



1-1-2002

Book Review [Just War or Just Peace? Humanitarian Intervention and International Law]

Santa Clara Law Review

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Santa Clara Law Review, Book Review, *Book Review [Just War or Just Peace? Humanitarian Intervention and International Law]*, 42 SANTA CLARA L. REV. 689 (2002).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol42/iss2/8>

This Book Review is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

BOOK REVIEW

Just War or Just Peace? Humanitarian Intervention and International Law. By Simon Chesterman. Oxford University Press, Inc., 2001. Pp. 295. Hard Cover. \$70.00.

*Reviewed by Matthew J. Madalo**

I. INTRODUCTION

Few people will ever forget the compelling human tragedies that were witnessed in the former Yugoslavia and Rwanda during the 1990s. The numerous incidents of ethnic cleansing and genocide caused a particular fear amongst many that there was a breakdown of the collective security mechanism created by the United Nations ("U.N.").¹ The United States and many European countries point to this breakdown to justify the military action taken by the North Atlantic Treaty Organization ("NATO")² in Kosovo. This was not the first time, however, that unilateral military action has occurred for the sake of protecting innocent civilians. In fact, military intervention in the name of humanitarian interests became a common theme over the last century. From the dawn of time, nations have used such arguments to justify

* Book Review/Ethics Editor, Santa Clara Law Review, Volume 42. J.D. candidate, Santa Clara University School of Law; B.S., California State University, Sacramento.

1. According to the U.N. Charter, the United Nations Security Council has the primary responsibility for the maintenance of international peace and security. See U.N. CHARTER art. 24, para. 1. For more information on the United Nations Security Council, see the United Nations Web site at <http://www.un.org>.

2. The North Atlantic Treaty Organization ("NATO") is a political and military alliance that was established on April 4, 1949. See North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243, available at <http://www.nato.int/docu/basicxt/treaty.htm>. NATO currently consists of nineteen member states from North America and Europe. For more information on NATO, see the North Atlantic Treaty Organization Web site at <http://www.nato.int>.

the use of force or military intervention throughout the world.

In his book, *Just War or Just Peace?*, Simon Chesterman examines the question of the legality of humanitarian military intervention in international law.³ This book tackles a very intriguing subject and makes a valuable contribution to the study of international law. Mr. Chesterman provides a thorough discussion of the emerging legal principles and historical aspects of military intervention taken in the name of humanitarian efforts. Moreover, he pays particular attention to both the policy considerations and political ideology underlying the identification of these legal rules and principles. The book's organization is a virtue in its ability to take the reader from the development of the legal principle of humanitarian military intervention,⁴ to its supposed application in various world crises throughout history.⁵ But for all the strengths the book possesses, the subject matter that it tackles is very esoteric and is not intended for those who are unfamiliar with international law and world affairs. As the editor's note indicates, this book is intended for "lawyers, historians and students of international affairs."⁶ Nevertheless, *Just War or Just Peace?* provides an interesting analysis for anyone interested in the complex legal issues raised when states undertake military intervention in another country.

The author begins with the basic premise that international law and the U.N. Charter clearly prohibit military humanitarian intervention.⁷ However, as Mr. Chesterman points out, there has been a long running debate as to whether a right of unilateral intervention pre-dated the U.N. Charter.⁸ Thus, *Just War or Just Peace?* examines the doctrine of humanitarian intervention in its historical and political context to arrive at the determination of whether

3. See SIMON CHESTERMAN, *JUST WAR OR JUST PEACE? HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW* (Oxford Press, 2001).

4. See *id.* at 7-44.

5. See *id.* at 60-215.

6. See Ian Brownlie, *Preface* to SIMON CHESTERMAN, *JUST WAR OR JUST PEACE? HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW* (Oxford Press, 2001).

7. See CHESTERMAN, *supra* note 3, at 1. See also U.N. CHARTER art. 2, para. 4. The U.N. Charter prohibits the use of force by States, subject to two exceptions: self-defense and actions authorized by the U.N. Security Council. See *id.*

8. See CHESTERMAN, *supra* note 3, at 1.

such a right is an exception to the U.N. Charter's general prohibition against the use of force.⁹ The book then examines the unilateral military actions of the 1990's, which were justified under the banner of humanitarian intervention, and the role of the U.N. Security Council in light of these actions.¹⁰ Mr. Chesterman argues that incorporating a unilateral right to humanitarian intervention would be inimical to the emergence of an international rule of law and would lead to such interventions being undertaken in bad faith.¹¹

II. THE JUST WAR

Mr. Chesterman begins his discussion by examining the genealogy of the right of humanitarian intervention.¹² As the author so candidly observes, "much of the historical analysis of humanitarian intervention suffers from a lack of precision as to what that term embraces."¹³ He identifies the origin of humanitarian intervention as emerging from the tension between the belief in the justice of a war waged against an immoral enemy and the principle of non-intervention as a corollary to sovereignty.¹⁴ He then proceeds to examine classical writings from scholars, natural theorists, and legal positivists to show how the notions of a "just war" and non-intervention came about.¹⁵ Mr. Chesterman skillfully illustrates that international law did not proscribe the term "intervention" as a means of settling disputes until the twentieth century.¹⁶ In other words, a nation was either in a state of war or it was not. However, Mr. Chesterman notes that many theorists in the Middle Ages, a period during which some of Europe's most savage religious wars took place, wrote of the "just war" that people were justified in taking up arms against the wicked or on behalf of the oppressed.¹⁷

9. See U.N. CHARTER art. 2, para. 4. Cf. U.N. CHARTER arts. 39, 41-45 (for use of force actions authorized by the U.N. Security Council) & 51 (right of self-defense).

10. See CHESTERMAN, *supra* note 3, at 112-62.

11. See *id.* at 6.

12. See *id.* at 1-44.

13. *Id.* at 7.

14. See *id.* at 7.

15. *Id.* at 7-44.

16. See CHESTERMAN, *supra* note 3, at 8.

17. See *id.* at 10-16.

As a counterpoint to the development of a humanitarian justification for war, the author then discusses the development of legal positivism¹⁸ in international law. The book traces the writings of many legal positivists and non-interventionists in order to show the historical antithesis to intervention.¹⁹

Finally, this chapter concludes with a look at state practice in the nineteenth and twentieth centuries to show the paucity of evidence of a general right of humanitarian intervention in customary international law.²⁰ The book proceeds to discuss the cases of several military interventions during this era, highlighting the idea that although such intervention on its face was humanitarian in nature, it by no means implies that such a right is consistent with state practice. For example, the book takes the U.S. intervention in Cuba in 1898 as a clear example of this dilemma.²¹ The initial intervention followed reports of atrocities committed by Spanish military authorities attempting to suppress the insurrection that commenced in Cuba in 1895.²² The stated goal of the intervention was to guarantee Cuban independence and for its part, the United States expressly disclaimed any intention to exercise control over the island beyond pacification of the dispute.²³ The author adds that legal commentators at the time were split over the genuine motives of the United States in intervening in the conflict.²⁴ Because of this difference of opinion, Mr. Chesterman concludes that it is unsurprising that the status of humanitarian intervention, as a right, was unclear at the start of the twentieth century.²⁵

18. Legal Positivism is the belief that legal rules are valid only because they are enacted by an existing political authority, not because they are grounded in morality or in natural law. See BLACKS LAW DICTIONARY 1162 (6th ed. 1990).

19. See CHESTERMAN, *supra* note 3, at 16-24.

20. See *id.* at 24-42.

21. See *id.* at 33-34.

22. Two other factors leading to the intervention were the leaking of a particularly undiplomatic personal letter, written by the Spanish Minister to the United States, and the untimely destruction of the US battleship *Maine*. See *id.* at 34.

23. See *id.* at 35.

24. See *id.*

25. See CHESTERMAN, *supra* note 3, at 35.

III. THE SCOURGE OF WAR

This Chapter examines two arguments that a right of humanitarian intervention somehow survived or emerged after the enactment of the U.N. Charter.²⁶ The first argument is that humanitarian intervention falls within the provisions of Article 2(4) of the U.N. Charter; or secondly, that humanitarian intervention is a form of self-help consistent with Article 51.²⁷ Mr. Chesterman begins the discussion by looking at the text of Article 2(4) of the U.N. Charter to clearly discern its meaning, and compares it to the argument that somehow the provisions can be read to include the right of humanitarian intervention. As Mr. Chesterman bluntly puts it, "to interpret [Article 2(4)] as in any way justifying a right of unilateral humanitarian intervention would stretch even the Orwellian school of interpretation."²⁸

The chapter then proceeds to a more common argument that the right of humanitarian intervention developed as a customary rule of international law and that it exists in parallel with the U.N. Charter.²⁹ Mr. Chesterman outlines the arguments in favor of a customary right of humanitarian intervention. The first is that it is a form of self-help that pre-dates the U.N. Charter, and the second is that it is an emerging norm that has somehow modified the U.N. Charter.³⁰ What follows is an enlightening discussion of the legal principles that logically flow from each argument – state

26. *See id.* at 47.

27. *See id.* at 86. *See also* U.N. CHARTER art. 2, para. 4 ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."); U.N. CHARTER art. 51 provides:

[N]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Id.

28. CHESTERMAN, *supra* note 3, at 53.

29. *See id.*

30. *See id.*

practice and *opinio juris* – and whether these principles apply to establish humanitarian intervention as a customary norm of international law.³¹ Mr. Chesterman concludes that there is no doctrinal or historical basis for asserting the right of humanitarian intervention: “As such, humanitarian intervention will remain at most in a legal penumbra – sometimes given legitimacy by the Security Council, sometimes merely tolerated by states.”³²

IV. ‘YOU, THE PEOPLE’

This chapter diverges a little from the main thesis to explore the issue of whether a right of unilateral intervention exists to promote democracy. The starting point is a discussion of the emerging recognition of the right to democratic governance in the 1980s and 1990s.³³ The “right to democracy” argument finds its strength in the number of states committed to open, multiparty elections and new discourses in international law and international relations, stressing democracy as a value.³⁴ Again, Mr. Chesterman begins with a theoretical discussion of basic international legal principles that apply to this argument.

One of these principles, popular sovereignty, is illustrative of how far the argument for intervention can be taken. Advocates of this “unilateral pro-democratic intervention” theory argue that intervention to restore democracy does not violate state sovereignty (and international law), rather it upholds and vindicates it.³⁵ In the extreme, proponents of this argument assert the view

31. See *id.* at 63-86. State practice refers to its understanding as an element of international custom making international law. Article 38 of the Statute of the International Court of Justice refers to international custom, as evidence of a general state practice accepted as law. What is sought for is a general recognition among states of a certain practice as obligatory. See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 4 (Oxford Press, 1998). *Opinio juris* is a general practice recognized by states as a legal obligation, as opposed to motives of courtesy, fairness, or morality. See *id.* at 7.

32. CHESTERMAN, *supra* note 3, at 87.

33. See *id.* at 88.

34. See *id.*

35. See *id.* at 91. Advocates of a “unilateral pro-democratic intervention” theory argue that the term ‘sovereignty’ constitutes an anachronism when applied to undemocratic governments. *Id.* Thus, the traditional concepts of sovereignty are being replaced by a ‘popular sovereignty’ vested in individual citizens of a state. See *id.*

that undemocratic regimes lose the protection of international law by essentially voiding their sovereignty.³⁶ Mr. Chesterman sums this argument up by stating that "such a justification of unilateral intervention to promote democracy or other noble ends) depends on a radical reconceptualization of sovereignty."³⁷ The argument of intervention to promote democracy essentially would entitle a state to assert and enforce the rights of an individual or group against another state.³⁸ Realistically, as Mr. Chesterman points out, this argument taken to its logical conclusion paves the way for selective application of a principal that is prone to abuse.³⁹

The chapter moves on to discuss two examples of intervention that are sometimes characterized as being "pro-democratic": the U.S. interventions in Grenada in 1983⁴⁰ and in Panama in 1989.⁴¹ The immediate obstacle in accepting these two examples as indicative of a unilateral right of pro-democratic intervention, is the fact that they are not supported as such, even by a significant minority of states.⁴² Therefore, no such right could exist as a principal of customary international law.⁴³ Although there is some evidence of support on the part of the United States and the United Kingdom, upholding or restoring democracy has not been previously asserted as an independent basis for intervention.⁴⁴ Mr. Chesterman concludes this chapter by again asserting that no conclusive acceptance of a unilateral right of intervention to promote democracy exists in state practice.⁴⁵

36. *See id.*

37. *See id.*

38. *See id.* If taken literally, such a rule would render up to a third of the world's states susceptible to intervention. *See id.*

39. *See id.*

40. On October 25, 1983, a force of over four hundred U.S. marines and 1,500 paratroopers and troops from neighboring Caribbean states landed in Grenada, a small island nation in the Caribbean, where a violent coup had been launched by Marxist rebels opposed to the regime of Maurice Bishop. *See id.* at 99.

41. On December 20, 1989, 24,000 U.S. troops began an operation to overthrow the government of Panama and capture its head of state, General Manuel Noriega. *See id.* at 102.

42. *See id.* at 106.

43. *See id.* at 109-10.

44. *See id.* at 106-07.

45. *See* CHESTERMAN, *supra* note 3, at 106-07. Indeed, the position adopted in this book is that pro-democratic intervention may, in all but the most

V. THE NEW INTERVENTIONISM & PASSING THE BATON

In chapters four and five, Mr. Chesterman turns to the issue of the U.N. Security Council and its role in the international legal order. Here, he examines enforcement actions of the Security Council prior to 1990⁴⁶ and the expanding role of the Security Council in the years between 1990 and 1999.⁴⁷ The basic premise that Mr. Chesterman wishes to convey to the reader is that trends established in the Security Council during the period between 1990 and 1999 herald a new challenge to the international legal order.⁴⁸ Specifically, he asserts that the U.N. Security Council, by its actions and decisions, has blurred the boundaries of the exception to the prohibition of the use of force established in the U.N. Charter.⁴⁹ Furthermore, he argues that the plasticity of the circumstances in which the Security Council may act and the willingness of states to follow through on its behalf, threaten to undermine non-intervention as a cardinal principle of the international legal order.⁵⁰ Mr. Chesterman traces enforcement actions throughout the Security Council's history; he then proceeds to focus on the invocation of humanitarian justifications for enforcement actions in the period between 1990 and 1999.

The power of the Security Council to deal with threats to peace and security is mandated under the terms of Chapter VII of the U.N. Charter.⁵¹ Mr. Chesterman skillfully points this out to show how the decision to commence enforcement actions after 1990 have been reduced to the political will of those states prepared to intervene and not to any clear definition of when intervention is authorized by international law.⁵² "If anything is unique about Somalia, Rwanda, and

exceptional circumstances, actually be inimical to human rights. *See id.* at 110.

46. *See id.* at 114-21.

47. *See id.* at 121-60.

48. *See id.* at 112.

49. *See* U.N. CHARTER arts. 39, 41-45. *See also* CHESTERMAN, *supra* note 3, at 112.

50. *See* CHESTERMAN, *supra* note 3, at 113.

51. *See* U.N. CHARTER art. 39 ("[T]he Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."). *See also* CHESTERMAN, *supra* note 3, at 124.

52. *See* CHESTERMAN, *supra* note 3, at 161.

Haiti," he argues, "it was that the United States and France decided to act and seek [Security] Council authority to do so."⁵³ Mr. Chesterman points to the Security Council's actions regarding the Sudan as evidence of the arbitrariness with which the current international security mechanism operates.⁵⁴ Civil war has raged there for seventeen years and yet the only resolutions passed by the Council were for Sudan's failure to extradite suspects in the unsuccessful assassination attempt on Egypt's President Mubarak.⁵⁵

The book mirrors these same arguments in chapter five to demonstrate that the Security Council's practice of delegating its enforcement powers has depended more upon a coincidence of national interest than on any procedural legality.⁵⁶ The book's strength is once again demonstrated through the logical flow and organization of Mr. Chesterman's argument. He begins with a discussion of the procedures by which the Security Council delegates its enforcement powers.⁵⁷ Mr. Chesterman concludes that the general trend of enforcement actions has been to delegate them only when it coincides with the regional power's ability to act.⁵⁸ He uses the NATO action in Kosovo to illustrate the notion that national interests have relegated Security Council resolutions from a legal authority to a mere policy justification.⁵⁹ The framework of the Security Council and its progression from open-ended resolutions authorizing unilateral action at its inception to the modern method of authorizing unilateral action supposedly in support of Council resolutions is made clear to the reader.⁶⁰ The author is persuasive in his argument because he paints a very vivid picture of the natural progression of Security Council actions in the 1990's. Although he acknowledges the sound policy justifications behind the U.N. Charter, Mr. Chesterman

53. *Id.* at 161.

54. *See id.*

55. *See id.*

56. *See id.* at 165.

57. *See id.*

58. *See* CHESTERMAN, *supra* note 3, at 179.

59. *See id.* at 218. The author argues that the NATO operation in Kosovo follows a natural progression shown in other Security Council actions during the 1990's. Security Council resolutions provided political support for increasingly militant rhetoric and subsequent military action taken outside its sessions. *See id.* at 206.

60. *See id.* at 165.

compares the present role of the Security Council to that of the Council of the League of Nations,⁶¹ a comparison that, for obvious reasons, is hardly flattering.

VI. CONCLUSION

In the final analysis, *Just War or Just Peace?* paints the picture of an international collective security system that is subservient to the will of its members. It may be argued that the procedure in place at least ensures that a substantial body of world opinion consents to a particular action.⁶² However, Mr. Chesterman suggests that the Security Council is merely the sum of its members.⁶³ If so, what does this mean for the principles embodied in the U.N. Charter's prohibition on the use of force? It seems apparent from Mr. Chesterman's argument that the right of humanitarian intervention is not a clear principle of international law. As mentioned earlier, he argues that its application as customary rule of international law neither preceded nor survived the U.N. Charter, primarily because relevant state practice is unclear as to the use of the term "humanitarian intervention."⁶⁴ He is quick to point out that even the most moral and well-intentioned arguments in favor of a right of humanitarian intervention in international law ultimately fail because the "ends are never so clear and the means are rarely so closely bound to them."⁶⁵

Whether or not the reader agrees with Mr. Chesterman's arguments, he will nonetheless find *Just War or Just Peace?* to be a thoroughly engaging and thought-provoking book, and one which makes a significant contribution to the study of international law.

61. *See id.* at 218 (The League of Nations was an international organization formed after World War I to solve international disputes through arbitration, which was eventually dissolved in 1946.).

62. *See id.*

63. *See id.*

64. *See* CHESTERMAN, *supra* note 3, at 42.

65. *See id.* at 236.