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Operation Iraqi Freedom: Just or Unjust War? Humanitarian Action, or Simply Geopolitics?

By **RUTI TEITEL**

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The pivotal question in the still swirling international debates regarding the United States intervention in Iraq is this: Is the military operation simply aggression, or can it somehow be justified as a humanitarian action, as the claim that it is a "war of liberation" implies?

The U.S.'s Use of Humanitarian Arguments, Here and Elsewhere

The issue runs deeper than this war alone. For many years, much of the U.S.'s engagement in the Middle East has been framed as a form of humanitarian action - with the U.S.'s stated goal to bring peace to a troubled region.

More recently, the "war against terrorism" has been framed as a worldwide campaign to protect freedom-loving peoples. After 9/11, the war in Afghanistan was no doubt a form of self-defense; after all, it followed an armed attack on U.S. soil. Yet it, too, was largely characterized as a "war of liberation" - this time, from the Taliban.

Similarly, the arguments for interventionism in Iraq have been made in humanitarian terms, with the Bush Administration invoking human rights, democracy, and the security not only of the U.S., but of people worldwide.

In all these instances, despite existing geopolitical state interests, such as oil politics, the arguments for intervention have been made, instead, on humanitarian grounds. But were these grounds persuasive? Did they justify the wars that were, and are being, fought?

That leads to a question of intense relevance right now: To what extent is it fair to bring humanitarian arguments to bear in the war on Iraq, in particular?

Why the Humanitarian Argument for the Iraq War Is, at Best, A Stretch

The humanitarian argument for currently invading Iraq remains a stretch.

In Kosovo, ongoing attacks on civilians justified the NATO intervention. In contrast, no similar ongoing attacks were occurring at the time of the U.S./U.K. invasion.

Thus, in Iraq, the humanitarian claim must depend on one of two perspectives. The first is backward-looking - focusing on the regime's historical mistreatment of its citizens, such as the decade-ago gassing of the Kurds.

The second is forward-looking. One version of this perspective focuses on the unlikelyhood of the Iraqi people soon attaining democracy except through invasion. The other - and much more speculative - argument from this perspective claims that the security of all humanity is at stake, and that anticipatory war is justified because it will avert a potential future humanitarian catastrophe.

What Counts As A Humanitarian Argument? Testing the Boundary

It may sound strange to call that final argument a "humanitarian" argument at all. It focuses not on current suffering, deprivation or injustice to particular people, but on the abstract possibility of future attacks. But in today's debates, the meaning of humanitarian intervention has, for some, taken on radically new dimensions. Indeed, it could even be called a "new humanitarianism."

The threat posed by terrorism - together with the proliferation of weapons of mass destruction - presents the potential for great humanitarian disasters. This threat, and these weapons, strengthen the argument that self-defense may justify a preemptive strike, or even "preventive war." After all, the argument goes, in a post 9/11 world, the international community is more interconnected and interdependent. Fighting a common threat that would cause great human suffering, by this logic, is itself a humanitarian act.

The danger of such an approach, of course, is that it may lead to boundless unilateral action on the part of the United States.

What Legal Principles, If Any, Govern the "New Humanitarianism"?

There continues to be sharp international division over whether the Iraq war can be viewed as a legitimate humanitarian action. Is there any rule of law we can look to to resolve the question?

We might choose to simply look to the U.N. Charter, and the fact that the U.N. did not authorize the war. After all, there are reasons to go through the U.N.: It offers the benefits of multilateralism, transparency, and careful deliberation.

At least in theory, a deliberative, multilateral process such as the U.N.'s can sort out good from bad justifications for intervention - asking, for instance, is this justification plausible? Is it a pretext? Bringing diverse countries and their interests into the decisionmaking processes like the U.N.'s arguably offers a constraint against the false uses of humanitarianism for one country's self-interested, and perhaps neo-imperialist ends.

The U.N. process, then, has much to recommend it. But the U.N.'s decision to approve, or not to approve, war may not be the only legal source to draw upon. As to Iraq, it seemed Saddam Hussein had plainly materially breached prior UN resolutions. The U.S. argued that if the U.N. could not enforce these resolutions, the U.S. would do so.

More fundamentally, the fact that process has been complied with does not guarantee the protection of substantive rights. International law has a number of substantive aims. And complying with U.N. processes, doesn't mean those aims have been fulfilled. Process is not an end in itself. It cannot always guarantee the actualization of truly humanitarian aims. Consider, for example, the Kosovo crisis.

Why U.N. Process Alone Is Not Enough: The Kosovo Example

In the 1990's, multilateral efforts failed to effectively address the crises in Bosnia and Rwanda. Their failure created a demand for humanitarian intervention.

Accordingly, at that time, liberal human rights advocates were unilateralists. They argued that American power should be used in the service of humanitarianism. Necessity simply meant the U.S. was the only nation that could act, and that action needed to be taken. So if not us, who?

NATO used force in Kosovo without authorization under the United Nation charter. But it did so rightly, to combat ongoing atrocities. As a result, NATO's action gave rise to a grudging recognition that multilateral process could not be the only determinant of legitimacy.

For example, the Independent Commission appointed to evaluate the Kosovo action concluded that the intervention was "illegal but nevertheless legitimate"-- thus restoring for the first time in years the sense that justice could be found in war.

Kosovo taught us this lesson, then: A Security Council consensus, however defined, is not tantamount to justice.

This should already have been evident to some extent, for existing international institutions, legacies of the World Wars, are today far from representative of the world's actual distribution of power. Moreover, there is a deeper question: How much should power count? What about purer world democracy, as opposed to the Security Council's vesting of huge influence with the five veto powers?

Changes to these institutions could be considered, but consensus would be difficult to achieve - because there's a growing gap between the United States and Europe on the ongoing legitimacy of the use of force as a tool of foreign policy, and on the deeper questions of what national security means, and, as I have noted, on what humanitarianism is.

Of course, international institutions remain invaluable in many contexts. Consider the Middle East. One solution to regional problems may be akin to the post-World War II Marshall plan. Under the Marshall Plan, countries' transition to democracy came about through the establishment and support of international institutions premised on cooperation and reciprocity. But when such cooperation fails, it is possible that humanitarian intervention is justified nevertheless.

Beyond Process: Humanitarianism When the U.N. and Others Disagree

In the end, the meaningful advancement of lasting humanitarian aims will take more than short-term, reactive rescue missions. It will take systematic reflection upon the political and economic roots of contemporary ethnic and political violence, and on the tension between human rights values and a multilateral system of international law that sometimes will not enforce those values.

Thus, the U.S. should beware of too easily resorting to force to "solve" problems and achieve even humanitarian results, without seriously considering what it is sacrificing in the bargain. American power and world order may yet be made compatible.

Ruti Teitel is the Ernst Stiefel Professor of Comparative Law at New York Law School, and a member of the Council on Foreign Relations. She is also the author of Transitional Justice (Oxford University Press 2000).