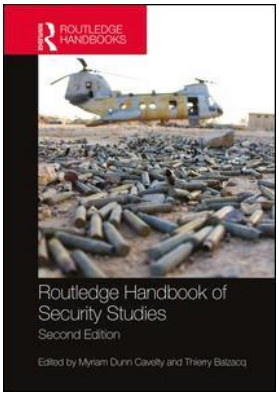

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HUMANITARIAN INTERVENTION

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In the post-Cold War era the issue of humanitarian intervention has come to dominate the international political agenda in a way few could have predicted. With the advent of technological change – manifest most prominently in the emergence of 24-hour media and the Internet – the suffering of 'strangers' and overseas crises have permeated to the very centre of domestic political debate. Whilst public awareness of, and academic interest in, foreign humanitarian crises has increased, the international community's ability to respond to these crises remains limited. The desultory international response to the slaughter in Syria since 2011 is a sobering reminder of how, for all the talk of human rights, 'never again!', and international responsibilities, we have yet to solve the perennial problem posed by intra-state mass atrocities.

This chapter has four parts. It begins by assessing the definition of humanitarian intervention, showing that while the term is controversial, it usefully frames a particular debate. The second section looks at the controversy surrounding the threshold for intervention, before analysing the issue of authority in the third section. While in recent years there has been a degree of unanimity around what constitutes grounds for humanitarian intervention, the mechanisms by which action should be authorized remain hugely controversial and politicized. The fourth section examines the under-researched issue of reform: if, as the case of non-intervention in Syria suggests, we remain prey to a system which cannot ensure a consistent and timely response to intra-state humanitarian crises, should we think about systemic reform?

What is 'humanitarian intervention'?

There are literally hundreds of definitions of 'humanitarian intervention', and while there are differences between them, controversy stems not so much from profoundly different understandings but rather from normative assumptions (Hehir 2013: 15). The 'intervention' element is uncontentious and relatively easy to clarify. Normally, it refers to coercive action undertaken by a third party from outside the state, which differentiates it from three related practices: internal policing and/or the deployment of national militaries to quell domestic unrest; intervention undertaken with the consent of the host state, such as UN peacekeeping; and non-military intervention, such as the provision of humanitarian aid. Whether an intervention has to be legal is generally not considered a decisive factor. As discussed below, there

is considerable debate about who has the authority to sanction and engage in intervention, but there have been cases where interventions have been deemed *illegal* but still described as a 'humanitarian intervention': NATO's military campaign against the Federal Republic of Yugoslavia in 1999 being a prime example (Independent International Commission on Kosovo (IICK) 2000: 4).

What creates more of a debate than 'intervention' is the word 'humanitarian' and its positive connotations. The difference between a 'military intervention' and a 'humanitarian intervention' relates not to the means, as both employ coercive force, but rather to the motives. Military interventions can be undertaken for a variety of reasons such as to acquire land, repel an attack, or as part of a counterterrorism operation. Humanitarian interventions, however, are generally deemed to necessitate the articulation of benevolent motives, namely to prevent or halt the suffering of others. How exactly this is to be determined, and to what extent such justifications must be articulated, is a controversial issue.

Only very few scholars have argued that a humanitarian intervention must exclusively be motivated by altruism (Miller 2000: 54). Most accept that an intervention can still be deemed humanitarian if there is some degree of national interest involved – how much is both a matter of dispute and methodologically difficult to determine. In any case, the majority of academics reject an either/or approach, suggesting that mixed motives are a fact of life and need not undermine the 'humanitarian' claim (Weiss 2007: 7). Provided there is some public declaration that force is being employed to prevent or halt oppression, then the intervention can potentially constitute a humanitarian intervention; 'potentially' because claiming an act is motivated by a desire to stop oppression does not foreclose debate about whether this was the 'real' motivation. For example, Russia claimed in 2008 that its invasion of Georgia was aimed at halting the 'genocide' being perpetrated by government forces against ethnic Russians, a claim that convinced few (Bellamy 2014: 147).

Furthermore, there are many examples of cases of intervention where determining the 'true' motivations is unclear, such as the 2003 invasion of Iraq, which inspired much acrimonious debate about the US-led coalition's intentions (Wheeler and Morris 2007). In response to this problem, some have suggested that the outcome rather than the expressed intentions of the intervener should determine whether an intervention counts as humanitarian. Nicholas Wheeler, for example, has argued that an intervention undertaken without any actual humanitarian motivation or justifications articulated by the intervening party can still count as a humanitarian intervention provided it has a positive humanitarian outcome (2002: 39).

For others, 'humanitarian intervention' is a misnomer precisely because military intervention always constitutes a politically motivated act and can never truly be 'humanitarian'. Many humanitarian aid agencies have criticized the term, arguing that only the impartial provision of aid is 'humanitarian' and this term should never be used in connection with the use of military force (Lu 2006: 44). In the developing world in particular, 'humanitarian intervention' has pejorative connotations since it is associated with colonial-era rhetoric of the 'white man's burden' and 'mission civilisatrice'.

Given these different viewpoints, it is highly unlikely that a consensus can emerge. However, this empirical contestation does not undermine the utility of the concept altogether; as in the cases of 'democracy', 'sovereign state', or 'good society', the absence of an agreed archetype does not render discussion about a concept irrelevant. Nevertheless, given the contestation surrounding the concept, it is perhaps better to think of 'humanitarian intervention' not as a precise descriptor but rather as a term that narrows the parameters of potential debate and creates a conceptual framework within which a set of interrelated issues can be discussed.

When is intervention warranted?

After the Second World War, the UN Charter established that all states were equal (Article 2.1) and entitled to exclusive authority over matters within their 'domestic jurisdiction' (Article 2.7). Decolonization led to an increase in the number of former colonial states in the UN. In general, these states championed sovereign inviolability, which ensured that the General Assembly routinely passed resolutions reaffirming sovereign inviolability.

Yet, while sovereign inviolability became increasingly codified and affirmed, a parallel trend in international law pointed towards consensus on the limits to domestic jurisdiction. Most obviously, the 1948 Genocide Convention affirmed that the international community did have a right to become involved to prevent or halt certain egregious intra-state atrocities. Throughout the Cold War, the General Assembly passed a number of resolutions which restricted the power of states (at least formally) by forbidding various practices, including torture (3452), racial discrimination (3379), and gender discrimination (3521). Yet, while these human rights abuses were outlawed, it was not clear what should be done if they were committed – and, most controversially, whether the commission of these crimes was ever grounds for external intervention. Regulating compliance with these international laws was, paradoxically, essentially seen as an internal matter (Henkin 1990: 250).

During the Cold War, East–West rivalry made it impossible to achieve consensus around an issue as controversial as thresholds for external intervention at the Security Council. Additionally, the 'spheres of influence' and nuclear stand-off made the potential costs of intervention excessively high. After the implosion of the Soviet Union, however, many hoped for a new era of cooperation at the UN, which could help to determine when the international community could intervene to protect human rights (Barnett 2010: 21–2; Berdal 2003: 9). Initially the optimism appeared to be well-founded: in 1991, for example, the Security Council passed Resolution 688, which described the oppression of the Kurds in Iraq as a threat to international peace and security. This was later used as the legal basis for 'Operation Provide Comfort', the imposition of no-fly zones over northern and later southern Iraq.

Yet, as the 1990s proceeded, cases of massive human rights violations were ignored while less grave situations were addressed. The pattern of sanctioned intervention appeared erratic and highly inconsistent (Chesterman 2002: 5). This was perhaps most apparent in 1994. That year the Security Council failed to respond while some 800,000 people were slaughtered in Rwanda; yet, via Resolution 940, the Council sanctioned a multi-national force to address the much less acute crisis in Haiti. As the following section suggests, this had more to do with geopolitics at the Security Council than confusion over the thresholds for intervention. The genocide in Rwanda and the desultory international response to the dissolution of Yugoslavia led to significant concern – particularly in the developing world – about the selective manner in which decisions to intervene were made. Calls for clearer guidelines on the thresholds for intervention followed.

The key concern, essentially, was that 'humanitarian intervention' constituted a threat to sovereign equality – and hence international order. Without clear guidelines on when intervention was warranted, the international system would regress to the subjective and malleable rules of colonial times when European states routinely justified their incursions into 'terra nullius' as benevolent and humanitarian (Ayoob 2002). Describing a situation as 'morally unconscionable' and determining that intervention was thus 'a moral imperative' (cf. Clinton 1999) necessarily constitutes a potential shift away from restrictive positive law to the more selective, and hence more easily abused, natural law (Bellamy 2004: 141).

This concern about thresholds for intervention led to a proliferation of lists of criteria outlining when intervention was warranted (Nardin 2003: 11–27; Wheeler 2002: 34). The majority

of lists relied on the just war tradition and the 'just cause' criterion in particular. Yet, while these were generally sensible prescriptions, they were often vague. in its now-famous report *The Responsibility to Protect*, the International Commission on Intervention and State Sovereignty (ICISS) stated that:

> Military intervention for human protection purposes is warranted [when there is] large-scale loss of life actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action or state neglect . . . or large-scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.
>
> *(2001: xii)*

'Large scale' is obviously subjective, and many warned that this lack of specificity could facilitate precisely the politically motivated selectivity that had led to the establishment of the ICISS in the first place (Bellamy 2006: 148–9). To some extent, these fears were allayed when the 'Responsibility to Protect' (R2P) was formally recognized in the 2005 World Summit *Outcome Document*. Paragraphs 138 and 139 restricted R2P's application to genocide, ethnic cleansing, war crimes, and crimes against humanity. Yet, significant contestation surrounds the precise definition of these crimes, and again there is no mention of scale. Hence, the *Outcome Document* did not completely foreclose concerns about selectivity. Arguably, paragraph 139 even formally facilitates it by noting that the Security Council will assess each situation on 'a case-by-case basis'.

While some lamented that the *Outcome Document* did not outline specific criteria for military intervention (Evans 2008: 48), the fact that it clarified the types of crimes which constitute a basis for humanitarian intervention was deemed a major breakthrough. These 'four crimes' are now widely accepted as the only legitimate basis for humanitarian intervention. Concerns that politically and/or culturally specific human rights (such as the right to vote) or 'low-level' human rights abuses (such as denial of education or the right to drive a car) would be used as grounds for intervention, have largely been quieted (Bellamy 2014: 12).

Yet, while the 2005 World Summit *Outcome Document* outlined the grounds for humanitarian intervention, this has not addressed what Simon Chesterman described as 'inhumanitarian non-intervention' (2003: 54), namely those situations where the gravity of the crisis clearly passes the threshold for intervention yet no action is taken by the international community. This is most evident in regard to the crisis in Syria, which degenerated horrifically after it began in 2011, claiming, according to the UN, over 220,000 lives by January 2015 (Hadid 2015). While evidence from objective UN-appointed observers (as well as the majority of humanitarian organizations on the ground) unequivocally found that President Assad's forces were actively engaged in crimes against humanity and war crimes (BBC 2013), the international community failed to take robust action. While clarifying the grounds for intervention potentially removes the problem of spurious, unwarranted intervention, it does not in itself solve the more pressing question regarding the authorization of clearly warranted punitive measures.

Who sanctions interventions?

By far the most controversial question related to this debate is 'who is authorized to sanction a humanitarian intervention?' Under international law there are three possibilities: the first is that the Security Council can pass a Chapter VII resolution; the second is that the General Assembly can pass a resolution under the powers granted to it in the 1950 'Uniting for Peace' Resolution 377; the third is that regional organizations can act under Chapter VIII of the Charter. In reality, the

Security Council is the primary body. The 'Uniting for Peace' provision has rarely been invoked and a resolution authorized by the General Assembly sanctioning intervention against the wishes of one of the great powers or their allies would be highly unlikely to actually result in an intervention taking place (Krasno and Das 2008). Additionally, 'Uniting for Peace' cannot be invoked in situations under consideration by the Security Council. Likewise, while regional organizations have undertaken action which could be described as constituting a 'humanitarian intervention' – such as the Economic Community of West African States' interventions in Liberia in 1990 and Sierra Leone in 1997 – this is extremely rare, and in any event, the Charter states in Article 53.1 that such action must be approved by the Security Council.

The legality of unilateral intervention – action taken by a state or group of states without Security Council or General Assembly authorization – is controversial, but the majority view is that such action is illegal (ICISS 2001: 48–9). There have been occasions when it has been tacitly tolerated, however, such as when Tanzania intervened in Uganda in 1979 (Franck 2005: 219), though in more recent times the US-led invasion of Iraq in 2003 and Russia's intervention in Georgia in 2008 have generated renewed opposition to unilateral intervention.

Thus, Security Council authorization remains the most sound and practically viable legal basis for action. Under Article 42, the Security Council is empowered to 'take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security'. As stated earlier, the Cold War rendered this provision moribund, but since the dissolution of the Soviet Union, such action has been sanctioned on a number of occasions, most notably in 2011 when Resolution 1973 authorized the imposition of a 'no-fly zone' over Libya which eventually resulted in the overthrow of Gaddafi.

While some have argued that humanitarian crises are not actually 'a threat to international peace and security' and thus the Security Council is not actually empowered to launch a humanitarian intervention (IICK 2000: 196; White 2004), Council practice since 1991 has rendered this argument somewhat moot. That the Security Council can, and has, authorized coercive measures to relieve humanitarian crises within states is now firmly established (Chesterman 2011). This has not, however, ameliorated concerns regarding the inconsistent manner in which the Security Council has exercised this right.

According to Article 24.1 of the Charter, the Security Council is mandated to act on behalf of all UN member states; in practice, however, this has rarely been the case. The Security Council comprises 15 states but it is the permanent five members (P5) – China, France, Russia, the UK, and the US – who have the greatest influence, thanks to their veto power. While the formal use of the veto is relatively rare – 29 resolutions have been vetoed since the end of the Cold War – the threatened use of a veto also impacts on Security Council deliberation and action; draft resolutions that will definitely be vetoed are rarely put to the vote. Because the P5 can block any resolution put to the Security Council, and because P5 actions are strongly guided by national interests, achieving consensus around Chapter VII action has generally proved difficult. Also, a number of states have been shielded from external censure by virtue of having an ally amongst the P5. For example, in February 2011, the US blocked a resolution condemning Israeli settlements in Palestine, which was supported by the other 14 members of the Council. Russia and China have vetoed resolutions seeking to impose punitive sanctions against President Assad on four occasions since 2011.

This inconsistency has led many to question the legitimacy of the laws governing humanitarian intervention and specifically the Security Council's monopoly on the authorization of such action. NATO's intervention in Kosovo in 1999 highlighted this issue starkly: NATO acted without Security Council authorization to protect the Kosovo Albanians. While the action was thus technically illegal, it was deemed by many to have been necessary and laudable – 'illegal but legitimate' according to the Independent International Commission on Kosovo (IICK 2000: 4) – and thus it

highlighted the tension between the existing laws and a growing disposition in favour of humanitarian intervention. In the wake of Kosovo, many called for new laws on humanitarian intervention or for a reliance on 'natural law' in cases where the legal route through the Security Council was impossible (Nardin 2003: 23).

Yet, both alternatives to Security Council authorization – reform or reliance on natural law – bring their own difficulties and potential drawbacks. In terms of reform, this has been discussed for decades, and myriad proposals have been advanced (Buchanan and Keohane 2011; Hehir 2012: 228; UN Commission for Global Governance 1995: 90; UN High-Level Panel on Threats, Challenges and Change 2004: 57). The main stumbling block is that reform requires the Security Council's consent which, unsurprisingly, has not been forthcoming; indeed one of the few issues the P5 have consistently agreed upon is the need to maintain the organizational status quo and hence their privileged position (Bourantonis 2007: 35). It has also been argued that the Security Council's primary – albeit not exclusive – responsibility is to maintain international peace and security and to ensure that there is no outbreak of hostilities between the great powers which could cause massive loss of life (Jackson 2000: 291). The Security Council's monopoly on the authorization of the use of force ensures that military action which is strongly opposed by one or more of the P5 cannot be sanctioned; while this may occasionally mean that crises and human suffering go unaddressed, it considerably reduces the possibility of a globally devastating conflict (Bosco 2009: 10).

The second alternative – maintaining the legal status quo and occasionally relying on 'natural law' – has suffered greatly through its association with some of history's most controversial and discredited 'humanitarian interventions'. The basic logic underpinning natural-law-based justifications is that there are laws which transcend positive law. These 'moral norms' constitute the very fabric of our common humanity and though they are not always reflected in actual codified law, they retain a position of primacy (Byers 2005).

The problem is, however, that the natural law argument is easily abused: the determination that existing law is no longer legitimate necessarily constitutes subjective judgement, which may actually mask more nefarious motives. Many fear that championing natural law constitutes a regression to the pre-charter era when European states routinely justified their imperial conquests as benevolent, altruistic, moral acts (Evans 2005; Hehir 2012: 170). Without rules and clear procedures on who may employ force, moral arguments might be spuriously invoked, leading to oppression and the degradation of the very idea of humanitarian intervention. The 2003 invasion of Iraq undoubtedly discredited both the idea of humanitarian intervention and the legitimacy of unilateral action, as did the Russian invasion of Georgia in 2008.

The most prominent initiative in the contemporary era aimed at improving the manner in which the international community responds to intra-state humanitarian crises is R2P. In its original report ICISS affirmed the primacy of the Security Council, noting 'there is no better or more appropriate body than the Security Council' and, cautioning against seeking alternatives, suggested that the key task was 'to make the Security Council work better' (2011: xii). The focus was, therefore, on changing the attitude of the P5 rather than their powers. With respect to the veto, ICISS suggested that the P5 should abide by a 'code of conduct' whereby 'a permanent member, in matters where its vital national interests were not claimed to be involved, would otherwise not use its veto to obstruct the passage of what would otherwise be a majority resolution' (ICISS 2011: 51). The two paragraphs related to R2P in the 2005 World Summit *Outcome Document* also reiterated the primacy of the Security Council, stating that external intervention was only permissible if sanctioned 'through the Security Council in accordance with the Charter'. This has also been reiterated during subsequent key junctures in the evolution of R2P, such as the 2009 General Assembly debate on the concept, and the six official reports published by UN Secretary General Ban Ki-Moon since 2009.

Many have argued that R2P, despite having achieved significant international recognition, has ultimately failed to address the primary source of the inconsistent response to intra-state crises precisely because it has focused on moral advocacy rather than calling for substantive reform of the Security Council's powers (Reinhold 2010; Stahn 2007). The Security Council's response to the Arab Spring certainly suggested that the perennial problem of politicized selectivity remains: while the Security Council was quick to act against Gaddafi's oppression of pro-democracy protestors in Libya, the situation in Bahrain was essentially ignored (Hehir 2015; International Crisis Group 2011). Arguably more damaging to R2P's perceived efficacy has been the crisis in Syria. The Security Council has demonstrated a pronounced inability to act in a unified fashion due to the competing national interests of the P5. As Gareth Evans noted, 'the shame and horror of Syria' has led to 'a real sense of disappointment' (2014), and thus the search for a solution to the perennial problem of inconsistency and 'inhumanitarian non-intervention' goes on.

Duty or discretionary entitlement?

Many of the problems discussed above stem from a pivotal question that is rarely asked and remains under-researched: 'does anyone have a duty to prevent or halt mass atrocities; if not, should a body with just such a mandate be established?' States are bound under international law to protect their people from harm. This is reflected in the wording of paragraph 138 of the 2005 World Summit *Outcome Document*, which asserts 'Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity'. Yet in recent years, the behaviour of various governments demonstrates that this injunction to protect is occasionally wilfully ignored. Historically, states have constituted the greatest threat to their citizens' livelihood: more people were killed by their own governments during the bloody twentieth century than by external forces (Lu 2006: 54). So, while states may legally have a duty to protect, this cannot be assured in practice.

The key issue, then, is: who assumes not just a right to protect but a *duty* to protect when the state fails to do so? This distinction between a 'right' and a 'duty' is of crucial importance: that individuals have rights under international law is incontrovertible; that there is a body charged with a *duty* to enforce these rights is, however, far from assured. There is no doubt that 'human rights' exist; this is reflected in both domestic and international legislation. Yet, positive international law may imbue individuals with certain rights and forbid states from engaging in certain acts but it does not by itself constitute a sufficiently comprehensive legal framework as it does not create a means by which these human rights can be enforced and protected.

As discussed earlier, the Security Council, and indeed the General Assembly and regional organizations, can act to enforce human rights, but they do not have a duty to do so.[1] This contrasts sharply with the nature of the (normative) domestic legal system: rights are enshrined in law but additionally a body – the police – are established with a duty to uphold these rights and a judiciary is mandated to try those who violate them. A police officer cannot – legally at least – choose when to enforce the law and is constitutionally bound to act whenever a citizen is imperilled. If a police officer fails to act then there are consequences. An individual citizen certainly has the right to come to the aid of a fellow citizen being attacked but this is a matter of personal choice; the intervening citizen has no obligation. The international response to intra-state crises is determined by the conscience – and interests – of citizen-like actors rather than the duties and obligations of a police-like entity. This has a number of grave consequences which help explain the record of humanitarian intervention.

First, in the absence of an obligation, decisions on whether or not to act will naturally be taken on the basis of factors extraneous to the suffering that is occurring. They are factors that

relate in essence to the interests of potential interveners, including the relationship between the potential intervener and both the aggressor and the victim; the costs (military and economic) likely to be incurred by the intervener; the potential material interests that depend on the outcome of the case; and the particular political disposition of the intervener's government/citizenry/military at any given time. When all these factors are considered, it is no surprise that intervention rarely takes place and that 'inhumanitarian non-intervention' is the norm.

Second, the absence of a group constitutionally mandated to address intra-state crises potentially leads to unilateralism. Security Council inaction in response to certain atrocities has at times unsurprisingly led people to call for unilateral intervention (Lang 2014). While there may well be a strong moral basis for these calls, unilateral intervention cannot constitute a viable foundation upon which to construct a consistent means to respond to intra-state crises. Such action – even if morally warranted – by definition degrades international law and legitimizes extra-legal action which may not always be morally defensible.

Third, perpetrators of systematic human rights abuses can shield themselves from external censure if they have an alliance with one of the veto-wielding P5. In the contemporary era certain oppressive regimes have continued to focus on cultivating an alliance with a member of the P5 rather than change their illegal behaviour. In any system where legal censure is not guaranteed – because of the judiciary's ineffectiveness, its lack of coercive capacity, or its susceptibility to corruption and/or the influence of power – potential lawbreakers are naturally less wary of breaking the law and the preventative benefits of a non-political legal system are lost (Hurrell 2005: 16).

Thus, humanitarian intervention remains prey to the vagaries and anachronisms of the legal system designed by Stalin, Churchill, and Roosevelt over seventy years ago. Clearly, the P5 have an interest in maintaining the status quo and have worked conscientiously to do so, but there has also been an arguably surprising reluctance amongst some human rights advocates to lobby for reform. In particular, the global movement advocating R2P has, almost uniformly – Thomas Weiss being a notable exception (2009) – rejected the idea of legal reform and decried proposals aimed at improving the legal architecture as unrealistic and, even, potentially a threat to international peace and stability (Davies and Bellamy 2014; Evans 2008: 180). As the distribution of power shifts from the West to the emerging powers – notably Brazil, Russia, India, China, and South Africa – achieving agreement at the Security Council, and other international fora, is arguably likely to decrease, and thus the efficacy of initiatives – such as R2P – which depend on political consensus and diplomatic machinations is likely to diminish, to the detriment of universal human rights.

Conclusion

Despite the enormous contemporary upsurge in interest in the issue amongst the general public, academics, journalists, and policy-makers, humanitarian intervention remains a divisive, contested, and controversial subject. While this is lamentable – given the tragic nature of the core issue – it is arguably not surprising. Humanitarian intervention is a subject which incorporates a complex array of issues of profound importance, such as state sovereignty, human rights, state-society relations, universal morality, the international–domestic divide, and the legitimacy and efficacy of the use of force. The debate throws up myriad questions and conundrums, and this is one of the reasons it has remained such an alluring and unresolved focus of enquiry for a long time.

Unfortunately, it seems highly unlikely that the issue will lose its relevance any time soon; intra-state crises will continue to erupt and the calls for 'something' to be done will be reiterated. Any conceptions of 'human progress' must surely be tempered by the jarring juxtaposition of man-made egregious human suffering, and inaction on the part of those with the capacity

to halt such wanton violence. One must hope that further research into this issue – on a variety of themes from prevention to human rights law and Security Council reform – will help to improve the international community's capacity to address mass atrocities and render such blights on humanity a thing of the past.

Note

1 In 2007 the International Court of Justice did note that states have an obligation to act to prevent and/or stop genocide but noted that the nature of a state's obligation was determined by factors such as its capacity to act, geographic proximity, and political links with the parties involved (International Court of Justice 2007: 221). In this sense the court found that Serbia breached its obligations with respect to the violence perpetrated by Serbs in Bosnia, but a similar ruling would not, and could not, be made against neighbouring Slovenia or Croatia; the particularities of Serbia's relationship with the perpetrators of the crimes in Bosnia were the crucial determinant on the court's findings.

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