

HUMAN RIGHTS, GENOCIDE, AND NATIONAL SOVEREIGNTY: JUST WAR THEORY—HELP OR HINDRANCE?

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I. INTRODUCTION

One of the most critical issues humanity faces in the first decades of the twenty-first century is mankind's continued inhumanity to his fellow man. The twentieth century was recorded as history's bloodiest in terms of the sheer numbers of human beings slaughtered by their fellow man. Such barbarity was underscored and punctuated by the Nazi extermination camps, the Soviet Gulag, and Pol Pot's Khmer Rouge's nightmarish "autogenocide" (when one-third of Cambodia's population was eliminated).

Horrified by the unprecedented blood-letting it had experienced, the worldwide community tried to erect sufficient international legal barriers to eliminate a repetition of such atrocities against whole peoples and ethnic groups. The *United Nation's Universal Declaration on Human Rights*,¹ a seminal international document that flowed out of the horrors retold in the Nuremberg trials and the Tokyo war crime trials, attempted to set a post World War II threshold of human rights and protections below which no nation could sink without international sanctions and even active armed interventions.

II. THE CHALLENGE OF INTERNAL ATROCITIES

Tragically, numerous horrific episodes around the globe over the last half of the twentieth century made it painfully clear that such

¹ *Universal Declaration of Human Rights*, adopted by the General Assembly of the United Nations December 10, 1948.

international standards have not prevented rogue regimes from perpetrating truly gruesome atrocities against their neighbors as well as against their own citizens, within the confines of their own borders. This *intranational* violence has proved most difficult for the international community to address and to suppress.

For example, the United Nations with U.S. leadership was able to intervene successfully militarily to prevent North Korea from brutally conquering and subjugating the people of South Korea.² However, more recently, the international community has been spectacularly unsuccessful in keeping the gangsters and war criminals who run North Korea from turning their half of the Korean peninsula into one vast concentration camp, with the nation's malnourished and impoverished citizens serving as the camp's miserable inmates and their despicable government officials functioning as the camp's brutal guards. Of all the places in the world you could wake up in the morning, surely the worst place during most of the last half century would have been North Korea. It still remains to be seen whether the international community can help to alleviate the tragic plight of the millions of North Koreans who are suffering so terribly at the hands of their own government.

So far, national sovereignty and the borders that are a manifestation of that sovereignty have protected North Korea's murderous rulers from international intervention. So, how, and under what circumstances, can just war criteria be useful in decision making when applied to atrocities and genocide within a country's borders?

III. JUST WAR CRITERIA: HELP OR HINDRANCE?

When one takes Korea as a test case, the applicability of just war criteria to cross-border aggression by one country against another country (*international* aggression) is comparatively straightforward. It is the attempt to apply just war criteria to grievous aggression by governments against elements of their own populations (*intranational* aggression) that tests and challenges the criteria as a helpful resource in minimizing violence and injustice and maximizing peace and justice in human society in the twenty-first century.

In order to understand how just war criteria applies to wars of *international* aggression, and whether they can be applied successfully to evaluate wars of *intranational* aggression, one must understand the origins of just war theory in Western Civilization, how it has evolved historically, identify its current criteria, and attempt to employ those criteria to evaluate both categories of conflicts.

² Cf. Michael Walzer, *Just and Unjust Wars. A Moral Argument with Historical Illustrations*. 4th ed. (New York: Basic, 2006, orig. published 1977) 117–122. and Richard J. Regan, *Just War Principles and Causes* (Washington, D.C.: The Catholic University of America Press, 1996) 28–29, 32–33 concerning the Korean War.

IV. JUST WAR'S ORIGIN AND DEVELOPMENT

Drawing on the earlier ruminations of classical Greek philosophers such as Plato, Augustine (AD 354–430) developed a full-fledged theory of “just-war” in the early fifth century.³ He did so as a consequence of Christianity having reached a type of “critical mass” of adherents in the Roman Empire during the fourth century AD. Especially in the wake of the Emperor Constantine’s “conversion” to the Christian faith, Christianity gained enough followers within the empire that its collective attitudes toward armed conflict—and whether, or when, to participate in it—became a very relevant issue for the entire Empire as it faced increasingly powerful and hostile forces bent on Rome’s destruction. Would Christians defend Rome against her enemies, and if so, under what conditions?⁴

Augustine took up the challenge and formulated the concept of just war precisely to answer such questions. In the early fifth century, Augustine, writing in *The City of God* constructed just war theory, not to “justify” war, but to try to bring war under the sway of justice as understood by Christians and to ensure that war, when it does occur, is hedged about by limits which reduce its barbarity.⁵ In fact, if all parties accepted just war criteria there would be no more wars, since the theory’s first rule states no war is just unless it is a defense against aggression. If everyone adhered to just war theory, then aggression, *international* and *intranational*, would be eliminated.

Medieval theologians and philosophers such as Thomas Aquinas (AD 1225–1274) further revised and amplified just war criteria. It was during the medieval period that the two dimensions of just war theory *jus ad bellum* and *jus in bello* were formally delineated. *Jus ad bellum* concerns whether and when it is right to fight and *jus in bello* concerns how to fight justly once the decision to fight has been made.

Both Martin Luther and John Calvin in particular, and the Reformation in general, with the exception of the European Anabaptists, the Mennonites, and the Quakers, embraced just war concepts and criteria. So, at least in the Western Church tradition, both Roman Catholic and Protestant, some form of just war theory has been the dominant instrument by which most Christians, in most places and at most times, have grappled with questions of war and peace, justice and injustice, to fight or not to fight, and to intervene or not to intervene in armed conflicts.

³ John S. and Paul D. Feinberg, *Ethics for a Brave New World* (Wheaton: Crossway, 1993) 346–347. Cf. also Robert Clouse, “Introduction”, in *War: Four Christian Views* (ed. Robert Clouse; Downer’s Grove, IL: IVP, 1981) 14–15.

⁴ Feinberg and Feinberg, *Ethics*, 346–347.

⁵ Paul Ramsey, “The Just War According to St. Augustine,” in *Just War Theory*, ed. Jean Bethke Elshtain (New York: New York University Press, 1992) 8–22.

Several formulations of just war criteria are being utilized currently in the West. Consequently, it is advisable to list and describe the just war criteria that will be employed in this discussion and analysis of intervention in *international* and *intranational* conflicts.

The criteria of just war are:

1. *Just cause.* Armed conflict is only permissible to resist aggression and to defend those victimized by it. Only defensive wars are defensible. Just cause requires first that “the use of force must be a response to a specific act of aggression or the imminent threat of such.”⁶

Nearly a century and a half ago, John Stuart Mill reminded us that “war is an ugly thing, but not the ugliest of things: the decayed and degraded state . . . which thinks nothing worth a war, is worse.”⁷ War is never good, but there are times it is the price mankind must pay for living in a civilized world. Mill went on to say:

A man who has nothing which he cares about more than he does about his personal safety is a miserable creature who has no chance of being free, unless made and kept so by the existence of better men than himself. As long as justice and injustice have not terminated their ever renewing fight for ascendancy in the affairs of mankind, human beings must be willing, when need is, to do battle for the one against the other.⁸

2. *Just intent.* The only acceptable motive must be to restore peace and to secure as much justice as possible for all involved, including the aggressors. Also, once the decision to use force has been reached, then during course and conduct of the conflict just intent includes continued “pursuit of peace and reconciliation, including avoiding unnecessary destructive acts or imposing unreasonable conditions (e.g. unconditional surrender).”⁹

3. *Last resort.* Resort to arms can only be justifiable morally when all legitimate peaceful avenues of conflict resolution have been rebuffed or have demonstrably failed.

4. *Legitimate authority.* The use of military force is only the prerogative of governments. Rom 13:1–4 gives the divinely ordained civil magistrate a monopoly on the use of state-sanctioned lethal force

⁶ Jean Bethke Elshtain, “New Preface”, in *Just War Theory*, ed. Jean Bethke Elshtain, xiii.

⁷ John Stuart Mill, “The Contest in America,” in *Dissertations and Discussions* (Boston: William V. Spencer, 1867) 208–209, quoted in James Turner Johnson, “Threats, Values, and Defense: Does the Defense of Values by Force Remain a Moral Possibility?” in *Just War Theory*, ed. Jean Bethke Elshtain, 74.

⁸ *Ibid.*

⁹ U.S. Catholic Bishops’ Pastoral Letter, “The Challenge of Peace: God’s Promise and Our Response. The Pastoral Letter on War and Peace” in *Just War Theory*, ed. Jean Bethke Elshtain, 100.

internally (the police) and externally (military force). Consequently, only the duly constituted civil authority can legitimize military action.

However helpful a United Nations Security Council vote may be, the only duly constituted authority for United States military forces is the government of the United States, and the authorizing vehicle is either a declaration of war or a special joint resolution of the U.S. Congress.

5. *Limited goals.* If the true purpose or intent is to restore peace and secure as much justice as possible, then annihilation of the enemy, total destruction of his civilization, or enslavement of the enemy population is not acceptable. “Total war” is beyond the pale.

6. *Proportionality.* Will the human cost of the armed conflict to both sides be proportionate to the stated objective and goals? Does the good gained by resort to armed conflict justify the cost of lives lost and bodies maimed? Also, unless one’s survival or liberty are imperiled, it is not acceptable to resort to war unless the goals are achievable. The question of proportionality continues in terms of the war’s conduct (*jus in bello*), after the decision to wage war (*jus ad bellum*) has already been made.

7. *Noncombatant immunity.* No armed conflict can be just which does not seek to disqualify noncombatants as legitimate military targets and which does not seek to minimize collateral, inadvertent civilian casualties. No one has the right to wage war on civilians.

V. KOREA: A CASE STUDY

The Korean peninsula provides a clear-cut example of aggression across borders by one state (North Korea) in an attempt to conquer and to subjugate the other (South Korea)—*international* conflict. In addition, North Korea’s lamentable history since 1953 of deprivations and atrocities committed against its own people illustrates the different and more difficult issues raised by *intranational* violence within a country.

Korea: 1950–1953

On June 25, 1950, the armed forces of North Korea invaded the nation of South Korea with massive military force. Catching the lightly armed South Koreans and Americans by complete surprise, they made rapid progress. President Harry Truman made the fateful decision to resist this invasion with massive military force. After initial setbacks, the Allied forces under U.S. command reversed the tide of battle and were driving the North Koreans back deep into their own country with the intention of liberating and uniting the formerly divided country of Korea. When massive military intervention of Communist Chinese forces reversed the tide of battle once again, the United Nations’ forces under U.S. command were forced to retreat to territorial boundaries roughly equivalent to the dividing line between the two countries before hostilities began. This

bloody military stalemate lasted for nearly two more years before the conflict ended in armistice on July 27, 1953.

Sometimes called the “forgotten war,” overshadowed as it was by the Vietnam War in the 1960s and early 1970s, the Korean War was pivotal in helping to solidify the “containment policy,” which the United States and her NATO and other allies used to help contain and eventually cause the collapse of the Soviet Union.

Was the Korean War (1950–1953) a just war? The answer to that question is derived by applying just war criteria to the conflict. First, was it a *just cause*? The United Nations’ forces, led by the United States, came to the aid of a country (South Korea) which was desperately imperiled by the surprise attack of its then more powerful neighbor, North Korea. It was a war of defense against aggression.

Second, was it a *just intent*? The U.N. forces’ motive was to defend the nation of South Korea from Communist aggression and to discourage similar aggressions by other Communist states against their neighbors in various other places around the globe. Most analysts believe that the demonstrated American willingness to resist such aggression militarily did help to suppress Communism’s expansionist impulses to a significant degree. If North Korean aggression had gone unresisted, it would have led other Communist states to more naked acts of aggression against their neighbors. As the U.S. and U.N. forces were successful in pushing back the North Korean forces, they contemplated liberating the North Koreans as well and thus liberating the entire Korean peninsula.

Third, was the Korean War a *last resort*? Most would say yes since the U.N. was faced with an invasion that threatened to completely conquer South Korea.

Fourth, was the Korean War authorized by *legitimate authority*? Yes, if one believes that the United Nations’ Security Council Resolution No. 82 which “recommended that member states furnish necessary assistance to the South Korean government to repel the attack of North Korea and to restore international peace and security in the area.”¹⁰ The fact that President Truman deployed U.S. forces in defense of South Korea even before the U.N. Security Council called for such action and did not seek immediate congressional approval leads to the conclusion that this criterion is at best a qualified yes.

Fifth, were the Korean War’s goals *limited*? Yes, the U.N. forces’ goals were at a minimum, to defend South Korean freedom, and at best, liberate the North and unify the country.

Furthermore, the U.N. forces never sought to destroy the North’s civilization and while the Korean War was bloody and destructive, the majority of analysts believe that “the good gained by resort to armed conflict” did “justify the cost of lives lost and bodies maimed.”

¹⁰ Richard J. Regan, *Just War, Principles and Cases*, 29.

The Korean War (called a “police action” by the Truman Administration), could have spread to a much broader war, if the U.N. forces had not limited their war aims in the wake of massive Chinese intervention. General Douglas MacArthur, the commander of the U.N. forces, was relieved of his command by President Truman subsequent to General MacArthur’s insistence that “in war there is no substitute for victory,” which placed him at severe odds with President Truman, who on grounds of *proportionality*, decided that widening the war by bombing China or introducing tactical or strategic nuclear weapons into the conflict, would not have justified “the cost of lives lost and bodies maimed.” The debate about whether MacArthur’s strategy would have been the more prudent and saved more lives in the long run will never be more than abstract speculation.

Lastly, while the U.N. forces did not normally *target* civilians, their record was less than stellar in terms of seeking “to minimize collateral civilian casualties.”¹¹

The world community’s defense of South Korea’s freedom was, largely speaking, just. If the protagonists on both sides had more closely followed just war criteria, the war could have been even more just, with enormous benefits in diminished casualties and suffering for the people of the Korean peninsula, North and South.

North Korea: (1953–2007)

If the Korean War (1950–1953) illustrates how just war criteria can be applied to a conventional *international* conflict, North Korea since 1953 illustrates the challenges of applying just war criteria to an unconventional, *intranational* conflict where a government exhibits extreme violence and deprivation on its own population.

North Korea has perpetrated extreme violence on its own people and violated multiple, minimal, international norms. An untold number of North Koreans have simply starved to death or died of illnesses to which they were highly susceptible because of long-term malnourishment as a result of government decisions to spend enormous amounts of the nation’s limited resources on a vast range and volume of military armaments.

What should the international community do with this rogue regime which so grotesquely mistreats its own people? Multiple efforts to bring pressure to bear have been rebuffed. Economic and trade sanctions have been applied multiple times over the past decades and none have managed to achieve the desired result of causing the North Korean regime to cease and desist from committing war crimes against their own people and to liberalize their policies and become compliant with the *Universal Declaration of Human Rights*.

¹¹ Michael Walzer, *Just and Unjust Wars*, 154–155.

Given this half-century record of failure to rescue the North Korean people from their brutal government captors, if, and when, would armed intervention be justified to liberate the North Korean people from their serfdom? The criteria of just war offer a helpful guide to help formulate an answer to that question.

Would it be a *just cause*? Clearly, any attempt to use military force to liberate the North Korean people would be occasioned by continued use of lethal aggressive force by the North Korean government against its own population. The intent of such intervention would be to liberate the oppressed and presumably bring about the long-delayed reunification of the Korean peninsula under one government—a government elected by, and accountable to, the Korean people, North and South.

Would international military intervention be a *last resort*? This is more difficult to answer, but it has been half a century since the cease-fire of 1953 was signed. This question must at least be asked: “How many North Koreans have to be tortured or die before international outrage is forced by conscience to say, ‘Enough’?”

Would the use of military force to liberate North Korea be condoned by *legitimate authority*? Ideally, such action would be authorized by the United Nations’ Security Council, along with passage of a joint resolution by the Congress of the United States, if U.S. forces were to participate.

In the case of North Korea, almost certainly China and/or Russia would veto such U.N. action, so the legitimizing authority would have to be the individual participating governments who volunteered to make up a “coalition of the willing.” This would meet the requirement for some, but not for others. What if only one country felt compelled to intervene to stop the atrocities occurring within the borders of North Korea? While my understanding of just war criteria would not require multi-national approval, it would be far more preferable to have it. Other just war theorists would disagree.

Would a proposed liberation of North Korea have *limited goals*? A justifiable military liberation would aim “to restore peace and secure as much justice as possible” for the North Korean people. The problem would be, even if you took great pains to shield noncombatants from harm, how would you liberate the country without destroying it? That dilemma leads one to the question of *proportionality*.

Will the human cost of the liberation be proportionate to the good gained by the resort to violence? Sadly, most experts believe the outbreak of armed conflict on the Korean peninsula, given the massive military apparatus of the North Korean regime, coupled with their utter disregard for any human lives other than the regime’s supporters, would result in hundreds of thousands of Koreans, in the North and South, being killed within just a few weeks. It is also highly possible that the North Korean regime might use some crude form of first generation nuclear weapon, which could quickly spiral out of control to a dangerous use of nuclear weapons by other parties to the conflict.

The just war criterion of proportionality is the main reason military liberation of North Korea does not pass the just war test and thus does not, and in all probability will not, be advocated or implemented.

In this case, just war criteria served as a productive tool in evaluating the “just” military options concerning North Korea.

VI. RWANDA: GENOCIDAL ETHNIC STRIFE

The last decade of the twentieth century saw also a tragic upsurge in lethal ethnic strife in places as dispersed as Bosnia-Herzegovina (1992–1995)¹² in the former Yugoslavia in Europe and Rwanda (1994).

The genocidal slaughter that erupted in the central African country of Rwanda in 1994 stands as one of the bloodiest and most horrific nightmares in a century replete with such events. In the long-term intermittent ethnic violence between the majority Hutu (approximately 85 percent to 90 percent of the population in 1994) and the minority Tutsi (approximately 8 percent to 14 percent of the population in 1994) exploded into full scale genocide with breathtaking rapidity.¹³

In the spring of 1994, within a two-week time span (April 7–April 21) as many as 250,000 Tutsi and moderate Hutu had been hacked to death in one of the most concentrated acts of genocidal slaughter ever perpetrated. It is estimated that the “killing rate” in Rwanda in April 1994 was between three and five times as high as the rate of slaughter in the Nazi death camps during the Holocaust.¹⁴

A Tutsi guerilla organization, the *Rwandan Patriotic Front (RPF)*, was formed in that late 1980s with the goal of overthrowing the Hutu dominated government. In 1993 after several years of guerilla war, an “internationally-mediated peace treaty” was negotiated and signed, which mandated power sharing between the Hutus and the Tutsis.¹⁵

Unfortunately, many Hutu extremists were outraged by President Habyarimana’s accommodationist policies. “Some of these extremists, who were high-level government officials and military personnel, had begun devising their own solution to the ‘Tutsi problem’ as early as 1992.”¹⁶

¹² Cf. Regan, *Just War*, 192–211 for a helpful and informative discussion of this tragic episode which resulted in approximately 200,000 deaths through what numerous international organizations have justifiably termed genocide.

¹³ “Case Study: Genocide in Rwanda, 1994”, www.gendercide.org. The fluctuation in population percentages is accounted for by the fact that a considerable, but undetermined, number of Tutsis had fled the country prior to 1994, due to ethnic strife.

¹⁴ Philip Gourevitch, *We wish to inform you that tomorrow we will be killed with our families: stories from Rwanda* (London: Farrar, Straus, and Giroux, 1998) 3, and Gerard Prunier, *The Rwanda Crisis: history of a genocide* (New York: Columbia University Press, 1995) 261.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, quoting Prunier, *The Rwanda Crisis*.

President Habyarimana's plane was blown out of the sky by a surface-to-air missile on April 6, 1994. By the next day, the *interahamwe* militia ("those who attack together") had slung into action, up to 30,000 strong, slaughtering Tutsis, with the main weapons being machetes and hoes.

Responsibility for the president's assassination has never been determined.

But the speed with which the genocide was subsequently launched strongly suggests that the Hutu extremists had decided to rid themselves of their accommodationist president and implement a "final solution" to the Tutsi "problem" in Rwanda.¹⁷

In the following one hundred days, an estimated 800,000 Rwandans were slaughtered (approximately 750,000 Tutsis and 50,000 Hutus who did not support the genocide). At least 75 percent of the nation's Tutsi minority was exterminated.¹⁸ Almost a decade later (2002), the Rwandan government released a report which estimated between 1990 and 1994 just over one million people ("approximately one-seventh of the total population") were slaughtered with the "Tutsis accounting for 94 percent."¹⁹

How could such a thing happen on planet earth at the end of the twentieth century? This was a government-led genocide.

The genocide happened not because the state was weak, but on the contrary, because it was so totalitarian and strong that it had the capacity to make its subjects obey absolutely any order, including one of mass murder.²⁰

Rwanda furnishes the classic illustration of *intranational* war where the Rwandan government engaged in a genocidal war against a portion of its own people. Instead of intervention to stop the mass killings, the various international "players" furnish a collective portrait of selfishness, ineptitude and moral cowardice.

The major international actors—policymakers in Belgium, the U.S., France, and the U.N.—all understood the gravity of the crisis within the first twenty-four hours, even if they could not have predicted the massive toll that the slaughter would eventually take. They could have used national troops or UNAMIAR or a combined force of both to confront the killers and immediately save lives. By disrupting the

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid, quoting "More than one million Rwandans killed in 1990s," Associate Press dispatch, Feb. 14, 2002.

²⁰ Prunier, *The Rwanda Crisis*, 353–54.

killing campaign at its central and most essential point, the foreign soldiers could have disabled it throughout the country. . . . Major international leaders were ready to collaborate on the common goal of evacuating their own citizens and expatriate employees, but they refused any joint intervention to save Rwandan lives. Instead they focused on issues of immediate importance for their own countries: Belgium on extricating its peacekeepers with a minimum of dishonor; the U.S. on avoiding committing resources to a crisis remote from U.S. concerns; and France on protecting its client and zone of Francophone influence. Meanwhile, most staff at the U.N. were fixed on averting another failure in peacekeeping operations, even at the cost of Rwandan lives.²¹

After the genocide ended, the U.N. did establish the International Criminal Tribunal for Rwanda (ICTR), which has tried and found guilty some government officials and others. Also, over 100,000 people have been jailed on suspicion of complicity of genocide in Rwanda itself.²² However commendable such belated efforts at accountability may be, it is clearly a case of closing the barn door after the horses have left the premises.

How do the criteria of just war help in determining the advisability and feasibility of forceful intervention to halt the Rwandan government's genocide of its own people? If ever there was a *just cause* for intervention with a *just intent*, it was Rwanda. Questions of *last resort* are akin to asking whether you should attempt to put out a fire that is consuming your house.

Last resort was reached within 24 to 72 hours after the slaughter began. The U.N. had peacekeepers in the area and withdrew them. Surely some willing coalition of civilized countries could have individually authorized collective intervention. The criterion of *limited goals*, "defined as restoring peace and securing as much justice as possible," provides an incentive, not a hindrance, to armed intervention. Perhaps the question of *proportionality* is easier to assess here than in most such discussions. A joint military force of European, NATO, and American military personnel (most likely European troops and American logistical support) could have stopped the mass murder within a week and saved approximately 750,000 lives.

The collateral costs would have been minimal given the scale of atrocities, and the world community would have imposed its civilized standards by suppressing barbarism. Such intervention would have caused minimal noncombatant casualties, and it would have prevented hundreds of thousands of noncombatants from being slaughtered.

²¹ "Case Study: Genocide in Rwanda 1994", www.gendercide.org, quoting Alison Des Forges in Human Rights Watch "Ignoring Genocide", in *Leave None to Tell the Story*. UNAMIR refers to the United Nations Assistance Mission to Rwanda.

²² Case Study, "Genocide in Rwanda, 1994".

The failure to intervene with force to stop the Rwandan genocide was a shameful disgrace and exposed the glaring inadequacies of the international community's thinking about such humanitarian crises within a nation's borders. If another country had invaded Rwanda and visited upon the Tutsis what their own government did to them, it is far more likely that the world community would have interceded with force (as they did when Iraq invaded Kuwait in 1991) to stop *international* aggression than they proved willing to intercede to stop *intranational* aggression.

VII. DARFUR

One would hope that the world community has learned a hard-taught lesson in Rwanda about what happens to human beings when that community allows national sovereignty to shield genocidal activities by a government or one segment of the population against another segment of the population within a country.

Alas, history seems to be repeating itself in slow motion in the African nation of Sudan. Since the genocide in Darfur in western Sudan began in February 2003, approximately 400,000 have died in Darfur and over 2.5 million have been displaced due to violence—out of a total population of 6 million Darfuris.

The Darfur conflict began in early 2003 when a new liberation group, the Sudan Liberation Movement, and other groups initiated a series of attacks against government outposts. The Sudanese government responded by mobilizing the Janjaweed (“Devils on Horseback”) militia, drawn from Darfur's indigenous Arabs. Working closely, and in collaboration with the Sudanese military, the Janjaweed militias have terrorized the black African citizens of Darfur. As the Janjaweed militias continue literally to rape, murder and pillage the helpless civilian population of Darfur, aided and abetted by the Sudanese government and military, the world has yet to construct a sufficient response to stop this genocide.

Once again, the chief stumbling block to effective action has been that the genocide is the product of an *intranational*, rather than an *international*, conflict.

The international community's ability and willingness to address such crises has begun to change. On Sept. 10, 2001 (the event was blown off the diplomatic radar by the event of 9/11 the next day) the International Commission on Intervention and State Sovereignty (ICISS), produced *The Responsibility to Protect* at the conclusion of a conference in Canada.²³ Their document brought a new obligation into the international vocabulary—“the responsibility to protect.” This

²³ Lee Feinstein, “Darfur and Beyond. What Is Needed to Prevent Mass Atrocities”. Council on Foreign Relations. CSR NO. 22 (January 2007):.8

“responsibility to protect” has now been adopted by the United Nation’s General Assembly and Security Council.

The “responsibility to protect” involves two essential foundational elements. First, governments are told “don’t do genocide.”²⁴ Second, the rest of the world is obligated to respond when a government either perpetuates, or allows, genocidal atrocities within its borders.

The United Nation’s General Assembly elaborated on this responsibility in some detail:

The international community, through the United Nations, also has a responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action in a timely and decisive manner through the Security Council in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.²⁵

This means while national sovereignty is an extremely important value, it cannot be allowed to enable and to protect genocidal crimes in *intranational* conflicts any more than the world community tolerates genocidal crimes in international conflicts.

If one applies just war criteria to Darfur, one should conclude that it meets all seven criteria for collective use of military force to end such genocidal conflict if peaceful means continue to be inadequate to do so. The world community must ask itself this question: “Are we willing to let the twenty-first century begin with the kind of genocide (Rwanda) with which the twentieth century ended?”

William Wilberforce, the great British statesman who led the successful fight to end the slave trade, gave a substantial speech on the slave trade early in his anti-slave trade campaign in which he challenged the House of Commons by saying the following: “Having heard all this, you may choose to look the other way . . . but you can never again say that you did not know.”

The world cannot say we did not know about Darfur. We know.

²⁴ *Ibid.*, 9.

²⁵ *Ibid.*, 9–10, quoting UN General Assembly, Sixtieth Session, 2005, *World Summit Outcome*, A/RES/60/1, 2005, para 139.

