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# Reading Humanitarian Intervention

Human Rights and the Use of Force in  
International Law



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it led to 'the effort to place the law on the side of the people of Haiti for perhaps the first time in that nation's history'.<sup>58</sup> Similarly, Geoffrey Robertson sees the UN intervention in East Timor as a case where the international community acted to protect the right of people to determine their own governance. Robertson argues that the UN 'got lucky' in its 'last humanitarian operation of the century'.<sup>59</sup> He believes that the future of East Timor 'is clear and optimistic: nation-building begins apace for a people the protection of whose post-plebiscite right to self-determination was the acknowledged reason for the intervention'.<sup>60</sup>

In the human rights terms adopted by Robertson, the international community attempts to ensure through humanitarian intervention the creation of conditions for the exercise of the right to self-determination.<sup>61</sup> According to the UN Charter, self-determination of peoples is a principle to be respected as a basis for the development of peaceful and friendly relations among nations.<sup>62</sup> Self-determination was raised to the status of a right of peoples in the common Article 1 of the two major human rights covenants, which provided that all peoples have the right freely to determine their political status and freely pursue their economic, social and cultural development.<sup>63</sup> The idea that states were committed to respecting, protecting and promoting self-determination was a central component of the promise that the creation of the UN would usher in an age of decolonisation. In the post-Cold War era, some international lawyers came to argue international law guaranteed peoples not only the right to choose a form of political, economic and social organisation, but also the right to democratic governance as the ideal form of political organisation.<sup>64</sup> The concept that under international law all peoples have a right to self-determination reflects most perfectly law's self-image as a guarantor of peace, human rights and democracy.

Yet the tensions that beset the attempt to guarantee the right to self-determination or to democratic governance through the use of force

<sup>58</sup> *Ibid.*, 1603.    <sup>59</sup> Robertson, *Crimes*, p. 425.    <sup>60</sup> *Ibid.*, p. 434.

<sup>61</sup> For an analysis that treats military intervention as a means of achieving self-determination, see Morton H. Halperin and David J. Scheffer with Patricia L. Small, *Self-Determination in the New World Order* (Washington, 1992).

<sup>62</sup> Articles 1(2) and 55, UN Charter.

<sup>63</sup> Article 1, International Covenant on Civil and Political Rights, New York, 19 December 1966, in force 23 March 1974, 999 UNTS 171; Article 1, International Covenant on Economic, Social and Cultural Rights, New York, 19 December 1966, in force 3 January 1976, 993 UNTS 3.

<sup>64</sup> See particularly Thomas Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46.

reveal the limitations of those modernist legal claims. In his Grotius lecture on law and empire, Nathaniel Berman argues that there is a reformist tradition of international legal scholarship which treats law as a solution to the problem of imperialism.<sup>65</sup> International lawyers narrate the story of the rise of the state in Western Europe as a triumph of reason, order and sovereign equality over tribalism, religion and hierarchical relations.<sup>66</sup> The moment that figures the final break between law and empire, or between a society grounded on imperial legitimacy and one grounded on mutual recognition between European sovereigns, is the Peace of Westphalia of 1648. Much later, the modern law of decolonisation implemented under the UN Charter would be treated as extending this notion of sovereign equality in what is portrayed as a clean break between law and old-fashioned colonialism. Berman argues, however, that the 'claim of an historical break can only work if you treat imperialism as a single phenomenon that disappears with the death of specific players and legal forms. But decolonisation was only the end of a specific form of imperial domination.'<sup>67</sup> This book explores the possibility that the law of intervention can be read as a component of just such a new form of imperial domination.

Those international lawyers who support the new interventionism of the post-Cold War era have tended not to discuss the potential imperial character of multilateral intervention. Instead, they present an image of international institutions and international law as agents of democracy and human rights. That representation operates to reinforce the identity of international institutions and of major powers, particularly the USA, as in turn bearers of those progressive values. The UN and other post-World War II institutions have embodied the faith of many people in the ability of international institutions to protect ideals of universalism, humanitarianism, peace, security and human rights. Multilateralism has seemed to offer an escape from unrestrained self-interest and power politics. That faith, if anything, has grown stronger in the post-Soviet era, with commentators treating multilateral and regional institutions, particularly the UN and now NATO, as essentially benevolent and able to bring not only peace and security, but also human rights and democracy,

<sup>65</sup> Nathaniel Berman, 'In the Wake of Empire' (1999) 14 *American University International Law Review* 1521 at 1523.

<sup>66</sup> David Kennedy, 'Images of Religion in International Legal Theory' in Mark Janis (ed.), *The Influence of Religion on the Development of International Law* (Dordrecht, 1991), pp. 137–46 at pp. 138–9.

<sup>67</sup> Berman, 'In the Wake', 1531.

to the world. Those who express concern about the potential for powerful states to abuse the emerging norm of humanitarian intervention tend to treat this as a problem for the future. For example, in his 1999 annual address to the General Assembly, Kofi Annan commented that the Kosovo action could set 'dangerous precedents for *future* interventions without a clear criterion to decide who might invoke these precedents, and in what circumstances'.<sup>68</sup> The faith in law's freedom from imperialist desire is clear in the general acceptance amongst legal commentators of the humanitarian motives behind intervention in the post-Cold War era.

The issues at stake in this confrontation between law and empire arose for me in a discussion I had with a second close friend who supported the multilateral military intervention in East Timor. For her, the military intervention was the lesser of two evils, the greater of which was the continued Indonesian military occupation of East Timor, with the attendant rapes and murders. She described images on television of desperate parents throwing their children over a barbed wire fence into the UN compound in Dili, trying to make sure that their children reached sanctuary, and of the horror of seeing the bodies of some of those children getting caught on the barbed wire and hanging there. She talked about the televised images of people lining the streets of East Timorese villages, cheering the troops. She told me of activists returned from Timor talking to people in her home town in country Australia. Their stories were of people who were willing to die to cast their vote and say they had had enough of the Indonesians, of people walking miles carrying children and pleading with the UN staff to keep the polling booths open. They expected to die the next day and did not care. Their courage, she told me, is inspiring. We should be willing to go and stand with them.

I wondered – does this mean that we should not be critical about the way in which our response is shaped by televised images of war that are approved by our militaries?<sup>69</sup> Does our solidarity have to mean unquestioning acceptance of the use of force, an option our government and its allies consider an increasingly appropriate response in the post-Cold War era? Having originally felt that maybe this was a case for intervention, I argued strongly and seemingly without ambivalence with my

<sup>68</sup> UN, *Secretary-General Presents* (emphasis added).

<sup>69</sup> For a critical account of the extent to which war correspondents are controlled and managed by governments and their militaries, with a focus on the Kosovo conflict, see Philip Knightley, 'Fighting Dirty', *Guardian Weekly*, 30 March–5 April 2000, p. 23.

friend. I said that military intervention had not led to greater freedom or self-determination for subject peoples in places such as Kuwait or Bosnia-Herzegovina. As I suggest in Chapter 4, those people have instead seen one form of domination replaced by another. For example, in the case of Kuwait, this has taken the form of a denial of civil and political rights to most of the country's citizens. In the post-Gulf War elections on 5 October 1992, only 14 per cent of the country's 600,000 citizens were eligible to vote.<sup>70</sup> Despite the strong Kuwaiti women's suffrage movement, women as a whole were excluded from eligibility. For women struggling for political rights in postwar Kuwait, the Gulf War means that they are now 'faced with patriarchal barriers... blessed militarily'.<sup>71</sup> Yet the systematic exclusion of a large percentage of the population from the Kuwaiti political process was not the subject of comment in analyses of the success of UN action in the Gulf, despite the UN's rhetorical commitment to the restoration of democracy, self-government and human rights to the people of Kuwait.<sup>72</sup> In the case of Bosnia-Herzegovina, this took the form of administration of the new state by international organisations and their appointees. As Chapter 4 shows, the Dayton Peace Agreement institutionalised the exclusion of the people of Bosnia and Herzegovina from vital economic and political decision-making.<sup>73</sup>

Yet according to many legal accounts, the tension between law and empire was neatly, if belatedly, resolved in the case of East Timor. Portugal had held East Timor as one of its colonies from 1893. In 1960, the UN General Assembly placed East Timor on its list of non-self-governing territories, with Portugal as the administering power. Portugal initiated

<sup>70</sup> Those eligible were Kuwaiti men, over the age of twenty-one, who could trace their origins in the emirate to before 1920: Dale Gavlak, 'Still Suffering Nonsuffrage in "Liberated" Kuwait' (Jan–Feb 1993) 3 Ms. 14. Gavlak reports that women activists conducted protests outside polling stations, election rallies for women's political rights and lobbied parliamentary committees about the need for women's political participation. Kuwaiti women also demanded the right to run for political office, the right to be judges and prosecutors, equal rights in housing and education, and full citizenship for the children of Kuwaiti women married to naturalised Kuwaitis.

<sup>71</sup> Enloe, *The Morning After*, p. 176.

<sup>72</sup> Philip Alston argues that while human rights rhetoric played an important role in securing for the allies the support they needed both from their own citizens and from other UN member states during the Gulf War, the allies did not pay much more than lip service to human rights having established their military objectives. See Alston, 'The Security Council'.

<sup>73</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, 1995, (1996) 35 ILM 75. For a discussion of the effect of the Dayton Agreement in these terms, see David Chandler, *Bosnia: Faking Democracy after Dayton* (2nd edn, London, 2000).

a decolonisation process in 1974, and sought to establish a provisional government and popular assembly to determine the future status of East Timor.<sup>74</sup> The Indonesian invasion of East Timor in 1975 ended this move towards decolonisation. Nevertheless, despite Indonesia's purported integration of East Timor as an Indonesian province, the UN condemned Indonesia's aggression and continued to recognise Portugal as the administering authority over the territory. The more celebratory account of this period suggests that international law was able to oversee the chaotic and bloody end to the imperial overreach of Indonesia and the failed decolonisation attempt for which Portugal was responsible. In 1998, Indonesia proposed that East Timor be granted limited special autonomy within the Republic of Indonesia. The resulting talks involving Indonesia, Portugal and the UN Secretary-General saw the Secretary-General entrusted with the organisation and conduct of a popular consultation to ascertain whether the East Timorese people accepted Indonesia's special autonomy proposal.<sup>75</sup> When the vote rejecting the autonomy proposal in favour of independence resulted in a campaign of violence and destruction waged against the East Timorese, the international community responded by sending a multinational force to restore peace and security.<sup>76</sup> International financial institutions were also able to help protect the people of East Timor against the violence sanctioned by Indonesia by exerting pressure on the Indonesian government during the post-ballot period.<sup>77</sup> In the following months, the Indonesian armed forces, police and administrative officials withdrew from the territory and militia attacks were controlled.

According to this story, law champions the East Timorese and paves the way for the removal of imperialists, both old (Portugal) and

<sup>74</sup> See generally Catholic Institute for International Relations/International Platform of Jurists for East Timor, *International Law and the Question of East Timor* (London, 1995); Julie M. Sforza, 'The Timor Gap Dispute: the Validity of the Timor Gap Treaty, Self-Determination, and Decolonization' (1999) 22 *Suffolk Transnational Law Review* 481.

<sup>75</sup> Agreement between Indonesia and Portugal on the question of East Timor, 5 May 1999 and the Agreements between the United Nations and the Governments of Indonesia and Portugal, 5 May 1999, S/1999/513, Annexes I to III.

<sup>76</sup> Security Council Resolution 1264, S/RES/1264 (1999), adopted on 15 September 1999. The Security Council acting under Chapter VII authorised the establishment of a multinational force with the tasks, *inter alia*, of restoring peace and security in East Timor and facilitating humanitarian assistance operations.

<sup>77</sup> For example, on 6 September 1999 the IMF froze all lending to Indonesia in protest against the violence in East Timor. On 13 September, the World Bank froze all disbursements to Indonesia, both in protest at the Bank Bali scandal and to increase the pressure to end the atrocities in East Timor. See World Bank Group, 'World Bank Freezes All New Loans to Indonesia', *Development News*, 23 September 1999.

new (Indonesia). Secretary-General Kofi Annan certainly saw these actions as signifying an important moment for the international community. For Annan, 'the tragedy of East Timor, coming so soon after that of Kosovo, has focused attention once again on the need for timely intervention by the international community when death and suffering are being inflicted on large numbers of people'.<sup>78</sup> He therefore welcomed the 'developing international norm in favour of intervention to protect civilians from wholesale slaughter'.<sup>79</sup> Similarly, Australia's Foreign Minister Alexander Downer lauded the role played by Australian troops as part of INTERFET in supporting self-determination and relieving suffering in the territory.

Australia has played a very constructive, and wholly creditable, role in the process that has led to self-determination for the people of East Timor... We saw an opportunity to allow East Timorese to decide their own future, and we helped them realise that chance. And when those who lost the ballot sought to overturn it through violence and intimidation, we put Australian lives on the line to end that suffering.<sup>80</sup>

Yet a consideration of the role of international organisations in East Timor in the period following intervention complicates this picture, particularly in the context of international law's imperial history. The UN and the World Bank have adopted a major 'trusteeship' role, taking over responsibility for administration in East Timor during the period of transition to independence. On 25 October 1999, the Security Council established the UN Transitional Administration in East Timor (UNTAET) as a peace-keeping operation 'endowed with overall responsibility for the administration of East Timor and...empowered to exercise all legislative and executive authority, including the administration of justice'.<sup>81</sup> The UN granted itself a broad and ambitious mandate, including the provision of security and maintenance of law and order, the establishment of an effective administration, assisting in the development of civil and social services, supporting capacity-building for self-government and assisting in the establishment of conditions for sustainable development.<sup>82</sup> The Secretary-General's Special Representative

<sup>78</sup> Kofi Annan, 'Two Concepts of Sovereignty', *The Economist*, 18 September 1999, p. 49.

<sup>79</sup> *Ibid.*, p. 50.

<sup>80</sup> Alexander Downer, Minister for Foreign Affairs, 'East Timor: the Way Ahead', speech given to the Rotary Club of Sydney, 30 November 1999.

<sup>81</sup> Clause 1, Security Council Resolution 1272, S/RES/1272 (1999), adopted on 25 October 1999.

<sup>82</sup> *Ibid.*, clause 2.

and Transitional Administrator, Sergio Vieira de Mello, was made 'responsible for all aspects of the United Nations work in East Timor', with 'the power to enact new laws and regulations and to amend, suspend or repeal existing ones'.<sup>83</sup> The UN's view of its role in East Timor is well illustrated by Jean-Christian Cady, the Deputy Transitional Administrator of East Timor, who was to comment, 'the United Nations found themselves in a situation without precedent in their history: to rebuild a country entirely'.<sup>84</sup> The World Bank also plays a major role in the administration of East Timor. It administers the World Bank Administered Multilateral Trust Fund for East Timor, and works in consultation with the East Timorese and UNTAET representatives to facilitate economic development. The Bank has made clear that certain familiar Bank programmes and priorities are to be implemented in the management of East Timor. Its plans focus on ensuring that East Timor has a small state and is quickly inserted into the global market economy, albeit as one of the poorest countries in the region.<sup>85</sup>

The economic and political management being developed by these international organisations on behalf of East Timor sets the stage for the kind of limited sovereignty that Antony Anghie has analysed in his study of the operation of the mandate system under the League of Nations after World War I.<sup>86</sup> Under that system, territories belonging to defeated powers were placed under the control of mandate powers who were responsible for the administration of those territories and required to report back to the League concerning the measures taken to ensure the well-being and development of mandate peoples. The mandate system appeared to be premised on the international community's desire to move away from colonialism, and to represent a radical departure from international law's acceptance of colonialism towards an expression of condemnation of colonial exploitation and violence.<sup>87</sup> In fact, Anghie argues that far from representing a move away from imperialism, the mandate system merely changed its legal form, instituting a new form

<sup>83</sup> *Ibid.*, clause 6.

<sup>84</sup> Jean-Christian Cady, 'Building the New State of East Timor', lecture given at the Centre for International and Public Law, Australian National University, 18 May 2000.

<sup>85</sup> See, for example, World Bank, *Report of the Joint Assessment Mission to East Timor*, 8 December 1999, pp. 3-5, 8; World Bank East Asia and Pacific Region, *Background Paper Prepared for the Information Meeting on East Timor*, 29 September 1999, p. 2.

<sup>86</sup> Antony Anghie, 'Time Present and Time Past: Globalization, International Financial Institutions, and the Third World' (2000) 32 *New York University Journal of International Law and Politics* 243.

<sup>87</sup> *Ibid.*, 278.



of colonial power based not on political but on economic control. The neocolonial process would be overseen by an international institution, one which, like the World Bank in East Timor, saw its role as technical rather than political. Administration of a territory was to be undertaken by a disinterested body of international experts intent on ensuring the proper development and welfare of those subject to their trust.<sup>88</sup> The policies of such institutions were seen as scientific and objective, rather than self-interested. The system as a whole, however, operated to integrate the mandate society into the international economy. Mandate territories were inserted into that economy in a subordinate role. As a result, while those territories appeared to be freed from political control, they remained subject to the control of the parties that exercised power within the international economy.<sup>89</sup>

Many of the same arguments can be seen to apply in the case of East Timor. The new enthusiasm for international trusteeship evidenced there is 'linked in some equivocal way to imperial history',<sup>90</sup> a history in which international institutions came to play an important role in limiting the meaning given to the concept of self-determination for newly sovereign states. Indeed, in the months following the intervention critics were to argue that the reconstruction of East Timor was providing an opportunity for massive foreign direct investment in the areas of telecommunication, banking, tourism, construction and legal services. For example, George Aditjondro sees East Timor under UN and World Bank management as becoming 'a paradise for market-driven foreign investors, without considering the real need for foreign investment... a new outpost of global capitalism in the Asia-Pacific region, due to the absence of a democratically elected government'.<sup>91</sup> He suggests that such a government would 'rely more on its own people's resources and traditions, and would therefore put the brakes on this massive influx of foreign capital'.<sup>92</sup>

Thus one of the arguments this book develops is that the nature of post-conflict reconstruction in places such as Bosnia-Herzegovina and East Timor mirrors the way in which the international community supported colonialism in earlier periods. From its support for acquisition of territory belonging to uncivilised peoples through to the operation of the mandate system, the international community has systematically

<sup>88</sup> *Ibid.*, 284.    <sup>89</sup> *Ibid.*, 283.    <sup>90</sup> Berman, 'In the Wake', 1526.

<sup>91</sup> George Aditjondro, 'From Colony to Global Prize' (2000) 47 *Arena Magazine* 22 at 32.

<sup>92</sup> *Ibid.*

facilitated the enterprise of colonialism. Central to this support has been the limited meaning given to the concept of self-determination. Post-conflict reconstruction carried out under the auspices of international financial institutions is often concerned to create a secure environment in which foreign investment can produce profits for the shareholders of multinational and foreign corporations, free of the kinds of investment constraints that were the product of the efforts of decolonised states to create a new international economic order during the 1970s.

As a result, there appear to be limits on the capacity of those in whose name the exercise of reconstruction is conducted to participate fully in determining the conditions that will shape their lives. I argue throughout the book that only one 'choice' is being made available to the new subjects of international law, such as the nation of East Timor. That choice is to be governed by economically rational governments under the tutelage of the international economic institutions who follow the military as representatives of the international community. This illustrates a broader political problem facing the subjects of the international legal system. International law has always operated to constitute as its subjects those who resemble the idealised self-image of European sovereign peoples. The anxieties about who should count as international legal subjects generated by the nineteenth-century colonial enterprise were central to the ways questions about legal personality were posed and answered.<sup>93</sup> The doctrinal attempt to define the 'proper subjects of international law' was fuelled by the political imperative of European lawyers seeking to find a way to distinguish 'sovereigns proper from other entities that also seemed to possess the attributes of sovereignty, such as pirates, non-European states, and nomads'.<sup>94</sup> The natural law of earlier jurists, such as the Spanish theologian Francisco de Vitoria, did not prove useful, as natural law thinking was premised on the notion that all societies, whether European or 'barbarian', were bound by a universal law expressed in Christian doctrine and the Roman law of nations.<sup>95</sup> The answer for nineteenth-century positivists such as Thomas Lawrence and John Westlake was to create a distinction based on perceived essential

<sup>93</sup> Antony Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law' (1999) 40 *Harvard International Law Journal* 1 at 17.

<sup>94</sup> *Ibid.*, 26.

<sup>95</sup> See the discussion in Antony Anghie, 'Francisco de Vitoria and the Colonial Origins of International Law' (1996) 5 *Social and Legal Studies* 321.

cultural differences between sovereigns and others.<sup>96</sup> Historically, the resulting refusal to recognise non-European peoples as 'sovereign' greatly constrained their capacity to shape the development of what came to be known as 'international' law. The ongoing struggle of indigenous peoples to be recognised as peoples entitled to self-determination and as subjects of international law is one of the contemporary manifestations of this history. The struggle of people in Bosnia, Haiti, Kuwait, East Timor and Kosovo to determine the nature of their conditions of existence and to be recognised as fully sovereign is another.

The subjects of international law are themselves always constituted by the law. As Costas Douzinas argues, 'the law is not just the creation of popular sovereignty: it is also the carrier of the dictates of social reproduction, the begetter of subjects and the vehicle of violence'.<sup>97</sup> In 'recognising' new entities entitled to self-determination, the law is creating new legal subjects. These subjects must fulfil what the spirit of international law requires, excluding what the international community perceives as alien or other at any given time. In the era of free trade and liberal democracy, the law's new subjects can determine their own destiny only within the constraints imposed by liberal capitalism. In other words, if we accept that it is better to allow the USA and Australia under the UN banner to choose to intervene militarily to 'protect' some of those at risk of genocide, the next question must be: having grudgingly and after twenty-four years helped the East Timorese to regain their independence from the Indonesians, how do 'we' help them gain their independence from the International Monetary Fund (IMF), the World Bank and the international community? What language do we have for talking about that? Here the liberal promises of ballot boxes and humanitarian intervention seem to be of little help.

So, as I debated the promises of intervention with my friend, I argued that living under the administration of the UN and the World Bank promises little change – no real independence and new threats to life, health and security. I argued that the presence of the military as representatives of the 'international community' provides an alibi for exploitation – we are able to portray our presence as offering salvation and protection. I argued that this is a revolution, that this has changed

<sup>96</sup> Thomas Lawrence, *The Principles of International Law* (London, 1895), pp. 1–25; John Westlake, *Chapters on the Principles of International Law* (Cambridge, 1894), pp. v–xvi, 1–16. See the discussion of this feature of their work in Anghie, 'Finding the Peripheries', 10–22.

<sup>97</sup> Costas Douzinas, *The End of Human Rights* (Oxford, 2000), p. 227.

people's hearts and minds, that now people are ready to go on to the streets and protest for intervention, for the increased presence of US and Australian militaries in our region. Yet even as I argued, I thought about all the people protesting on the street, and I wanted to be part of that optimism. I wondered if I was missing something very fundamental here, if I was choosing not to believe in the good intentions of the international community in this case because I was lacking the necessary faith (in humanity? in law? in international organisations?). For my friend, the choice was clear. Living under UN and World Bank trusteeship is better than living under Indonesian governance. If she had the choice to live in Papua New Guinea under the World Bank, or West Papua under the Indonesian military, she argued, she would choose Papua New Guinea. People there eat better and are more secure. They are less likely to be subjected to rape and murder than those who are subject to the terror tactics of the Indonesian military or the pro-Indonesian militias.

I asked whether the choice between living under Indonesian soldiers or under international governance is after all a choice – 'we', the 'international community', were part of the conditions of the life of the East Timorese under Indonesian soldiers. Now we have changed the manner of our intervention, but does this mean we can treat 'then' as somehow being about the East Timorese suffering purely under the governance of the Indonesian military? 'Then' involved the US, British and Australian governments and militaries, arms manufacturers from Britain and the USA and the involvement of the World Bank and the IMF, whether through action or omission, in supporting the Indonesian government and military in its occupation of East Timor. So the choice between life in West Papua and Papua New Guinea seemed to me a false dichotomy, as they are both symptoms of global capitalism. Perhaps my friend was right though – it was extreme of me to argue that one symptom is no better than another. Yet how does it come down to these choices, to people arguing over whether it is better to be governed by the IMF and the World Bank or by the Indonesian military?

I worried about this conversation for days afterwards. Maybe on this one occasion it was better for there to be military intervention with the attendant international supervision, administration and governance that it legitimises. And yet didn't supporting this intervention support a dubious line of 'humanitarian interventions' including the Gulf War and NATO's actions in bombing Kosovo? To support such a shift in policy towards the acceptability of humanitarian intervention surely increased the legitimacy of militarism in states such as the USA, the UK, France,

Nigeria, Australia and Canada. It threatened to limit the role for non-violent and principled means of addressing human rights abuses. It helped build the acceptance of the actions of the international community as unquestionably benevolent and charitable, a story that once played out as the civilising mission. Perhaps I am just wedded to this rejection of humanitarian intervention as an option because I am not able to see the particularity of the situation in East Timor. After all, justice is only possible in the particular case. If in the future this precedent is misused, that is something to be dealt with in the future. This case may indeed mean that the law has changed, and that may be a good thing. Certainly, that is what an increasing number of international lawyers have been advocating since the time of the Gulf War.

As I thought about these things, I started to watch a television programme about Sierra Leone. It showed terrible images of little boys, who, the story told us, were in fact members of rebel groups, forced by the rebels to conduct raids and atrocities, and drugged to enable them to do so. The images we saw were of rebel soldiers dressed in fatigues. In one scene one armed soldier stood on the leg of a naked child of about ten in a truck, while the child screamed in terror. Other soldiers stood around. The child was clearly terrified. It was a horrific scene. In another image, a skinny little boy sat on the ground in front of a building, crying. He was being interrogated by soldiers. I turned off the TV and went to look at my sleeping baby boy. I thought back to my discussion with my friend and decided that I have no right and no power to make any argument at all about these matters. There is no alternative. The best we can hope for in the world as it is today is to be on the side of the more powerful of the ruthless militarised men who seem to dominate all societies, and hope that they don't turn against us.

But the next morning I returned in my mind to those scenes. I began to think about the conditions that made those images possible, and of their effect on me. I was reminded of the 1972 essay by John Berger, 'Photographs of Agony'.<sup>98</sup> Berger wrote that our response to war photographs, photographs of agony, is to feel a sense of powerlessness, which we then interpret as a commentary about our lack of moral agency. Perhaps we then send money to an aid organisation, or resolve to support whichever army is fighting those responsible for the agony. He says we should think instead about the conditions of our powerlessness and understand the relationship of those conditions to our lack of ability to participate democratically. Berger points out:

<sup>98</sup> John Berger, *About Looking* (London, 1980), p. 37.

Newspapers now carry violent war photographs because their effect, except in rare cases, is not what it was once presumed to be. A paper like the *Sunday Times* continues to publish shocking photographs about Vietnam or about Northern Ireland whilst politically supporting the policies responsible for the violence. This is why we have to ask: What effect do such photographs have?<sup>99</sup>

This is clearly the case in Australia with respect to East Timor. The policies of the Australian government and the international community supported the Indonesian government and the Indonesian military in their repression of the East Timorese for over twenty years. Yet even as Australians are appalled by the images of the results of those policies on our television screens, the ordering principles of the international political economy which supported that violence are free from interrogation. Berger writes that our sense of powerlessness is a product of the conditions of photography itself, so that ‘any response to that photographed moment is bound to be felt as inadequate’.<sup>100</sup> The camera records and isolates an image of a moment of agony, a moment which is itself experienced by those being photographed as a moment violently isolated from the flow of time. The paralysis and frustration the viewer feels when looking at such images are a result of the relationship such images set up between viewer and viewed.

Those who are there in the situation being photographed, those who hold the hand of the dying or staunch a wound, are not seeing the moment as we have and their responses are of an altogether different order. It is not possible for anyone to look pensively at such a moment and to emerge stronger...

The possible contradictions of the war photograph now become apparent. It is generally assumed that its purpose is to awaken concern. The most extreme examples... show moments of agony in order to extort the maximum concern. Such moments, whether photographed or not, are discontinuous with all other moments. They exist by themselves. But the reader who has been arrested by the photograph may tend to feel this discontinuity as his own personal moral inadequacy. *And as soon as this happens even his own sense of shock is dispersed:* his own moral inadequacy may now shock him as much as the crimes being committed in the war. Either he shrugs off this sense of inadequacy as being only too familiar, or else he thinks of performing a kind of penance – of which the purest example would be to make a contribution to OXFAM or to UNICEF.<sup>101</sup>

In the context of the Sierra Leone story his point is clear. If I was ‘there in the situation being photographed’ with armed men brutalising a naked child, I imagine that I would be moved by my anger to step forward and say something to them, and I am sure that many people would

<sup>99</sup> *Ibid.*, p. 38.

<sup>100</sup> *Ibid.*, p. 39.

<sup>101</sup> *Ibid.*, pp. 39–40 (emphasis in original).

be in the same position. 'Those who are there in the situation being photographed...are not seeing the moment as we have.' The television images produce a sense of powerlessness because someone stood by and focused steadily on that picture, and did not make any move within that frame to help the child. If the image was instead of the photographer rushing forward and telling those people to stop, then I would feel less powerless. As I discuss in Chapter 5, this relates to the arguments made by feminist film critics that the function of cinematic narrative is to stop us recognising our own passivity as viewers, by creating our identification with the active hero in the film.<sup>102</sup> Thus the response produced in those of us watching televised images of death and suffering is to call for action. I think back to the images my friend described of children being thrown into the UN compound in Dili, and getting stuck on barbed wire. Anyone who was there in person would not have the horror of passively watching that scene, but would be able to try and help the children, covering the barbed wire with clothes, climbing up to make sure the children did not get stuck, lifting them over. Our sense of passivity is a product of the way in which televised images are produced, as is our desire that violence be used in response. Perhaps the greater our frustration with our passivity, the greater our need to see action taken in our name. As I argue through this book, the relationship between viewer and viewed and the narrative effect of such images are central to the conservative meanings made of humanitarian intervention.

I think also of Rey Chow's argument, that the 'Third World' is produced as spectacle, entertainment and monstrosity for those of us watching the media in the 'First World'.<sup>103</sup> In her discussion of the meaning of the massacre in Tiananmen Square, Chow says:

The 'Third World', as the site of the 'raw' material that is 'monstrosity', is produced for the surplus-value of spectacle, entertainment, and spiritual enrichment for the 'First World'. The intense productivity of the Western newsperson leads to the establishment of clear boundaries. Locked behind the bars of our television screens, we become repelled by what is happening 'over there'.<sup>104</sup>

Televised images of suffering people in the 'Third World' function to explain the need for intervention, and in so doing act also as the forms

<sup>102</sup> Kaja Silverman, *The Subject of Semiotics* (New York, 1983), pp. 215-36; Laura Mulvey, *Visual and Other Pleasures* (Bloomington, 1989), pp. 14-29; E. Ann Kaplan, *Looking for the Other: Feminism, Film and the Imperial Gaze* (New York, 1997).

<sup>103</sup> Rey Chow, 'Violence in the Other Country: China as Crisis, Spectacle and Woman' in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres (eds.), *Third World Women and the Politics of Feminism* (Bloomington, 1991), pp. 81-100.

<sup>104</sup> *Ibid.*, p. 84.

of entertainment and spiritual enrichment to which Chow directs our attention. It is easy to forget that television news is part of a highly profitable entertainment industry, and that 'entertaining' the audiences of that industry is at least one of the functions that the suffering Third World fulfils. In addition, we are shown nameless starving, weeping, mourning strangers as part of a narrative in which we are spiritually enriched by the knowledge of our superiority and capacity to rescue and redeem these others. In the context of US reporting on the Tiananmen massacre, Chow points out that we should not take for granted the image of a US journalist 'standing on the street in Beijing, speaking a language which is not Chinese, condemning the Chinese government'.<sup>105</sup> She argues that we need to question the conditions that make such a fantastic spectacle appear normal. The 'freedom' that makes it possible for such journalists to produce knowledge about the 'non-West' is 'not a basic existential condition to which all are entitled (though that is the claim that is made) but a network of demands, negotiations, and coercions that are themselves bound by historical determinants constructed on slaughter and bloodshed'.<sup>106</sup>

Both Berger and Chow are arguing that our response to the kinds of images of suffering in the 'Third World' that give meaning to military intervention must be to think about the conditions that make those images possible, the relationship of that to imperialism and the history of the presence of the 'West' in those places. We take for granted, as Chow says, that there will be a person in Kosovo or East Timor speaking English, an observer, providing images of monstrosities for us to consume at home over dinner. We do not think about the violent history that creates the conditions that produce the 'Third World' as spectacle. And we therefore do not start to think about the political effect of that production of the Third World as spectacle.

A focus on those images of the West and the non-West, or the international and the local, is important in part because of the links that such a focus suggests with cultures of imperialism. Postcolonial theorists have argued that imperialism was made possible in part through narrative.<sup>107</sup> Stories about civilising missions were used to announce, argue, and promote the cultural superiority of colonising states, to justify democratising and civilising invasions by colonial powers and to

<sup>105</sup> *Ibid.*, p. 85.      <sup>106</sup> *Ibid.* (Emphasis in original).

<sup>107</sup> Said, *Culture*, p. xiii (arguing that 'the power to narrate, or to block other narratives from forming and emerging, is very important to culture and imperialism, and constitutes one of the main connections between them'). See further the discussion in Chapter 5 below.