventions can be justified. Consequently, these changes set the stage for the creation of doctrines and legal regimes and frameworks that redefined the meaning of sovereignty over time.

As demonstrated in the chapters above, the seemingly innocent genesis event of the founding of the ICRC laid the foundation for the creation of systems of compliance on humanitarian bases and of non-governmental humanitarian institutions. Building on that infrastructure, the human rights movement expanded the scope of humanitarian concerns, eventually elevating them to the level of international peace and security. In turn, this new status catalyzed the creation of new regimes that drove humanitarian action down the road to militarization and allowed for the physical and military intervention in the domestic affairs of sovereign states on moral, if illegal, grounds. In other words, with militarized humanitarian action now imaginable and possible, when legal regimes and mechanisms fail to guarantee compliance, the offending state, its sovereignty now redefined, is brought to compliance by force, further prolonging the conflict and victims' suffering. What started as an intervention to reduce and/or put an end to human suffering caused by armed conflict has had the reverse effect. Today, many states find themselves in the unforgiving grip of armed conflict, and millions of civilians in the Global South find themselves dealing with death, injury, starvation, displacement, and no access to basic needs as a result.