

**HUMANITARIAN INTERVENTION, REFUGEE
PROTECTION, AND THE PLACE OF HUMANITARIANISM
IN INTERNATIONAL RELATIONS**

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INTRODUCTION

In June 1985, a young Afghan refugee named Sharbat Gula, known at the time as simply ‘the Afghan girl’, captured the attention and the hearts of so many around the world when her piercing green eyes occupied the cover of National Geographic Magazine. Her picture had been taken by a photographer for National Geographic at a refugee camp on the border of Afghanistan and Pakistan where the young girl, her four siblings, and her grandmother shared a tent with half a dozen strangers. It was here that Sharbat sought refuge from the destruction of the Soviet invasion of Afghanistan; she was six years old when Soviet bombing killed her parents. During the civil war which followed the Soviet withdrawal from Afghanistan, ‘the Afghan girl’ retreated back to her village where she was married at the age of 16 and bore four children, one of which died in infancy. Her husband, unable to find work in Afghanistan, lives away from his family in Peshawar, Pakistan. Sharbat struggles to live with the heat and pollution of Peshawar in the summer because she suffers from asthma, so she is forced to live in a village in the Afghan mountains during this period. The one dollar per day her husband earns as a baker barely covers the medical bills they incur as a consequence of living in such poverty. According to her brother, except for perhaps her wedding day, Sharbat has never known a happy day in her life.¹

The tragedy and despair of Sharbat’s story is not uncommon within Afghanistan. The country has been ravaged by more than three decades of war, civil unrest, government repression, famine, and drought. Communist-inspired civil violence in the late 1970s was followed by the brutal war against the Soviet Union in the 1980s. Civil war plagued the country in the early 1990s before the callous Taliban regime assumed control over the country and set about establishing a repressive Islamic state. Finally, as the epicentre of international terrorism, Afghanistan was invaded in 2001 by a multilateral force led by the United States in a war which is ongoing in 2012. During this period, it is the people of Afghanistan that have borne the brunt of their country’s arduous circumstances. Tens of millions of Afghan civilians have been forcibly displaced within and without the borders of Afghanistan. At its height, the refugee crisis in Afghanistan accounted for roughly 60 per cent of the entire world refugee population, while it is estimated that as many as two out of three Afghans have been displaced at least once during this period. “There is not one family that has not eaten the

¹ For the full story of Sharbat Gula, see Cathy Newman, ‘A Life Revealed’, *National Geographic Magazine*, www.ngm.nationalgeographic.com/print/2002/04/afghan-girl/index-text, accessed 11 March 2012.

bitterness of war”, said a young Afghan merchant in the 1985 story that accompanied Sharbat’s photograph. In this destitute situation, the people of Afghanistan are heavily dependent upon the humanitarian commitment and compassion of the international community in order to survive. As respected Pakistani journalist, Rahimullah Yusufzai, explains, in Afghanistan “you live at the mercy of other people; more than that, you live at the mercy of the politics of other countries”.²

The political context of international humanitarianism is precisely the topic of this thesis. Humanitarianism exists in order to respond to the kind of human suffering experienced in Afghanistan. Its core purpose, simply to provide assistance to those in the greatest of need, is a manifestation of human nature at its finest. It is a principle to which subscription is unanimously claimed within international politics. There are thousands of international non-governmental organisations (NGOs), inter-governmental organisations (IGOs), and state departments operating today whose professed purpose is to undertake humanitarian action around the globe. Many of these organisations are dependent upon the cooperation and support of sovereign states in order to operate successfully, both in terms of their funding and their access to state territories.

As such, it is states that are the most important actors in the international humanitarian regime. The success of the international humanitarian regime is heavily dependent upon the extent to which the international community of states is committed to the principle of humanitarianism. Successful humanitarian action can only be facilitated by a community of states that is sincerely committed to the principle of humanitarianism. However, the opposite is also true that a community of states that is insincere in its commitment to humanitarianism invariably hampers the success of the international humanitarian regime. Because the international humanitarian regime is likely to be futile without the full support of states, the extent to which states are committed to the principle of humanitarianism is therefore of the utmost importance. The extent of this commitment will be explored in this thesis.

The two specific areas of humanitarianism that this thesis will focus on are the areas of humanitarian intervention and refugee protection. These are two areas that have attracted a large degree of scholarly attention in the post-Cold War era, within which the political and ethical dimensions of acting in the name of humanity have featured prominently within

² Ibid.

intellectual debate. This topic was of particular interest following the high profile wars that took place in Afghanistan and Iraq, due to the fact that humanitarianism played an important role in legitimising these wars.³ Scholars of international relations began to dedicate more attention to the critical analysis of the dynamics of international humanitarianism, and the manner in which humanitarianism has been used by states to legitimise the pursuit of non-humanitarian aims.

Humanitarian Intervention

The first area of focus in this thesis is on humanitarian intervention. Humanitarian intervention is a facet of humanitarianism that is concerned with the externally-oriented use of military force to assist those in need. States send military personnel and resources to intervene in the domestic affairs of other states with a view to correcting some internal imbalance or injustice that has resulted in great human suffering. In theory, the purpose of humanitarian intervention is simple as well as negative: solve the humanitarian crisis and then get out of the country and let the local population get on with their lives.⁴ It is not concerned with occupation or conquest, and the test of a genuine humanitarian intervention is that the intervening forces are in and out as quickly as possible.⁵ Pro-interventionists often understand humanitarianism as an act which takes place ‘over there’, far away from the territory of the state that is providing its assistance abroad.

The largest concentration of intellectual debate on the topic of humanitarian intervention has been focused largely on questions around its legitimacy. The post-Cold War era has witnessed the return of the ‘good war’ in international politics, whereby humanitarianism has come to represent the primary method for justifying the use of military force.⁶ Helen Dexter explains that from the point of view of the international community, humanitarian intervention is no longer just one form of war, but has in fact become “virtually synonymous with permissible war itself”. The ‘new’ security challenges of the post-Cold War era necessitated a military response, but this military response was legitimised by appealing to the humanitarian principles of democracy and human rights. The US-led wars in Afghanistan

³ A detailed discussion of the justifications provided for the intervention in Afghanistan can be found in Chapter 3 of this paper.

⁴ Michael Walzer, 'The Politics of Rescue', *Social Research*, 62/1 (1995). p.70.

⁵ Ibid. p.70.

⁶ Helen Dexter, 'The 'New War' on Terror, Cosmopolitanism and the 'Just War' Revival', *Government and Opposition*, 43/1 (2008b).

and Iraq in the early 2000s fit firmly within this context, as both were framed within a humanitarian discourse. However, Dexter is highly critical of the concept of the ‘good war’ because, although the use of humanitarian rhetoric has increased since the post-Cold War era, she argues that this has not been matched by an increased commitment to the principles of humanitarianism. Rather, humanitarian rhetoric is being used more frequently by powerful states simply as an attempt to legitimise non-humanitarian, self-interested wars. Dexter questions the humanitarian credentials of the wars in Afghanistan and Iraq, claiming that their appeals to the principle of humanitarianism were considerably undermined by “the many civilian casualties, the use of torture, derogating from the Geneva Conventions, and prosecuting pre-emptive military campaigns”. Consequently, she warns that those who wish to support intervention for the sake of humanity but do not wish to see humanitarianism used as a pretext for unjust wars of self-interest “must tread carefully”.

The legitimacy of humanitarian intervention is explored further by Alex Bellamy, who discusses the significance of the motivating factors that underlie humanitarian intervention.⁷ The underlying intention of the intervening state is crucial because it is the intent, not the ostensible humanitarian outcome that may be produced, that it is legitimised by the limited norm of humanitarian intervention. Ensuring that a genuine humanitarian intention underlies a humanitarian intervention helps to ensure, in theory at least, that humanitarian intervention remains truly humanitarian in nature. Bellamy explores the ‘motives versus outcomes’ debate and provides a comprehensive account of both sides of the argument. The most commonly held view among scholars is that it is a humanitarian motive alone that can legitimise a humanitarian intervention.⁸ However, there are those who disagree and insist that a humanitarian outcome is far more important than a humanitarian motive. Siding with the conventional view, Bellamy argues that a state’s motive for intervening is the most important criteria for assessing the legitimacy of an intervention. He claims that “intentions are products of motivations and outcomes are shaped by the strategies that one adopts to achieve one’s aims”. Therefore, where interventions are motivated primarily by a humanitarian motive, it is likely that the intervening state will undertake the intervention in a manner that is conducive to enhancing the human welfare in the target country. On the other hand, allowing an intervention to be legitimised on the basis of an unintended humanitarian outcome risks

⁷ Alex J. Bellamy, 'Motives, Outcomes, Intent and the Legitimacy of Humanitarian Intervention', *Journal of Military Ethics*, 3/3 (2004).

⁸ Ibid. p.217; B. Parekh, 'Rethinking Humanitarian Intervention', *International Political Science Review*, 18/1 (1997). p.54.

allowing humanitarianism to be used as a pretext for wars that may be based on an ulterior motive.

Closely related to the 'motives vs. outcomes' debate are questions around the level of responsibility that an intervening state has towards the target state and its population. In contrast to a conventional military invasion, a humanitarian intervener has far greater and more clearly defined responsibilities towards its target state. According to Fatima Ayub and Sari Kouvo, the success of a humanitarian intervention should be measured on the basis of the durability of the government and the wellbeing of the civilian population of a target state.⁹ At the core of the intervention must be a long-term strategy for stability and human security. However, Ayub and Kouvo claim that these areas have been "much neglected in the traditional humanitarian intervention". States that undertake humanitarian intervention are rarely willing to commit the time and resources necessary to ensure that an adequate level of stability and human security is achieved.¹⁰ They point to the case of Afghanistan to demonstrate how the agendas of governance, political reform, and the promotion of human security were repeatedly sidelined by the intervening coalition of states for the sake of shorter-term political expediency. To the detriment of Afghanistan's suffering population, the military elements of the intervention were prioritised ahead of the humanitarian elements. Ayub and Kouvo are highly critical of this and conclude that the disingenuous fusion of a military intervention with a humanitarian one that took place in Afghanistan raises "new difficulties for the paradigm... of humanitarianism and the justifiable use of force to protect vulnerable populations".

Refugee Protection

The second area of focus in this thesis is the area of refugee protection. In contrast to the externally-oriented nature of humanitarian intervention, refugee protection is a more internally focused dimension of humanitarianism in that it often necessitates that states extend a sense of hospitality to those in need. Rather than taking place "over there", states who commit to refugee protection are often required to resettle and support refugees within their own territory. Studies in the area of refugee protection have often focused on the level of responsibility that states have towards refugees and the extent to which they fulfil these

⁹ Fatima Ayub and Sari Kouvo, 'Righting the Course? Humanitarian Intervention, the War on Terror and the Future of Afghanistan', *International Affairs*, 84/4 (2008). p.641.

¹⁰ Ibid. p.649.

responsibilities. Exploring the level of responsibility that the industrialised Western states have towards refugees, Matthew J. Gibney considers the ethical claims of the citizens of a state and those of refugees.¹¹ He concludes that states have an inherent obligation to assist refugees up to the point that the costs of doing so begins to interfere with the fundamental responsibilities that a state has towards its own citizens. He argues that the principle of humanitarianism provides an ideal ‘rallying point’ for both sides because it is cautious enough in what it demands from states to be able to strike a compromise between the competing claims of both citizens and refugees. While states place great emphasis on fulfilling the needs of their citizens, Gibney maintains that the onus is on states to ensure that they have in place refugee policies that satisfy humanitarian requirements.

Of course, no state today is willing to open up its borders in order to fulfil the demands of humanitarianism. Neither does any state today have a refugee policy that adequately satisfies the requirements of humanitarianism by doing all it can to assist refugees. In fact, many states actively try to avoid fulfilling their obligations to refugees. The international community of states has come under intense criticism from scholars of humanitarianism for not doing more to help ease the severity of the global refugee crisis.¹² Jennifer Hyndman offers a critique of the manner in which many states attempt to contain refugees within their countries of origin rather than providing them with assistance abroad.¹³ She argues that the containment of refugees is an attempt to prevent displaced persons from crossing an international border, as it is only upon crossing an international border that refugees trade the entitlements of citizenship for the international protection provided by international legal arrangements, host governments, and humanitarian agencies. Hyndman maintains that the containment of refugees is merely a “donor-sponsored effort... to avoid international legal obligations to would-be refugees”. She believes that these kinds of practices expose the fallacy of the existing system of refugee protection which is grounded in a legal definition that emphasises the borders of states rather than in a geographical context that better meets the needs of those displaced. For Hyndman, this has created a geographically unequal system of refugee

¹¹ Matthew J. Gibney, 'Liberal Democratic States and Responsibilities to Refugees', *The American Political Science Review*, 93/1 (1999). p.176.

¹² See for instance Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism* (Univ Of Minnesota Press, 2000); Arthur C. Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century* (Oxford University Press, 2002); and B.S. Chimni, 'Globalization, Humanitarianism and the Erosion of Refugee Protection', *Journal of Refugee Studies*, 13/3 (2000).

¹³ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*, explores the controversy around ‘preventive protection’. This is discussed further in Chapter 6 of this thesis.

protection that privileges the developed states of the West and hampers those regions of the world that are forced to host the bulk of the world's refugees.

Arthur Helton is similarly critical of what he perceives to be the half-hearted manner in which the international community of states responds to the global refugee crisis. Like Hyndman, Helton argues that the current system of refugee protection is in disarray. However, he is less critical of the structural basis of the existing system than he is of its policies, which he believes are not equipped to adequately address refugee crises.¹⁴ He accepts that the motivations for humanitarian action are not always benign, but he believes that whether selfish or altruistic "more effective humanitarian action will redound to the benefit of both individuals and states". He therefore urges the international humanitarian regime to reform and reorganise its policies to better address the needs of displaced persons. Helton's central argument is that in order to be successful, refugee policy reforms must account for the core interests of states. For this reason, states' refugee policies will be most effective when they are incorporated into broader issues of foreign affairs. He maintains that while there is no single answer to the problem of human displacement, it remains a task of the international humanitarian regime to assess the needs of refugees and to align these as much as possible to the varied interests of states.

States are not the only actors within the international humanitarian regime to come under criticism for failing to adequately respond to the needs of refugees. Some scholars have focused their critiques on the United Nations High Commissioner for Refugees (UNHCR). Scholars such as David Turton and Peter Marsden and Gill Loescher have criticised the UNHCR for the manner in which its political relationships with states has undermined its ability to fulfil its supposedly non-political mandate to protect refugees.¹⁵ David Turton and Peter Marsden provide a detailed analysis of the UNHCR's operations in Afghanistan since 2001 and explore the political context within which the agency's refugee repatriation programme took place in late 2001. The programme facilitated the return of 1.7 million refugees from Iran and Pakistan to Afghanistan, yet Turton and Marsden argue that the repatriation programme was "in the interests neither of the majority of its intended beneficiaries (refugees) nor of the long term reconstruction of Afghanistan". They claim that

¹⁴ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*.

¹⁵ See for instance Gil Loescher, *The Unhcr and World Politics: A Perilous Path* (Oxford University Press, 2001) and David Turton and Peter Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan', Afghanistan Research and Evaluation Unit (2002).

the repatriation of refugees was an ‘unsustainable solution’ to the Afghan refugee crisis, as the conditions in Afghanistan were not suitable for the mass return of refugees. Turton and Marsden argue that the UNHCR was responding more to the political interests of its donors and host states than it was to the interests of the Afghan refugees. The repatriation programme was only launched because the UNHCR was in such a “weak position in relation to the policies of its funders and hosts” that it could not refute their policy demands.

Assessing the State of Humanitarianism

In taking into account the vast body of literature that exists on the topic of international humanitarianism, this thesis aims to provide a contribution to the field by way of an analysis of the dubious manner in which states apply the principles of humanitarianism. It derives conclusions around the level of commitment and sincerity of the international humanitarian regime to the principles of humanitarianism by exploring the dynamic relationship between the two areas of humanitarian intervention and refugee protection. From this analysis stems the two main arguments made herein. The primary argument is that while the governments of the wealthy Western states are often amongst the loudest trumpeters of humanitarian principles, they fail to live up to their humanitarian obligations. For, rather than committing to humanitarian action on the basis of need, they are only willing to commit to humanitarian action in cases that serve in their own national interests; cases of human suffering from which they do not stand to benefit remain caught in the margins of the international humanitarian regime.

The secondary argument is a corollary of the primary argument in that there is a consequential relationship between the two. It claims that the international humanitarian regime remains overly focused on providing externally-oriented forms of humanitarian assistance at the expense of internally-oriented forms. States favour a strategy of providing humanitarian assistance as far away from their own territories as possible in order to maintain ‘space and distance’ from the problems that may accompany humanitarian crises. In covetous circumstances, states are willing to provide financial resources or military assistance in order to ‘fix’ other countries abroad. However, they are explicitly averse to providing humanitarian assistance that may have an impact closer to home. This theory helps to explain why the same states that were so willing to contribute to the military intervention in Afghanistan were so eager to avoid their responsibilities to Afghanistan’s refugees. While states perceive

humanitarian intervention as a tool that may be utilised in the pursuit of their foreign policy goals, the admission of refugees within their borders is perceived as being detrimental to their national interests. It is in this context that this thesis suggests that the international humanitarian regime is driven primarily by the self-interests of the dominant states within the international system rather than by the altruistic principles upon which the regime is supposed to be founded. This thesis calls for a refocusing of the discussion of international humanitarianism from being centred upon outward humanitarian assistance to a more holistic approach towards humanitarian action whereby the actions taken reflect the specific human requirements of those in need.

In pursuing this line of argument, chapter one, 'Humanitarianism Explained', begins with an explanation of the concept of humanitarianism and discusses the fundamental principles upon which the concept is premised. It then analyses the nature of humanitarianism in the contemporary era of international politics, focusing on the politicisation of humanitarianism that took place in the post-Cold War era which placed the international humanitarian regime in a complex state of disarray. The specific area of humanitarian intervention and refugee protection are then introduced as core components of international humanitarianism.

Chapter two, 'Afghanistan in Crisis', introduces the case study of Afghanistan that will feature throughout this thesis. It provides an explanation of Afghanistan's troubling history, culminating in the devastating humanitarian crisis that manifested around the turn of the 21st century. Chapter three, 'Intervention in Afghanistan', then explores the international response to the crisis by offering a critical discussion of the US-led international intervention in Afghanistan that began in October 2001. It demonstrates the willingness of the international community to contribute to the Afghan intervention and highlights the multilateral nature of the mission. Of particular importance in this chapter is the explanation of the various justifications that were offered for the intervention in Afghanistan, and the manner in which the intervention was framed as a case of humanitarian intervention.

The focus of this thesis is then directed towards the refugee crisis that developed in Afghanistan during this period in chapter four, 'Afghanistan's Refugee Crisis'. Afghanistan's history of refugees is briefly discussed before this chapter goes on to highlight the manner in which the international intervention in Afghanistan served to exacerbate the desperate situation of Afghanistan's civilian population and create further displacement. Despite the

efforts of the US-led coalition to 'fix' Afghanistan through reconstruction efforts, the country remained in a precarious state and was unsuitable for refugee repatriation.

Chapter five, 'The United Nations High Commissioner for Refugees (UNHCR) in Afghanistan', explores the politics surrounding the UNHCR's operations in Afghanistan. It seeks to explain why the UNHCR adopted a policy of repatriation and returned a record number of refugees to Afghanistan despite the fact that this policy ran against the best interests of those refugees being repatriated. Chapter six, 'The State Response to Afghanistan's Refugee Crisis', places the operations of the UNHCR in context by examining the manner in which the international community of states responded to the Afghan refugee crisis. It highlights the sense of reluctance that many states express towards sharing the 'refugee burden' by exploring some of the various ways that states seek to avoid fulfilling their humanitarian obligations to refugees. The sense of disdain that the many states expressed towards Afghan refugees is then highlighted in a case study of Australia's explicit inhospitality towards Afghanistan's refugees.

Finally, chapter seven, 'The Place of Humanitarianism in International Politics', provides a concluding chapter that ties the preceding chapters together in a discussion of the major themes that emerged over the course of the thesis. It identifies the core problems with the existing international humanitarian regime and some of the major areas in which the regime fails to adequately uphold the principles of humanitarianism. Finally, this chapter then entertains some of the amendments and improvements to the international humanitarian regime that have been prescribed by some of the prominent scholars of international relations and considers their chances of achieving a desirable outcome.

CHAPTER 1: HUMANITARIANISM EXPLAINED

Humanitarianism is the basic ethical principle that human beings have an incumbent duty to assist those in great distress. It is a principle that holds between strangers that share nothing in common other than their humanity. Humanitarianism has always had a strong presence in international politics, yet there are reasons for believing that it has never enjoyed the prominence that it enjoys today. The classical understanding of humanitarianism, guided by the principles of impartiality and neutrality, underwent a considerable shift in nature in the post-Cold War era of international politics. This shift resulted in a more politicised and more prominent form of humanitarianism which has been central to the promotion of a new liberal world order. It is within this context that the contemporary international humanitarian regime fell into a state of disarray as the international community's response to humanitarian crises began to reflect the political agendas of the world's most powerful states.

The Principles of Classical Humanitarianism

Born out of the highest ethical principles of international relations, humanitarianism is offered as a remedy for humanity's worst suffering. It provides relief from suffering indiscriminately, whether that suffering is caused by nature or human conflict. Humanitarianism stems from the foundational principle of humanity, which may be defined as 'the desire to prevent and alleviate human suffering wherever it may be found...to protect life and health and to ensure respect for the human being'.¹ The principle of humanity itself is derived from the doctrine of natural law. It maintains that human beings have certain moral duties to each other by virtue of their common human nature and that we are obliged to help those in need however we are able.² It is this genuine desire to minimise human suffering that is at the heart of the principle of humanitarianism.

The guiding light of international humanitarianism has traditionally been provided by the International Committee of the Red Cross (ICRC), founded in 1864. The centrality of the

¹ Jean Pictet, 'The Fundamental Principles of the Red Cross: Commentary', *International Red Cross* <http://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm>, accessed 18 April 2011.

² Dorothea Hilhorst, 'Humanitarian Principles and Organisational Culture: Everyday Practice in Médecins Sans Frontières-Holland', *Development in Practice*, 12/3-4 (2002). p.491.

ICRC to the international humanitarian regime is highlighted by the fact that in 1986, the International Court of Justice refrained from providing a definition of the term 'humanitarianism'; it rather chose to simply equate its meaning with the work of the ICRC.³ Today the ICRC operates in accordance with a set of seven fundamental principles that were established in 1965 by the Vice President of the Committee, Jean Pictet. These principles are:

(1) the before-mentioned principle of humanity; (2) impartiality; (3) neutrality in conflict situations; (4) independence from any state or other organisation; (5) voluntary service; (6) unity within the Red Cross society; and (7) universality.⁴

While each of these principles plays an important role in defining the unique character of the ICRC, the two most essential principles are those of impartiality and neutrality. Impartiality is essential to humanitarianism in that it ensures that victims are not distinguished according to any criteria other than their needs. Neutrality is a necessity for humanitarians to enjoy the confidence of all whereby they are able to retain access to the victims on both sides of a conflict. To attach any political, racial, religious, or ideological lens to humanitarianism would invariably undermine its legitimacy and effectiveness. Impartiality and neutrality are indispensable principles for creating the atmosphere of trust, without which humanitarian action would be inconceivable.⁵ Until recently, the role of these two principles as the basis of international humanitarianism was relatively uncontroversial.⁶

Within international politics, subscription to the principle of humanitarianism is virtually unanimous. There are an estimated 3,000 to 4,000 international humanitarian non-governmental organisations (NGOs) operating in the world today whose purpose is to provide protection and assistance to those in the greatest of need.⁷ These organisations range from those who provide general services to the needy, such as the International Committee of the Red Cross (ICRC), to those who focus on more specific humanitarian goals, such as the

³ Thomas G. Weiss, 'Principles, Politics, and Humanitarian Action', *Ethics & International Affairs*, 13/1 (1999). p. 1.

⁴ For an in-depth description of the ICRC fundamental principles, see Pictet, 'The Fundamental Principles of the Red Cross'.

⁵ Yves Sandoz, 'The International Committee of the Red Cross and the Law of Armed Conflict Today', *International Peacekeeping*, (1997). p.88.

⁶ Weiss, 'Principles, Politics, and Humanitarian Action'. p.1.

⁷ Abby Stoddard, 'Humanitarian NGOs: Challenges and Trends', in Joanna Macrae and Adele Harmer (eds.), *Humanitarian Action and the 'Global War on Terror': A Review of Trends and Issues* (Humanitarian Policy Group, 2003). p.25.

International Rescue Committee (IRC) who focus on repatriating refugees within post-conflict societies. There are also a number of inter-governmental organisations (IGOs) that are focused on international humanitarian issues, such as the Human Rights Council and High Commissioner for Refugees branches of the United Nations. Finally, most state governments in the world have dedicated foreign policy sectors and portions of their annual budgets to help alleviate humanitarian crises around the world.⁸ In this sense, the international community has recognised the importance of providing assistance to those in need and has lent its support to the operations of the international humanitarian regime.

The Politicisation of Humanitarianism

The nature of international humanitarianism underwent a distinct change following the end of the Cold War. The end of superpower conflict saw the international political system change in a manner that served to undermine the effectiveness of classical humanitarianism. From the early 1990s, the dynamics of international conflict underwent fundamental shift. The conventional grand wars between the world's most powerful states gave way to civil conflict within states during which "civilians were targeted because of their religion or ethnicity.... and where children carried guns".⁹ The belligerents in these civil conflicts were not state soldiers, but war criminals that showed complete disregard for international humanitarian law, targeted relief personnel, and seized foreign aid to fuel war economies. Conflicts such as those in Somalia, Rwanda, and Bosnia in the early 1990s revealed the limitations of classical humanitarianism as humanitarian efforts failed miserably to assist the hundreds of thousands of victims of human rights abuse and genocide in these crises. Humanitarians began to accept the new conventional wisdom that suggested that there was 'no humanitarian solutions to humanitarian problems'.¹⁰ Human rights violations and ethnic cleansing campaigns could not be remedied by humanitarianism alone; humanitarian action had political consequences and could therefore not be limited to reactive relief work.¹¹ By the turn of the century, the international community had largely accepted the notion that humanitarianism had to renounce its traditional principles of impartiality and neutrality and become more politically oriented in order to be effective in the post-Cold War era of international politics.

⁸ For instance, see New Zealand Aid, 'Humanitarian and Emergency Assistance', <http://www.aid.govt.nz/what-we-do/humanitarian-assistance.html>, accessed 18 April 2011.

⁹ Dexter, 'The 'New War' on Terror, Cosmopolitanism and the 'Just War' Revival.' p.57.

¹⁰ David Rieff, 'Humanitarianism in Crisis', *Foreign Affairs*, 81/6 (2002). p. 111.

¹¹ *Ibid.* p.113.

In the context of this shift in the nature of humanitarianism, humanitarian action began to be viewed by humanitarians and political leaders alike as a tool through which to bring about positive political change around the globe. Humanitarian action and the promotion of liberal values such as human rights and democracy began to be seen by many as part of the same struggle for a more fair and peaceful world.¹² Upon receiving the 2001 Nobel Peace Prize, United Nations Secretary General Kofi Annan declared that “no walls can separate humanitarian or human rights crises in one part of the world from national security crises in the other”.¹³ Traditionalist organisations such as the ICRC or Medecins Sans Frontieres (MSF) argued that the fusion of political and humanitarian agendas, no matter how noble they may be, took humanitarianism beyond the role for which it was intended. Nevertheless, by the late 1990s the international humanitarian regime had come to embrace the idea that the humanitarian action would be more effective by discarding the archaic apolitical rules and working in conjunction with the liberal ideology of the world’s most powerful states.

However, this new politicised mode of humanitarianism has seldom been far from controversy. Clear tensions exist between the pursuit of political goals and the aims of humanitarianism. Yet the politicisation of humanitarianism has blurred the lines between the two, which has had a number of negative consequences for the international humanitarian regime.¹⁴ While the rules of the game have clearly changed around international humanitarian action, the international humanitarian regime have failed to articulate a coherent set of principles and practices to adequately respond to the humanitarian crises of the 21st century.¹⁵ Jennifer Hyndman explains how, in the absence of a clear and consistent framework for international humanitarian action, “a number of ad hoc and sometimes contradictory measures are being employed” to manage international humanitarian crises.¹⁶ Two of these measures, humanitarian intervention and refugee protection, form the basis of this thesis and are introduced in greater depth below.

¹² Ibid. p.114.

¹³ Kofi Annan, 'Nobel Lecture', http://nobelprize.org/nobel_prizes/peace/laureates/2001/annan-lecture.html. accessed 24 February 2012

¹⁴ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.1.

¹⁵ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. p.xxiv.

¹⁶ Ibid. p.xxv.

Humanitarian Intervention

At the heart of the debate over the nature of humanitarianism lies the question of its relationship to war. The integration of humanitarianism and human rights only makes sense in the context of a world in which military intervention is one of the standard responses to a humanitarian crisis.¹⁷ In this paper, humanitarian intervention is defined as:

“the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.”¹⁸

For natural law theorists, the moral obligation we have towards our fellow human beings “is the most basic ground... for interference in the internal affairs of one nation by outsiders”.¹⁹ In his book *De Jure Belli ac Pacis* (On the Law of War and Peace), the classical Dutch jurist Hugo Grotius argues that other states may exercise a right of forcible military action where a ruler “provokes their people to despair and resistance by unheard of cruelties”.²⁰ Humanitarian intervention is morally justified if it is undertaken to prevent the grave violation of the fundamental rights of humanity. In this view the international community of states has not only the right but also the moral obligation to punish those states that that excessively violate the rights of humanity as stipulated by the law of nature.

The legality of humanitarian intervention is an issue that has attracted intense debate within international relations. At the heart of this debate are questions around the law of state sovereignty and its uneasy relationship with the principle of non-intervention. The principle of non-intervention was established in the Treaty of Westphalia in 1648 and is enjoyed by states as a corollary of their sovereignty. The United Nations Charter affirms the principle of in Article 2.4, demanding that all member states “shall refrain... from the threat or use of

¹⁷ Rieff, 'Humanitarianism in Crisis'. p.116.

¹⁸ J. L. Holzgrefe and R. O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, 2003). p.18.

¹⁹ Ibid. p.25.

²⁰ Hugo Grotius, *De Jure Belli Ac Pacis (On the Law of War and Peace)*, translated by A.M. and A.C. Campbell (Kitchener: Batoche Books, 2001). p.247.

force against the territorial integrity or political independence of any state”.²¹ However, from the mid-1990s proponents of humanitarian intervention began to argue that sovereignty was not an inherent right of states, but rather a privilege afforded to those states that lived up to their responsibilities to their citizens.²² If states failed to uphold the rights of their citizens, they forfeited their right to sovereignty and the principle of non-intervention no longer applied to them. This concept of sovereignty as responsibility was enhanced in 2001 by a report issued by the International Commission on Intervention and State Sovereignty (ICISS) entitled *The Responsibility to Protect*. The report called for a “necessary recharacterisation [of sovereignty] from sovereignty as control to sovereignty as responsibility” in order to provide a basis from which the international community could act against states who violated the human rights of their citizens.²³ The Responsibility to Protect report gained widespread support from the international community and in 2004 the UN Secretary General Kofi Annan affirmed the report on behalf of the UN. This signalled a fundamental normative shift away from the traditional concept of sovereignty as an unconditional right of states towards the concept of sovereignty as responsibility. It also provided a firm legal framework to which states could appeal in order to justify the use of military force on humanitarian grounds.

It is perhaps unsurprising that the period in which humanitarianism took on a more political nature and the concept of state sovereignty took on an alternate definition also bore witness to a sharp rise in the number of humanitarian interventions. Influenced by increasing quantities of scholarship supportive of intervention, as well as political figures such as George H.W. Bush and Kofi Annan and organisations like the ICISS, the international community began to subscribe to the idea that humanitarian intervention was an appropriate tool through which to bring about a new liberal world order based on universal human rights and democracy.²⁴ As the ‘new’ political problems of the post-Cold War world unfolded, humanitarian intervention in non-liberal regimes around the world became increasingly viewed as the solution.²⁵ It is within this context that the humanitarian interventions in Somalia in 1992, Bosnia in 1995, Kosovo and East Timor in 1999, and Afghanistan in 2001 took place. By the turn of the 21st

²¹ The United Nations, 'The Charter of the United Nations', <http://www.un.org/en/documents/charter/chapter1.shtml>, accessed 24 February 2012.

²² A. Etzioni, 'Sovereignty as Responsibility', *Orbis*, 50/1 (2007). p.71.

²³ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect', (2001). p.13.

²⁴ Noam Chomsky, *The New Military Humanism: Lessons from Kosovo* (Pluto Press, 1999). p.4.

²⁵ Peter Lawler, 'The “Good War” After September 11', *Government and Opposition*, 37/2 (2002). p.151.

century, humanitarian intervention was no longer simply one form of war; it had become virtually synonymous with the idea of legitimate war.²⁶

Refugee Protection

Whether legitimate or otherwise, war has a number of negative consequences for civilian populations. Other than death or severe injury, one of the most devastating consequences of war is forced displacement. Forced displacement has accompanied war from the earliest beginnings of human civilisation. Yet so too has the humanitarian response of granting refuge to those who have forcibly been displaced.²⁷ References to the granting of refuge to displaced persons have been found in texts written 3,500 years ago during the development of the great early empires such as the Babylonians and ancient Egyptians. Granting refuge to those in great need has always been seen as a moral imperative. It was not until the mid-20th century that forcibly displaced persons gained recognition as a legal status under the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention). A legal status for refugees was necessitated by the vast number of persons who were displaced during the Second World War as a result of national and ethnic criteria being used to determine who belonged within which political community.²⁸

In the 1951 Refugee Convention, the term ‘refugee’ is defined as:

“an individual who, owing to a well-founded fear of persecution for reasons of political opinion, race, religion, nationality, and membership in a social group are outside their country of nationality and are unable or, as a result of such fear, unwilling to return to it”.²⁹

This definition of a refugee has naturally been adopted by the international community of states as members of the UN. Yet this definition contains a number of limitations. Most importantly, it excludes internally displaced peoples (IDPs), such as the Kurds in Iraq, simply because they did not cross an international border. Moreover, it overlooks those who have been displaced as a result of general states of violence, such as civil wars,

²⁶ Dexter, 'The 'New War' on Terror, Cosmopolitanism and the 'Just War' Revival.'

²⁷ United Nations High Commissioner for Refugees (2010), 'Refugees', <http://www.unhcr.org/pages/49c3646c125.html>, accessed 28 May 2010.

²⁸ Gibney, 'Liberal Democratic States and Responsibilities to Refugees'. p.169.

²⁹ United Nations High Commissioner for Refugees (2011a), 'Convention Relating to the Status of Refugees', <http://www2.ohchr.org/english/law/refugees.htm>, accessed 28 May 2010.

rather than a specifically targeted persecution against their particular ethnicity, religion, and so on.³⁰ In order to overcome these limitations, the term ‘refugee’ used in this paper will be intentionally broad in order to include the three categories of peoples seeking refuge: those displaced or in danger within their own countries (IDPs), those who have fled to foreign states, and those whose refugee status is pending definitive evaluation by the relevant national asylum system (commonly referred to as ‘asylum seekers’).

Since the end of the Cold War, refugee issues have become intimately intertwined in evolving notions of humanitarianism³¹. The changed nature of warfare in the post-Cold War era has significantly worsened the plight of civilian populations within conflict zones. In fact, many humanitarian crises today are the result of localised wars within which combatants deliberately seek to engage in ‘displacement by design’.³² Civilian populations are frequently targeted and are often afforded no protection from their own states; it may even be their own governments that are threatening their safety. With their homes destroyed, their dignity lost, and their rights violated, these civilians caught up in the consequences of conflict are left with no alternative but to seek refuge in foreign lands. In this disconsolate situation, refugees become entirely dependent upon the humanitarian compassion of the international community in order to survive.

The severity of the international refugee crisis today is difficult to fathom. The total population of concern to the United Nations High Commissioner for Refugees (UNHCR) stood at a staggering 43.3 million at the end of 2009, the worst instalment of the global refugee crisis since the mid-1990s.³³ This has increasingly commanded the attention of the international community in recent years. Richard Holbrooke, the Permanent Representative of the United States to the UN, stressed the importance of refugee issues by explaining that apart from the dead, refugees are the most obvious victims of political disasters. “How therefore can the [political] world turn away from people made homeless by political evil?”, he queried.³⁴ Holbrooke conceded that while finding solutions to refugee crises is not cheap, the consequences of not dealing with them in a timely fashion are even greater because

³⁰ Gibney, 'Liberal Democratic States and Responsibilities to Refugees'. p.170.

³¹ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.3.

³² Ibid. p.276.

³³ United Nations High Commissioner for Refugees (2009), 'UNHCR Statistical Yearbook 2009', <http://www.unhcr.org/4ce532ff9.html>. accessed 29 April 2011.

³⁴ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.1.

refugee crises can have an undermining effect on political stability in the future.³⁵ So while humanitarian compassion should be the primary motivator for assisting refugees, doing so also makes sense in the context of the political and strategic considerations of states.

The moral obligation that states have towards refugees is clearly stipulated by the principle of humanitarianism. Humanitarianism does demand that states commit to assisting refugees. Yet it is cautious in what it demands from states and tries to strike a balanced compromise between the competing claims of citizens and refugees.³⁶ Humanitarianism requests that states accept refugees up to point that certain costs are incurred. It does not expect states to assist refugees to the point that it is unable to fulfil its primary responsibilities to its own citizens;³⁷ as the cost of assisting refugees increasingly impinges upon a state's commitment to its citizens, a state's duty to assist refugees subsequently decreases. However, in applying the humanitarian standard, states are expected to demonstrate that they are doing what they can within their limits to help reduce the vast number of refugees in the world. As Matthew Gibney explains, "the onus [is] on state officials to give a reasoned defence of why they believe their current policies are satisfying humanitarianism's requirements".³⁸ So for instance, in New Zealand, refugees constitute less than ten percent of the approximately 50,000 new entrants the country accepts each year. To apply the humanitarian standard, the New Zealand government would need to justify how this policy represents its maximum ability to contribute towards easing the refugee crisis. In placing this expectation on states, the principle of humanitarianism has the potential to ease the severity of the global refugee crisis by improving the refugee policies of states.

The international community's legal responsibilities towards refugees are also clear. Various sources of international law recognise and protect the legal rights of refugees. For instance, Article 14(1) of the 1948 Universal Declaration of Human Rights proclaims that "everyone has the right to seek and to enjoy in other countries asylum from persecution".³⁹ Article 33 of the Refugee Convention similarly affirms the law of *non-refoulement*, which prohibits states from expelling a refugee to a country in which "his life or freedom would be threatened".⁴⁰

³⁵ Ibid. p.1.

³⁶ Gibney, 'Liberal Democratic States and Responsibilities to Refugees', p.178.

³⁷ Ibid. p.178.

³⁸ Ibid. p.179.

³⁹ The United Nations (2011b), 'Universal Declaration of Human Rights', <http://www.un.org/en/documents/udhr/index.shtml#a14>, accessed 2 May 2011.

⁴⁰ The United Nations (2011c), 'The 1951 Convention Relating to the Status of Refugees', <http://www.unhcr.org/3b66c2aa10.html>, accessed May 2 2011.

The preamble to the Refugee Convention also stresses the importance of ‘burden-sharing’ as an essential means of solving refugee crises.⁴¹ It recognises that because granting refuge to large numbers of refugees may place an ‘unduly heavy burden’ on some countries, there must be a high degree of international cooperation on refugee issues in order to share this burden.⁴² However, to the detriment of the world’s refugees, there is great disparity in the extent to which states are willing to share this burden. Many states perceive humanitarianism as an external phenomenon; while they are willing to support humanitarian action on the other side of the world by contributing foreign aid or troops to humanitarian interventions, many states are reluctant to apply the principles of humanitarianism within their own borders.⁴³ In the context of the global refugee crisis, this results in states seeking to minimise the number of refugees they resettle in their countries. These kind of practices by states will be discussed in greater depth in chapter six of this thesis.

In the post-Cold War era of international politics, international humanitarianism became increasingly complex. The traditional distinction between humanitarianism and the political agendas of the world’s states became blurred as the international community began to view humanitarian action as a tool through which to construct and enforce a new liberal world order based upon universal human rights and democracy. This overt politicisation of humanitarianism resulted in the creation of a number of dubious humanitarian policies that sought to achieve humanitarian and political goals simultaneously. This thesis explores two such policies, humanitarian intervention and refugee protection, in the context of the tensions that existed between the humanitarian and political goals of the 2001 US-led war in Afghanistan.

⁴¹ B. Frelick, ‘Haitian Boat Interdiction and Return: First Asylum and First Principles of Refugee Protection’, *Cornell International Law Journal*, 26 (1993). p.676.

⁴² The United Nations (2011c), ‘The 1951 Convention Relating to the Status of Refugees’.

⁴³ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. p.2.

CHAPTER 2: AFGHANISTAN IN CRISIS

While the troublesome history of modern Afghanistan is well documented, it is not always well understood. Prior to 2001 Afghanistan had already been ravaged by more than two decades of conflict and humanitarian tragedy. Afghanistan had been at the centre of international attention in the 1980s as the axis of superpower interest in the context of the Cold War. As such, Afghanistan received vast amounts of financial and military assistance from the US in support of its resistance against the Soviet invasion of Afghanistan. However, once the Soviet Union collapsed and the Cold War ended, Afghanistan was relegated to the sidelines of international concern. During the 1990s it struggled to cope with a devastating civil war, followed by a repressive governmental regime, alongside severe drought and famine. It was during this period that Afghanistan developed into a major threat to international peace and security and fell victim to one of the worst humanitarian crises in modern history.

The Violent History of Afghanistan

The full extent of the tragedy that fell upon Afghanistan in the early 21st century can only be understood by recognising the incessant state of conflict that plagued the country over the preceding two decades. The chain of events that culminated in the Afghan war of 2001 began as early as 1978 when the Marxist People's Democratic Party of Afghanistan (PDPA) overthrew the government of Muhammad Daoud. Despite being backed by the Soviet Union, the PDPA's grip on power was fragile and faced frequent opposition from the Afghan population. In the context of the Cold War, the Soviet Union was determined to maintain a Marxist regime in Afghanistan and in December 1979 invaded Afghanistan in an attempt to suppress an uprising against the PDPA. The Soviet invasion took a brutal toll on the Afghan population, which was often subjected to torture and collective punishment.¹ The Soviet invasion instantly transformed Afghanistan into a country of strategic significance for the US and its Western allies.² A local insurgency in resistance to the Soviet invasion had been mounted by a loosely allied group of *mujahideen*, or Islamic holy warriors, and the US saw

¹ M.H. Kakar, *Afghanistan: The Soviet Invasion and the Afghan Response, 1979-1982* (University of California Press, 1997). p.162.

² Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.10.

this group as an ideal mechanism for weakening the Soviet Union by engaging it in protracted guerrilla warfare. The US seized the opportunity to provide the *mujahideen* with financial, military, and humanitarian supplies in support of its resistance to the Soviet Union. This resulted in a decade-long war between the *mujahideen* and the Soviet Union which devastated Afghanistan and its civilian population. It is estimated that from a total population of 16.4 million, more than 1.5 million Afghans were killed, 4.2 million were maimed or disabled, and more than 7 million were displaced as a result of the war.³

The war also exhausted the Soviet Union, who withdrew from Afghanistan in February 1989. After supporting the *mujahideen* for so long, the Soviet withdrawal sparked the end of the US' strategic interest in Afghanistan. By 1990, Afghanistan had virtually fallen off the radar of the international community and the Afghans were largely left on their own to rebuild their devastated country.⁴ Without the support of the Soviet Union the PDPA relinquished control of the country and a *mujahideen*-led government rose in its place. This was met with genuine hope and anticipation among Afghans, who expected the *mujahideen* to usher in an era of peace and stability in Afghanistan. However, this optimism was short lived as it quickly became apparent that internal power battles between the major leaders within the *mujahideen* government would prevent it from achieving any political stability in Afghanistan.⁵ Within a matter of months Afghanistan was again plunged into a state of conflict, this time civil war between the ethnic divisions within the *mujahideen*. The war pitted the majority Pushtun population in the south and east of the country against the ethnic minorities of Tajik, Uzbek, Hazara, and Turkmen of the north.⁶

It was in 1994 that a predominantly Pushtun force known as the Taliban emerged as a force to be reckoned with in the south. The Taliban was comprised primarily of young Afghan refugees living in Islamic *madrasahs* (seminaries) in Pakistan. It was supported by the anti-Western political party Jamiat-ul-Islam (JUI) of Pakistan and the ultraconservative Wahhabi branch of Islam in Saudi Arabia. With financial backing from the Wahhabis in Saudi Arabia, JUI established hundreds of *madrasahs* in Pakistan's Pushtun belt, from which Afghan refugees were offered free education in fundamentalist Islamic teachings, as well as food, shelter, and military training. These *madrasahs* proved to be ripe breeding grounds for

³ A.Z. Hilali, *US-Pakistan Relationship: Soviet Invasion of Afghanistan* (Ashgate Publishing Co, 2005). p.198.

⁴ A. Rashid, 'The Taliban: Exporting Extremism', *Foreign Affairs*, 78 (1999). p. 23.

⁵ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.12.

⁶ Rashid, 'The Taliban: Exporting Extremism'. p.23.

Taliban recruitment.⁷ The Taliban preached that the solution to Afghanistan's problems was to be found in the creation of a strict Islamic state. It had managed to bring some level of relative peace and stability to the parts of the country it controlled, and this had raised its popularity among the Afghan population.⁸ Recruiting from the *madrasahs* also gave the Taliban a strong military advantage over its rivals for political control of Afghanistan. In 1994 the Taliban gained control of Afghanistan's second largest city, Kandahar, with the loss of only a dozen men. In 1995 they took Herat, in 1996 Jalalabad and the capital Kabul, and in 1998 Mazar-i-Sherif. Finally, in September 2000 they took the last major city outside of their control, Taloqan. The Taliban's extremist ideology and authoritarian system of government made it increasingly unpopular within the international community, which imposed trade and diplomatic sanctions against Afghanistan in response.⁹ In spite of this, the Taliban held firm political control of the country heading into the new millennium.

Afghanistan's Growing Security Threat

Under the control of the Taliban, Afghanistan developed into a multifaceted threat to international peace and security. Afghanistan's troubles had been largely contained within its immediate environment prior to the Taliban's accession to power, but this changed under the Taliban's regime.¹⁰ Part of the threat it posed the international community was as a major source and trafficker of narcotics. Drug cultivation and trafficking was the Taliban's largest source of income.¹¹ The UN Drug Control Programme reported in 1999 that Afghanistan produced more opium than the rest of the world put together, making the Taliban the largest heroin producer in the world.¹² Around Kandahar, poppy fields stretched as far as the eye could see, while in Herat, the Taliban set up model farms where farmers were able to learn the best methods of heroin cultivation. Vast amounts of heroin were exported internationally from Afghanistan, and with a 20 percent tax collected from dealers, this money went directly into the Taliban's war chest.

⁷ Ibid. p.25.

⁸ H. Ruiz, 'Afghanistan: Conflict and Displacement 1978 to 2001', *Forced Migration Review*, 13 (2004). p.9.

⁹ Ayub and Kouvo, 'Righting the Course? Humanitarian Intervention, the War on Terror and the Future of Afghanistan'. p.643.

¹⁰ Iran and Pakistan also felt the effects of Afghanistan's problems, with these two countries admitting millions of Afghan refugees over the years.

¹¹ Rashid, 'The Taliban: Exporting Extremism'. p.9.

¹² Ibid. p.31.

Another area of international concern, particularly in the Middle Eastern region, was around the smuggling of international trade commodities in and out of Afghanistan. The smuggling of international trade goods made up the Taliban's second-largest source of income.¹³ The World Bank estimated that in 1999 the smuggling of consumer goods, fuel, and food products in and out of Afghanistan amounted to \$5 billion, a figure which surpassed Afghanistan's total GDP. This flow of illegal trade crippled the local industry in Afghanistan and many other states in the region, as local producers were unable to compete with the foreign-made, duty-free goods being smuggled into their markets. It also undermined the effectiveness of the international trade sanctions in place against Afghanistan, as the Taliban were able to obtain whatever they required through the black market.

But the greatest threat that the Taliban's Afghanistan posed to the rest of the world came from the fusion of fundamentalist Islam and terrorism. While Afghanistan had always been a deeply conservative Muslim country, the traditional form of Islam practiced in Afghanistan was also highly tolerant. As such, none of Islam's extreme orthodox sects, such as Wahhabism, had ever been able to take root in Afghanistan.¹⁴ Under the Taliban this changed dramatically as Afghanistan was transformed into a hub of Islamic fundamentalism and an exporter of extremist Islamic ideology. Islam became a lethal weapon in the hands of the Taliban. It imposed a fundamentalist system of Islam based upon a strict form of *sharia* law and a crude interpretation of the notion of *jihad* (religious struggle) upon which it justified the killing of its enemies – Muslims of different sects and Western infidels - in the name of God. This system inspired and nurtured a new generation of violent Islamic fundamentalists who, during the 1990s, sought to carry out Taliban-style revolutions throughout the Middle East and beyond.¹⁵ Radical Islam was exported from Afghanistan to Chechnya in Russia, Kashmir in India, and even as far as Xinjiang in China. The Taliban's Information Minister, Amir Khan Muttaqi, boasted that "[our] prestige is spreading across the region because we have truly implemented Islam, and this makes the Americans and some of our neighbours very nervous".¹⁶

As the Taliban's influence grew across the region, containing the spillover of Islamic extremism from Afghanistan developed into a major concern of the international community.

¹³ Ibid. p.31.

¹⁴ Ibid. p.25.

¹⁵ Ibid. p.29.

¹⁶ Ibid. p.29.

The Taliban readily harboured foreign Islamic extremists that had engaged in terrorist activities in their own countries.¹⁷ Terrorists from Iran, Uzbekistan, and China among others, all found refuge in Afghanistan under the Taliban. However, it was the Taliban's well known support of Osama bin Laden and his transnational terrorist network al-Qaeda that had the most devastating effect on international peace and security. Bin Laden was a key figure in the *mujahideen's* resistance against the Soviet invasion in the 1980s. But after being supported by the US during this period, bin Laden had turned against the US after it established military bases in his native Saudi Arabia in the early 1990s. He perceived the US as an imperialist power whose presence in the Middle East was both exploiting and corrupting the Islamic world.¹⁸ After striking up a friendship with the Taliban chief Umar, bin Laden established terrorist training camps in Afghanistan in 1997 from which he planned various terrorist attacks against the US and its allies. It was from Afghanistan that bin Laden masterminded the bombing of the US embassies in Kenya and Tanzania in 1998, the US Navy destroyer Cole in 2000, and World Trade Centre and Pentagon in the US in September 2001. Backed by the UN Security Council, Washington demanded that bin Laden be extradited from Afghanistan to face justice in the US, but the Taliban refused to comply. The Taliban's harbouring of bin Laden and his al-Qaeda network served as one of the main reasons for the US-led 'war on terror' that began in Afghanistan in October 2001. It also ultimately proved to be beginning of the end of the Taliban's period of control in Afghanistan, as the regime was removed from power in early 2002.

Afghanistan's Humanitarian Crisis

By 2001 the combination of more than two decades of incessant conflict and the Taliban's repressive governmental regime culminated in one of the worst humanitarian disasters of modern history. The earliest signs of a humanitarian crisis long preceded the events of September 2001. Civilians in Afghanistan began to feel the humanitarian consequences of war as early as 1978 during the violent PDPA-led Saur Revolution.¹⁹ But it was as a result of the devastation that accompanied the Soviet invasion that Afghanistan was placed in the destitute humanitarian situation within which it remained trapped for so long. The war with

¹⁷ For examples, see Ibid p.28-29.

¹⁸ I. Ahmad, 'Containing the Taliban: Path to Peace in Afghanistan', *Journal of International Affairs*, 4 (2001a).

¹⁹ R. Margesson, 'Afghan Refugees: Current Status and Future Prospects', Congressional Research Service, Washington DC 2007. p.2. Even at this early stage, refugees fled Afghanistan in an attempt to escape the political violence of the Saur Revolution, led by the PDPA against the government of Afghanistan's first President, Muhammad Daoud.

the Soviet Union had a devastating effect on Afghanistan's infrastructure; thousands of homes were destroyed, roads were damaged, and the facilities needed to provide basic services such as electricity and water were not functioning adequately. More importantly, it also created political instability within the Afghan government, which made it impossible for Afghanistan to resolve the developing humanitarian crisis on its own.²⁰ By the early 1990s, Afghan citizens were almost entirely dependent upon foreign aid in order to survive.²¹ Perversely, the defeat of the Soviet Union in 1989 saw the total withdrawal of US assistance to Afghanistan at the precise point that it was required more than ever to recover and rebuild.²² International NGOs functioned as the main providers of key services such as education, healthcare, demining, and food and water distribution. But this assistance was unable to adequately compensate for the absence of functioning state structures in Afghanistan.

As the decade progressed the humanitarian crisis duly worsened. This was in part a consequence of the repressive system of government that was introduced by the Taliban. It imposed a particularly repressive vision of Islamic propriety, which included severe restrictions on women's activities, education, and social and cultural life.²³ It banned television and videos, imposed inhumane *sharia* punishments such as stoning and amputation, forced women to adopt the restrictive Taliban dress code, and prohibited them from even leaving their homes without a male family member escort. The brutal manner in which the Taliban imposed these regulations resulted in widespread human rights violations against the Afghan population.²⁴ Taliban soldiers often forcibly displaced people from their homes; burnt houses; summarily executed civilians, including women and children; raped and beat women; and performed public hangings, stoning to death, and beheadings.²⁵ The Afghan population remained trapped in a state of extreme poverty and fear, helplessly subordinate to the Taliban regime and its repressive methods.²⁶

²⁰ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.74.

²¹ Kofi Annan, 'Statement by the UN Secretary General: Humanitarian Crisis in and around Afghanistan', http://www.un.org/News/dh/latest/sg_afghanistan.htm. accessed 23 May 2011.

²² Rashid, 'The Taliban: Exporting Extremism'. p.3.

²³ Margesson, 'Afghan Refugees: Current Status and Future Prospects'. p.2.

²⁴ Joanna Macrae and Adele Harmer (eds.), *Humanitarian Action and the 'Global War on Terror': A Review of Trends and Issues* (Humanitarian Policy Group, 2003). p.49-50.

²⁵ Global Watch Group, 'Background and History of Afghanistan: Human Rights under the Taliban', <http://www.globalwatchgroup.org/projects/afghanBackground10.html>. accessed 18 May 2011.

²⁶ Macrae and Harmer (eds.), *Humanitarian Action and the 'Global War on Terror': A Review of Trends and Issues*. p.50.

As though life was not difficult enough at this point, the grave humanitarian situation in Afghanistan was exacerbated by the worst drought conditions in living memory. Afghans already had great difficulty in obtaining drinking water due to the high risk of water contamination due to their over-reliance on wells. But the drought that began in 1999 in the north and continued into 2000 and 2001 in the south and east made conditions even worse. It is estimated that during this period, up to 85 percent of the population were forced to live without access to running water.²⁷ The drought also affected Afghanistan's agriculture and food production by hampering the growth of crops and killing vast amounts of livestock, which resulted in a severe famine. The international aid community tried to provide some level of assistance to Afghanistan, but it struggled to have any meaningful effect due to the fact that its efforts were frequently obstructed by the Taliban.²⁸ The Taliban restricted access to the needy, arrested aid workers, and even attacked UN personnel from the World Food Program, making it more and more difficult for aid workers to reach those in need. With more than 1 million Afghans facing severe famine conditions, tens of thousands abandoned their homes in search of food. In September 2001 the World Food Programme reported that in some areas, people were surviving by eating grass and locusts.²⁹ The UN accurately described the situation in Afghanistan as "a humanitarian crisis of stunning proportions" and urged greater assistance from the international community.³⁰

When the events of September 11 2001 thrust Afghanistan back into the international spotlight, what was exposed was an unstable and threatening country in the grip of a devastating humanitarian tragedy. A deadly cocktail of more than two decades of conflict, an aggressive and repressive governmental regime, and famine and drought had placed Afghanistan in a precarious situation. It posed a major threat to international peace and security which demanded a strong international response. Afghanistan's civilian population were also suffering in a humanitarian crisis for which international intervention was long overdue. By October 2001 it had become clear to the international community that it could no longer afford to turn a blind eye to the situation in Afghanistan.

²⁷ Ibid. p.53.

²⁸ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.74.

²⁹ Hiram Ruiz and Margaret Emery, 'Afghanistan's Refugee Crisis', *Middle East Report* <http://www.merip.org/mero/mero092401>. accessed 18 May 2011.

³⁰ The United Nations (2011a), 'In Afghanistan, a Population in Crisis', <http://www.un.org/News/Press/docs/2001/afg145.doc.htm>. accessed 23 May 2011.

CHAPTER 3: INTERVENTION IN AFGHANISTAN

Al-Qaeda's terrorist attacks on the US proved to be the catalyst for the international action against Afghanistan. Following the attacks the UN Security Council (UNSC) passed a series of resolutions against international terrorism. Citing these resolutions, the US gathered international support and formed a coalition of countries to undertake an intervention in Afghanistan, with one of its professed goals being to address the escalating crisis in the country. It has been suggested that the international community was forthcoming in its support in the context of the global war on terror, and that the Afghan intervention should therefore not be classed as a humanitarian intervention.¹ However, Afghanistan's humanitarian crisis played an important role in legitimising the intervention; humanitarian justifications were vigorously invoked by the coalition in order to foster a greater degree of international support for the intervention. The humanitarian and the security rationales for the Afghan intervention were inextricably linked and were mutually reinforcing. As such, while the intervention may have been primarily framed in the context of the war on terror, the humanitarian dimension cannot be overlooked.

Momentum Towards Intervention in Afghanistan

The deteriorating situation in Afghanistan began to command an increasing level of international concern from the late 1990s. International pressure on the Taliban steadily grew as a number of international organisations began to raise awareness for the plight of the Afghan civilian population. In 1998 the United Nations Office of the High Commissioner for Human Rights expressed its "deep concerned at the increasingly deteriorating human rights situation in Afghanistan".² Various human rights watchdogs, such as Amnesty International and Human Rights Watch, also began to strongly denounce the Taliban regime on the

¹ See for examples: Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*; Ayub and Kouvo, 'Righting the Course? Humanitarian Intervention, the War on Terror and the Future of Afghanistan'; D. Chandler, 'From Kosovo to Kabul: Human Rights and International Relations', *London: Pluto*, (2002); T. Smith and L. Diamond, 'Was Iraq a Fool's Errand-What Really Went Wrong', *Foreign Affairs*, 83 (2004).

² United Nations Office of the High Commissioner for Human Rights (1998), 'Resolution 1998/70: Situation of Human Rights in Afghanistan', ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1998-70.doc, accessed 19 May 2011.

grounds of its poor human rights record.³ The UNSC's grave concern for the situation in Afghanistan was reflected by the fact that it passed a total of nine resolutions on Afghanistan between 1996 and 2001. Of these nine resolutions, the most significant were resolutions 1267, which established a sanctions regime against the Taliban, and 1333 which prohibited military ties with Afghanistan.

Yet it was not until October 2001 that international military force was taken against Afghanistan. The UNSC was determined to combat the growing threat to international peace and security posed by terrorism. It passed Resolution 1368 which recognised the inherent right of states who were victims of terrorism to use military force in self defence. The US-led coalition evoked resolution 1368 in support of its decision to use military force against Afghanistan for its support and harbouring Osama bin Laden and his al-Qaeda network. The UNSC also passed resolutions 1373 and 1386 shortly following the onset of military force against Afghanistan which further condemned Afghanistan for its support of international terrorism and expressed support for the intervention. But the intervention simultaneously contained an inherent humanitarian component. This was emphasised by UNSC resolution 1383 which urged the international community to provide "urgent humanitarian assistance to alleviate the suffering of Afghan people" and "long-term assistance for the... rehabilitation of Afghanistan".⁴ The US and the UNSC established a number of international organisations to oversee the distinct security and humanitarian dimensions of the intervention. The following chapter looks at some of these key organisations in greater depth.

Justifying the Intervention in Afghanistan

Reflecting the multifaceted threat that Afghanistan posed to the world in October 2001, the countries who participated in the international intervention in Afghanistan provided varying justifications for their involvement. While some countries focused primarily on the security threat that Afghanistan posed and international terrorism, others chose to justify their involvement on diplomatic and humanitarian grounds. In the post-Cold War world, the humanitarian and foreign policies of states became increasingly interrelated. This was

³ Hazara People, 'Afghanistan: Continuing Atrocities against Civilians', <http://www.hazarapeople.com/1997/09/11/document-afghanistan-continuing-atrocities-against-civilians>, accessed 26 May 2011.

⁴ United Nations Security Council (2001b), 'UNSCR 1378', <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/638/57/PDF/N0163857.pdf?OpenElement>, accessed 27 May 2011; the humanitarian justifications provided by the US and UK governments are also explored in the following section.

reflected by the fact that the humanitarian and security justifications for the intervention in Afghanistan were inextricably linked and mutually reinforcing.⁵ However, it is important to examine the role that the respective rationales played in justifying the intervention in order to understand how legitimacy is sought through proposed legal and normative distinctions between military force and humanitarian intervention.⁶ The following section aims to determine the extent to which the humanitarian rationale in particular proved decisive in legitimising the intervention in Afghanistan.

There is a general disagreement that exists around the primary motive behind the intervention in Afghanistan. This disagreement is broadly divided into two main camps. The first argues that the intervention was primarily justified by the security concerns of the international community, and the US in particular, following the September 2001 terrorist attacks.⁷ It is in this context that US President George W. Bush announced that the US had the right to secure itself against those countries that harboured or gave aid to terrorist groups. In what would commonly become known as the Bush Doctrine, Bush declared that “If you feed a terrorist, if you fund a terrorist, you’re a terrorist. And... [we] will hold you just as responsible for the actions that take place on American soil”.⁸ It is also in this context that the US informed the UN Security Council on 7 October 2001 that it was launching military strikes on Afghanistan after the Taliban rejected the American’s request to extradite the al-Qaeda leaders it was harbouring. Fatima Ayub and Sari Kouvo argue that “never was there an argument made that the US war in Afghanistan was anything other than a unilateral use of force in self-defence”.⁹ The Security Council accepted the US action as a legitimate exercise in self-defence and supported the military effort in Afghanistan by authorising the creation of ISAF under Chapter VII of the UN Charter.

Those who subscribe to this view reject the notion that humanitarian concerns had any motivating effect on the international community’s decision to intervene in Afghanistan. According to Tony Smith, the call for democracy and human rights in Afghanistan was

⁵ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.277.

⁶ V. Nesiah, 'From Berlin to Bonn to Baghdad: A Space for Infinite Justice', *Harvard Human Rights Journal*, 17 (2004). p.76.

⁷ Ayub and Kouvo, 'Righting the Course? Humanitarian Intervention, the War on Terror and the Future of Afghanistan'. p.641.

⁸ George W. Bush (2001b), 'President Rallies Troops at Travis Airforce Base', <http://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011017-20.html>. accessed 24 February 2012.

⁹ Ayub and Kouvo, 'Righting the Course? Humanitarian Intervention, the War on Terror and the Future of Afghanistan'; D. Chandler, 'Introduction: Peace without Politics?', *International Peacekeeping*, 12/3 (2005). p.647.

nothing more than “an integral part of a power play by Washington to control the entire Middle East for the sake of the ‘war on terror’”.¹⁰ Proponents of this view highlight the fact that despite suffering a devastating humanitarian disaster for years during the 1990s, the international community did not lend its support to undertake a humanitarian intervention. When intervention did come in 2001, it was not for the sake of the Afghan people but as a result of a sudden and dramatic shift in the American national interest. As Ayub and Kouvo explain, the Afghan mission only took on a humanitarian dimension when the initial plan for a swift military operation “[became] blurred by complex questions of long-term stabilisation and state-building”.¹¹

This argument is supported by the justifications offered by the Australian government for the country’s contribution to the intervention. Australia was the first country to offer its full support to the United States following the September 11 attacks.¹² Australian Prime Minister John Howard was visiting Washington at the time of the attacks and immediately invoked the mutual-defence clauses of the ANZUS Treaty for the first time since it was enacted in 1952. He declared that “at no stage should any Australian regard this as something that is just confined to the United States. It is an attack upon the way of life we hold dear in common with the Americans”.¹³ Australia’s support over the following months continued to be based on combating the threat of terrorism. It was clear that Howard’s primary reason for sending Australian troops to Afghanistan was to contribute to the ‘war on terror’. The language of humanitarianism was notable only in its absence as Howard repeatedly stressed the importance of “banishing terrorism from the face of the earth”.¹⁴ Australia was eager to reinvigorate its relationship with the United States and become a willing partner in the post-9/11 world.¹⁵ It did so by taking a hard-line on terrorism and lending its unequivocal support for the US-led wars in both Afghanistan and Iraq.

As Australia’s presence in Afghanistan remained throughout the decade, it continued to be justified in the context of the ‘war on terror’. The terrorist attacks in Bali that had killed 88

¹⁰ Tony Smith and Larry Diamond, 'Was Iraq a Fool's Errand? What Really Went Wrong', *Foreign Affairs*, November/December (2004) p.130.

¹¹ Ayub and Kouvo, 'Righting the Course? Humanitarian Intervention, the War on Terror and the Future of Afghanistan'. p.641.

¹² Siracusa, 'John Howard, Australia, and the Coalition of the Willing'. p.41.

¹³ John Howard (2001a), 'Government Invokes ANZUS Treaty - Prime Minister's Press Conference', <http://www.australianpolitics.com/foreign/anzus/01-09-14anzus-invoked.shtml>. accessed 08 June 2011.

¹⁴ John Howard (2001b), 'We Are Allied with a Just Cause: Howard', <http://www.australianpolitics.com/news/2001/01-10-25.shtml>. accessed 14 April 2011.

¹⁵ Siracusa, 'John Howard, Australia, and the Coalition of the Willing'. p.41.

Australians in 2002 shocked the Australian public and reinforced the resolve of the Australian government in its anti-terrorism efforts. The threat of terrorism dominated the discourse within Australian politics and the media.¹⁶ The government maintained public support for Australia's involvement in Afghanistan by framing the war as a matter of Australian national interest; Howard expressed his "very strong belief that it is in Australia's national interest to prevent Afghanistan.....becoming a safe haven for terrorists".¹⁷ Howard's successor Kevin Rudd similarly maintained that the purpose of Australia's involvement in Afghanistan was to "help protect innocent people, including innocent Australians, from being murdered by terrorists".¹⁸ In 2010 Prime Minister Julia Gillard continued this theme by claiming that Australia was in Afghanistan "because we do not want Afghanistan to become a safe haven for terrorists to train and then come and take Australian lives".¹⁹ The government's strong stance on terrorism resonated with the Australian public, which strongly supported tougher national security measures and the fight against international terrorism.²⁰

While the rationales offered for Australia's involvement in Afghanistan support the argument that the intervention was not motivated by humanitarian concerns, to a large extent this argument overlooks the significance of the point in question. What is at issue at here is not whether the United States and its allies were sincere in their motives for intervention, but that they felt it was necessary to publicly defend the intervention in humanitarian terms.²¹ It is clear that in the post-Cold War world, the language of humanitarianism has become an important means of legitimising actions taken in pursuit of policy objectives which are not inherently humanitarian. In the case of Afghanistan, this was reflected by the fact that the US-led coalition felt the need to invoke a humanitarian rationale alongside that of self-defence/anti-terrorism rationale.²²

The humanitarian rationale featured prominently in the speeches made by coalition political leaders. George W. Bush declared that "the oppressed people of Afghanistan will know the generosity of America and its allies. As we strike military targets, we'll also drop food,

¹⁶ Ibid. p.42.

¹⁷ John Howard (2007), 'More Troops for Afghanistan', <http://australianpolitics.com/2007/04/10/howard-announces-extra-troops-to-afghanistan.html>, accessed 28 June 2011.

¹⁸ Kevin Rudd, 'Parliamentary Statement on Afghanistan', http://www.foreignminister.gov.au/speeches/2010/kr_sp_101021.html, accessed 28 June 2011.

¹⁹ Julia Gillard, 'Julia Gillard Warns against Afghanistan Pullout', *The Australian*, 18 October 2010.

²⁰ Siracusa, 'John Howard, Australia, and the Coalition of the Willing', p.42-43.

²¹ N.J. Wheeler, 'Humanitarian Intervention after September 11, 2001', *Just Intervention*, (2004). p.14.

²² Ibid. p.35.

medicine, and supplies to the starving and suffering men and women and children of Afghanistan".²³ This pledge was echoed by Deputy Assistant Secretary of Defence for Peacekeeping and Humanitarian Affairs, Joseph J. Collins. Collins claimed that not only had "military actions not slowed humanitarian assistance", but rather they had in fact served to "accelerate humanitarian assistance".²⁴

The language of humanitarianism was also frequently used by British Prime Minister Tony Blair. Blair claimed that there were "three parts, all equally important, to the operation in which we are engaged: military, diplomatic, and humanitarian".²⁵ He was eager to point out that, "while the military action continues...., we are establishing a huge humanitarian effort to feed and shelter as many refugees as we can".²⁶ In the early days of military action, Blair was also eager to point out that the humanitarian crisis in Afghanistan was not the result of the coalition intervention, but rather the "cruel, dictatorial and oppressive" nature of the Taliban regime that had caused the displacement of 4.5 million Afghan refugees in the pre-September 11 era.²⁷ He maintained that the coalition was bringing about a permanent solution to the crisis and improving the lives of the Afghan civilian population. Military action was an unfortunate yet necessary step in order to achieve this change. Blair conceded that, "although conflict is never easy or pleasant, to see women and children smiling after years under one of the most brutal and oppressive regimes in the world is finally to understand the true meaning of the word 'liberation'".²⁸

The Dutch government also placed a strong emphasis on the humanitarian dimension of the intervention in justifying its involvement in Afghanistan. The Netherlands' initial deployment in late 2001 was made to provide support only to the humanitarian effort, with the Dutch Prime Minister Wim Kok announcing that the Dutch forces and equipment would "not be involved in any attacks in Afghanistan".²⁹ This decision reflected view of the Dutch

²³ George W. Bush (2001a), 'Presidential Address to the Nation', <http://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011007-8.html>, accessed 01 June 2011.

²⁴ Wheeler, 'Humanitarian Intervention after September 11, 2001', p.15.

²⁵ Tony Blair (2001b), 'Attack on Afghanistan: Tony Blair Statement', http://articles.cnn.com/2001-10-07/world/gen.blair.speech_1_military-action-taliban-regime-uk-forces?_s=PM:WORLD, accessed 15 September 2012.

²⁶ Tony Blair (2001c), 'Tony Blair's Speech to the Welsh Assembly', <http://guardian.co.uk/world/2001/oct/30/september11.usa3?cat=world&type=article>, accessed 22 August 2012.

²⁷ Ibid.

²⁸ Blair (2001a), 'Tony Blair's Speech to Parliament Concerning the Terrorist Attacks in the US'.

²⁹ Wim Kok, 'Dutch Ready to Send Troop Support', <http://edition.cnn.com/2001/WORLD/europe/11/09/ret.nl.military/index.html>, accessed 22 August 2012.

government that NATO's operational strategy in Afghanistan should be "as military as necessary, as civilian as possible". The Dutch government frequently stressed that the international mission should emphasise the humanitarian elements of the mission, such as reconstruction and civilian welfare, more than combat operations.³⁰ For Nicholas Wheeler, the fact that the humanitarian rationale was invoked alongside that of self defence by the US and its allies represents an implicit admission on behalf of the coalition that the humanitarian rationale was a necessary enabling condition of the intervention.³¹

Proponents of the humanitarian view therefore reject the claim that the Afghan intervention was not a humanitarian intervention. Some go as far as to claim that the humanitarian rationale proved much more critical in legitimising the intervention than the self-defence rationale.³² Vasuki Nesiah, for instance, argues that the "post-Cold war dialogue on humanitarian intervention in furtherance of international norms" played a much more crucial role in legitimising the intervention in Afghanistan than the "legalistic elaboration of self-defence arguments".³³ She maintains that it was the heavily emphasised discussions about the humanitarian situation in the context of the Responsibility to Protect doctrine being drafted around the time of the intervention that created the space for military intervention by giving the coalition the moral authority to challenge the leadership and practices of the Taliban government. Others adopt a more liberal view and highlight the mutually reinforcing nature of the respective rationales. Piki Ish-Shalom points to the claim put forward by the coalition leadership that the values and interests of the coalition were united.³⁴ He explains that the promotion of humanitarian values, such as freedom and democracy, was part of the coalition's strategy in fighting global terrorism in that it aimed to "create a balance of power that favours human freedom".³⁵ This view highlights the extent to which the security and humanitarian justifications for the intervention overlapped and were used alongside each other to gain international support for the intervention.

³⁰ Morelli and Belkin, 'NATO in Afghanistan: A Test of the Transatlantic Alliance'. p.24.

³¹ Wheeler, 'Humanitarian Intervention after September 11, 2001'. p.15.

³² Nesiah, 'From Berlin to Bonn to Baghdad: A Space for Infinite Justice'. p.86.

³³ Ibid. p.88.

³⁴ Piki Ish-Shalom, "'The Civilisation of Clashes': Misapplying the Democratic Peace in the Middle East', *Political Science Quarterly*, 122/4 (2007). p.549.

³⁵ Ibid. p.549.

The Military Elements of the Intervention

Reflecting the military dimensions of the intervention, two multilateral military organisations were established in 2001 to confront the security threat posed by Afghanistan. The first was Operation Enduring Freedom (OEF), a coalition of countries led by the US Central Command (CENTCOM) committed to a global counter-terrorism campaign. OEF was comprised of several distinct counter-terrorism operations including operations in the Philippines, the Horn of Africa, and Kyrgyzstan. The Afghan operation of OEF was the largest and most complex, with more than 60 countries in total contributing military forces or equipment to the Afghan mission.³⁶ OEF coordinated the first military strikes against Afghanistan on 7 October 2001. US and British forces began bombing Taliban targets and al-Qaeda training camps as part of OEF's primary purpose to expel the Taliban government from Afghanistan and to shut down the al-Qaeda's terrorist training camps in the country. OEF succeeded in these achieving these goals after just two months. However, it remained in Afghanistan to conduct 'counterinsurgency' operations, assist Afghan security forces (ASF) to maintain security in Kabul, and to provide logistical, communications, and other support for the International Security Assistance Force (ISAF) in Afghanistan. OEF is believed to have ultimately been responsible for the killing of Osama bin Laden in 2011.

ISAF was the second multilateral military force that was established to address the Afghan security threat. ISAF was established in December 2001 as part of the Bonn Agreement, a meeting arranged between UN officials, Afghan political leaders, and members of the international community to discuss the future of post-Taliban Afghanistan. The UNSC authorised the establishment of ISAF in resolution 1386 and provided it with a mandate to support the Afghan Interim Authority (AIA) to maintain security in and around Kabul.³⁷ ISAF operated under the command of NATO and was comprised of approximately 50 countries, including those from the Middle East, Asia, and the Pacific region. Despite being sanctioned by the UNSC, ISAF was not organised, staffed, or funded by the UN. ISAF members provide their own equipment and personnel, and fund their own involvement in the force. For reasons of effectiveness, ISAF and OEF operate separately and have missions that

³⁶ United States Central Command, 'Coalition Countries', <http://www.centcom.mil/coalition-countries>, accessed 27 May 2011.

³⁷ Michael J. McNerny, 'Stabilization and Reconstruction in Afghanistan: Are Prts a Model or a Muddle?', *Parameters*, Winter (2006). p.32.

are distinct from each other.³⁸ ISAF's primary purpose is to assist in maintaining security in Afghanistan and creating the conditions whereby the new government of Afghanistan can exercise its authority throughout the country.³⁹

When the ATA was installed in Kabul at the end of 2001, the international military presence in Afghanistan was deliberately light. The US in particular was wary of repeating the Soviet mistakes of the 1980s by giving the impression the international military presence was an occupying force.⁴⁰ ISAF had around 4,500 troops stationed in Kabul, while OEF had an even smaller number in the south-eastern provinces towards Pakistan pursuing missions against al-Qaeda. The military strategy of the international forces came to be known as the 'Afghan model': a minimalist strategy based on air power, US Special Operations Forces, and indigenous troops. This strategy proved to be highly effective in removing the Taliban from power.⁴¹ But the strategy was much less effective in hunting down al-Qaeda and the Taliban forces who had escaped to the mountainous border region with Pakistan. One of the primary reasons for the ineffectiveness of this strategy was the lack of organisation and collaboration between the international forces and the indigenous Afghan troops.⁴² For security reasons, US military leaders did not inform their Afghan counterparts in advance of an operation which left them with little time to prepare for missions and hampered the effectiveness of the military elements in Afghanistan. There was not even a Status of Forces Agreement (SOFA) with Afghanistan as is customary between sovereign states working together in a military situation. The increasingly limited effectiveness of the international military operations in 2002 led the US and ISAF to conclude that maintaining the military pressure on the Taliban and al-Qaeda was going to require a revised military strategy.⁴³

Provincial Reconstruction Teams

To be more effective, Afghan President Hamid Karzai and the UN wanted ISAF to expand its operations into the Afghan provinces. But this strategy called for a much greater number of

³⁸ United Nations Security Council (2001a), 'Security Council Authorises International Security Force for Afghanistan', <http://www.un.org/News/Press/docs/2001/sc7248.doc.htm>, accessed 27 May 2011.

³⁹ International Security Assistance Force (2011), 'International Security Assistance Force: Key Facts and Figures', <http://www.isaf.nato.int/images/stories/File/Placemats/16%20May%202011%20Placemat.pdf>, accessed 27 May 2011.

⁴⁰ A. Suhrke, 'A Contradictory Mission? NATO from Stabilization to Combat in Afghanistan', *International Peacekeeping*, 15/2 (2008), p.214.

⁴¹ Richard B. Andres, Craig Wills, and Thomas E. Griffith, Jr. (2006), 'Winning with Allies. The Strategic Value of the Afghan Model', *International Security*, 30/3, p.124.

⁴² Suhrke, 'A Contradictory Mission? NATO from Stabilization to Combat in Afghanistan', p.215.

⁴³ *Ibid.* p.218.

international troops. In Bosnia and Kosovo, there were initially 18 to 20 international peacekeepers per thousand people; to achieve this ratio in Afghanistan would have required hundreds of thousands of troops in a country that had a historical aversion to foreign occupation.⁴⁴ The US was unwilling to deploy such a large number of troops to maintain security in Afghanistan's isolated provincial towns and believed that a traditional peacekeeping mission would be ineffective in Afghanistan.⁴⁵ Instead, it established the concept of Provincial Reconstruction Teams (PRTs) to spread the "ISAF effect" without actually expanding ISAF itself. The PRTs were combined military/civilian units comprised of up to 100 soldiers, Afghan advisers, and representatives from civilian agencies, such as the US State Department and the US Agency for International Development (USAID). In 2003, 28 PRTs were established to maintain security and oversee the reconstruction of Afghanistan's provinces.

The PRTs had three main areas of focus. The first was to improve tactical-level military coordination between foreign and local troops. The second was to build and strengthen relationships between the foreign forces and the provincial leaders and communities; this meant respecting local leadership structures and partnering with the local actors who played important roles in the rebuilding process of Afghanistan. Third, the PRTs were to build local capacity in the areas of security and good governance through training, mentoring, and monitoring programmes.⁴⁶ In these areas the PRTs initially achieved some success. They played important roles in everything from election support to disarmament to mediating minor conflicts, and managed to build support outside Kabul for the international forces and the new Afghan government. But despite their modest successes the PRTs were always "a bit of a muddle".⁴⁷ Their very nature as multinational, multifunctional, civil-military units created confusion among potential local partners as to their exact role in Afghanistan. Their effectiveness was also undermined by a combination of inconsistent mission statements, unclear roles and responsibilities, ad hoc mission preparations, and under-resourcing. The PRTs remained in operation, but the general sense of confusion around the nature of their operations prevented them from having as great an effect as the US and ISAF had envisaged.

⁴⁴ James Dobbins et al., *America's Role in Nation-Building: From Germany to Iraq* (California: RAND Corporation, 2003). p.151.

⁴⁵ McNerny, 'Stabilization and Reconstruction in Afghanistan: Are Prts a Model or a Muddle?' p.32.

⁴⁶ Ibid. p.35.

⁴⁷ Ibid. p.33.

The Counterproductive Effect of a Heavy Military Presence

From late 2003, the US rescinded its decision to maintain a light military presence in Afghanistan and the international military force was expanded significantly. By 2007 the international forces in Afghanistan had grown to almost 50,000 and the US was still seeking further expansion.⁴⁸ The vast mass of foreign troops increasingly began to resemble an occupation force and at times behaved like one. They frequently searched villages without the permission of the tribal elders and demonstrated little respect for the local civilians and their culture.⁴⁹ They detained Afghan terror suspects on military bases, and were frequently accused human rights violations, injurious cases of mistaken identity, and even the death of suspects while in custody.⁵⁰ As their presence increased, the foreign troops began to create a sense of fear and antagonism within Afghanistan.

The military build up alongside the US invasion of Iraq in March 2003 had the effect of exacerbating the military conflict in Afghanistan.⁵¹ Afghanistan developed into a second front for an intensifying war between international forces and militant Islam. Radical groups from around the Middle East began to flock to Afghanistan in support of al-Qaeda and the Taliban's struggle against the 'occupying infidels' of the West. This counterproductive effect was linked to the limitations of what Astri Suhrke refers to as the 'American model' of warfare in Afghanistan.⁵² The 'American model', an overly aggressive military approach, was clearly not the best approach for dealing with insurgency in Afghanistan. It had limitations that could not be overcome by simply deploying more troops.⁵³ The heavier military presence simply reinforced these limitations and served to undermine rather than support the stabilisation of Afghanistan. ISAF came to recognise this fact and at one point even stressed the importance of the 'hearts and minds' component of counter-insurgency warfare. Yet it never publicly acknowledged the obvious failings associated with a creating a heavy military presence in Afghanistan.

Overall, the military dimension of the Afghan intervention suffered from a lack of coherent strategic understanding of the nature of the mission. Peter Dahl Thuelsen argues that the

⁴⁸ Suhrke, 'A Contradictory Mission? NATO from Stabilization to Combat in Afghanistan'. p.214.

⁴⁹ Ibid. p.221.

⁵⁰ M. Cherif Bassiouni (2005), Report of the Independent Expert on the Situation of Human Rights in Afghanistan, United Nations doc: UN E/CN.4/2005/122.

⁵¹ Suhrke, 'A Contradictory Mission? NATO from Stabilization to Combat in Afghanistan'. p.220.

⁵² Ibid. p.221.

⁵³ Ibid. p.229.

operations of OEF and ISAF represented a mission “being implemented with a lack of civilian resources, holistic strategy, interagency coordination and lacking an appreciation of the context and importance of mission success”.⁵⁴ Confusion around the aims of the military mission seemed to stem from the top of the command ladder, and this confusion resulted in key military tasks being undertaken on an ‘ad hoc’ basis rather than in a consistent strategic manner. It is perhaps for this reason that the international forces struggled to bring about an acceptable level of security in Afghanistan and why an exit strategy for the vast numbers of international troops deployed in Afghanistan remained so elusive.

The Civilian and Humanitarian Elements of the Afghan Intervention

To coordinate the civilian/humanitarian elements of the intervention, the United Nations established the United Nations Assistance Mission in Afghanistan (UNAMA) in March 2002. UNAMA is a political mission directed and supported by the UN Department of Peacekeeping Operations. Its primary task is to maintain a coherent international engagement in Afghanistan, particularly in the areas of humanitarian assistance and human rights protection.⁵⁵ UNAMA’s mandate provides a framework for cooperation between the Government of Afghanistan, the UN, and the international community in laying the foundations for human wellbeing in Afghanistan. With an annual budget of US\$240 million in 2010, the largest budget of any UN political mission in history, UNAMA was an impressively grandiose multilateral initiative. In 2011 it had more than 2,100 civilian staff spread between 18 regional offices across Afghanistan and liaison offices in Islamabad and Teheran.⁵⁶

UNAMA was responsible for the direction and oversight of all humanitarian relief and human rights activities in Afghanistan. It sought to ensure that all international humanitarian programmes were in line with the Afghanistan National Development Strategy, which was specifically designed to enable Afghanistan to gradually reduce its dependence upon

⁵⁴ P. D. Thruelsen, 'Nato in Afghanistan: What Lessons Are We Learning, and Are We Willing to Adjust?', (Dansk Institut for Internationale Studier København, 2007). p.4.

⁵⁵ United Nations Assistance Mission in Afghanistan (UNAMA) (2011c), 'Political Affairs', <http://unama.unmissions.org/Default.aspx?tabid=1752>. accessed 30 May 2011.

⁵⁶ United Nations Assistance Mission in Afghanistan (UNAMA) (2011b), 'UN Political and Peacebuilding Missions Fact Sheet', <http://unama.unmissions.org/Portals/UNAMA/Publication/missions%20factsheet.pdf>. accessed 30 May 2011.

international aid.⁵⁷ UNAMA monitored all humanitarian activities in an attempt to ensure maximum accountability in the area of humanitarian assistance. Yet humanitarianism was not the sole area of concern for UNAMA.⁵⁸ Its operations were comprised of both humanitarian and political affairs. The separate Office for the Coordination of Humanitarian Affairs (OCHA) that had existed since 1988 to focus exclusively on humanitarian issues was disbanded when the integrated UNAMA mission was launched in 2002. As a result, UNAMA was as concerned with implementing the institutional and political objectives of the Bonn Agreement as it was with ensuring the humanitarian wellbeing of Afghanistan's civilian population.⁵⁹ This confused organisational structure essentially incorporated all international humanitarian activities into an integrated political mission.

The fusion of UNAMA's political and humanitarian functions in Afghanistan severely diminished the capacity and effectiveness of the international community in the humanitarian space.⁶⁰ This was largely owing to the fact that the international community mistakenly accepted the notion that Afghanistan was in a post-conflict situation, and that therefore the role of the international humanitarian regime was to support the new Afghan government. The result of this was that the capacity for responding to humanitarian need that had existed since the late 1980s and had represented the only form of the international community's engagement in Afghanistan during the Taliban years was dismantled on the basis of an erroneous assumption that it was no longer needed.⁶¹ As such, there was no humanitarian consensus among the intervening states and an absence of any exclusive humanitarian space in Afghanistan. The humanitarian donor states, all of whom were also belligerents in the war in Afghanistan, were either unable or unwilling to recognise the need for a purely humanitarian response to the humanitarian crisis in Afghanistan and to mobilise the necessary resources.⁶² As such, while the humanitarian crisis steadily worsened the international

⁵⁷ United Nations Assistance Mission in Afghanistan (UNAMA) (2011a), 'Relief, Recovery, & Reconstruction', <http://unama.unmissions.org/Default.aspx?tabid=1754>, accessed 30 May 2011.

⁵⁸ A. Donini, 'Afghanistan: Humanitarianism Under Threat', *Humanitarian Agenda 2015: Principles, Power, and Perceptions*, (Feinstein International Centre, 2009). p.2.

⁵⁹ A Donini, 'Afghanistan Country Study', *Humanitarian Agenda 2015: Principles, Power, and Perceptions* (Feinstein International Centre, 2006). p.32.

⁶⁰ E. James, 'Two Steps Back: Relearning the Humanitarian-Military Lessons Learned in Afghanistan and Iraq', *Journal of Humanitarian Assistance*, (2003); R. Nash, 'Demarcation between Military and Humanitarian Activities in Afghanistan and the Role of Law', *Essex Human Rights Review*, 4/2 (2007); N. J. Stockton, 'The Failure of International Humanitarian Action in Afghanistan', *Global Governance*, 8 (2002).

⁶¹ Donini, 'Afghanistan Country Study'. p.30.

⁶² Donini, 'Afghanistan: Humanitarianism Under Threat'. p.2.

humanitarian regime was not suitably equipped to address the crisis, even in Kabul where the international humanitarian agencies were based.

Many observers saw this linkage of humanitarian action with the political and military agendas of the intervening states as a dangerous blurring of lines.⁶³ The integration of humanitarian assistance into a political military agenda seriously compromised the claims to the principles of neutrality, impartiality, and independence that had traditionally been so central in the humanitarian space.⁶⁴ Humanitarian workers were perceived as being associated with the international coalition in the military conflict, and this had devastating consequences for the workers themselves and the civilians who were denied assistance because of this perception. In Afghanistan, the balance of priorities was heavily in favour of the political process. Within UNAMA the political agenda trumped humanitarianism, and this had negative consequences for the humanitarian mission.⁶⁵ Antonio Donini argues that a more modest humanitarian approach, “closer in ambition and intent to classical, time-tested humanitarian principles” offered much more hope of saving lives than did the “increasingly politically-driven and militarised form of relief” that was pursued in Afghanistan.⁶⁶ This view was shared at the time by various humanitarian NGOs and the UN’s Emergency Relief Coordinator. Yet it remained opposed by the UN’s political authorities in Afghanistan.⁶⁷

Five years after its integrated mission was first launched, UNAMA belatedly came to recognise the paramount need for a separate humanitarian unit in Afghanistan. In 2007 it re-established a separate Office for the Coordination of Humanitarian Affairs (OCHA). However, separating humanitarian affairs from the political mission was not a cure for all of the problems associated with the international humanitarian effort in Afghanistan. To start with, the support of the international humanitarian regime in Afghanistan was simply not great enough. The Afghan population viewed the humanitarian action of the international community as superficial, and therefore ineffective and unsustainable.⁶⁸ This perception is

⁶³ Donini, ‘Afghanistan: Humanitarianism Under Threat’; Rieff, ‘Humanitarianism in Crisis’; Sandoz, ‘The International Committee of the Red Cross and the Law of Armed Conflict Today’, *International Peacekeeping*, 4 (1997); S. J. Jagger, ‘Blurring the Lines? International Humanitarian Non-Governmental Organisations and the Military Use of Aid and Development in Afghanistan’, (The University of Waikato, 2010).

⁶⁴ Jagger, ‘Blurring the Lines? International Humanitarian Non-Governmental Organisations and the Military Use of Aid and Development in Afghanistan’, p.iii.

⁶⁵ Donini, ‘Afghanistan Country Study’. p.43.

⁶⁶ Donini, ‘Afghanistan: Humanitarianism Under Threat’. p.8.

⁶⁷ Ibid. p.2.

⁶⁸ Donini, ‘Afghanistan Country Study’. p.10.

justified when Afghanistan is compared with recent humanitarian assistance programmes such as those in East Timor, Kosovo, or Bosnia. In these countries, the international community spent an average of \$250 per person annually in humanitarian aid.⁶⁹ If that average were applied in Afghanistan, the country would have received \$5.5 billion in aid every year. Instead, it received less than a quarter of that amount. Similarly, while Iraq received \$26 billion in reconstruction aid in 2003, Afghanistan received less than \$1 billion.⁷⁰

Many Afghan civilians also saw the international aid effort as something that was alien and did not concern them because it never materially reached them. A large source of this problem was that international aid was chronically mismanaged and involved too many intermediaries who were open to corruption. The greatest level of humanitarian assistance went not to the most needy, but to those who were “well-connected with those in power” and to “the rich and powerful who are able to occupy key links in the chain of intermediaries.”⁷¹ The poorest people and those living in rural areas were rarely the beneficiaries of international assistance. These kinds of operational failings severely undermined the effectiveness of the international humanitarian regime, which found little favour in Afghanistan. The ineffectiveness of the humanitarian category as a whole in Afghanistan was reflected by the fact that in a very short space of time, international humanitarian NGOs turned from heroes to villains in the eyes of the Afghan civilian population.⁷²

The Multilateral Nature of the Intervention of Afghanistan

While the US spearheaded the Afghan mission, the international community demonstrated great commitment to the intervention in Afghanistan. In total, more than 60 countries contributed to the force. The multilateral nature of the intervention is highlighted by analysing the significant contributions that were made by some of the countries involved. The following section provides a snapshot of the support that the Afghan intervention received from the international community by examining the contributions of three countries in particular: Australia, Great Britain, and the Netherlands. The nature and the extent to which these countries were involved in Afghanistan varied significantly, but their respective

⁶⁹ S. Zia-Zarifi, 'Losing the Peace in Afghanistan', *Human Rights Watch World Report 2004*, (2004). p.2.

⁷⁰ Ibid. p.2.

⁷¹ Donini, 'Afghanistan Country Study'. p.9.

⁷² Ibid.

contributions highlight the high degree to which the international community was committed to the intervention.

The Australian Contribution

As previously mentioned, Australia was the first country to offer unequivocal, open-ended support to the United States following the September 11 attacks by invoking the ANZUS military treaty.⁷³ Accordingly, Australia was also one of the first countries to contribute military troops to the international mission in Afghanistan. The first contingent of approximately 200 Special Air Service (SAS) troops was deployed in a combat role as part of OEF just days after the initial bombing campaign began in October 2001.⁷⁴ In the months that followed, Australia further contributed navy frigates, long-range maritime aircraft, tanker aircraft, and FA-18 fighter jets to Afghanistan. Australia's SAS troops were based in Uruzgan province and their primary purpose was to improve security in the region by targeting and engaging the Taliban network in and around the province. The initial military support provided by Australia remained operative until the end of 2002. It was around this period that the Australian government began to focus its military commitment on the invasion of Iraq; for this reason no Australian Defence Force units were deployed again to Afghanistan until 2005.⁷⁵

By this point the focus of the international operations in Afghanistan was more balanced between combat and reconstruction activities. At the request of the Afghan Government and ISAF, Australia's SAS troops were re-deployed in September 2005 and rotated again in May 2007 to undertake similar counterinsurgency tasks similar to those the force had performed in 2001-2002.⁷⁶ In August 2006 Australia also deployed more than 850 defence personnel to Afghanistan as part of a Reconstruction Task Force working in the Uruzgan province.⁷⁷ This force contributed to the PRT in Uruzgan, working alongside civilian personnel from other Australian government agencies, such as the Australian Agency for International

⁷³ J. M. Siracusa, 'John Howard, Australia, and the Coalition of the Willing', *Yale Journal of International Affairs*, 2/2 (2006). p.41.

⁷⁴ Australian Department of Defence (2011a), 'Australia's Commitment in Afghanistan: Fact Sheet 3', http://www.defence.gov.au/defencenews/articles/1017/files/3_Australia's%20commitment%20in%20Afghanistan%20Fact%20Sheet%203_May%202011.pdf. accessed 07 June 2011.

⁷⁵ Australian Department of Defence (2011b), 'History of Australia's Military Commitment in Australia - Fact Sheet 4', http://www.burleighheadsrl.com/pdfs/4_History.pdf. accessed 02 October 2012.

⁷⁶ Nicole Brangwin, 'Australia's Military Involvement in Afghanistan since 2001: A Chronology', http://www.aph.gov.au/library/pubs/bn/fads/MilitaryInvolvement_Afghanistan.htm#_Toc267051911. accessed 14 April 2011.

⁷⁷ Australian Department of Defence (2011a), 'Australia's Commitment in Afghanistan: Fact Sheet 3'.

Development (AusAID) and the Department of Foreign Affairs and Trade. A large number of Australian troops also operated under the Mentoring Task Force, training the Afghan National Security Forces to assume responsibility for maintaining security in Uruzgan. At the height of its contribution, Australia had more than 1,550 troops in Afghanistan.⁷⁸ As of November 2011, Australian troops remain in Afghanistan. However, the size of the force is gradually decreasing as the security situation in Afghanistan slowly improves. Overall, Australia has suffered 32 combat deaths in Afghanistan.

In the civilian and humanitarian space Australia's contribution was also relatively significant. In the decade from 2001, Australia committed more than \$800 million in aid and reconstruction assistance to Afghanistan through the country's official agency AusAID.⁷⁹ This assistance is delivered at the national and provincial levels in line with the wider development priorities of the Afghan Government's Afghanistan National Development Strategy. AusAID has nine personnel in Afghanistan who engage with the Afghan Government and ISAF to provide advice on stabilisation and development projects. Particular areas of focus include improving the delivery of basic services to Afghan civilians and supporting vulnerable populations. In 2009, AusAID funded the establishment of the Development Assistance Facility for Afghanistan (DAFA). The purpose of DAFA is to build local capacity within four of Afghanistan's Ministries: Agriculture, Health, Education, and Rural Rehabilitation and Development. To achieve this, DAFA delivered an assistance programme worth \$35 million over three years from March 2009 to April 2012.⁸⁰ In addition to this, a significant portion of Australia's humanitarian assistance was provided through the World Bank-run Afghanistan Reconstruction Trust Fund which contributes to major infrastructural development activities.

The United Kingdom's Contribution

Along with the United States, the UK military were the first country to initiate military action against Afghanistan by way of the bombing campaign that began in October 2001. Royal Air Force aircraft provided reconnaissance and air-to-air refuelling capabilities in support of US bomber aircraft. UK troops were first deployed in November 2001 when 1,700 ground forces helped to infiltrate and destroy a number of Taliban bunkers and caves. UK ground forces

⁷⁸ Brangwin, 'Australia's Military Involvement in Afghanistan since 2001: A Chronology'.

⁷⁹ Australian Department of Defence (2011a), 'Australia's Commitment in Afghanistan: Fact Sheet 3'.

⁸⁰ Ravi Tomar, 'Australian Aid to Afghanistan', (Parliament of Australia, 2011). p.1-2.

retained a constant presence in Afghanistan as ISAF began to expand beyond Kabul from 2003; the UK led the Provincial Reconstruction Teams in the North.

In May 2006 the UK deployed troops into the south of Afghanistan as part of the plan to extend ISAF's presence in from the north and Kabul. The British government commissioned the Post Conflict Reconstruction Unit to lead interagency planning for a strategic framework that encompassed both civilian and military activity in the Helmand province, the heartland of the Taliban insurgency in southern Afghanistan. This new framework incorporated the operations of the Ministry of Defence (MOD) and the Department for International Development (DFID). The logic was that having a joint strategy would allow the military and civilian dimensions of the UK mission to collaborate in their efforts for greater operational effectiveness.⁸¹ The British campaign in Helmand began with a focus on hard military power and destroying the Taliban in the south. An initial 3,600 British troops were deployed to secure the region by spreading out and engaging with the Taliban from outposts throughout the province. However, this force was far too small to properly secure the area and they suffered large losses to the Taliban; in just five months, 29 British troops had been killed in the region.

By 2007 the UK began to acknowledge its failings in Helmand and revised its military strategy. It concluded that the military campaign needed "more resources and less fighting".⁸² Along with the supply of superior military equipment, an additional 1,500 troops were deployed to Helmand in response to the Taliban's fierce resistance. More importantly, however, the focus of the British mission evolved from one based on hard military offensives to a more conservative mission focusing on stabilisation operations to secure the civilian population.⁸³ The British military concentrated its efforts on undermining the Taliban's influence in the region rather than directly fighting their forces. This "population-centric" strategy proved to be much more successful. The British troops were more effectively able to protect urban centres and develop the Afghan government's influence and authority in those areas that could realistically be secured and held.⁸⁴ In 2009 Theo Farrell and Stuart Gordon concluded that the UK military machine, while "a little creaky perhaps...., is fit for purpose"

⁸¹ Theo Farrell and Stuart Gordon, 'COIN Machine: The British Military in Afghanistan', *Orbis*, Fall (2009). p.669-70.

⁸² Ibid. p.673.

⁸³ Ibid. p.673.

⁸⁴ Ibid. p.673.

and was achieving success in Afghanistan. As of November 2011, the UK had suffered a total of 388 combat deaths, second highest only to the United States.

The UK was also one of the major players in the civilian and humanitarian area. The UK's Department for International Development (DFID) was the third largest donor of humanitarian and development assistance to Afghanistan, contributing an estimated 100 million pounds per year from 2004.⁸⁵ DFID's assistance in Afghanistan unfolded in two distinct phases. The first was an essentially limited humanitarian effort from 2001-2003 that focused on providing basic humanitarian assistance to civilians during the initial military engagement. The purpose of this initial stage was simply to reduce the impact of the intervention as much as possible. During this period DFID had a comparatively good track record on aid effectiveness, with pledges being translated to meaningful disbursements reasonably quickly.⁸⁶ The second phase was characterised by a series of programmes that moved away from purely humanitarian assistance and into areas such as state building, economic management, election monitoring, and anti-corruption. This shift in focus was consistent with the broader UNAMA policy of integrating humanitarian action into the international political mission in Afghanistan. The problems that hampered the international humanitarian effort as a result of this blurring of the lines between the humanitarian and the political agendas have already been discussed above. However, it is important to note that the UK's broader development activities achieved some measure of success in important areas such as improving access to education and healthcare.⁸⁷

The Netherlands' Contribution

Like Australia and the UK, the Netherlands also contributed militarily to both OEF and ISAF missions in Afghanistan from an early stage. In early 2002 Dutch Special Forces troops were deployed; in 2003, the Netherlands headed ISAF along with Germany; in 2004 a Dutch Apache helicopter unit was deployed; and in 2005 F16 fighter plane units served in Afghanistan. In December 2005, despite considerable domestic opposition, the Netherlands made its first combat deployment of ground troops since the Korean War when it contributed

⁸⁵ Department for International Development (2012), 'Summary of DFID's Work in Afghanistan', <http://www.dfid.gov.uk/Documents/publications1/op/afghanistan-2011-summary.pdf>. accessed 02 October 2012.

⁸⁶ Ibid.

⁸⁷ Department for International Development (2009), 'Evaluation of DFID's Country Programmes: Afghanistan 2002-2007', www.dfid.gov.uk/.../evaluation/afghan-eval-summary.pdf. accessed 02 October 2012.

approximately 2,000 troops to ISAF.⁸⁸ Despite this significant military contribution, the Dutch military strategy was based on avoiding military combat wherever possible.⁸⁹ The Dutch motto was “Rebuild Where Possible, Fight Where Necessary”, and Dutch forces operated under a mandate that typically required them to use force only if attacked. They were to avoid enemy engagement rather than pursue it. The strategy became known as the “3D” strategy because its focus was on defence, development, and diplomacy rather than traditional military offensives.

Employing this strategy allowed the Netherlands to avoid large numbers of troop losses. It also managed to keep civilian deaths and physical destruction of property relatively low; the Netherlands even went so far as to establish a compensation system for local property that was damaged by Dutch troops.⁹⁰ The minimalist military strategy of the Dutch was seen by some as being politically motivated to keep casualties low in order to prevent domestic dissent at the country’s contribution to Afghanistan.⁹¹ If this was the case, it appeared to be effective. The Dutch forces were initially scheduled to withdraw by the end of 2008, but this was extended to August 2010 by the new Dutch coalition government in November 2007. Despite their prolonged presence in Afghanistan, critics argued that the Dutch troops spent too much time in secured areas rather than fighting to secure new areas. They therefore failed to offer any significant challenge to the Taliban’s control over the regions in which Dutch reconstruction efforts were taking place. In August 2010, the Netherlands became the first NATO country to withdraw its entire military contingent from Afghanistan. Overall, the country suffered a total of 25 combat deaths.

In the humanitarian space, the support of the Netherlands was more overt. After the overthrow of the Taliban, the Netherlands placed Afghanistan on its list of partner countries which guaranteed a long-term aid relationship between the two countries.⁹² The focus of this relationship was initially on emergency humanitarian aid to help provide the basic needs required by the Afghan civilians. Beyond this initial period the focus shifted towards sustainable development through the provision of assistance to help with the reconstruction

⁸⁸ John Nagal and Richard Weitz, 'Counterinsurgency and the Future of NATO', *The Chicago Council on Global Affairs*, Transatlantic Paper Series No. 1 (2010). p.12.

⁸⁹ Ibid. p.12-13.

⁹⁰ Ibid. p.14.

⁹¹ Ibid. p.14.

⁹² Ministry of Foreign Affairs (Netherlands) (2006), 'The Netherlands in Afghanistan', <http://netherlandsmission.org/files/pdf/the-netherlands-in-afghanistan.pdf>. accessed 02 October 2012.

effort in Afghanistan. According to the Dutch government, the reconstruction effort in Afghanistan would only be effective if development, humanitarian, and economic aid play as great a role as the military dimensions of the mission.⁹³ It argued that human prosperity and greater individual rights would be as effective as military action in preventing further conflict in Afghanistan. This sentiment was reflected in the main principle underpinning the Dutch contribution in the humanitarian and civilian space: “as military as necessary, as civilian as possible”.⁹⁴ Fittingly, The Netherlands was appointed by ISAF and the Afghan government as the lead country in the area of good governance.

When the US-led coalition intervened in Afghanistan in October 2001, it did so with the overwhelming support of the international community. A number of countries made substantial contributions of military personnel and equipment, civilian reconstruction units, humanitarian personnel and supplies, and financial aid in what was a truly multilateral mission; this chapter explored the contributions of Australia, the UK, and the Netherlands in particular. Yet the basis for this support varied among those countries involved. Some emphasised the security rationale for intervention and the importance of taking action against international terrorism, while others stressed the centrality of the humanitarian rationale and the importance of improving the lives of Afghanistan’s suffering civilian population. The degree to which these two rationales featured in their justifications for contributing to the intervention differed from country to country. This highlights the fact that the two primary rationales for intervention in Afghanistan were mutually reinforcing and frequently overlapped. The security and humanitarian rationales were both key elements of the intervention and were pivotal in garnering international support. The centrality of both rationales to the intervention therefore cannot be overlooked.

⁹³ Ibid. p.24.

⁹⁴ Ibid. p.20.

CHAPTER 4: AFGHANISTAN'S REFUGEE CRISIS

After being caught in the grip of conflict and strife for more than two decades, the international intervention in Afghanistan in 2001 was just the latest episode in a series of tragic events for Afghanistan's civilian population. For Afghans, this period was characterised by wave after wave of forced displacement. It is estimated that during the course of the 1980s and 1990s, as many as two in every three Afghans had been displaced at some point, some more than once. In spite of the coalition's claim that the intervention would provide some respite to the suffering endured by the Afghan population, in reality it exacerbated the situation. It created yet another vast wave of displacement as millions of Afghans fled from the latest state of conflict to engulf their country. Following the overthrow of the Taliban, the international community tried to reconstruct Afghanistan through various methods of state building; it was envisaged that the country would be in an adequate position to welcome back the millions of refugees that had sought refuge from the conflict in neighbouring Pakistan and Iran. However, Afghanistan remained plagued by ongoing conflict and sat rooted to the bottom of the UN Human Development Index. The new Afghan state was in no position to facilitate the repatriation of its vast refugee population.

The History of Afghanistan's Refugees

More than two decades of persistent tragedy resulted in a refugee crisis in Afghanistan that, at its height, accounted for roughly 60 per cent of the entire world refugee population. The roots of the refugee crisis were sewn as early as 1978 and the PDPA's seizure of power detailed in chapter two of this thesis. Small numbers of refugees displaced by the internal political conflict began to trickle into the neighbouring states of Pakistan and Iran. In December 1979 the trickle became a flood as millions of Afghans sought refuge from the intense bombardments of the Soviet Union. The majority of refugees fled from mostly rural areas where the fighting between the Soviet forces and the *mujahideen* took place. Because the country had been invaded by a non-Islamic power, flight was not only seen by the Afghan population as a means of escaping from war and violence, but also as a religious duty.¹

¹ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.10.

By the beginning of 1981, the outflow of refugees to Pakistan and Iran was already estimated to have numbered 2.3 and 1.5 million respectively.² In Pakistan, refugee camps were established along the length of the border with Afghanistan with assistance from the international community and the UN High Commissioner for Refugees (UNHCR) which provided food rations, tents, and other basic necessities. As their numbers increased throughout the 1980s, refugees began to build their own mud houses and gradually these refugee camps were transformed into more permanent 'refugee villages'.³ While the Pakistani government allowed Afghan refugees to move freely around the country and gain employment, it restricted the rights of refugees to own land in Pakistan which meant that many refugees had little choice but to remain in the 'refugee villages' on the border. By 1990 there were said to be more than 300 'refugee villages' in Pakistan that served as a home to more than 3.3 million Afghan refugees.

Meanwhile, in Iran the 1979 revolution had put an Islamic fundamentalist government in power. This severely strained its relationship with the West. As a result, Iran was initially reluctant to seek international assistance in order to deal with the vast number of Afghan refugees that poured across its border. When Iran did request international assistance in 1980, it received a small fraction of the assistance that was afforded to Pakistan.⁴ In spite of this the Iranian government established a limited number of refugee camps along its border with Afghanistan and provided refugees with access to free education, healthcare, and to subsidies on basic necessities. It also allowed refugees to work legally in designated menial occupations.⁵ Generally speaking, this enabled refugees in Iran to be much more independent and live better lives than those in Pakistan. By 1990 there were an estimated three million Afghan refugees in Iran, making the total number of Afghan refugees in Pakistan and Iran the largest refugee population in the world at more than six million.

Following the Soviet withdrawal from Afghanistan, millions of refugees in Pakistan and Iran began to return. The UNHCR established assisted repatriation programmes in both countries to encourage refugees to return to Afghanistan. In Pakistan, refugees who cancelled their refugee passbooks and returned to Afghanistan were given a cash grant of US \$100 to cover the cost of travel, and 300kg of wheat. According to David Turton and Peter Marsden, this

² Margesson, 'Afghan Refugees: Current Status and Future Prospects'. p.2.

³ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.11.

⁴ Ibid. p.11.

⁵ Ibid. p.11.

programme was about “de-registration as much as it was about repatriation” because the donor states of the west were eager to reduce their assistance to Afghanistan’s refugees now that the Cold War was over.⁶ By 1992 the programme had facilitated the return of more than 900,000 refugees from Pakistan and was trumpeted as a success. A similarly successful repatriation programme was run from Iran, where the government had signed a three year repatriation agreement with the new Afghan government and the UNHCR. By 1993 more than 600,000 Afghan refugees returned to Afghanistan from Iran.

However, no sooner had this estimated 1.5 million refugees returned to Afghanistan than the country once again descended into disorder. As detailed in chapter two, internal ethnic divisions within the *mujahideen* began to fight over control of the government in Kabul. In 1994, an intense civil war broke out in Afghanistan that would last until September 2000. For the Afghan population, the widespread violence and destruction that accompanied the civil war resulted in waves of force displacement, or re-displacement for those who had recently repatriated. An estimated 65,000 refugees fled to Pakistan and Iran from Kabul and other parts of Afghanistan in 1994. Tens of thousands more fled from Herat in 1995, Jalalabad in 1996, Mazar-i-Sherif in 1998, and Taloqan in 2000. It was estimated that in 2000 alone, more than 170,000 Afghans sought refuge in Pakistan from the deadly cocktail of civil war, Taliban brutality, and famine and drought. On the 10th of September 2001, the UNHCR estimated that the total number of Afghan refugees in the world stood at 4.65 million. Of this number, 3.7 million resided in states that neighboured Afghanistan, while almost one million more remained internally displaced.⁷

The Impact of the 2001 Intervention on Afghanistan’s Refugee Crisis

With international military intervention imminent in the aftermath of the 9/11 terrorist attacks, yet another wave of refugee mobilisation took place in Afghanistan. By the time the US began its bombing campaign on the night of October 7th, vast numbers of Afghans had already begun abandoning cities and towns that could become military targets. The mass exodus was so swift that the UNHCR expressed its concern that hundreds of thousands of Afghans attempting to hastily escape the country were under threat from the more than 10

⁶ Ibid. p.12.

⁷ United Nations High Commissioner for Refugees (2001a), 'UNHCR Afghan Refugee Statistics 10 September 2001', http://digitalcommons.arizona.edu/objectviewer?o=uadc%3A%2F%2Fazu_nehafghan%2Fazu_acku_pamphlet_hv640_4_a28_u643_2001. accessed 1 July 2011.

million landmines and other unexploded ordnance that remained dispersed in rural areas from the Soviet war.⁸ It is estimated that between October 2001 and January 2002, 200,000 Afghan refugees made their way to Pakistan in order to escape the US bombing, while a further 1.2 million were internally displaced.⁹

The mass exodus of Afghans from their homelands was justified in the context of the consequences that the international intervention had upon the lives of the Afghan population. The US bombing ruined much of the country's remaining infrastructure, while approximately fifty percent of the houses in the major Afghan cities were destroyed or damaged.¹⁰ Human Rights Watch interviewed dozens of refugees who fled to Pakistan during the early months of the international intervention and reported that the most common reasons for fleeing Afghanistan were related to the physical and psychological harm caused by the US bombing. The Taliban intentionally set up its military bases near to civilian settlements in an attempt to shield itself from the bombing. The local population naturally felt increasingly insecure when these bases were being bombed anyway, regardless of their proximity to their homes. One refugee explained how "each night the electricity went off and then the bombs came and our children would scream and cry. We just could not stay there anymore with this hell every night."¹¹

The large number of Afghans who fled their country was further justified in doing so by the number of civilian deaths that were reported during the initial months of the intervention. In a study of the nine month period between September 2001 and June 2002, Aldo Benini and Lawrence Moulton found that a total of 5,576 Afghan civilians were killed by coalition forces.¹² This figure was largely a consequence of the bombing campaign. A number of villages were bombed due to mistaken information, including one on October 10th 2001 near Jalalabad which was reduced to rubble after a US bombing raid; on October 11th the US admitted that the village had been hit by mistake.¹³ Eyewitnesses claimed to have seen 30 fresh graves in the village the day after the raid, while the Taliban claim the death toll was more than 200. According to media reports, the US and UK warplanes also continued to drop

⁸ Khabir Ahmad, 'Military Strikes Worsen Desperate Plight of Afghans', *The Lancet*, 358/9289 (2001c). p.1,250.

⁹ S. Petrin, *Refugee Return and State Reconstruction: A Comparative Analysis* (UNHCR, 2002). p.13.

¹⁰ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.45.

¹¹ Human Rights Watch, 'Closed Door Policy: Afghan Refugees in Pakistan and Iran', *Human Rights Watch*, 14/2 (2002b). p.12.

¹² A. A. Benini and L. H. Moulton, 'Civilian Victims in an Asymmetrical Conflict: Operation Enduring Freedom, Afghanistan', *Journal of Peace Research*, 41/4 (2004). p.411.

¹³ K. Ahmad, 'UN Pleads for Break in Bombing in Afghanistan', *Lancet*, 358/9290 (2001b). p.1352.

cluster bombs despite such weapons being strongly condemned by several humanitarian groups because of the massive indiscriminate destruction they cause.¹⁴ Even after the bombing campaign, the war continued to claim high numbers of civilian casualties as coalition forces began to round up al-Qaeda remnants in the Afghan cities. Angered by the seemingly indiscriminate manner in which the coalition launched its military offensive in Afghanistan, thousands of protestors turned out in frequent anti-US demonstrations in various cities in Afghanistan and Pakistan.¹⁵

To add to the suffering that was endured by the Afghan population, the intervention also hampered the mechanisms that existed for redressing the pre-existing suffering in Afghanistan. The UN World Food Programme had warned early in 2001 that more than 1 million Afghans were facing famine conditions, with millions dependent on international food aid for survival.¹⁶ But the intervention exacerbated this desperate humanitarian situation further by causing a massive disruption in the international humanitarian aid operations in Afghanistan. As the security environment in the country rapidly deteriorated, the majority of international aid workers were forcibly withdrawn from Afghanistan.¹⁷ The United Nations massively reduced all aid operations in Afghanistan, while Medecins Sans Frontieres (MSF) withdrew all expatriate staff from all but three locations in the north. Dealing with the world's worst humanitarian disaster was left to the skeleton staff of local UN employees that remained in Afghanistan.

The ground delivery of aid supplies from outside Afghanistan was also severely hampered by the intervention. The World Food Programme (WFP) had resumed the delivery of food supplies into Afghanistan despite the continuation of the US bombing campaign. But suppliers and aid workers faced regular interruption from the bombing raids and troops movements.¹⁸ The disruption limited the WFP's delivery of wheat stocks to just 14,800 tonnes during the month of October; an estimated 60,000 tonnes were required in order to feed the 7.5 million Afghans dependent upon food aid over the winter. Furthermore, the intervention hampered the ability of humanitarian agencies to reach those in need. Head of the Red Cross in Kabul, Reto Stocker, claimed that aid agencies had "never had so little

¹⁴ Ibid. p.1352.

¹⁵ Ahmad, 'Military Strikes Worsen Desperate Plight of Afghans'. p.1250.

¹⁶ H. Ruiz and M. Emery, 'Afghanistan's Refugee Crisis', <http://www.merip.org/mero/mero092401>. accessed 02 October 2012.

¹⁷ M. Emery and H. Ruiz, 'Descent into Disaster? Afghan Refugees', *Middle East Report*, 31/4 (2001). p.17.

¹⁸ Ahmad, 'UN Pleads for Break in Bombing in Afghanistan'. p.1352.

access” to those in need at any time over the past 27 years. He explained that while “prolonged human suffering is causing real concern in ever larger areas... there is little capacity to address it”.¹⁹ With the coalition focusing its efforts primarily on security and developmental aid, Stocker warned that large humanitarian needs were being overlooked in Afghanistan. The result of this was that the prospects for obtaining basic food aid, shelter, and medical care became even bleaker for the vast number of Afghans in need. The humanitarian situation grew so severe that the United Nations High Commissioner for Human Rights (UNCHR) warned that the Afghan crisis could turn into “a humanitarian disaster on the same scale” as was seen in Rwanda’s crisis of 1994 where nearly 800,000 people were killed or died from disease and malnutrition.²⁰

The Bush administration acknowledged the concern around the negative impact that the intervention was having upon the humanitarian situation in Afghanistan. It responded by announcing that it was providing a US \$320 million food air drop campaign to assist those in need. But this initiative prompted widespread criticism from international aid agencies including MSF and Oxfam, who view air drops as a last-resort tactic for delivering humanitarian relief to isolated areas.²¹ Food drops are expensive than other methods of food distribution and are usually less targeted to those in the greatest need. Large amounts of food will also often become unusable because it either gets lost or the packaging breaks on impact. In a country with 750 square kilometres of uncharted minefield, food that is dropped into these zones may endanger the lives of desperate people who attempt to retrieve the aid.²² In any case, the American food drops did little to alleviate the humanitarian crisis in Afghanistan; as Oxfam spokesperson, Sam Barratt, explained, “dropping 37,500 meals per night in a country where 5.5 million people are starving is a drop in the ocean”.²³

Relief agencies in the ground in Afghanistan dismissed the US food air drop campaign as little more than a means of scoring political points.²⁴ While the American food drops in Afghanistan are hardly the first example of politicized humanitarian aid, Emery and Ruiz highlight the extent to which the humanitarian and the military goals of the US were linked by pointing out how questions about the food drops were fielded by Defence Secretary

¹⁹ Richard Norton-Taylor, 'Afghanistan's Refugee Crisis 'Ignored'', *The Guardian*, 13 Feb 2008.

²⁰ Ahmad, 'UN Pleads for Break in Bombing in Afghanistan'. p.1352.

²¹ Emery and Ruiz, 'Descent into Disaster? Afghan Refugees'. p.17.

²² Ibid. p.17.

²³ Ahmad, 'UN Pleads for Break in Bombing in Afghanistan'. p.1353.

²⁴ Emery and Ruiz, 'Descent into Disaster? Afghan Refugees'. p.17.

Donald Rumsfeld at Pentagon briefings.²⁵ Yet by associating humanitarian aid with military operations, the US posed a potentially serious threat to the lives of many ‘genuine’ aid workers in Afghanistan by creating a sense of confusion in the minds of the Afghan population over the nature of international humanitarian aid.²⁶ The air drop campaign was a case of “shooting with one hand and distributing aid with the other”. While it made little contribution to the humanitarian situation, it severely undermined the work of humanitarian agencies in Afghanistan by placing their image as impartial groups in disrepute. These agencies were adamant that the only way to ease the humanitarian catastrophe was to immediately suspend the US bombing in order to allow for the ground delivery of aid to those in need.²⁷

The intervention also served to intensify the refugee crisis in Afghanistan by exacerbating the tensions that existed between Afghanistan and its neighbours on the issue of refugees. The intervention further tested the wilting resolve of Afghanistan’s neighbours to accommodate the masses of fleeing Afghans by creating yet another wave of refugees. Hostility and intolerance towards Afghan refugees had been growing in Pakistan and Iran long before the events of September 11.²⁸ From the late 1990s, the governments of both countries made it clear that Afghan refugees were no longer welcome in their countries. In 1997, the Iranian government refused to register new arrivals from Afghanistan, while police began to randomly question Afghans in the street as to the validity of their residence in Iran. In periodic waves, both those who had documentation and those who did not were taken to detention centres and deported back to Afghanistan.²⁹ The Pakistani government similarly hardened its attitude towards Afghan refugees and officially closed its border with Afghanistan in 2000. It cited a lack of international support as the primary reason for this, with one Pakistani official claiming that “if donors have donor fatigue, then we have asylum fatigue”.³⁰ The hard-line policies towards Afghan refugees in both Pakistan and Iran were a natural consequence of the international community’s unwillingness to support Afghanistan’s neighbours to address the refugee crisis. Both countries perceived the deepening Afghan

²⁵ Ibid. p.17.

²⁶ Ahmad, 'Military Strikes Worsen Desperate Plight of Afghans'. p.1250.

²⁷ Ahmad, 'UN Pleads for Break in Bombing in Afghanistan'. p. 1353.

²⁸ Emery and Ruiz, 'Descent into Disaster? Afghan Refugees'. p.16.

²⁹ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.15.

³⁰ Ibid. p.15.

refugee problem as a case of the richest states in the world shifting the burden of refugee assistance onto the shoulders of the poorest.³¹

In response to these hard-line policies against Afghan refugees, the international community did increase its financial assistance to Pakistan and Iran in late 2001 to help the two countries better manage the latest influx of Afghan refugees. But this was not enough to convince Pakistan and Iran to open their borders to Afghanistan or to provide legal protection to Afghan refugees. Both countries continued to enact policies that infringed upon the rights of Afghanistan's refugees.³² Iran agreed to build camps on its border to accommodate the new influx of refugees, but the UNHCR reported in November 2001 that Iran was continuing to deport Afghan refugees that had crossed the border since the intervention began.³³ At one point more than 350 refugees were forcibly returned to Afghanistan in a matter of days. Pakistan also agreed to accept Afghan refugees under a new 'relocation' initiative that involved relocating Afghan refugees to areas of the country far away from the Afghan border. Yet Human Rights Watch reported that the forced return of Afghan refugees continued to take place in Pakistan towards the end of 2001, at a rate of approximately 300 per month in October and November.³⁴ In some cases, refugee parents were being picked up in the street and deported, with their children left behind in Pakistan.³⁵ The influx of refugees that accompanied the 2001 intervention proved to be the straw that broke the back of Afghanistan's neighbours. The result was that, in direct violation of international refugee law, Afghan refugees were being forcibly returned to a situation where they were lives were under a very real threat.

International State-Building in Afghanistan

For the intervening coalition, the permanent solution to the refugee crisis in Afghanistan lay in the country's reconstruction. International reconstruction, or state-building, is the common response by the international community when a state fails. Over the past two decades, state-building projects have taken place in the wake of conflicts in Bosnia, Kosovo, East Timor, and more recently Iraq and Afghanistan. While there is no universally accepted model for

³¹ Ibid. p.15.

³² Human Rights Watch, 'Closed Door Policy: Afghan Refugees in Pakistan and Iran'. p.14.

³³ United Nations High Commissioner for Refugees (2001), 'UNHCR Afghanistan Humanitarian Update No. 31'. <http://reliefweb.int/node/89592>. accessed 03 October 2012.

³⁴ Human Rights Watch, 'Closed Door Policy: Afghan Refugees in Pakistan and Iran'. p.28.

³⁵ Meriel Beattie, '80,000 Refugees Are Trapped in Freezing Corner of Pakistan', *The Independent*, 10 February 2001.

rebuilding a failed state, state-building is usually characterised by measures such as ending conflict between warring parties, establishing a UN-provided interim authority, creating a new democratic government, constructing multi-ethnic national institutions, returning refugees in exile, and ultimately rebuilding the infrastructure and economy.³⁶ The state-building process that took place in Afghanistan followed this model to a large extent.

Following the launch of the intervention, Afghanistan could accurately have been described as a “quasi-state”. Despite being recognised as a state by the international community it lacked the effective power and authority to protect the rights and provide for the social and economic welfare of its citizens.³⁷ The process to reconstruct the Afghan state began almost immediately after the fall of the Taliban. The UN organised a conference in Bonn, Germany, to map out the future of Afghanistan. Attendance at the Bonn Conference was made up of the major western powers, Afghanistan’s neighbouring countries, and political representatives from the major ethnic groups in Afghanistan. It was decided that the reconstruction of Afghanistan should not be performed by outsiders. Rather, the international efforts on Afghanistan should be directed towards building the capacity of the Afghan government and empowering Afghan citizens to assume control of their own state.³⁸ In this context it was further decided that political control should be transferred back to the local authorities as soon as possible, rather than being placed under UN control as had been the case in Kosovo and Bosnia. An Afghan Interim Authority (AIA) would hold political control from December 2001 before the Afghanistan Transitional Authority (ATA) under the leadership of American-backed Hamid Karzai would assume control from June 2002. The Bonn Agreement stipulated that the ATA would be responsible for overseeing the reconstruction of Afghanistan until a suitable point in 2004 when democratic elections would be held.³⁹ From this point onwards the newly elected government of Afghanistan would take on the responsibility for the country’s reconstruction, though at no point would the support of the international community be prematurely withdrawn. In September 2004 Karzai won the Presidential election largely through securing the support of his Pashtun majority ethnic base, while parliamentary elections were not held until September 2005.

³⁶ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.75.

³⁷ R. H. Jackson, *Quasi-States: Sovereignty, International Relations, and the Third World* (Cambridge Univ Press, 1993). p.13.

³⁸ Thomas H. Johnson, 'Afghanistan's Post-Taliban Transition: The State of State-Building after War', *Central Asian Survey*, 25/1-2 (2006). p.2.

³⁹ Petrin, *Refugee Return and State Reconstruction: A Comparative Analysis*. p.12.

The Place of Refugee Repatriation in State-Building

Refugee repatriation is central to the state-building process. Over the past two decades refugee issues have often been both a cause and consequence of political conflict. Finding permanent solutions to the needs of refugees has therefore been a focal point of international state-building initiatives. Meeting the basic needs of returnees and reintegrating them into society is often the first objective of a transitional state.⁴⁰ In principle, refugee repatriation can only take place once significant changes have taken place within the country of origin to ensure that the original reason for flight has been addressed. Because the nature of the state is often central to the refugees' plight, it is often the fundamental make-up of the state itself that needs to be addressed in this context.⁴¹

There are a number of reasons why refugee repatriation is perceived as being so important in the state-building process. First and foremost, refugees provide a transitional state with the legitimacy it requires to fit within the international community.⁴² In the eyes of the international community, states that generate refugee flows lack the legitimacy of their citizens because there has been a breakdown in the state-citizen relationship. When refugees decide to return to their home countries, they are re-placing their faith in their state to protect them. This is seen as an important show of support for the transitional state by its citizens. On the return of refugees to Afghanistan, a UNHCR official commented that "Afghans are showing the world how confident they are about the future of their country".⁴³

Returning refugees are also seen as an important human resource for states in transition. This was recognised in the UN's transitional plan for Afghanistan when it expressed that "the return of millions of uprooted people will be an important achievement with the dual benefit of providing human resources for reconstruction as well as rebuilding civil society".⁴⁴ Because they are returning to countries that have had experienced a high level of destruction, refugees must work hard to rebuild their lives from the moment of their return. The aggregated result of this hard work is highly beneficial for the state, and returning refugees have often been integrated into the development objectives of transitional states.⁴⁵ Returnees are often able to find employment within international agencies that are involved in the

⁴⁰ Petrin, *Refugee Return and State Reconstruction: A Comparative Analysis*. p.5.

⁴¹ Ibid. p.2.

⁴² Ibid. p.6.

⁴³ Ibid. p.6.

⁴⁴ Ibid. p.7.

⁴⁵ Ibid. p.6.

reconstruction project. This serves a double purpose in that it not only provides much needed employment for returnees, but it also gives them a sense of ownership in the renewal of the country which can, in turn, assist in their successful reintegration. The value of refugees as a human resource

However, for all of the benefits associated with refugee return, large-scale repatriation can also have an adverse effect on state development and run against the best interests of refugees themselves. For states in transition, managing the successful repatriation of masses of refugees is an imposing challenge, particularly as many refugees return spontaneously without assistance; in Afghanistan, for example, more than 150,000 refugees had returned before the UNHCR even began its repatriation programme. Yet it is essential that states manage the repatriation of refugees in a manner that is consistent with their reconstruction initiatives.⁴⁶ If the state is not suitably equipped to provide refugees with the basic needs and services that they require to successfully reintegrate, refugee repatriation can result in unsuccessful reintegration experiences and re-displacement. For Turton and Marsden, this poses a strange paradox in that states in post-conflict transition are “almost by definition, unable to provide the kind of stability and security, the lack of which induced their citizens to become refugees in the first place”.⁴⁷ In this sense repatriation can only be considered a sustainable solution to forced displacement if the state in question is capable of successfully facilitating the reintegration of refugees.

The Suitability of Afghanistan for Refugee Repatriation

The following section explores the extent to which Afghanistan was in a position capable of facilitating the repatriation of refugees from Iran and Pakistan in 2002. By mid-2002, the intervening coalition had successfully removed the Taliban from power and installed the ATA to oversee the reconstruction of the country. Yet at this stage the level of security and human wellbeing in Afghanistan remained among the worst in the world and Afghanistan remained rooted near the bottom of the UN Human Development Index.⁴⁸ The international state-building efforts had begun, yet they could not accurately be described as ‘post-conflict’ reconstruction because the conflict between international forces and the Taliban and al-Qaeda

⁴⁶ Ibid. p.7.

⁴⁷ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.36.

⁴⁸ United Nations Development Programme (2004), 'Afghanistan National Human Development Report 2004', <http://planipolis.iiep.unesco.org/upload/Afghanistan/Afghanistan%20HDR%202004.pdf>. accessed 03 October 2012. Afghanistan occupied the dismal position of 173 out of 178 countries ranked worldwide.

was still ongoing. There was certainly no peace agreement or reconciliation between the warring parties that usually characterises the start of state-building activities.⁴⁹ Even the most basic efforts to assist the Afghan population were complicated by the intense fighting that continued between the two sides.

A number of other factors also contributed to the insecure environment in Afghanistan. After so many years of conflict and disorder within Afghanistan a general culture of impunity had developed towards human rights. Reports of human rights violations were widespread throughout Afghanistan while the perpetrators were rarely brought to justice for their crimes. The more than 10 million mines and other unexploded ordnance left scattered throughout the Afghan countryside posed a significant threat to many Afghans just performing their everyday tasks. The Afghan Human Development Report estimated that in 2004, between 150 and 300 people were killed or injured by explosive devices every month, many of them children.⁵⁰ With growing populations, high unemployment, and inadequate policing in Afghanistan's major cities, the urban crime rate was at record highs and increasing.⁵¹ These precarious security conditions made for a very difficult living environment for the refugees who hoped to return and reconstruct their lives. Their ability to recreate stable and sustainable lives in Afghanistan was impeded by the fact that the majority of Afghans were unable to simply maintain a basic standard of physical safety.

While the state is supposed to be the primary source of support for returning refugees, the disorderly political environment in Afghanistan posed a further obstacle to successful reintegration. The new Afghan government was in no position to provide returnees with the essential services they required because it was consumed with trying to hold a monopoly on political power in Afghanistan. In spite of the effort that the international coalition had put into regenerating the Afghan National Army, the new Afghan government struggle to assert its authority throughout the country.⁵² In fact, for years after the intervention the authority of Karzai's government extended only weakly beyond the outskirts of Kabul. Its inherent weakness limited the government's ability to bring about positive change in a timely manner

⁴⁹ N. Weinberger, 'Civil-Military Coordination in Peacebuilding: The Challenge in Afghanistan', *Journal of International Affairs – Columbia University*, 55/2 (2002). p.252.

⁵⁰ United Nations Development Programme (2004), 'Afghanistan National Human Development Report 2004', p.86.

⁵¹ Petrin, *Refugee Return and State Reconstruction: A Comparative Analysis*. p.14.

⁵² United Nations Development Programme (2004), 'Afghanistan National Human Development Report 2004', p.52.

and deliver on its promised improved security targets, or even a semblance of the rule of law. As time passed, these governmental failings resulted in an increasing sense of disillusionment and distrust among Afghans towards Karzai's government.⁵³

As a result of the government's lack of authority and control beyond Kabul, local governance of Afghanistan's provinces was entrusted to regional warlords or militia groups that were loosely affiliated with the government. Rather than dedicating resources to removing them from power, the Afghan government and the international coalition decided to maintain relationships with local warlords. However, because these local authorities often had their own established rules for the provision of welfare and security, they undermined the coalition's efforts to strengthen central authority and the rule of law in Afghanistan. Many of the regional warlords had human rights records that rival that of the Taliban; some even continued to work in mutually-beneficial relationships with the Taliban and al-Qaeda forces.⁵⁴ The populations under the control of these local rulers were frequently subjected to acts of intimidation and human rights abuse. A 2002 Human Rights Watch report described Afghanistan as "a fractured, undemocratic collection of 'fiefdoms' in which warlords are free to intimidate, extort, and repress local populations".⁵⁵ Many Afghans had held high expectations that Karzai's government would take the unique opportunity that Afghanistan had for reform and completely restructure the country's political system.⁵⁶ However, for many Afghans the new political structure remained almost identical to that which existed prior to the intervention; as one Herat resident remonstrated, "What has changed in Afghanistan? Look: all the same warlords are in power as before".⁵⁷

The social condition of many Afghans also failed to register any meaningful improvement following the intervention. The Afghan Human Development Report of 2004 described the magnitude of poverty in Afghanistan as "unacceptably high".⁵⁸ The Afghan Independent Human Rights Commission estimated that more than two-thirds of the population had no

⁵³ Ibid. p.85.

⁵⁴ H. Adelman, *Protracted Displacement in Asia: No Place to Call Home* (Ashgate Publishing, 2008). p.158.

⁵⁵ Human Rights Watch, 'All Our Hopes Are Crushed: Violence and Repression in Western Afghanistan', 14/7 (C) November (2002a).

⁵⁶ United Nations Development Programme (2004), 'Afghanistan National Human Development Report 2004', p.85.

⁵⁷ Human Rights Watch, 'All Our Hopes Are Crushed: Violence and Repression in Western Afghanistan'. p.5.

⁵⁸ United Nations Development Programme (2004), 'Afghanistan National Human Development Report 2004'. p.52.

stable source of income and lived below the poverty line, earning less than \$1USD per day.⁵⁹ As a consequence, a large proportion of the population lacked access to basic necessities. Food insecurity was manifested by extreme malnutrition while a lack of shelter, clothing, safe water, and sanitation facilities were also common. In the absence of an adequate health care system, these social conditions contributed to a major health crisis in Afghanistan. Average life expectancy in 2004 stood at a meagre 45 years for males and 44 years for females, while infant and maternal mortality rates in Afghanistan were also among the highest in the world.⁶⁰

The state of Afghanistan's education system also placed it among the worst in the world. The more than two decades of conflict in Afghanistan had damaged or destroyed an estimated 80 percent of the country's schools, resulting in a large shortage of schooling facilities. While this shortage of facilities was the primary obstacle to gaining an education for Afghan children, family commitments and marriage for girls, and the need for employment for boys are also common obstacles.⁶¹ Those children that were able to attend school regularly had to endure open-air facilities or tents with little or no furniture or learning materials. Decades of insufficient education in Afghanistan was reflected in the fact that, in 2004, the adult literacy rate stood at a mere 28 percent of adults over 15 years of age.⁶²

For many Afghans, not only did the intervention in October 2001 fail to provide any relief from their suffering, it exacerbated the arduous security and humanitarian environment in Afghanistan even further. Millions were forcibly displaced as the war between the international coalition and the Taliban and al-Qaeda forces caused further destruction to an already devastated country. In spite of the coalition's efforts to reconstruct Afghanistan following the fall of the Taliban, the country remained firmly entrenched in the depths of humanitarian despair. While ongoing fighting continued to endanger the lives of civilians, the weak and disorderly Afghan government failed to deliver any significant improvements to the living conditions of the Afghan population. Many of Afghanistan's human development

⁵⁹ Adelman, *Protracted Displacement in Asia: No Place to Call Home*. p.157.

⁶⁰ United Nations Development Programme (2004), 'Afghanistan National Human Development Report 2004'. p.58.

⁶¹ Ibid. p.66.

⁶² United Nations Development Programme (2011), 'International Human Development Indicators: Adult Literacy', <http://hdrstats.undp.org/en/indicators/6.html>. accessed July 22 2011.

indicators remained as low as they had been prior to the intervention. In this state, Afghanistan was in no position to facilitate the repatriation of millions of refugees from Pakistan and Iran in early 2002.

CHAPTER 5: THE UNHCR IN AFGHANISTAN

Despite the fact that Afghanistan remained in such a destitute state in early 2002, the UNHCR chose to pursue a policy of repatriation in response to the refugee crisis. It maintained that repatriation was the 'durable solution' that would finally allow the millions of Afghan refugees living abroad to rebuild their lives in dignity and peace in Afghanistan. With the support of the UNHCR and encouraged by the international coalition and the new Afghan government, a record number of refugees returned to Afghanistan under the UNHCR's repatriation programme. The programme was subsequently hailed as an overwhelming success. However, in the weeks and months that followed the mass repatriation it became clear that in fact repatriation was not a durable solution at all to the Afghan refugee crisis. The desperate state of the country hampered any attempt to create a sustainable livelihood for those who had returned and many returnees were almost immediately re-displaced. The repatriation of millions of refugees in 2002 was highly premature and ran firmly against the best interests of the refugees themselves. The fundamental question that is raised here is: why therefore did the UNHCR choose repatriation as its preferred policy in response to the Afghan refugee crisis?

The Mandate of the UNHCR

The UNHCR is the main international organisation responsible for providing political and legal protection to refugees. The agency was formally established after WWII in response to the masses of displaced and stateless people in Europe who required assistance in the aftermath of the war. Its primary purpose was and remains to complement the 1951 Convention Relating to the Status of Refugees, and Articles I, 55, and 56 of the UN Charter, which provide the legal grounds for the protection of refugees.¹ Since its inception in 1951 the UNHCR has grown substantially in terms of its budget and staff, and its mandate is now global. This expansion was necessitated by the need for a better response to increasingly complex and challenging refugee crises around the world. It was also the result of the agency's drive for institutional ascendancy in the humanitarian domain.² While it is necessary

¹ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. p.8.

² Loescher, *The Unhcr and World Politics: A Perilous Path*. p.348.

for the UNHCR to work closely with states in response to refugee crises, its mandate remains non-political and strictly humanitarian in nature. This means that the UNHCR must actively seek to ensure that its operations are not used to pursue the political agendas of states.³ This political neutrality is central to the credibility of the UNHCR and is necessary if the agency is to continue to receive unrestricted access to those in need.

The UNHCR's primary purpose is to find 'durable solutions' for refugees that will allow them to rebuild their lives in dignity and peace.⁴ Working in close partnership with the international community the UNHCR promotes three 'durable solutions' in pursuit of this goal. The first and preferred solution is that of voluntary repatriation. This reflects the fact that most refugees want to return to their homelands and rebuild their lives in a familiar environment once it is safe for them to do so. To facilitate voluntary repatriation the UNHCR establishes protective legal frameworks and agreements with states that seek to safeguard the reintegration of refugees into their home countries. These legal frameworks are designed to ensure that returning refugees' right of national protection is re-established with their home state and that they are not subjected to further persecution or discrimination in the home countries. In principle, the UNHCR only promotes voluntary repatriation as a 'durable solution' if the state in question has entered a post-conflict phase and its internal situation is deemed to be suitable for refugee repatriation.

The second 'durable solution' is that of local integration, whereby refugees are resettled in their country of first asylum. For many refugees, circumstances in their home countries are such that safe return is unlikely to be possible in the foreseeable future. For others repatriation is an undesired solution because of the traumatic events they experienced in their home countries.⁵ In such cases, refugees are granted citizenship in their country of first asylum and can set about rebuilding their lives in close geographical proximity to their home countries. Local integration works most effectively where ethnic or tribal links cross state borders, as it enables refugees to maintain social ties with members of their own nation. This helps to make resettlement in a new country much easier. However, local integration can sometimes be a difficult option to implement because many of the countries neighbouring

³ Ibid. p.349.

⁴ United Nations High Commissioner for Refugees (2011c), 'Durable Solutions', <http://www.unhcr.org/pages/49c3646cf8.html>, accessed 29 July 2011.

⁵ United Nations High Commissioner for Refugees (2002d), 'Putting Principles into Practice', p.12.

those that are generating refugees are economically and politically unstable themselves.⁶ They are therefore in no position to be able to absorb a new population when their own people may be struggling. This has particularly been the case in refugee crises in sub-Saharan Africa where there are few countries suitably placed to accept refugees.

In cases where both repatriation and local integration are deemed to be unsuitable options, the only remaining solution available to refugees is third country resettlement. In theory, resettlement within a country that is well equipped to accept large numbers of refugees appears to be an ideal solution to the problems associated with forced displacement. These are countries that are free from conflict and are economically in the best possible position to assist refugees to rebuild their lives. Yet of the total number of refugees that exist in the world, only around 1 percent are resettled in third countries.⁷ This reflects the fact that third country resettlement remains the UNHCR's least preferred 'durable solution' for a number of reasons. First, the level of cultural adjustment required on the part of host societies and refugees alike can threaten the prospects for long term integration for refugees. Refugees are often resettled in a country where the society, language, and culture are completely foreign to them which naturally poses a number of challenges.

More importantly perhaps, third country resettlement is perceived by the UNHCR and its primary donor states as being financially too costly compared with the other two solutions.⁸ There are only a small number of states that have established resettlement programmes with the UNHCR and accept refugees in annual quotas; the US, Canada, and Australia are among those states with the highest quotas. Yet the total number of refugees accepted for resettlement by third countries worldwide stands at 80,000 per year, while the UNHCR estimated that more than 800,000 refugees required third country resettlement in 2011 alone.⁹ Despite the UNHCR's appeal to the international community to drastically increase this total, a vast chasm exists between the need for third country resettlement and the international community's willingness to 'share the burden' of accepting refugees for resettlement.

⁶ Ibid. p.12.

⁷ United Nations High Commissioner for Refugees (2011d), 'Resettlement', <http://www.unhcr.org/pages/4a16b1676.html>. accessed 29 July 2011.

⁸ Loescher, *The Unhcr and World Politics: A Perilous Path*. p.351.

⁹ United Nations High Commissioner for Refugees (2011b), 'UNHCR Urges More Countries to Establish Refugee Resettlement Programmes', <http://www.unhcr.org/4c31cd236.html>. accessed 29 July 2011.

The UNHCR's 'Facilitated Repatriation' Policy in Afghanistan

Following the start of the intervention the UNHCR moved swiftly into Afghanistan to help coordinate the international response to the refugee crisis. In January 2002 it announced that a policy of 'facilitated repatriation' would be implemented as the preferred 'durable solution' to the crisis. The agency envisaged that of the almost 4 million Afghan refugees living abroad, an estimated 800,000 would return to Afghanistan in 2002. Over the course of the ensuing five years the UNHCR and its partner states would plan and implement a "programme to anchor refugees and enable their durable reintegration into their homes and communities" in Afghanistan.¹⁰ The repatriation programme was planned in two distinct phases. The first would take place immediately following the physical return of refugees, whereby returnees would be provided with their basic humanitarian needs by the UNHCR in coordination with the various other international humanitarian organisations operating in Afghanistan.¹¹ The purpose of this first phase was simply to ensure that all returnees had adequate shelter, food, and water. The second phase would then seek to ensure a smooth transition from the immediate survival needs of returnees to the sustainable development of their lives. This would involve the much greater challenge of making vast improvements in key areas such as employment, education, and health care in partnership with international development organisations such as the World Bank and the United Nations Development Programme (UNDP).

When the UNHCR's 'facilitated repatriation' programme commenced 1 March 2002 it immediately had the desired effect of returning large numbers of refugees to Afghanistan. The programme was hailed as "an overwhelming success" by the UN and the intervening coalition.¹² By the end of August, just six months after it began, the total number of refugees who had been repatriated under the programme exceeded 2 million. This was a monumental figure that more than doubled the UNHCR's previous record high for an assisted return operation. In fact, the volume of returnees was so great that the UNHCR became increasingly concerned that it lacked the necessary operational capacity and funding to facilitate the

¹⁰ United Nations High Commissioner for Refugees (2002c), 'UNHCR Initial Plan for the Return and Reintegration of Afghan Refugees and Internally Displaced People 2002-2004.' (Afghanistan, 2002b). p.19.

¹¹ Ibid. p.19.

¹² United Nations High Commissioner for Refugees (2002b), 'The Voluntary Repatriation of Afghan Refugees from Pakistan, March -August 2002, Statistical Abstract (Vol. ii)' (Islamabad, 2002a).

repatriation of such a vast numbers of refugees.¹³ The large scale return was the intended outcome of the programme from the outset, yet the UNHCR was left unprepared for the sheer volume of refugees that heeded its call to repatriate. The agency was forced to appeal for greater operational funding from its donor states in order to handle the mass repatriation.

It is important to understand the reasons why so many Afghan refugees decided to repatriate when they did given the desperate situation that existed in Afghanistan. In their analysis of the key factors that prompted so many refugees to repatriate in 2002, Turton and Marsden conclude that two factors in particular had the greatest impact. The first was related the great, but ultimately misplaced, expectations about the level and impact of international assistance in Afghanistan.¹⁴ The UN, the international coalition, and the new Afghan government sent strong public messages about the positive future of Afghanistan. The international community had already pledged \$4.5 billion for the reconstruction of Afghanistan, while Hamid Karzai had appealed for all Afghans to return and help rebuild a new Afghanistan within which there would be opportunity for all. The media in Iran and Pakistan also led refugees to believe that they would receive generous assistance from the UN in the form of cash grants and assistance packages to help them rebuild their lives once they reached home.¹⁵ Furthermore, the vast presence of foreign troops in Afghanistan also suggested that the international community was genuinely committed towards improving security in the country. This time around Afghanistan was not going to be abandoned in the manner it was after the Soviet defeat in 1989.

The second was due to the increasing pressure that was being placed on refugees to leave from their countries of asylum. From the viewpoint of Pakistan and Iran, if the UNHCR was not going to resettle the Afghan refugees within their borders in wealthy third countries then their only option was repatriation. As discussed in the previous chapter, the governments of these countries adopted various policies that were designed to persuade Afghans that it was time to return home, including the arbitrary detention of Afghans and forced deportation. It was these refugees who were having the most difficulty remaining in their countries of asylum that would have been most likely to have taken the encouraging messages to

¹³ Irin News, 'Afghanistan: Repatriation Pace Outstripping Funds - UNHCR', <http://www.irinnews.org/Report.aspx?ReportID=18347>, accessed August 3, 2011.

¹⁴ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.29.

¹⁵ Ibid. p.30.

repatriate at face value and returned to Afghanistan.¹⁶ The increasingly untenable conditions of asylum in Pakistan and Iran was a push-factor that proved strong enough to convince many refugees that life would be better back in Afghanistan.

For many, however, this was not the case. The judgement of the UNHCR's repatriation programme as "an overwhelming success" was as premature as the return movement itself.¹⁷ For, while the programme may have been a statistical success story, refugees were returning to a situation that offered them little opportunity to rebuild their lives. As Turton and Marsden point out, they were returning to a country:

"where there was, effectively, no functioning state; where the worst drought in 150 years was entering its fourth year...; where there was continuing military activity by coalition forces and between rival local powers; where ethnic violence... had contributed to the internal displacement of hundreds of thousands of people; where institutions of law and order were either non-existent or highly rudimentary; and where the provision of basic services, such as drinking water, health, and education was rudimentary and seriously under-resourced."¹⁸

Therefore, rather than being measured on the number of refugees who returned to Afghanistan, the true success of the UNHCR repatriation programme had to be measured on the extent to which it represented a 'durable solution' for those refugees who returned.

The greatest challenge around the durability of repatriation was how to overcome the relief-development gap for the returning refugees. Repatriation would not represent a durable solution unless refugees were able to smoothly transition from the emergency aid needed to sustain their lives over the short term to the development aid needed to sustain their lives over the longer term and ultimately to self-sufficiency. But the problem for the UNHCR was that it possessed neither the mandate nor the resources to assume control of developmental activities. The agency was therefore dependent upon various international development organisations and its own donor states to ensure the sustainability of refugee repatriation. This problem was highlighted when, after a successful first phase of the reintegration process, serious doubts began to arise over the sustainability of repatriation due to a lack of progress in the second phase. The UNHCR had great difficulty receiving adequate funding from its 15

¹⁶ Ibid. p.34.

¹⁷ Ibid. p.20.

¹⁸ Ibid. p.20.

donor states in the Afghan Support Group, who advised the UNHCR that the limited funding it was providing for major development projects would not be made available until April 2003.¹⁹ It is in this context that Turton and Marsden describe the UNHCR's position in Afghanistan as one of being "alone on the dance floor" while it urged its reluctant development partners for support to ensure that repatriation was indeed a 'durable solution'.²⁰ Returned refugees expressed widespread disappointment at the lack of international assistance they received upon their return to Afghanistan. Many felt as though they had been intentionally misled by the false promises of the UN, the coalition, and the new Afghan government.²¹

In light of the lack of development activity and seeming lack of international commitment to help refugees repatriate successfully, the initial euphoria around the UNHCR's repatriation programme quickly turned into anxiety about the sustainability of the mass return.²² This was based on the fact that many of those who had returned under the programme in the summer were not in a position to survive the winter. The UNHCR's repatriation policy came under strong criticism from humanitarian groups who urged the agency to cease its repatriation programme because conditions on the ground in Afghanistan were just not suitable for refugee return.²³ Moreover, the return of so many refugees hampered the reconstruction effort in Afghanistan by putting even more pressure on an already fragile infrastructure and under-funded reconstruction effort. In the search for a quick and inexpensive solution to the Afghan refugee crisis, the full costs and benefits of repatriation were not adequately considered.²⁴ The UNHCR's repatriation programme ultimately proved to be counterproductive to the aim of achieving a solution to the refugee crisis as many of those who did repatriate were once again forcibly displaced.

In the post-mortem of the UNHCR's repatriation programme it is important to note that even in the planning stage of the programme, the agency had expressed its concern that the conditions in Afghanistan were unsuitable for repatriation. It was for this reason that the

¹⁹ A. Rashid, 'Descent into Chaos: The US and the Failure of Nation Building in Pakistan, Afghanistan, and Central Asia', https://www.carnegiecouncil.org/resources/transcripts/0045.html/pf_printable, accessed August 03 2011.

²⁰ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.36.

²¹ Ibid. p.30.

²² Ibid. p.40.

²³ BBC News, 'Call to Stop Afghan Repatriation', http://news.bbc.co.uk/2/hi/south_asia/2147349.stm, accessed August 3 2011.

²⁴ S. Schmeidl, 'Repatriation to Afghanistan: Durable Solution or Responsibility Shifting?', *Forced Migration Review*, 33 (2009). p.20.

UNHCR was reluctant to define its programme as one of ‘promoted repatriation’ and instead opted to define it as a programme of ‘facilitated repatriation’. The distinction between the two terms may appear innocuous, but it is one which is, symbolically at least, highly significant. The UNHCR’s decision to define its repatriation programme as ‘facilitated’ rather than ‘promoted’ was an explicit attempt to allow the agency to exercise its mandate to help refugees repatriate “without appearing to induce, encourage, or ‘promote’ return to a fundamentally unsatisfactory situation”.²⁵ This distinction was not meant to discriminate between two different policies, but to create a formal difference where none actually existed in practice. The language of ‘facilitated repatriation’ was used as a shield to allow the UNHCR to encourage refugees to return to an unsafe situation while appearing to abide by the international legal standards around voluntary repatriation.²⁶

The Fallacy of the UNHCR’s Non-Political Mandate

Rather than a success story, the UNHCR’s repatriation programme in Afghanistan can therefore be described more accurately as a self-inflicted disaster for the agency. The UNHCR conceded in hindsight that it had mismanaged the process and that “the Afghanistan experience... had proven to be a much more sustained and complex challenge than initially anticipated”.²⁷ However, simply attributing the problematic repatriation experienced to “mismanagement” fails to take into account the significance of some of the other factors that contributed to the failed programme. For, the fact that the logic behind the repatriation of refugees to Afghanistan was fundamentally flawed from the outset suggests that the simple mismanagement of how the programme was carried out was not the main source of the problem. The UNHCR was returning refugees to a situation that was clearly unsustainable, suggesting that the policy of facilitated repatriation was not chosen with the best interests of Afghanistan’s refugees in mind.²⁸ The fundamental question that is raised here is: why therefore did the UNHCR pursue a policy that ran firmly against the best interests of the very refugees it is mandated to protect?

To answer this question, it is necessary to first understand the intense political pressure that is placed upon the operations of the UNHCR by states. As an intergovernmental organisation,

²⁵ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.44.

²⁶ Ibid. p.45.

²⁷ Schmeidl, 'Repatriation to Afghanistan: Durable Solution or Responsibility Shifting?'. p.20.

²⁸ Ibid. p.20.

the UNHCR remains dependent upon states for its funding. In total, almost 98 percent of the agency's funding comes from voluntary contributions from state governments. The majority is donated by a small number of affluent western states; for example, in 2002 the US, Japan, and countries from the European Union accounted for 94 percent of all government contributions to the UNHCR.²⁹ The result of this is that these major donor states invariably exercise a disproportionate amount of influence on the agency. These major donor states exert leverage on the UNHCR by earmarking their donations for programmes that are of particular political interest to them. They donate vastly disproportionate amounts of aid to a select few cases of political worth while providing a small amount of funds to the dozens of remaining cases.³⁰ In 2000, for instance, the UNHCR received ten times the per capita expenditure to resolve the refugee crisis in Kosovo than the total it received for African refugee crises in the same year. In 2002, 80 percent of all government contributions the UNHCR received were earmarked, the highest percentage in the agency's history.³¹

The UNHCR also comes under strong political pressure from both host states and refugees' states of origin. Host states are states that are forced to host vast numbers of refugees due to their geographic proximity to refugee crises. Many host states struggle to handle the vast numbers of refugees that pour across their borders and therefore develop hostility towards refugees; the hostility of Pakistan and Iran towards Afghan refugees has already been discussed in this thesis. This hostility towards refugees placed a large amount of pressure on the UNHCR to find timely alternative solutions for refugees to help ease the sense of burden that host states feel.³² On the other hand, many states from which refugees originate place a large amount of pressure on the UNHCR to encourage the return of refugees that have previously fled their borders.³³ The return of refugees is a powerful symbol of a government's legitimacy, both in the eyes of its own people and of the international community. As such there is a clear incentive for states in post-conflict situations to have as many of their refugees repatriated as possible. This was clearly the case in Afghanistan,

²⁹ United Nations High Commissioner for Refugees (2002a), 'UNHCR: An Overview - Funding UNHCR's Programmes', *UNHCR Global Report 2002* (Geneva, 2002c).

³⁰ Loescher, *The UNHCR and World Politics: A Perilous Path*. p.350.

³¹ United Nations High Commissioner for Refugees (2002a), 'UNHCR: An Overview - Funding UNHCR's Programmes'.

³² Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.46.

³³ *Ibid.* p.46.

where the UNHCR came under strong pressure from the Afghan government and UNAMA to boost the new government's legitimacy by repatriating as many refugees as possible.³⁴

In spite of the fact that the UNHCR has an explicitly non-political mandate, the agency is in fact highly politicised and is strongly influenced by the interests of its major donor and host governments. The UNHCR is increasingly faced with economic and political pressures to rethink its operational mandate in order to demonstrate its 'relevance' to its donor states. It is so dependent upon its major donors that it is left in no position to challenge the policy demands put forward by these states, even if those policies run against the best interests of refugees.³⁵ The UNHCR itself has admitted that it has often adapted its operations to align with the interests of its donor states.³⁶ Such instances of 'humanitarian pragmatism' have caused widespread concern within the international humanitarian community that the UNHCR has diluted its primary function of protecting refugees. It has forsaken the humanitarian principles upon which it was founded and has instead become an instrument for the world's most powerful states to pursue their political interests.³⁷

In spite of its non-political mandate, the UNHCR has demonstrated in recent years that it is more concerned with securing favour with its major donor states than it is with fulfilling its mandate to protect refugees. The UNHCR is in fact a highly political organisation whose operations are largely aligned with the political interests of the world's most powerful states. This was evident in Afghanistan where the UNHCR pursued a policy of repatriation that had little chance of providing a 'durable solution' to the Afghan refugee crisis because this policy was dictated by its donor states. The agency's weak position in relation to its funders meant it had little alternative but to adopt a policy of repatriation despite the fact that it ran against the best interests of the refugees it was mandated to protect.

³⁴ Ibid. p.46.

³⁵ Loescher, *The UNHCR and World Politics: A Perilous Path*. p.350.

³⁶ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. p.5.

³⁷ Loescher, *The UNHCR and World Politics: A Perilous Path*. p.350.

CHAPTER 6: THE INTERNATIONAL RESPONSE TO AFGHANISTAN'S REFUGEE CRISIS

The UNHCR's choice of policy in response to the Afghan refugee crisis becomes easier to understand through analysing the manner in which the international community itself responded to the crisis and how it treats refugees more broadly. Despite the fact that the majority of the world's states have accepted legal responsibility to provide assistance to refugees as signatories to the 1951 Refugee Convention, many of these states have failed to turn a positive humanitarian sentiment into positive humanitarian action. Rather, they have often expressed a deep-seated reluctance to 'share the burden' of assisting refugees, and have actively sought to avoid fulfilling their moral and legal obligations to refugees in a number of ways. The following chapter explores the general sense of antipathy with which the world's states respond to refugee crises before placing the Afghan case in this context by exploring the Australian response in particular to the Afghan refugee crisis.

The Role of States in Solving Refugee Crises

Any successful resolution of a refugee crisis within the contemporary international system is heavily dependent upon the cooperation and hospitality of states. It is only through the re-acquisition of citizenship, either through repatriation to their country of origin or resettlement in another, that refugees are able to regain the fundamental rights that are necessary to ensure a secure and sustainable existence. The dominant concept of identity in the political world today is one which is based upon a political triangulation of nation, state, and territory. It is as a citizen of a particular nation-state, existing within a legally-defined territory, that individuals today derive fundamental rights such as those of equal treatment, access to sources of livelihoods, and freedom of movement. In this sense, belonging to a state is instrumental in achieving a desirable standard of living.³⁸

By their very definition, refugees have been forced to renounce their belonging to a particular state in a bid to survive. Michael Dillon describes a refugee as someone who "can no longer safely respond to their previous name [and] cannot be hailed securely by their original ethnic,

³⁸G Kibreab, "Revisiting the Debate on People, Place, Identity and Displacement", *Journal of Refugee Studies*, 12/4 (1999). p.407.

religious, social, or political designation”.³⁹ In giving up their political identity and fleeing their homelands, refugees are not only deprived of their homes and property, but also their basic human dignity and the ability to enjoy the security and freedom that only state citizenship can provide.⁴⁰ Conceptions of universal human rights are shallow or even meaningless if one does not belong to a political community within which these rights are able to be secured.⁴¹ As Hannah Arendt explains, “the Rights of Man, supposedly inalienable, prove to be unenforceable... whenever people appear who are no longer citizens of any sovereign state”.⁴² It is therefore only through the reacquisition of state citizenship that refugees regain the rights, freedoms, and security that they had previously enjoyed as citizens of their homelands.

It is in this situation of rightlessness that refugees become wards of an international humanitarian regime that remains entirely dependent upon the endorsement, financial support, and generosity of states. It is states that hold the most important role in providing durable solutions to refugee crises around the world. The 1951 Refugee convention affirms this point and urges cooperation and ‘burden sharing’ among the international community of states in order to adequately respond to the needs of refugees.⁴³ With more than three-quarters of the world’s states as signatories to the Refugee Convention, the international community has responded admirably to this plea. In signing and ratifying the Convention and/or its 1967 Protocol, the majority of the world’s states have supplemented their moral responsibility to assist refugees with a legal responsibility to accept refugees into their borders and assist with their resettlement.

During the Cold War era, the world’s states expressed their strong commitment towards fulfilling these responsibilities to refugees. Refugees who fled from the communist Eastern Bloc countries in particular were welcomed with open arms by western states such as the US, Canada, and Australia. It was emphasised by the western states that the most suitable ‘durable solution’ for these refugee crises was third country resettlement because the brutality that

³⁹ M Dillon, 'The Scandal of the Refugee: Some Reflections on the "Inter" of International Relations and Continental Thought', in D Campbell and M.J. Shapiro (eds.), *Moral Spaces: Rethinking Ethics and World Politics*. (Minneapolis: University of Minnesota Press, 1999). p.102.

⁴⁰ J.C. Isaac, 'A New Guarantee on Earth: Hannah Arendt on Human Dignity and the Politics of Human Rights', *American Political Science Review*, 90/1 (1996). p.63.

⁴¹ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace, 1979). p.273.

⁴² Ibid. p.293.

⁴³ United Nations High Commissioner for Refugees (2007), 'The 1951 Refugee Convention: Questions and Answers', <http://www.unhcr.org/3c0f495f4.html>, accessed 03 October 2012. p. 6.

characterised the Eastern Bloc made repatriation unsuitable.⁴⁴ Turton and Marsden suggest that this commitment towards refugees reflected the fact that the Refugee Convention was a powerful political weapon in the arsenal of the western powers during the Cold War.⁴⁵ The desperate circumstances of the Eastern Bloc refugees provided an opportunity to publicly revile the communist world as brutal violators of their citizens' human rights. In this sense, the flow of refugees from east to west served a valuable political purpose in the ideological battle against communism.

However, refugees lost their ideological value following the end of the Cold War. From the perspective of the western states there was no longer any significant political gain to be made as a result of accepting refugees. Consequently, where refugees once provided proof of western superiority over the communists, they quickly became considered a liability. Predictably, the focus of the international refugee regime began to shift in the early 1990s from a focus of asylum and resettlement to one of containment and repatriation.⁴⁶ This shift was rationalised on the logic that displaced people do not necessarily have to leave their own country to find protection and that they were likely to be better off remaining within their own regions.⁴⁷ Furthermore, international assistance should be used to help deter new population flows rather than promote them. It was argued that in order to do this the focus of the international refugee regime should focus on repatriating those who had already left rather than resettling them elsewhere.⁴⁸

State Reluctance to Share the 'Refugee Burden'

This focus on keeping refugees within or near their countries of origin has remained prevalent into the current era of refugee protection. While refugees today remain heavily dependent upon the commitment of states to the principles of humanitarianism, the level to which states are committed to assisting refugees varies significantly between them. The widely held attitude towards refugees is that, as nations, we are under no obligation to accept any refugees at all; if we do accept some, it is not the fulfilment of an obligation but rather is an indication

⁴⁴ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.42.

⁴⁵ Ibid. p.41.

⁴⁶ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.10.

⁴⁷ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. p.17.

⁴⁸ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.42.

of our overtly generous character.⁴⁹ This view is exemplified by the United States, whose Office of the US Coordination for Refugee Affairs maintains that the underlying principle that guides refugee admissions is “an exceptional ex gratia act provided by the US in furthering foreign and humanitarian policies”.⁵⁰ In accordance with this attitude, states frequently respond to refugee issues with a high degree of selectivity, exercising the limits of discretion that states enjoy in the application of international law.

The general sense of aversion that states have demonstrated towards refugees since the end of the Cold War coincided with a disturbing shift in the terms of refugee discourse. Rather than being framed solely in the language of protection, discussions around refugees increasingly began to be placed in the context of various other political considerations.⁵¹ For instance, the language of refugee assistance began to be transformed into discussions around how refugees may pose a threat to the wellbeing of states. Providing assistance to refugees has increasingly become perceived as a burden by states, both in terms of the financial costs incurred and the perceived negative social costs.⁵² Refugees often require a large degree of initial assistance in basic areas such as housing, employment, health, and education, and many states are opposed to what they perceive as putting the needs of foreigners ahead of their own citizens. In the post 9-11 world in particular, refugees have also commonly been framed as a major threat to international security and a source of regional instability.⁵³ The fact that the Taliban military was largely made up of Afghan refugees recruited from refugee camps in Pakistan is a frequently cited example of the potential security threat that refugees may pose to their host states. It is in the context of this shift in the discourse around refugee issues that many states have expressed a deep-seated reluctance towards accepting refugees and have taken various measures to avoid fulfilling their responsibilities as signatories of the Refugee Convention.

Containment through ‘Preventive Protection’

One such measure that states have employed is the promotion of ‘preventive protection’, a recent concept that fits firmly within the paradigm shift that occurred in the early 1990s.

⁴⁹ P. Singer and R. Singer, 'The Ethics of Refugee Policy', in James S. Fishkin and Robert E. Goodin (eds.), *Population and Political Theory* (John Wiley and Sons, 2010). p.290.

⁵⁰ Ibid. p.290.

⁵¹ B. E. Whitaker, 'Document. Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania', *Refugee Survey Quarterly*, 21/1-2 (2002). p.332.

⁵² Gibney, 'Liberal Democratic States and Responsibilities to Refugees', explains the theory of ‘impartialism’ which is uncomfortable with the idea of balancing the needs of foreigners and citizens. p.173.

⁵³ Loescher, *The UNHCR and World Politics: A Perilous Path*. p.351.

‘Preventive protection’ may be defined as “the establishment or undertaking of specific activities inside the country of origin so that people no longer feel compelled to cross borders in search of protection and assistance.”⁵⁴ In applying the concept of preventive protection, the focus of refugee assistance is shifted from the traditional ‘right to leave’ one’s country in order to seek protection to ‘the right to remain’.⁵⁵ Those who have been displaced are discouraged from seeking refuge by crossing an international border by providing them with assistance still within their own countries. Rather than having displaced people fleeing to safety, preventive protection aims to bring safety to those displaced, by force if necessary, in order to prevent refugee crises from spilling over into neighbouring countries.⁵⁶

The emergence of the concept of preventive protection was closely associated with the sense of liberal optimism that arose from the end of the Cold War. Having defeated the evil of communism, western liberals believed that the world would enter the dawn of a new world order based on liberal values, where even the most enduring conflicts were solvable.⁵⁷ The concept of preventive protection offered a new alternative to the traditional three ‘durable solutions’ for refugees. It promised to prevent refugees from crossing an international border in the first place by solving the kinds of underlying problems that result in forced migration. In theory, this would be achieved through missions of humanitarian intervention around the world whereby foreign troops would protect ‘safe-zones’ within troubled countries. These ‘safe-zones’ would enable displaced populations to find refuge, temporary at least, without having to leave their home countries. Meanwhile, the international community would come together to address both the root causes and the direct causes of conflicts that put populations at risk.⁵⁸ This optimistic blueprint for solving the world’s refugee issues was later supported by the ICISS, which described the ‘responsibility to prevent’ as “the single most important element” of its Responsibility to Protect (R2P) report of 2001.⁵⁹

Unsurprisingly, the application of preventive protection in practice has yielded highly ambiguous results. With the exception of Northern Iraq in the first Gulf War, attempts to

⁵⁴ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. p.17.

⁵⁵ J. Hyndman, 'Preventive, Palliative, or Punitive? Safe Spaces in Bosnia Herzegovina, Somalia, and Sri Lanka', *Journal of Refugee Studies*, 16/2 (2003). p.169.

⁵⁶ K. Newland, 'The Decade in Review', *World Refugee Survey*, 1999, (1999). p.17.

⁵⁷ S. J. Stedman, 'The New Interventionists', *Foreign Affairs*, 72 (1992). p.1.

⁵⁸ International Coalition for the Responsibility to Protect, 'Summary of the Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty (ICISS)', <http://responsibilitytoprotect.org/R2PSummary.pdf>. accessed 12 August 2012. p.4.

⁵⁹ International Commission on Intervention and State Sovereignty, 'The Responsibility to Protect', (2001). p.xi.

provide ‘safe-zones’ of refuge to displaced persons within their countries of origin have proven “costly, ineffective...[and a] detrimental substitute for asylum”.⁶⁰ Critics such as Jennifer Hyndman have rejected preventive protection as a legitimate humanitarian practice. She maintains that that it is simply a donor-sponsored attempt to avoid their international legal obligations to would-be refugees by containing them within their countries of origin.⁶¹ With refugees increasingly being perceived as a threat to state wellbeing, the traditional resettlement countries of the west have demonstrated an eagerness to maintain what they perceive to be a desirable amount of space and distance from the vast waves of refugees in the developing world.⁶² The UNHCR is often urged by its major donor states to keep refugees within their countries of origin or in neighbouring states despite the fact that this often runs against the best interests of refugees. By keeping refugees ‘over there’, far from the borders of the donor countries of the west, preventive protection may accurately be seen as a political strategy of containment that prioritises the interests of these states ahead of those of refugees.

Return through ‘Voluntary Repatriation’

In some cases, the containment of refugees within their countries of origin is neither practical nor possible. The unpredictable nature of political conflict can often result in vast numbers of refugees pouring across international borders in the earliest stages of conflict or even in anticipation of conflict. For refugees that have already crossed an international border, the policy most eagerly pursued by states (often through the UNHCR) is that of ‘voluntary repatriation’. Repatriation is often framed in association with positive images of refugees resuming normal lives, free from the threat of oppression and conflict, within countries that enjoy well functioning basic services and government institutions. But this romanticized notion of repatriation is clearly an exception to the way it usually works.⁶³ In reality, the successful repatriation involves much more than simply crossing back over an international border. It is a complex process within which various political, economic, social, and cultural dimensions of reintegration must be addressed in order for it to be sustainable.⁶⁴

⁶⁰ Hyndman, ‘Preventive, Palliative, or Punitive? Safe Spaces in Bosnia Herzegovina, Somalia, and Sri Lanka’. p.182.

⁶¹ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. p.2.

⁶² Ibid. p.2.

⁶³ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.177.

⁶⁴ B. Stein, ‘Reintegrating Returning Refugees in Central America’, in K. Kumar (ed.), *Rebuilding Societies after Civil War: Critical Roles for International Assistance* (London: Lynne Rienner Publishers Inc, 1997). p.161.

However, as demonstrated in the case of Afghanistan, the UNHCR and its donor states are often less concerned with the sustainability of refugee repatriation than with the mere physical return of refugees to their countries of origin. While repatriation is often promoted as the best solution to a refugee crisis, the fundamental question here is: the best solution for whom? The overt promotion of repatriation has turned the physical return of refugees into an end in itself, with repatriation being conducted without adequate consideration as to whether it is in the best interest of those being returned and the country to which they are returning.⁶⁵ In the case of Afghanistan, it was clear that the UNHCR's repatriation programme was premature and ran against the best interests of both the refugees and the new Afghan state. Had the UNHCR's repatriation programme been delayed by a year or two, fewer refugees would have returned because of unrealistic expectations, while the new Afghan state could have dedicated more time, effort, and resources into reconstructing the country in order to make refugee repatriation more sustainable in the long run.⁶⁶

But the major donor states of the international refugee regime are unwilling to share the burden of refugee protection. In fact, they actively seek to avoid providing the minimal rights to which refugees are entitled under the Refugee Convention. Many states refuse to extend their social responsibility beyond their own borders, as indicated by the increasing hostility shown towards asylum-seekers and the declining number of refugee admissions to western countries.⁶⁷ In this context, the UNHCR is often left with little alternative but to pursue a policy of repatriation despite acknowledging that this often represents a less than desirable solution for refugees.

Avoidance through Legal Manoeuvres

States have employed various other methods in addition to preventive protection and repatriation that are designed to avoid the 'burden' of fulfilling their obligations towards refugees. One of the most common ways they have done this is by exploiting loopholes in international law to limit those who qualify to receive the protection of the international refugee regime. At the heart of this issue is the contentious understanding of who exactly is defined as a 'refugee' within international law. The definition of 'refugee' that states agreed to adopt in the Refugee Convention is based upon the status of those displaced in Europe

⁶⁵ Petrin, *Refugee Return and State Reconstruction: A Comparative Analysis*. p.15.

⁶⁶ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.45.

⁶⁷ Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism*. p.xxix.

during WWII. As Hyndman explains, the Convention definition “was intended to distribute the European refugee burden without any binding obligation to... non-European refugees.”⁶⁸ As such, the Convention definition of ‘refugee’ is based firmly around those who suffered persecution on the grounds of civil and political rights. Refugees who are victims of oppression on other grounds, such as socio-economic rights, are legally excluded from receiving the protection and assistance provided by the international refugee regime. However, the majority of the world’s refugees today, living in the developing world, face violence on a broader scale and for different reasons than those of post-war Europe. Yet as a result of the Refugee Convention’s western-centric formal requirements, states are not obligated to provide them with protection. Therefore, the primary definition of ‘refugee’ agreed to by states serves to uphold a geographically unequal system of refugee protection that places the majority of those requiring assistance outside the scope of refugee protection under international law.

In limiting their assistance to only those refugees that conform to the Refugee Convention definition, states have also excluded internally displaced persons (IDPs) from the protection provided by the international refugee regime. While refugee law does clearly distinguish between the rights and entitlements of IDPs and Convention refugees, in reality these categories exist only because of marginal differences in time and space. In fact, some UNHCR policymakers maintain that refugees and IDPs are qualitatively part of the same group, but are divided artificially by an arbitrary political border.⁶⁹ Yet IDPs remain excluded from the UNHCR’s protection mandate. This has resulted in a serious gap in the international system for the protection and assistance of the world’s estimated 20 to 30 million IDPs.⁷⁰ The lack of clarity within the international refugee regime over the responsibility to protect refugees that have not crossed an international border has led to the neglect of this vast population that require protection.

Another group of refugees that have fallen victim to the ambiguity of international law is that of asylum-seekers, otherwise known as spontaneous refugees. Strictly speaking, asylum-seekers come under the protection of international refugee law as soon as they cross an international border. Article 33 of the Refugee Convention states that no state “shall expel or return [refouler] a refugee... to the frontiers of territories where his life or freedom would be

⁶⁸ Ibid. p.8-9.

⁶⁹ Ibid. p.5.

⁷⁰ Loescher, *The UNHCR and World Politics: A Perilous Path*. p.354.

threatened”.⁷¹ Asylum-seekers can therefore not legally be expelled against their will, at least until their cases have been examined and their refugee status has been determined. However, many states have interpreted the principle of non-refoulement in a manner that allows them to reject asylum-seekers from gaining access to their borders.⁷² For instance, the United States and other Western states have argued that the principle of non-refoulement applies only to those persons who meet the standard of persecution as outlined in the Refugee Convention. They therefore do not afford the right of non-refoulement to asylum-seekers that are fleeing general states of violence or civil war, despite the fact that various international legal authorities demand that they should be.⁷³ Similarly, some states maintain that the principle of non-refoulement only applies to asylum-seekers once they have actually entered a state’s territory. They have then implemented controversial policies of interdicting refugees at sea or apprehending them at off-shore detention centres in order to prevent them from accessing their territory.⁷⁴

Deterrence Measures Against Refugees

Finally, in the hope of deterring refugees from their countries many states have adopted policies that aim to make their countries less appealing to refugees. These deterrence measures have typically taken three main forms. The first has been to limit the physical access refugees have to their territories, a category within which the aforementioned policies of interdiction and off-shore processing both fit. The second has been to create discontent for refugees upon arrival by rendering the conditions of stay in their countries less attractive. This has typically been done by providing a minimal level of resettlement assistance to refugees upon their arrival, or by scattering refugees of the same nationality to remote regions of the country in order to hamper any sense of social cohesion between them. The third way in which states have sought to deter refugees is to increase the difficulty with which they are able to gain full citizenship rights. In some countries, alternative statuses to citizenship have been specifically created for refugees that grant fewer rights than citizenship. In Australia from 1999 to 2008, for instance, asylum-seekers who were granted refugee status were not granted citizenship, but were given a three year Temporary Protection Visa (TPV). Not only

⁷¹ United Nations High Commissioner for Refugees (2011a), 'Convention and Protocol Relating to the Status of Refugees', <http://www.unhcr.org/3b66c2aa10.html>, accessed 03 October 2012.

⁷² Loescher, *The UNHCR and World Politics: A Perilous Path*. p.352 discusses some of these methods of avoidance.

⁷³ Ibid. p.352.

⁷⁴ Ibid. p.352.

did this create strong feelings of insecurity for refugees in their new situations, but it also limited their access to a range of entitlements and services.⁷⁵ TPV holders were forced to endure a three year period of uncertainty before reapplying for permanent refugee status, which would be granted only on the basis that conditions in their country of origin remained unchanged. These kinds of policies demonstrate the explicit aversion that states have towards refugees. Not only do they represent an erosion of the core principles of refugee protection in the name of selfish realism, but are also a flagrant violation of the humanitarian principles that the international refugee regime claims to uphold.

The International Inhospitability towards Afghanistan's Refugees

At the time of the intervention in Afghanistan, Afghans had constituted the largest single group of refugees in the world for almost two decades. During this period the vast majority had fled to Afghanistan's nearest neighbours: Pakistan, Iran, Turkmenistan and Uzbekistan. These countries struggled to support the millions of refugees that spilled over their borders due to the fact that these countries themselves are susceptible to humanitarian problems. Weary after years of hosting such vast numbers of refugees with minimum international interest or support and no prospect of a solution to the cause of refugee flows, many of these countries tightened their refugee policies to limit the number of Afghan refugees they were willing to accept.⁷⁶

The traditional refugee resettlement countries of the west, being in the best financial position to accept large numbers of refugees, also admitted some Afghan refugees into their countries, albeit in much smaller numbers. Countries such as the United States, the UK, Canada, Australia, New Zealand and the countries of the European Union have established quota refugee programmes with the UNHCR whereby they agree to resettle a proportion of the millions of existing Afghan refugees. These countries have also periodically accepted small numbers of asylum seekers from Afghanistan. However, by and large these states have sought to restrict the number of Afghan refugees they accept and have often implemented the kind of restrictionist policies discussed in the previous section towards Afghan refugees.

⁷⁵ For instance, TPV holders are ineligible for various financial assistance benefits, government funded English language programmes, and state medical care, have no family reunion rights, and are afforded no right of return if they leave the country. See G. Hugo, 'From Compassion to Compliance? Trends in Refugee and Humanitarian Migration in Australia', *GeoJournal*, 56/1 (2002). p.33.

⁷⁶ Amnesty International, 'Afghanistan: Continuing Need for Protection and Standards for Return of Afghan Refugees', (2002). p.4.

While this behaviour represents an explicit violation of the principles of humanitarianism on the part of these states, it also raises a specific question in the context of the Afghanistan intervention over the level of responsibility that these states have towards Afghan refugees. Given that many of these states were or remain active participants in the international military campaign in Afghanistan, it is logical to expect these countries to shoulder a greater sense of responsibility for assisting refugees. After all it is their military footprint that is partly responsible for the creation of these refugees. This section demonstrates that unfortunately states have not accepted this greater sense of responsibility towards assisting Afghan refugees, as highlighted by the case of Australian inhospitality towards Afghan refugees.

The Case of Australian Inhospitality

There are a number of countries that actively sought to limit the extent of their responsibility towards Afghan refugees in the context of the post-9/11 refugee crisis. Of the countries that were explored in Chapter 3 of this thesis, the Netherlands, the UK, and Australia all adopted some or all of the restrictionist policies discussed in the previous section in an attempt to limit the number of refugees they accepted from Afghanistan. Of these policies, the altering of immigration laws and the adoption of voluntary or involuntary repatriation policies were most common. For instance, in the Netherlands in October 2001 the Dutch government authorised the Dutch Immigration Service to stop processing Afghan asylum applications by removing the legal processing time limit of six months for Afghan claims. As A.R. Faquiri explains, “the Dutch Ministry of Justice seemed to hope that at the end of this period the situation in Afghanistan will be sufficiently safe to enable Afghans’ asylum applications to be rejected”.⁷⁷ The Dutch government wanted to avoid issuing residence documents to Afghans who might have become eligible for deportation a short while later.⁷⁸ Similarly in the UK, government officials indicated in early 2002 that they felt that Afghans in the UK should no longer be routinely granted ‘Exceptional Leave to Remain’, on the basis that the situation in Afghanistan had improved considerably.⁷⁹ Immigration Minister, Beverly Hughes, concluded that the situation in Afghanistan had changed to such an extent that Afghan asylum seekers could soon return, or be forcibly returned, to the country.

⁷⁷ A.R. Faquiri, 'Afghan Refugees in Europe', *Forced Migration Review*, 13 (2002).

⁷⁸ Ibid.

⁷⁹ Amnesty International, 'Afghanistan: Continuing Need for Protection and Standards for Return of Afghan Refugees'. p.4.

But it is Australia that stands out as the country whose response to Afghan refugees was the most inhospitable. The case of Australia provides a text book example of the kind of negative attitude and policies that are undermining the spirit of the Refugee Convention and the effectiveness of the international refugee regime. For, in contrast to Australia's enthusiasm to play a leading role in the military campaign in Afghanistan over the past decade, the country maintained an equally enthusiastic aversion towards assisting Afghan refugees.

Australia's general attitude of disdain towards refugees dates back to the late 1990s, when the 'refugee issue' in Australia became closely intertwined with negative aspects of undocumented migration and border control. However, it was the 'Tampa Affair' of August 2001 that really brought the issue to a head. The incident revolved around the Norwegian freighter MV *Tampa* which had rescued 438 Afghan asylum-seekers from a small fishing vessel that was sinking in Australian waters. The MV *Tampa* requested access to the Australian mainland in order to offload the rescued asylum-seekers, among which were pregnant women and children requiring medical attention. But Australian authorities controversially refused the request. A high profile standoff ensued as the Australian government rebuked suggestions that it had an obligation under international law to allow the asylum-seekers to lodge asylum claims in Australia, as they had not stepped foot on Australian territory. With the MV *Tampa* anchored off the shore of Christmas Island, a legal territory of Australia, Australian Special Air Service Regiment (SASR) troops boarded the freighter and forcibly transferred the asylum-seekers onto an Australian Navy vessel. They were then transported to the small island country of Nauru where they were held in two detention camps while a solution could be forged. In the end, New Zealand accepted approximately 150 of the *Tampa* refugees in a bid to relieve the situation. Most of those who remained ultimately received Australian Temporary Protection Visas (TPVs), despite Australian Prime Minister John Howard's declaration that none of the Tampa refugees would set foot on Australian soil.

Within Australia the strong response of the government to the Tampa affair was strongly supported by politicians, the Australian media, and a large proportion of the Australian public. The proximity of the 9/11 attacks to the incident only served to strengthen the anti-refugee sentiment that had already existed in Australia. In the election race of 2001 refugee issues became a headline issue, with Prime Minister Howard famously campaigning along the lines of "we decide who comes into this country and the circumstances in which they

come”. By most accounts, it was Howard’s tough stance on refugees that won him the election in November 2001,⁸⁰ suggesting that the anti-immigration rhetoric of his political campaign had struck a powerful chord with the xenophobic tendencies of the Australian public.⁸¹

During their decade-long involvement in Afghanistan from late 2001, Australia often demonstrated an eagerness to limit the number of Afghan refugees it accepted. Policies of interdiction, lengthy processing of asylum claims, detention at off-shore processing facilities, and limited-rights visas for refugees were all introduced by successive Australian governments from 2001 to 2010. Like the Netherlands and the UK before it, Australia also suspended the processing of new asylum applications from Afghanistan in 2010 on the basis that the circumstances in Afghanistan had improved to the extent that the ongoing refugee crisis was no longer a pressing issue.⁸² William Maley explains how this claim was nothing short of bizarre to those with recent experience on the ground in Afghanistan; the Afghan state was “so feeble that ‘constitutional and legal reform to protect minorities’ rights’ meant nothing for ordinary people.”⁸³ The Australian government went a step further in January 2011 by signing a controversial agreement with the Afghan government that allowed for the forcible return of Afghan asylum seekers that were judged “not to be in need of international protection” by the Australians.⁸⁴ It claimed that it had begun to receive “better information about the situation in Afghanistan” which would allow it to make more informed decisions on asylum claims and subsequently return more Afghan asylum seekers to their country of origin.⁸⁵ This policy of forcible repatriation was met with a large degree of scepticism from humanitarian advocates who questioned the validity of Australia’s refugee determination process. As Maley contends, “when approval rates for asylum claims suddenly plunge when the circumstances in the applicants’ country of origin are deteriorating, there are grounds for believing that there is something very wrong with the assessment process.”⁸⁶ Allowing the forcible return of refugees to their country of origin has the strong potential to expose

⁸⁰ Tim Hatton and Audrey Lim, ‘The ‘*Tampa* Effect’: Australian Asylum Policy in International Perspective’, <http://ecocomm.anu.edu.au/research/papers/pdf/wp457.pdf>, accessed 03 October 2012.

⁸¹ N. Klocker, ‘Community Antagonism Towards Asylum Seekers in Port Augusta, South Australia’, *Australian Geographical Studies*, 42/1 (2004), explores the negative attitudes of the Australian public towards asylum seekers and immigrants more broadly.

⁸² Steven Smith, ‘Changes to Australia’s Immigration Processing System’, (Australian Minister for Foreign Affairs and Trade, 2010).

⁸³ William Maley, ‘Reckless Plan for Afghans Will Cost Lives’, *The Age*, 20 January 2011.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

refugees to situations in which they genuinely fear persecution, and is therefore explicitly prohibited by the Refugee Convention. But in the contest between humanitarianism and the interests of states, such an agreement exposes the extent to which the latter takes overwhelming primacy over the former to the great detriment of the world's refugees.

The ability to resolve refugee crises around the world is heavily dependent upon the degree to which states are committed to the fulfilment of their humanitarian obligations to refugees.

The severity of the global refugee crisis today is to a large extent connected to the fact that the world's states have failed to fulfil these obligations. Refugee protection has increasingly become perceived by states as a burden, and many actively seek to avoid their responsibilities to refugees by adopting various restrictive policies. This was evident in the manner to which the international community responded to the Afghan refugee crisis. While many countries were willing to contribute to the military campaign in Afghanistan for the greater part of a decade, few countries were willing to match this with an equal degree of commitment and compassion towards the Afghan refugees, many of whom were displaced as a direct result of the international intervention. This exposes the manner in which refugee issues are neglected by states, which pay lip service to the principles of humanitarianism but rarely translate this into meaningful humanitarian action.

CHAPTER 7: THE PLACE OF HUMANITARIANISM IN INTERNATIONAL POLITICS

Humanitarian crises are rarely contained within a specific locale, as the case of Afghanistan has aptly demonstrated. The negative consequences of humanitarian crises invariably affect neighbouring countries, regions, and often times the entire international community. But as I have argued in this thesis, the overt politicisation of humanitarianism has resulted in the most important decisions in response to humanitarian crises being taken not at the international level in the interests of all concerned, but at the national level by individual states. As such, it is virtually impossible to prevent considerations of national interest from intruding upon decisions regarding humanitarian action for ostensibly humanitarian purposes.¹ The conflict between the humanitarian impulse and a state's national interests is inevitable when states make such decisions, yet it is difficult to determine the extent to which these decisions are truly motivated by their altruistic concern for the victims of humanitarian crises or simply their own self-interests.

Humanitarianism Driven by Realpolitik

However, history has demonstrated that states do not in humanitarian action unless it serves in their national interest either directly or indirectly.² In the case of Afghanistan, for instance, the international community only considered humanitarian intervention in the context of the global 'War on Terror', despite the fact that the country had been in the firm grasp of a humanitarian crisis for more than two decades. The timing of the intervention highlights the fact that considerations of national interest rather than humanitarian concerns ultimately play the most important role in determining whether states undertake humanitarian action. In this connection, it is perhaps understandable that in recent times, states' decisions to commit to humanitarian action have been frequently subject to scrutiny and suspicion.

¹ M. Ayoob, 'Humanitarian Intervention and State Sovereignty', *The International Journal of Human Rights*, 6/1 (2002). p.85.

² Ibid. p.86.

Considerations of national interest by states are rarely unambiguous. Within a state's decision making process, there are a number of competing elements that are able to exert considerable influence on the direction of a state's policies. In his study on the refugee policy of the United States, Tahl Tyson provides a valuable analysis of some of the elements that commonly influence the direction of states' humanitarian policies. He finds that a state's humanitarian policy is typically the product of compromise among four main influences which vary in strength and dominance over time.³ The first is humanitarian concerns, an influence that in theory should receive the highest priority in humanitarian policy given that it is humanitarian concerns that justify the very existence of a humanitarian policy. While the other competing interests are able to be pursued through alternative means, humanitarian concerns can only be pursued through the exercise of a state's humanitarian policy. The second influence is that of foreign policy concerns, which appear to be an inherent element of humanitarian policy due to the fact that responding to humanitarian crises is often a highly political process. The two appear to have an interdependent relationship, with humanitarian policy often serving foreign policy goals while foreign policy decisions invariably dictate the direction of humanitarian policy. Tyson suggests that the question is therefore not how to eliminate foreign policy influence from humanitarian policy, but rather how to make foreign policy more responsive to humanitarian concerns.⁴ The third competing influence comes from special interest groups, which affect the direction of humanitarian policy by exerting political pressure upon government in particular relevance to their ethnic or religious affiliation. As a result of this pressure, humanitarian assistance tends to go to those not in the most need, but to those groups with the strongest political constituencies or diasporas in Western states. The final influence is that of domestic concerns, which affect the direction of humanitarian policy by way of public approval or disapproval. The manner in which domestic concerns affect a state's humanitarian policy have been discussed in depth in the previous chapter, such as in the case of the Australian public's support for their government's tough stance on Afghan refugees.

These various influences all affect the direction of a state's humanitarian policy. Yet Tyson maintains that humanitarian policy can only be considered legitimate if it is based primarily upon a genuine concern for those in need. However, in analysing the degree of influence that

³ T. Tyson, 'The Refugee Act of 1980: Suggested Reforms in the Overseas Refugee Program to Safeguard Humanitarian Concerns from Competing Interests', *Washington Law Review*, 65 (1990). p.921.

⁴ *Ibid.* p.934.

each of these competing elements has on humanitarian policy, he concludes that humanitarian concern ironically has the least amount because state governments “lack a strong vested interest in ensuring the humanitarian approach”.⁵ The other competing elements exert a much greater degree of influence, and this directly serves to undermine the capacity of humanitarian concerns to drive the direction of humanitarian policy. Humanitarian concerns are superseded by the political objectives of states, which ultimately define whether they are willing to commit to humanitarian action around the world. Put simply, this amounts to a fundamental perversion of the principles of humanitarianism and a corruption of the very purpose of humanitarian policy which is to simply provide assistance to those in need. Humanitarian action undertaken primarily in the pursuit of states’ own interests and only incidentally for the sake of those in desperate need of assistance unequivocally remains outside the boundaries of what may be deemed to be legitimate humanitarianism. It is in the context of this distorted manifestation of humanitarianism that the international humanitarian regime may accurately be understood, in the words of B.S. Chimni, as “an instrument of an exploitative international system” which is “periodically mobilised to address its worst consequences”.⁶

The Problems of Selectivity and Double Standards

Being driven by the political interests of the world’s most powerful states has had a number of major implications for the international humanitarian regime. One of the most troubling is that, because it is defined by the often erratic and unpredictable will of these states, international humanitarian action has become subject to inconsistent application. States choose to respond to one instance of human suffering that warrants intervention in one part of the world but not a comparable instance elsewhere. One might ask, for instance, ‘why did Kosovo merit military intervention and why were its refugees met with such hospitality around the world whilst Rwanda was abandoned to suffer the worse genocide since WWII?’ Or, ‘why was Iraq subject to military intervention for the mistreatment of its Kurdish population but such action was never considered against Turkey for the same injustice?’ Similarly, ‘why were so many states willing to provide humanitarian support to Afghans on the other side of the world, but were so averse to doing so when Afghans who needed assistance arrived at their own territory?’ Far from involving themselves with all comparable

⁵ Ibid. p.930.

⁶ B. S. Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems', *Refugee Survey Quarterly*, 23/3 (2004). p.56.

humanitarian injustices around the world, those states with the power to alleviate human suffering commit themselves selectively to some instances which warrant intervention while turning a blind eye to others. The degree of selectivity with which states engage in humanitarianism around the world is a problem that has developed into one of the primary criticisms of humanitarian action.⁷

The problems of selectivity and double standards appear to be inevitable consequences of the existing international humanitarian regime. As staunch an advocate of humanitarian intervention as Thomas Weiss has been compelled to admit that in the application of humanitarianism, 'there can be no universal imperative. States will pick and choose'.⁸ Despite the fact that these problems are largely unwelcomed by humanitarian advocates, there are those who have sought to defend states' use of a selective approach to humanitarianism. Among them is Mark Evans, who provides an example of two instances of humanitarian suffering that are very similar in their nature. Where one presents "insuperable logistical obstacles to a successful action or threatens outweighing moral costs should such action ever be attempted". He argues that states would be justified in being selective about whether or not to intervene in such an instance; it would be unwise for states to intervene in order to bring about Tibetan independence from China, for example.⁹ It has also often been argued that while selectivity may not be desirable, it is better that states uphold the principles of humanitarianism selectively than not at all.¹⁰

But the defence of selectivity fails when it becomes the norm in applying the principles of humanitarianism. It is not the case that there are a limited number of exceptions where states are unable to undertake humanitarian action consistently. As Chimni explains, "both in the choice of situations and the nature of means used, [selectivity] is the defining characteristic of humanitarianism [today]".¹¹ The world's most powerful states do not refrain from providing humanitarian assistance on the grounds of 'insuperable logistical obstacles'; they simply commit themselves to those cases from which they stand to benefit and neglect those which offer no such dividends. Even within multilateral organisations like the United Nations, decisions to engage in humanitarian action are determined by the national interests of the

⁷ M. Evans, 'Selectivity, Imperfect Obligations and the Character of Humanitarian Morality', *Human Rights and Military Intervention. Hants*, (2002).

⁸ Thomas Weiss quoted in Ayoob, 'Humanitarian Intervention and State Sovereignty'. p.86.

⁹ Evans, 'Selectivity, Imperfect Obligations and the Character of Humanitarian Morality'. p.133.

¹⁰ A. Roberts, 'Humanitarian Action in War Aid, Protection and Impartiality in a Policy Vacuum', (1996). p.20.

¹¹ Chimni, 'Globalization, Humanitarianism and the Erosion of Refugee Protection'. p.8.

major powers. Military operations under Chapter VII of the UN Charter, for instance, are agreed largely on the basis of shared interests or tradeoffs among the five permanent members of the Security Council.¹² Kosovo merited intervention from the West because of its geographic proximity to the European Union and its importance for future access to Caspian Sea oil, while Rwanda offered no such incentives.¹³ Turkey was never considered for military intervention for its mistreatment of the Kurds because it was a NATO member and a key player in enforcing economic and military sanctions against Iraq.¹⁴ In Afghanistan, while intervention served the national security and political interests of the intervening states, Afghanistan's refugees remained excluded from the reach of the international humanitarian regime and their suffering was largely left unattended. Decisions to intervene or not to intervene in humanitarian crises are guided by strategic and economic considerations that have little to do with humanitarian concerns, even if they are often justified with reference to such ideals. The neglect of Afghanistan's refugees exposes the reality that it is *realpolitik* alone that ultimately distinguishes those humanitarian crises that receive the assistance of the international humanitarian regime from those that are left outside the margins of human compassion.

The Problem of Humanitarian Abuse

The fact that the international humanitarian regime is primarily driven by the national interests of the world's most powerful states has also created a major problem around the potential abuse of the humanitarian rationale. 'Abuse' in this context refers to cases where humanitarian reasons are used to justify action, particularly military action, that is not primarily motivated by the humanitarian concerns espoused, but by the political interests of those carrying out the action. Since the end of the Cold War, humanitarian values have become an important means of justifying and lending legitimacy to actions taken in the pursuit of political objectives which are not primarily humanitarian in nature.¹⁵ The United States in particular has readily utilised the humanitarian rationale when seeking to justify self-interested military action against other states; the humanitarian justification for the US invasion of Iraq in 2003 was the most explicit example of humanitarian concerns being used

¹² Ayoob, 'Humanitarian Intervention and State Sovereignty'. p.87.

¹³ Evans, 'Selectivity, Imperfect Obligations and the Character of Humanitarian Morality'. p.133.

¹⁴ Ayoob, 'Humanitarian Intervention and State Sovereignty'. p.87.

¹⁵ Turton and Marsden, 'Taking Refugees for a Ride: The Politics of Refugee Return to Afghanistan'. p.56.

to justify political objectives, while the ‘humanitarian’ intervention in Afghanistan also fits within this context.¹⁶

Whether such instances of military intervention may accurately be defined as exercise in humanitarianism has been a topic of considerable debate among scholars of international relations. The key point of contention here is whether it is the ostensibly humanitarian outcome of the intervention or rather the humanitarian motive of the intervener that invokes the legitimacy afforded by the principle of humanitarianism.¹⁷ As Alex Bellamy queries, “does it matter that an act was motivated by non-humanitarian concerns if the end result is a better world?” While it is clear that a number of factors shape a state’s decision to undertake humanitarian action, what is at issue here is the primary legitimising factor for an intervention rather than a singular factor. Some scholars have argued that a genuinely humanitarian motive should not be the threshold criteria for determining a legitimate case of humanitarian intervention. Fernando Tesón, for instance, claims that the true test for a humanitarian intervention lies in whether the intervener has achieved a positive humanitarian outcome.¹⁸ In this context, he argues that the US-led interventions in Afghanistan and Iraq were in fact legitimate cases of humanitarian intervention, despite clearly serving the national interests of the US, because it was ultimately beneficial for the people of these countries to be liberated from the brutal regimes of the Taliban and Saddam Hussein respectively.¹⁹

Yet while there is certainly an element of truth in this argument, there are reasons for distinguishing a military intervention that only coincidentally achieves a positive humanitarian outcome from a genuine humanitarian intervention. Elements of self-interest may inevitably creep into the decision making process, however a legitimate case of humanitarian action must be an act “wholly or primarily driven by the sentiment of humanity”. In this sense the primary motive for intervention must be guided by a sense of ‘disinterest’. As Bhikhu Parekh explains, the humanitarian component of an intervention “should not be the fortunate but unintended by-product of an otherwise unjust act perpetrated for self interested reasons”.²⁰ Within the existing system, however, this is precisely what

¹⁶ The humanitarian rationale offered for the intervention in Afghanistan was discussed previously in Chapter 3 of this thesis.

¹⁷ Bellamy, 'Motives, Outcomes, Intent and the Legitimacy of Humanitarian Intervention'. p.217.

¹⁸ F. R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Transnational, 1997). p.103.

¹⁹ For a detailed argument in this context, see F. R. Tesón, 'Ending Tyranny in Iraq', *Ethics & International Affairs*, 19/2 (2005), pp.1-20.

²⁰ B. Parekh, 'Rethinking Humanitarian Intervention', *International Political Science Review*, 18/1 (1997). p.54.

takes place. The intervention in Afghanistan was clearly not driven by the sentiment of humanity, for if it was, those states who contributed to the intervention would have demonstrated equal commitment in their response to Afghanistan's refugee population. Furthermore, the United States and its allies would have intervened more than a decade earlier at the onset of Afghanistan's humanitarian crisis. But in allowing states to legitimise the pursuit of their own interests on an elusive humanitarian outcome, the door to humanitarian abuse is flung wide open. It provides too great an opportunity for humanitarianism to be used as a pretext for the thwarted political aspirations of the world's most powerful states. This, in turn, breeds a sense of contempt for humanitarianism that may ultimately undermine the effectiveness of humanitarian action around the world to the detriment of those in need of assistance.

The Implications for those Forgotten

It is in the context of the kinds of problems discussed above that the existing international humanitarian regime should be understood as an inherently misconstrued system. It is also as a consequence of these problems that the existing system fails to provide consistent and transparent humanitarian assistance to those in the greatest of need. The internal conflict that takes place between the principles of humanitarianism and the political interests of states has resulted in a discriminatory and exploitative system for humanitarian action within which political interests define and supersede humanitarian concerns. States are only eager to provide humanitarian assistance in the areas of humanitarianism that offer a politically-expedient incentive for them to do so; they avoid areas of humanitarianism that run the risk of resulting in a negative political outcome or are likely to involve greater costs than benefits to themselves. As a result, states express much more willingness to commit to forms of humanitarian action that takes place "over there", far away from their own territories and societies, such as humanitarian intervention. Not only does humanitarian intervention offer potential political benefits such as greater access to natural resources or establishing military bases of strategic importance on the territory of the state being intervened in, but is also carries little risk of having a direct negative impact on an intervening state's own territory, security, resources, society, and so on. On the other hand, forms of humanitarian action requiring states to apply the principles of humanitarianism within their own space, such as refugee resettlement, are explicitly avoided by states. Not only do states perceive refugee

resettlement as a policy that requires greater costs than it provides benefits, but it also carries with it a politically-engineered sense of risk of having a direct negative impact at home.

This was perfectly demonstrated in the case of Afghanistan. The US and its coalition partners did not hesitate to commit their military forces to Afghanistan in the name of global security and humanitarian justice, as chapter three highlighted. This was because Afghanistan represented the major battleground for international security, was a major strategic location in the Middle East, and provided an ideal access point to the abundant oil and natural gas reserves in the Caspian region.²¹ Deploying military troops to fight in Afghanistan also carried little risk of having a negative spill-over effect at home. In contrast, the likes of the US and Australia were unwilling to commit equally to assisting Afghanistan's refugees, as highlighted in chapter six. They saw no incentive to bear the burden of refugee protection by agreeing to resettle Afghanistan's vast number of refugees in their own countries. For these states, the political and material costs of resettling refugees greatly exceeded the benefits they could expect to derive, while it also ran a greater risk of negatively impacting their own countries. It is in this context that B.S. Chimni believes that, rather than promoting refugee protection, the underlying ideology of the international humanitarian regime is in fact contributing to "the systematic erosion of the core principles of refugee protection and rights in the name of a spurious realism".²² While intervention in Afghanistan may have indeed served the political interests of the US and its allies, assisting the millions of refugees who were produced as a direct result of the intervention most certainly did not. As such, the containment of Afghanistan's refugees was contrived through the UNHCR's repatriation programme, while those who sought refuge through means of their own were met with varying degrees of western hostility. This neglect of Afghanistan's refugees highlights the 'inhumanitarian' nature of the intervention that took place in Afghanistan and once again exposes the inherent deficiencies of the international humanitarian regime.

²¹ C. A. Stabile and D. Kumar, 'Unveiling Imperialism: Media, Gender and the War on Afghanistan', *Media, Culture & Society*, 27/5 (2005). p.769 discusses the US political and economic interests in Afghanistan.

²² Chimni, 'Globalization, Humanitarianism and the Erosion of Refugee Protection'. p.16.

CONCLUSION:

IMAGINING A BETTER HUMANITARIAN REGIME

This thesis has demonstrated that the current system for international humanitarian action is fundamentally flawed and is in desperate need of reform of one variety or another. While the principles of humanitarianism have slowly been eroded over recent decades, the need for a more effective international humanitarian regime has only grown with the frequency of humanitarian catastrophes around the world. This need has prompted various scholars of international relations to consider some of the ways in which a more effective humanitarian regime might be devised. Incorporating everything from the embarrassingly modest to the absurdly ambitious, the propositions of these scholars fall broadly into two categories: 1) those that aim to ‘tweak’ the existing humanitarian regime, and 2) those that aim to remake the humanitarian system entirely. Theoretical prescriptions for reform in the realm of international politics can often prove to be an exercise in futility; nevertheless, considering alternatives to the existing system allows us to test the limits of what is possible in this regard. It is a useful tool for setting the parameters for thinking about the possible future of international humanitarianism.

‘Tweaking’ the Existing System

Successful humanitarian action is dependent upon international cooperation. Individual states are rarely equipped to address humanitarian crises on their own. However, to the detriment of those in need, most states are reluctant to commit to humanitarian action to solve problems that they do not perceive to be their concern. The result is that there is very little cooperation within the existing humanitarian regime and certain states continue to bear the brunt of humanitarian suffering while the international community turns a blind eye. This is particularly evident in the area of refugee protection because states perceive refugees as a ‘burden’ that impacts negatively on their own national interests. For scholars such as Arthur C. Helton and Gill Loescher, the inherent lack of cooperation is the greatest shortcoming of the existing humanitarian regime.¹ Without a pledge of support from states there can be no

¹ See Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. Chapter 9: ‘Imagining Better Refugee Policy’ and Loescher, *The Unhcr and World Politics: A Perilous Path*. Chapter 10: ‘Toward the Future: The UNHCR in the Twenty-First Century’.

coordinated approach to solving humanitarian crises. And without a coordinated approach to solving humanitarian crises, humanitarian assistance is undertaken sporadically on an ad-hoc basis which undermines the effectiveness of the international humanitarian regime.

Yet Helton and Loescher both remain optimistic about the possibility of bringing about a more cooperative humanitarian regime. They argue that all states have a direct interest in solving humanitarian crises because if they are left unattended they can have dire consequences for the entire world. A global consensus around the costs and benefits of humanitarian action is difficult to obtain because states are affected to such varying degrees by humanitarian crises. But Helton believes that international cooperation has foundered primarily because states do not properly understand the true costs and benefits associated with humanitarian action.² For instance, while the potential negative aspects of accepting refugees are well documented, many states are unaware of the many positive benefits that can result from accepting refugees.³ The perception of humanitarian action as a 'burden' is therefore simply a misconstrued representation of humanitarianism by those states that are fortunate enough not to have to deal directly with humanitarian crises. For Helton and Loescher, changing this perception of humanitarianism can only be achieved through greater cooperation.⁴ A greater level of international cooperation promises to introduce clarity and consistency around humanitarian action, and to lower the transaction costs associated with humanitarian action in the same manner in which an insurance policy successfully spreads risk.

To achieve greater cooperation within the international humanitarian regime Helton proposes a collective 'insurance-like' scheme for states to share the costs and risks associated with humanitarian action.⁵ He acknowledges that such a system would require a clear assessment of states' various interests and incentives, which would naturally vary in different circumstances. To account for this he proposes "a process... not a model or fixed formula" based on deliberation among states whereby they would commit a 'premium' of resources to be used in a coordinated response should a humanitarian crisis occur. Helton's optimistic proposition is tempered somewhat by the recognition that the inherent value of this 'insurance-like' scheme is only likely to be recognised incrementally by continuing

² Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.271.

³ See Refugee Council of Australia, 'Economic, Civic and Social Contributions of Refugees and Humanitarian Entrants', (2010). For examples of the benefits of refugee admission.

⁴ Loescher, *The UNHCR and World Politics: A Perilous Path*. p.366.

⁵ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.274.

humanitarian catastrophes. Nevertheless, he remains confident that the inadequacy of the existing solutions will encourage increasing cooperation in response to humanitarian crises.

Loescher is also confident of a more cooperative humanitarian regime in the future. However, he believes that the framework for such a system is already in place within the existing political system. Loescher believes that greater cooperation on humanitarian issues is likely to result from the international dominance of the liberal democratic ideology because responding adequately to humanitarian crises around the world is a central tenet of liberalism. He claims that because providing assistance to those suffering is “essential to the preservation and functioning of open societies around the globe”,⁶ it indirectly serves the self-interests of the world’s leading democratic states. He rather optimistically anticipates that as liberal democracy spreads around the globe, states will be reluctant to ‘wall out’ the world’s displaced population because doing so would undermine the liberal democratic ideology.

Remaking the International Humanitarian Regime

For other scholars, the kind of minor ‘tweaks’ to the existing international humanitarian regime prescribed by Loescher and Helton are too modest and promise too little in the way of the instrumental change that is required. For scholars such as David Rieff, Mohammed Ayoob, and B.S. Chimni, it is the fusion of *realpolitik* with humanitarianism that lies at the heart of the problems with the existing humanitarian regime. This view is based on the traditional principle of political neutrality, which demands that political interests be kept clearly distinct from humanitarian activities in order to guard humanitarianism being associated with political affairs.⁷ The problems associated with the fusion of politics and humanitarianism have already been discussed in this thesis; the lives of humanitarian workers in Afghanistan often depended upon the ability of humanitarian agencies to convince the Taliban that their neutrality was *bona fide*.⁸ For these scholars, what is required to bring about a more effective humanitarian regime is the explicit division of politics from humanitarianism. In essence, this means the creation of an apolitical system for humanitarian action.

⁶ Loescher, *The UNHCR and World Politics: A Perilous Path*. p.380.

⁷ Stockton, 'The Failure of International Humanitarian Action in Afghanistan'. p.265.

⁸ Ibid. p.268.

Foremost among the proponents of this view is David Rieff, whose central claim is that the fusion of political interests and humanitarianism is a perversion of humanitarianism. For Rieff, humanitarianism ‘must be either neutral or nothing’.⁹ This claim is founded upon humanitarian inviolability, or the legitimacy that is afforded to humanitarian workers by the principle of humanitarianism whereby they are provided with amnesty from attack. It is a concept that is at the core of humanitarianism, founded upon the twin pillars of neutrality and impartiality. The problem with the existing humanitarian regime is that the overt politicisation of humanitarian action has resulted in a sense of confusion as to what realm of activities genuinely ought to be protected as truly humanitarian, and inviolable on that basis.¹⁰ This confusion was never more evident than in the case of Afghanistan. On the one hand the US and its allies sought to portray themselves as the humanitarian rescuers of the suffering Afghan population. However, on the other hand they were fighting a self-interested war and rebuilding the Afghan state in accordance with their liberal ideology, while for political reasons they were rejecting the influx of Afghan refugees that resulted from this action. These activities were anything but apolitical in nature, and therefore remain outside the coverage afforded by the principle of humanitarian inviolability.

In this context of this deceptive confusion, Rieff calls for a distinct division between humanitarianism and politics in order to protect the legitimacy and effectiveness of humanitarian action.¹¹ He believes that states are too willing to engage in politicised humanitarianism, such as the waging of supposedly humanitarian wars, but are unwilling to commit equally to providing care to the human victims of humanitarian crises. It is this hypocritical application of humanitarianism that undermines the existing humanitarian regime. The collaboration of politics and humanitarianism may be a beneficial venture for states, from a humanitarian point of view it has been ineffective and has eroded the principles of humanitarianism. Humanitarianism should not be an instrument for states to pursue their political interests, nor should it be an instrument for states to pursue the creation of a ‘better’ world. Humanitarianism should not be, as Rieff suggests, “a catchall for the thwarted aspirations of our age”.¹² It should simply be a means of providing care and assistance to those in the greatest of need. That is the fundamental purpose of humanitarianism and it must

⁹ Rieff, 'Humanitarianism in Crisis'. p.120.

¹⁰ K. Anderson, 'Humanitarian Inviolability in Crisis: The Meaning of Impartiality and Neutrality for UN and NGO Agencies Following the 2003-2004 Afghanistan and Iraq Conflicts', *Harvard Human Rights Journal*, 17 (2004). p.42.

¹¹ Rieff, 'Humanitarianism in Crisis'. p.120.

¹² *Ibid.* p.121.

be protected by protecting humanitarianism from becoming consumed by the political interests of states.

Another proponent of this view is Mohammed Ayoob, who similarly argues that decisions to undertake humanitarian action are not supposed to be subject to the logic of *realpolitik*, and if they are, then such actions are not humanitarian in character. The purpose of humanitarianism is not to “provide major powers the facility to intervene selectively in the domestic affairs of weaker states”.¹³ To prevent humanitarianism from being exploited in this way, Ayoob argues that the authority for authorising humanitarian action needs to supersede the state level.¹⁴ This is necessitated by the fact that states within the existing system have proven unwilling to respond to humanitarian crises that do not serve their own interests. From this point we are faced with the questions: how might such an apolitical humanitarian regime be constructed? And where might the authority for authorising humanitarian action rest if not with states?

One alternative to a system dominated by states is an international humanitarian regime controlled by international organisations. In particular, it has been suggested that such a regime could incorporate the various humanitarian organisations of the United Nations under a single umbrella (for instance, the United Nations Office for Humanitarian Responses, UNOHR).¹⁵ This unified humanitarian agency would have a non-political mandate to coordinate a coherent response to humanitarian crises around the world. It would be responsible for identifying the worst cases of humanitarian suffering around the world and allocating funds and resources accordingly to address these crises. This supra-agency would be endowed with the ability to designate humanitarian assistance solely on the basis of need, without any consideration of the political dividends that may result from providing this assistance. Providing this agency with decision-making authority that supersedes the state level would serve to protect humanitarianism from political exploitation and redefine the humanitarian foundations of the international humanitarian regime.

The success of a UNOHR-like organisation would be dependent upon a significant degree of institutional change from within the United Nations. This change would be required in order to overcome the kinds of institutional barriers to success that have plagued the UNHCR in

¹³ Ayoob, 'Humanitarian Intervention and State Sovereignty'. p.96.

¹⁴ Ibid. p.96.

¹⁵ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.262.

recent decades. As chapter five of this thesis highlighted, the UNHCR's ability to fulfil its humanitarian goals has been consistently hampered by its lack of autonomy; its dependence upon its donors governments for financial support has placed the organisation in a feeble position to challenge the policies of its funders, despite the fact that these policies often directly hamper the UNHCR's ability to adequately fulfil its mandate.¹⁶ The UN would therefore need to provide much greater autonomy to its humanitarian supra-organisation, particularly fiscal autonomy. In practice, this would mean that states would remain responsible for funding such an organisation, just as they do within the current structure of the United Nations. However, they would not be afforded the right of stipulating how their funds would be spent or to earmark resources for particular crises. Only then would this organisation truly possess the autonomy it requires to pursue genuine humanitarian goals, confront governments when necessary on humanitarian policies, and fulfil its role as the international 'watch dog' on humanitarian issues.¹⁷

A second alternative to the existing humanitarian regime is a system within which humanitarian non-governmental organisations (NGOs) occupy a much greater role. After all, humanitarian NGOs are the primary implementing agencies of humanitarian action today and are often times the driving force behind the provision of humanitarian assistance.¹⁸ Helton explains how the failure of states to respond to humanitarian crises in the developing world has "given NGOs prominent roles on the ground". It has enabled them to act "not only as the primary representatives of the international community, but also increasingly provide public goods in the absence of functional states".¹⁹ Furthermore, because many NGOs do not have to contend with the restrictions that donor states place on their funding they have begun to take on an increasingly larger share of humanitarian resources than ever before in a bid to reach those neglected by the state-dominated system. A system dominated by NGOs would be much better equipped to address humanitarian crises in a coordinated and consistent manner because, once again, humanitarian action would not be defined by any sense of political self-interest.

The major obstacles to the success of a system run by NGOs are related to the lack of authority and autonomy that NGOs possess. Within the existing system, many NGOs allow

¹⁶ Chimni, 'Globalization, Humanitarianism and the Erosion of Refugee Protection'. p.14-15.

¹⁷ Loescher, *The UNHCR and World Politics: A Perilous Path*. p.367.

¹⁸ Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century*. p.262.

¹⁹ Ibid. p.262.

donor states to be involved in the design and management of their operations. The result is that their operations often come to incorporate various political interests and ideologies.²⁰ This is particularly the case among American NGOs of the 'Wilsonian' tradition. Wilsonian NGOs perceive an inherent compatibility between humanitarian goals and US foreign policy, which stems from US President Woodrow Wilson's ambition of projecting US values and influence as a force for good in the world. However, this has resulted in many NGOs becoming, or being perceived as, little more than 'government contractors'. This has had obvious implications for their perceptions of neutrality on the ground.²¹ For this reason, associations of this nature between NGOs and states must be guarded against in a humanitarian regime controlled by NGOs. Such a system must be premised upon political neutrality and autonomy from the political agendas of dominant states.

Many European NGOs operate on this basis by maintaining a higher ratio of private to public funding in order to protect their neutrality.²² Medecins Sans Frontieres (MSF), for instance, has a policy of allowing no more than 50% of their total funds to come from governments. It also refuses funding from governments that are belligerents in a conflict, including US money for its operations in Afghanistan. This method of operation has been a success largely thanks to the economic integration of the European Union, which has provided NGOs in Europe with considerably more latitude in choosing between government funding sources. An NGO-dominated regime within an increasingly integrated global economic system could hope to operate in a similar manner. Such a system would invariably remain dependent upon the support and cooperation of states for funding, provision of resources, and authorisation to operate within their territories. However, within such a system states would remain responsible for providing humanitarian assistance, yet this assistance would be in accordance with established international humanitarian norms rather than in return for political dividends.

The Ongoing Challenge of State Sovereignty

While the minor 'tweaks' to the existing humanitarian regime may be criticised for being too modest in nature to bring about the change required, the radical propositions for remaking the system may equally be accused of being too detached from the reality of international politics. Isolating humanitarianism from the competitive realm of realpolitik by creating an

²⁰ Stoddard, 'Humanitarian NGOs: Challenges and Trends'. p.27.

²¹ Ibid. p.30.

²² Ibid. p.29.

apolitical humanitarian regime may be appealing to idealist theorists, but it remains difficult to foresee how such a system would operate in reality. The fundamental problem with radical prescriptions of this nature is that they fail to account for the fact that ultimate authority and power within international politics rests with states due to the sovereignty they possess.²³ States retain both the legal right and the de facto ability to exercise their authority within their own territory. No rules of international law are binding upon states but those they have created for themselves through their consent. Yet in a material sense even when states consent to binding rules and regulations they do not surrender any of their sovereignty as they remain capable of disobeying these laws should they threaten their own interests. In both a normative and a material sense therefore, there is no authority within international politics higher than that held by states.

In this sense state sovereignty poses an ongoing challenge to the realisation of any humanitarian regime that is controlled by any actor other than states themselves. In the radical prescriptions above, states are expected to give up their decision-making capability on issues such as the number of refugees they admit within their borders or whether their troops are deployed as part of a humanitarian intervention. However, this is an unrealistic expectation that contradicts the reality of international politics. Put simply, because no higher authority exists to dictate to states against their will, in a conflict of interest situation it is the will of states that will ultimately prevail within its own territory.

The incessant competition between states leads to a situation where they will utilise whatever means are at their disposal to gain an advantage over each other; this includes the exploitation of humanitarianism as a means for pursuing their interests. An apolitical humanitarian regime would therefore only stand a chance of success in the presence of a sovereign authority above that of states. For Hans Morgenthau, what is required to bring about such a regime is not the limitation of the exercise of national sovereignty through international obligations and institutions, but rather “a radical transformation of the existing international society of sovereign nations into a supranational community of individuals”.²⁴ He argues that just as domestic order is secured within sovereign states, global order among nations can only be secured within a world state comprised of all nations in the world. In his eyes, this world state would perform three functions: (1) it would give humanity a legal personality which would

²³ See Hans Morgenthau, *Politics among Nations* (New York: Knopf, 1948). Morgenthau refers to state sovereignty as a ‘political fact’; See pp. 312-331 for his discussion on the tenets of state sovereignty.

²⁴ Ibid. p.501.

keep the unity of mankind before its eyes; (2) it would create and keep in motion agencies for positive worldwide social change; (3) it would establish enforcement agencies that would meet any threat to the common good with overwhelming strength.²⁵ Within such a system, the major problems facing humanity, whether war, environmental degradation, or humanitarian crises, would be met by a comprehensive and consistent response from a world authority whose interest would be invested equally in the welfare of all peoples rather than a select group.

But on the possible existence of such a world, Morgenthau's pessimism is overwhelmingly apparent. He acknowledges that the peoples of the world today are not willing to put the welfare of all of humanity ahead of that of their own nation, and that the nation remains the recipient of humankind's highest secular loyalties.²⁶ For, while they are willing to sacrifice themselves and die for the survival of their nation, they are unwilling to do so in the interests of greater humanity. As Morgenthau explains, "they are not prepared to perform... that unprecedented moral and political revolution which would force the nation from its throne and put the political organisation of humanity on it".²⁷ As such, the realisation of an altruistic international humanitarian regime whose operations firmly reflect the principles of humanitarianism remains confined to the realm of hopeless idealism. Such a system requires a global community that is willing and able to support it. Yet it appears that at the heart of human nature exists a malignant sense of selfishness that remains incompatible with the principles of humanitarianism. The future of international humanitarianism remains heavily dependent upon the extent to which nations are able to restrain this selfish nature in the interests of all humanity. While the extent to which they are capable of doing so remains to be seen, recent history has left little room for optimism.

It is clear that the existing international humanitarian regime is in crisis. The case of Afghanistan highlighted that humanitarian assistance today is provided by states whose primary motivation for doing so is based not on the principles of humanitarianism, but on their own self-interests. Put simply, states provide assistance to those crises that are deemed to be politically-expedient and neglect those, such as the Afghan refugee crisis, that are not.

²⁵ Ibid. p.512.

²⁶ Ibid. p.511.

²⁷ Ibid. p.512.

This results in the inconsistent and selective application of humanitarian action which undermines both its effectiveness and the principles upon which international humanitarianism is founded. In a bid to reconnect the international humanitarian regime to its foundational principles, various scholars of international relations have called for the depoliticisation of the existing regime so as to limit the degree of control and influence that states enjoy over the direction of international humanitarianism. However, the realisation of such a system remains unrealistic under the present moral, social, and political conditions of a world dominated by sovereign states. International politics is defined by competition for power; so long as states remain locked in this competition any conception of higher morality yields to selfish realism. This includes the concept of humanitarianism, whose future role in international politics is consequently becoming increasingly dubious.

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