Reading
Humanitarian Intervention

Human Rights and the Use of Force in International Law

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The UN as an organisation in turn distinguished between protecting its 'international civilian staff' and abandoning 'national staff'. The Independent Inquiry found:

When the international civilian staff of the United Nations were evacuated, national staff were left behind. There is considerable bitterness among the [surviving] national staff about what is perceived as a double standard within the United Nations as to the safety of different groups of staff members ... The United Nations regulations at the time precluded the evacuation of national staff. While the decisions taken at the time may have been in conformity with United Nations regulations, there can be no doubt of the damage caused by these rules to the trust between members of staff.[59]

The Independent Inquiry found that in Rwanda 'United Nations staff members may have been at greater risk than others as a result of their employment with the organization.'[60] This failure by the UN to protect its national staff was further exacerbated by the '*mistaken perception among national staff members in Rwanda that the United Nations would and could protect them*'.[61] As a result, the Independent Inquiry concluded:

The United Nations must be aware that its presence in conflict areas also raises among ... civilians an expectation of protection which must be borne in mind when analyzing the means necessary to conduct an operation. Whether or not an obligation to protect civilians is explicit in the mandate of a peacekeeping operation, the Rwandan genocide shows that the United Nations must be prepared to respond to the perception and the expectation of protection created by its very presence.[62]

The fall of Srebrenica offers a similar story of the ways in which the narrative of humanitarian intervention can prove destructive for those who believe that military intervention promises a rescue mission rather than a spectacle. The UN sought to respond to the Serbian 'ethnic cleansing' during the war in Bosnia by, *inter alia,* establishing 'safe havens'. The concept of 'safe havens', 'security zones', protected areas or protected zones was one that emerged during the search for compromise between Member States as to the appropriate mandate for UNPROFOR.[63] Some of the more powerful states on the Security Council, such as France and the UK, did not want to expand the UNPROFOR mandate to allow direct military confrontation with Bosnian Serb troops, while other Member States sought to expand the mandate and to use force to resist Serb aggression. The 'safe haven' concept was proposed by humanitarian organisations

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[59] Independent Inquiry Report, p. 30.   [60] *Ibid*.   [61] *Ibid*., emphasis in original.
[62] *Ibid*., p. 33.   [63] Srebrenica report, para 45.

such as the International Committee for the Red Cross, and was designed to 'protect threatened communities in their places of residence'.[64]

Srebrenica was to become such a 'protected zone'. On 13 March 1993, the UNPROFOR Commander in Bosnia and Herzegovina visited Srebrenica, then under siege from Bosnian Serb troops. He told local inhabitants that 'they were under United Nations protection and he would not abandon them'.[65] Security Council Resolution 819 (1993) adopted on 16 April demanded that 'all parties and others treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act'. By Resolution 824 (1993), the Security Council acting under Chapter VII declared that 'Sarajevo and other such threatened areas, in particular the towns of Tuzla, Zepa, Gorazde, Bihac, and their surroundings should be treated as safe areas by all the parties concerned, and should be free from armed attacks and from any other hostile act' (para 3). In each case, UNPROFOR stated that it could not implement the resolution without agreement between the parties or resources to enforce the resolutions. To be successful, the policy of creating safe havens required either that the warring parties agreed to the creation of demilitarised zones where civilians could be protected, or that the UN had in place a military force that could defend these havens. Neither condition was in place.[66] On 11 July 1995, the Bosnian Serbs overran the safe area of Srebrenica. Over 4,000 refugees sought protection in the compound of the UN peace-keepers at Potocari – another 15,000 to 20,000 refugees were prevented from entering the compound but remained in its immediate vicinity. The majority of the men and boys of Srebrenica attempted to escape on foot to Bosnian-controlled territory. The UN peace-keepers were not able to protect the refugees or maintain control over the town. Over the next few days, the Bosnian Serbs deported women, children and the elderly from the UN compound to Bosnian-held territory. During the same period, they executed and

[64] *Ibid*.   [65] *Ibid*., para 38.

[66] Security Council Resolution 836 (1993) appeared to remedy this to an extent. There the Security Council acting under Chapter VII extended the mandate of UNPROFOR to enable it 'to deter attacks against the safe areas' and 'to occupy some key points on the ground' (para 5) and authorised UNPROFOR to use force in self-defence 'in reply to bombardments against the safe areas by any of the parties or to armed incursion into them' (para 9). The Secretary-General has suggested that the absence of the words 'protect' or 'defend' in that resolution should be treated as 'essential' to understanding the scope of UNPROFOR's mandate in this respect. (Srebrenica report, para 79). Needless to say it is unlikely that the import of this semantic distinction was appreciated by those relying on UNPROFOR protection in the safe havens.

buried thousands of men and boys, while the UN negotiated with their military leaders.[67]

Those people in Srebrenica and Rwanda who sought sanctuary with the UN, only to find themselves abandoned to murderers and militias, had faith in the international community as saviours. Similarly, those East Timorese who in 1999 believed the UN assurances and posters promising 'UNAMET will stay after the vote' soon found that the UN as an institution had limited resolve to ensure their security in the face of violence.[68] It was only the commitment of individual UN staffers in Dili who refused to obey the instructions from headquarters to evacuate that prevented yet another situation of 'international staff' abandoning 'national' civilians sheltering in the UN compound. While civilians in Srebrenica and Rwanda who relied on the promise (or perception) of international protection may in any case have been slaughtered, it is possible that without these assurances of security and sanctuary they could have hidden elsewhere or taken other steps to escape. Thus in some ways the promise of humanitarian intervention may be more damaging to 'human rights victims' than grounding intervention on security or national interest. Both protectors and protected suffer when they believe that international intervention is a mission of salvation. As the UN Secretary-General states in his report on the fall of Srebrenica:

When the international community makes a solemn promise to safeguard and protect innocent civilians from massacre, then it must be willing to back its promise with the necessary means. Otherwise, it is surely better not to raise hopes and expectations in the first place, and not to impede whatever capability they may be able to muster in their own defence.[69]

These cultural and material effects suggest that much of the revolutionary potential of human rights was contained through the performance of humanitarian intervention in the 1990s. The practice of military intervention and of post-conflict reconstruction limited the opportunities to make use of the radical potential of human rights to subvert the established order of things. In this sense, we are not now at the end of the human rights era. A commitment to human rights has long ceased to be the foundation of the work of the UN and other international organisations,

[67] Srebrenica report, paras 239–393.
[68] UN posters are displayed at http://www.un.org/peace/etimor99/POSTERS/ posters_bottom.htm, accessed 24 July 2002.
[69] Srebrenica report, para 504.

if it ever was.[70] Human rights activists and scholars were aware well before 11 September 2001 that human rights and self-determination were not the priorities of powerful states.[71] Indeed, some commentators suggest that the growing acceptance of humanitarian intervention was itself the end of a process by which the politicisation of human rights had transformed the humanitarian impulse which 'started out as an expression of empathy with common humanity...into a lever for strategic aims drawn up and acted upon by external agencies'.[72] Following this trend, even the recent 'war against terrorism' has to some extent been characterised as humanitarian, with the United States government raising the human rights abuses of women and girls in Afghanistan as one factor legitimising its military action.[73] According to Secretary of State Colin Powell, 'the recovery of Afghanistan must entail the restoration of the rights of Afghan women...The rights of the women of Afghanistan will not be negotiable.'[74]

This institutionalised commitment to a narrow range of civil and political rights as the end of military and monetary intervention has shut out other opportunities for dissenting from the established order or achieving emancipatory ends. As Shelley Wright argues, 'in some ways there is now *less* room for critique and analysis than there was in 1989 despite the powerful new voice that human rights have gained since the end of the Cold War'.[75] Yet it would be simplistic for me to suggest that we have not lost some possibilities for achieving justice with the shift to the new wars against terror in the post-September 11 world. In the next part, I want to explore the possibilities for justice and bases

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[70] Philip Alston, 'The Myopia of the Handmaidens: International Lawyers and Globalization' (1997) 8 *European Journal of International Law* 435.

[71] In this sense, Ignatieff's portrayal of the end of the human rights era following 11 September 2001 resembles Fukuyama's belated sense of the end of history. Derrida notes that the loss of faith in a certain institutionalised Marxism faced many Europeans in the 1950s, long before Fukuyama's experience of an 'end of history' with the break-up of the Soviet Union in 1989. See Derrida, *Specters*, p. 15.

[72] David Campbell, 'The Road of Military Humanitarianism: How the Human Rights NGOs Shaped the New Humanitarian Agenda' (2001) 23 *Human Rights Quarterly* 678 at 700.

[73] See US Department of State, *Report on the Taliban's War against Women*, 17 November 2001, http://www.state.gov/g/drl/rls/c4804.htm (accessed 27 February 2002); Laura Bush, First Lady, Radio Address to the Nation, *The Taliban's War against Women*, 17 November 2001, http://www.state.gov/g/drl/rls/rm/2001/6206.htm (accessed 27 February 2002).

[74] Secretary Colin L. Powell, *Afghan Women*, Remarks at the Eisenhower Executive Office Building, Washington, 19 November 2001, http://www.state.gov/secretary/rm/2001/6229.htm (accessed 27 February 2002).

[75] Shelly Wright, *International Human Rights, Decolonisation and Globalisation: Becoming Human* (London, 2001), p. 212.

for resistance that were offered by the legal narratives of humanitarian intervention.

The haunting of humanitarian intervention

As I argued in Chapter 3, humanitarian intervention narratives work to reassure the international community that there is a differentiated other, and to locate this other 'somewhere else, outside'.[76] The call made in response to images of suffering in distant lands is not to admit those who have suffered abuses as refugees, but rather to intervene militarily and prevent exodus.[77] The notion that the suffering or chaotic other is located elsewhere is reinforced through the act of intervention – we use force to maintain 'safe havens' or to protect (local) civilians at home, while at the same time evacuating foreigners perceived to be out of place in these crisis situations. The effect of military intervention is to keep a distance between those we wish to save and our own community – through intervention we seek to locate the other elsewhere.

This space of humanitarian intervention can be imagined as the kind of 'collective day-dream' that Edward Said saw reflected in the texts of Orientalism.[78] If we follow this suggestion that colonial texts evoke a dream-space, we find that the cartography produced by texts which attempt to map the boundaries between us and them, here and there, seems far less stable. Geographer Steve Pile suggests we explore further this 'analogy between the production of dream-space and the production of space as dream-like' through Sigmund Freud's writing about the work of dreams.[79] For Freud, the space of dreams is dynamic.[80] If we follow Freud's lead along the royal road, the space of a dream is not a screen upon which images are projected. Rather, dreams exist in dynamic networks of meaning.[81] In dreams, trains of thought and images move back and forth across paths within the unconscious, changing direction and appearance without warning. Pile argues that we should thus not treat the images in the daydream of colonialism as fixed, as if the space of the dream were a screen upon which the coloniser could project his fantasies of the colonised. Rather, these dream images are uncontrollable and unstable exchanges.

[76] Pile, 'Freud', p. 233.

[77] See the discussion in James C. Hathaway, 'The Single Superpower and the Future of International Law' (2000) 94 *American Society of International Law Proceedings* 67–9.

[78] Edward W. Said, *Orientalism* (London, 1991), p. 52, citing V. G. Kiernan, *Lords of Human Kind*, p. 131.

[79] Pile, 'Freud', p. 207.   [80] *Ibid*., pp. 208–21.   [81] *Ibid*., p. 220.

In order for the Orient to become the blank screen-space onto which Western fantasies can be projected, the West needs to establish connections, extending networks of meaning and power into worlds interior and exterior. However, these networks ruin the screen; the Orient cannot simply be the West's other, nor merely the result of the West's fantasies and internal conflicts.[82]

Similarly, in order to manage, exploit, govern, save or reconstruct the states subjected to humanitarian intervention, the international community has had to have a physical presence in such locations – as observers, as peace-keepers, as technical development assistants, as aid workers. This then creates a dynamic, two-way process – the traffic along the royal road between us and them, here and there, moves both ways. We have to avoid knowing this to preserve the sense of ourselves as coherent, unified, valuable. Yet this denial of intimacy, this attempt to localise the other, fails. As we will see, the other always leaves a trace, and returns to unsettle those communities that it founds.

The narratives of humanitarian intervention also attempt to achieve stability and security in a second way, through trying to fix the identity of those states that make up the 'international community'. As we saw in the cases of Bosnia-Herzegovina, Rwanda and East Timor, the involvement of the international community through military intervention or post-intervention reconstruction is represented as a response to local problems of violence, incapacity for self-government or tribalism. At stake in any representation of humanitarian crises and mass suffering is the self-image of the Western state, and now the international community, as sovereign, civilised, autonomous, powerful and humane. This self-constitution depends upon establishing a narrative in which the chaotic other is separate from the heroic self.

Both the cartographic and the narrative attempts to fix or determine the boundaries between self and other are disturbed by the human rights victim. The response to this figure is at the heart of what is unsettling, and thus productive, about humanitarian intervention narratives. The figure of the human rights victim occupies an uneasy place in intervention texts – at once other and same, object both of our pity and of our military strategies, whether suffering directly at the hands of our bombing or sanctions, or at the hands of the local men of violence while in internationally protected 'safe havens'. In particular, it is the human rights victims who do not stay in place who threaten to unsettle the imaginative geography of intervention. These errant victims

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[82] *Ibid.*, p. 225.

make insistent claims upon the international community. While humanitarian intervention represents a response to the suffering of others through violence, I want to suggest that the haunting presence of these figures might operate less as a call to arms than as a plea for refuge or sanctuary.

One group of human rights victims who have refused to stay in place are those who have responded to the implicit or explicit promise of protection offered by the presence of UN peace-keepers at times of crisis. As we saw, the people of Srebrenica had faith in the promise that the international community would protect them. Rwandans sought sanctuary with UN peace-keepers, only to be abandoned to militias. Rwandans who worked for the UN sought protection from their employer, only to be told that UN regulations dictated that only foreign employees could be evacuated. In these instances, 'nationals' believed in the story that the international community was there to protect them. They demanded that these foreign troops rise to the occasion. Yet as General Dallaire commented of the goals of the US administration in the aftermath of the Rwandan genocide: 'My mission was to save Rwandans. Their mission was to put on a show at no risk.'[83]

As this comment suggests, even if humanitarian intervention is merely a spectacle, it nonetheless has to be performed by human beings. For those human beings it is not easy to walk away from the victims or the place of genocide. The example of Belgian troops shredding their blue berets on the tarmac of Kigali airport as they were evacuated attests to the ways in which expectations engender a response in those who find themselves asked to perform (or betray) the advertised role of international protector. In some cases, such as that of the UN officials who disobeyed the instructions to leave the UN compound in Dili and abandon the East Timorese sheltering there, the claims of those who seek sanctuary from human rights abuses cannot be denied.

A second group of errant human rights victims are the spectres who haunt those involved in performing (or failing to perform) the role of international humanitarian. One such person is Romeo Dallaire, a major general in the Canadian army when he was sent in 1993 to command UNAMIR. Dallaire, a man 'who believed wholeheartedly in the promise of humanitarian action' and in the UN as the embodiment of 'soldiering, service and sacrifice', fought hard to retain enough peace-keepers and resources to prevent the genocide occurring.[84] Instead, as

[83] Power, 'Bystanders', 18.   [84] *Ibid*., 3.

I discussed above, Dallaire's troops were re-deployed to protect the airport to allow the evacuation of foreigners, leaving Rwandans sheltering with UNAMIR soldiers to be massacred. He was left in Rwanda during the genocide with a force of only 270 troops.[85] Samantha Power explores the effect of this experience on Dallaire, in her powerful examination of the reasons why the USA and the UN did so little to respond to the Rwandan genocide once it began.[86] Dallaire became highly distressed upon his return to Canada after completing his mission in Rwanda. He found himself haunted by the images of bodies piled up, carried a machete around, and found sleeping difficult. His symptoms worsened when he was called to testify before the Rwandan war crimes tribunal. Dallaire's superiors told him that 'he would have to choose between leaving the "Rwanda business" behind him or leaving his beloved armed forces'.[87] Dallaire chose the latter, and was discharged from the Canadian military suffering 'post-traumatic stress disorder'. Power writes:

Dallaire had always said, "The day I take my uniform off will be the day that I will also respond to my soul." But since becoming a civilian he has realized that his soul is not readily retrievable. "My soul is in Rwanda", he says. "It has never, ever come back, and I'm not sure it ever will." He carries the guilt of the genocide with him, and he feels that the eyes and the spirits of those killed are constantly watching him.[88]

'This spectral *someone other looks at us,* we feel ourselves being looked at by it' – for Derrida, it is this feature of the spectre which so disturbs us.[89] It is this which gives the spectre of the human rights victim its power to unsettle our identity. As Bhabha comments:

In the objectification of the scopic drive there is always the threatened return of the look; in the identification of the Imaginary relation there is always the alienating other (or mirror) which crucially returns its image to the subject; and in that form of substitution and fixation that is fetishism there is always the trace of loss, absence.[90]

This inability to keep the spirits of Rwandan victims in their place, and the unbearable nature of the reproach posed by the victim's look, is a striking theme of the stories of many Americans involved in the failure to respond to that genocide. For example, Prudence Bushnell, the US Deputy Assistant Secretary of State, had just returned from Rwanda

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85 See the detailed discussion in Chapter 3 above.
86 Power, 'Bystanders', 23.   87 *Ibid.*   88 *Ibid.*   89 Derrida, *Specters*, p. 7.
90 Homi K. Bhabha, *The Location of Culture* (London, 1994), p. 81.

when the genocide began, and was unable to persuade her colleagues in the US Administration to take the necessary action to respond to the genocide.[91] She in turn remains haunted both by the ghosts of the Rwandan dead and by accusing eyes.

Prudence Bushnell will carry Rwanda with her permanently. During the genocide, when she went walking in the woods near her home in Reston, Virginia, she would see Rwandan mothers cowering with their children behind the trees, or stacked in neat piles along the bike path. After the genocide, when the new President of Rwanda visited Washington and met Bushnell and others, he leaned across the table toward her, eyes blazing, and said, 'You, madame, are partially responsible for the genocide, because we told you what was going to happen and you did nothing.'[92]

For a long time, Bushnell was 'haunted by these memories and admonitions'.[93] Similarly, during the Rwandan genocide the image of African children became too much to bear for Donald Steinberg, the National Security Council staffer who managed the Africa directorate. '[Steinberg] had tacked the photos of two six-year-old African girls he had sponsored above his desk at the White House. But when he began seeing the bodies clogging the Kagera River, he had to take the photos down, unable to bear the reminder of innocent lives being extinguished every minute.'[94]

These haunting stories of regret and shame are testimony to the damage caused to the souls of those who betrayed the humanitarian promise of international law and institutions. For if the Orient was the daydream of Europe, so too Europe was the dream of its others. And in that process of creation of images and stories, those whom we misrecognise as our doubles do not always offer us back the reflection of ourselves that we wish to see. As Slavenka Drakulic wrote of Europe after the Bosnian genocide:

It seems to me that a part of the tragedy of the Bosnians lies in their belief that Europe is what it is not. Europe did not intervene, it did not save them, because there was no Europe to intervene. They saw a ghost. It was us, the Eastern Europeans, who invented 'Europe', constructed it, dreamed about it, called upon it. This Europe is a myth created by us, not only Bosnians, but other Eastern Europeans, too...Should we not ask, must we not ask, then, what is Europe after Bosnia?[95]

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[91] Power, 'Bystanders', 7.   [92] *Ibid*., 23.   [93] *Ibid*.   [94] *Ibid*., 22.
[95] Slavenka Drakulic, 'Bosnia, or What Europe Means to Us' in Marjorie Agosin, *A Map of Hope: Women's Writing on Human Rights* (London, 1999), pp. 223–9 at pp. 228–9.

Yet these ghost stories also suggest that the human rights victim is the figure that can hold the international community to the promise of human rights. This figure is haunting precisely because it embodies a memory of the trauma of what was done to the other to secure a self for the West. As Derrida shows us, the return of such spectres gives us the opportunity to learn from them about justice.

> If he loves justice at least, the 'scholar' of the future, the 'intellectual' of tomorrow should learn it and from the ghost. He should learn to live by learning not how to make conversation with the ghost but how to talk with him, with her, how to let them speak or how to give them back speech, even if it is in oneself, in the other, in the other in oneself: they are always *there*, specters, even if they do not exist, even if they are no longer, even if they are not yet. They give us to rethink the 'there' as soon as we open our mouths.[96]

According to Derrida, we can exorcise the threat that such spectres represent, not 'in order to chase away the ghosts', but rather so that they may 'come back alive, as *revenants* who would no longer be *revenants,* but as other *arrivants* to whom a hospitable memory or promise must offer welcome'.[97] It is just such an *arrivant* – the refugee – who most insistently refuses to stay in place. It is the figure of the refugee that most clearly unsettles the comforting separation between us and them, here and there, that humanitarian intervention tries to maintain. Many instances in which humanitarian intervention has been invoked have been explicitly described in terms of the need to avert the threat of refugee 'flows'. Indeed, the desire to avert refugee 'flows' has been explicitly treated by the Security Council as one factor contributing to the perception of a threat to the peace and justifying the use of force in cases of internal conflict and humanitarian crisis. The feminine imagery of fluidity evokes well the threat that refugees are imagined as posing to the project of forming bounded, solid, stable nation-states.[98]

For example, in Security Council Resolution 688 (1991) responding to the repression of the Kurds in Northern Iraq, the Security Council expressed its grave concern at 'the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions which threaten

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[96] Derrida, *Specters*, p. 176.   [97] *Ibid.*, p. 175.
[98] On the feminine property of fluids, see further Luce Irigaray, *This Sex Which Is Not One* (trans. Catherine Porter, Ithaca, 1985), p. 118.

international peace and security in the region'. As Simon Chesterman observes, it is the flow of refugees and cross-border incursions that are perceived as posing a threat to peace and security.[99] The preamble of Security Council Resolution 918 (1994) establishing secure humanitarian areas in Rwanda also refers to the Council's deep concern at 'the massive exodus of refugees to neighbouring countries'. Security Council Resolution 841 (1993) establishing an economic and weapons embargo against Haiti lists the 'unique and exceptional circumstances' that had led the Security Council to conclude that the situation in Haiti posed a threat to peace and security, including the creation of 'a climate of fear of persecution and economic dislocation which could increase the number of Haitians seeking refuge in neighbouring Member States'.[100] The preamble of Security Council Resolution 940 (1994) authorising the establishment of a multinational force to restore the legitimately elected President and authorities of the Government of Haiti also expressed the Security Council's grave concern at the 'desperate plight of Haitian refugees'. These Haitian refugees arriving by boat in the USA posed a political threat for the US administration, and certainly motivated the actions taken by the US government in supporting and leading the multinational force.[101] Finally, Simon Chesterman suggests that 'concern about a refugee crisis' was a factor in Australia's decision to push for a multinational force to restore peace and security in East Timor in 1999.[102] As these Security Council resolutions make clear, refugee flows are now themselves characterised as a threat to peace and security.

Some refugee lawyers see the new enthusiasm for humanitarian intervention as linked to the decline in the commitment to international refugee law on the part of industrialised states.[103] Opposition to accepting refugees has grown throughout Europe, and in the United States and Australia. In the post-Cold War era, industrialised states have emphasised the need to address the causes of involuntary migration. International policy has in turn begun to focus on protection of those at risk within the state. Even the Office of the UN High Commissioner for Refugees (UNHCR), the international agency whose role it is to oversee

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[99] Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford, 2001), p. 132. As Chesterman notes there, this is also emphasised in the statements of most states voting for the resolution stressing that the flow of refugees into neighbouring countries was the key security issue posed by the situation.
[100] Security Council Resolution 918 (1994), preamble.
[101] Chesterman, *Just War*, pp. 152–5.   [102] *Ibid.*, p. 150.
[103] Hathaway, 'The Single Superpower', 67.

the implementation of international refugee law, has now been 'repositioned'. States have put 'pressure on UNHCR to condone premature refugee repatriation, predicated on the potential for the delivery of internal "protection".'[104] Related to this latter development is the link to intervention as a means of responding to displacement of peoples. If we think about intervention at least partly in the context of post-Cold War refugee politics, then part of what is at stake is the need to avoid being confronted by the 'refugee'.[105] We prefer to contain these endangered foreigners, these distant strangers with whom we nonetheless feel intimate due to the televised images of their suffering, in 'safe' havens. We return them to war zones prematurely, because, we argue, they will be 'protected' there by the international community. There are some situations in which there may be security or humanitarian reasons to seek to prevent mass exodus. For instance, this seems to have been the view of members of the Security Council in supporting the notion of 'safe havens' in Bosnia and Herzegovina, where the aim of the Serbs was precisely to 'depopulate' areas or ethnically cleanse territories in order to resettle them. In such situations, the international community may be reluctant to support these practices of ethnic cleansing or depopulation by encouraging victims of abuses to seek refuge outside the territory in question. Yet I want to suggest that the perception of refugees as a threat to peace and security is also a response to the failure of these human rights victims to know their place.

The refugee faces us as a reminder that the place of the other is not 'out there' but very much 'in here', central to the way in which the image of ourselves is constituted. We exclude the refugee, the stranger, from our nation because we want to protect a stable, unitary sense of identity. Yet this foreigner is always already a part of that very identity. In modernity, the subject's identity is structured through its relations to the nation-state, and one of the 'others' against whom the nation is formed is that of the foreigner, the stranger. Thus the subject as citizen has as one of its doubles the alien, or the refugee. For the law, the refugee represents this stranger in its most threatening form, because the refugee seeks to be recognised by the law, and thus to remind the law, and through it the subject, of the repressed otherness at the foundation of identity. As Giorgio Agamben suggests, 'the refugee represents such a disquieting element in the order of the nation-state

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[104] *Ibid*., 68.   [105] *Ibid*., 67.

…primarily because…it brings the originary fiction of sovereignty to crisis'.[106] Through the claims or demands of these refugees from violence, we are confronted with the spectre of a suffering other who does not stay at home, who unsettles our sense of safety and separateness. Their arrival at the borders of the nation-state

is experienced as the symptom of the trauma, as the return of the repressed, the sign of the lack in the heart of the citizen. The exclusion of foreigners is…constitutive of national identity [and] human subjectivity. In asking to be recognised, refugees bring back the exclusion and repression at law's foundation, and demand of us to accept the difficulty we have to live with the other in us, to live as an other.[107]

The law 'uses a number of strategies of disavowal and denial in an attempt to shelter subjectivity and community from the recognition of [this] constitutive trauma'.[108] Through mechanisms that include humanitarian intervention, the law avoids facing or acknowledging refugees and their claims, and thus 'denies the traumatic object facing it'.[109] The more violent and irrational aspects of humanitarian intervention are a response to this sense of threat. Narratives of humanitarian intervention resolve anxieties produced by the threatening sense of closeness to the other that is the effect of images of suffering. We are presented with images of these neighbours whose suffering we 'know' intimately through the visions on our television screens, but the logic of intervention does not require us to welcome them into our 'home' as a sanctuary. The violence of intervention operates as a strategy for ensuring that the otherness which these strangers represent is kept in its place. Intervention ensures that the refugee is prevented from even presenting herself to the law. As soon as the potential for exodus is recognised, the refugee-to-be is prevented from leaving and is then 'protected', at least in theory, by humanitarian intervention. We refuse to recognise the part that such acts of violent exclusion play in constituting our identities as modern subjects of Western states, by seeking to avoid coming face to face with this stranger. Through intervention, the other is restored to an external location – boundaries are shored up, it is safe to feel compassion again. How might international law respond to the claims of the human rights

[106] Giorgio Agamben, *Means without End: Notes on Politics* (trans. Vincenzo Binetti and Cesare Casarino, Minneapolis, 2000), p. 21.
[107] Douzinas, *The End of Human Rights*, p. 357.   [108] *Ibid.*, p. 357.   [109] *Ibid.*, p. 364.

victim if it were not engaged in this frantic attempt to secure identity against 'otherness', to repress our loss of the (m)other?

The space of human rights

I have suggested throughout this book that the discourse of humanitarian intervention is grounded in the Imaginary. In particular, the fantasy of human rights institutes 'a psychical scene in which *all* bodies are invested with rights'.[110] As William MacNeil has shown, the 'universality' of human rights 'solicits a sense of One-ness among the many, in which corporeal boundaries are blurred and bodily borders dissolved. Thus, this fantasy promotes, not difference (as some other scenes do), but sameness: specifically, a shared identity among all rights-bearers, each having the same claim to the procedural safeguards and substantive entitlements which rights grant'.[111] As with the 'oceanic feeling' that Freud explores in his discussion of religion, the promised universality of human rights creates the feeling 'as of something limitless, unbounded'.[112] It is this sense of an identity merged in unity or wholeness which gives human rights its energy.

The figure of the victim of human rights abuses is a representative of the universal rights-holder. In this sense we recognise ourselves in this figure – our sense of 'One-ness among the many' is premised upon a shared identity which invokes our affection or compassion when confronted with the image of the suffering victim. Yet as I argued in Chapter 5, the fetishised nature of the human rights victim also potentially invokes difference – here is a subject that is alien, external, foreign and threatening. The dependence on this figure of the human rights victim about whom we feel so ambivalent gives the discourse of humanitarian intervention its productivity for those who identify with the heroic subject of the international community. The human rights victim as fetish refers back 'through displacements of the signifier, to vulnerable or highly charged areas in the social fantasy that produced [this figure]'.[113] Because the narrative of humanitarian intervention not only disavows the trauma of loss, but also commemorates

[110] William MacNeil, 'Law's *Corpus Delicti*: the Fantasmatic Body of Rights Discourse' (1998) 9 *Law and Critique* 37 at 48.
[111] *Ibid.*, 49.
[112] Sigmund Freud, 'Civilization and its Discontents' in James Strachey (ed.), *The Standard Edition of the Complete Psychological Works of Sigmund Freud,* Volume XXI (London, 1961), pp. 64–145 at p. 64.
[113] Laura Mulvey, *Fetishism and Curiosity* (London, 1996), p. 10.

or mourns that thing which is thought to be missing, it 'stays in touch with its original traumatic real and retains a potential access to its own historical story'.[114]

Is it possible to make a different use of this 'potential access' to the 'original traumatic real' that is offered by the narrative of humanitarian intervention? How might we rewrite the demands of justice in the era of globalisation in a way that builds on the acceptance and mourning of the loss or lack memorialised in the body of the human rights victim? My approach to thinking about this draws on the work of Jeanne Schroeder. For Schroeder, (hetero)sexuality represents two positions that we can take to respond to loss.[115] 'We are masculine when we try to deny castration and feminine when we accept castration.'[116] More specifically, the masculine subject attempts to deny that loss or castration ever occurred.[117] One strategy involves telling himself the story: 'Castration has occurred, but (thank God) it was not me who was castrated but someone else. I still possess the phallus. It must be the feminine who lost it.'[118]

This strategy gives rise to 'the fear of having to confront one's own castration, or even worse, the fear that one will not be able to keep up appearances so that other men will learn that [one] is castrated'.[119] This requires that the feminine be exiled. 'If she represents the castration that men try to deny, she must be put out of sight.'[120] It is this response which I would argue is performed in the violent rejection of refugees, and in those versions of humanitarian intervention which are premised upon keeping potential refugees in their 'safe' havens, out of our way. This hostile response targets human rights victims because they are a reminder of the trauma of difference, and of the inherent vulnerability of the Western subject and the international community.

In Schroeder's schema, the response of the feminine to loss is quite different. 'If we are masculine when we try to deny castration, we are feminine when we accept castration, loss and negativity... The feminine acceptance of castration is the understanding that we are no longer and can never again be self-sufficient, complete, and whole by ourselves.'[121]

While this can lead to depression, it also offers a way out of the vicious circle of violence and rejection instituted by the denial and fear of loss.

[114] *Ibid.*, p. 5.
[115] Jeanne Lorraine Schroeder, 'Juno Moneta: on the Erotics of the Marketplace' (1997) 54 *Washington and Lee Law Review* 995 at 1009.
[116] *Ibid.*   [117] *Ibid.*, 1012.   [118] *Ibid.*   [119] *Ibid.*, 1019.   [120] *Ibid.*, 1020.
[121] *Ibid.*, 1015.