Reading
Humanitarian Intervention

Human Rights and the Use of Force in
International Law

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almost total but not quite').[144] The use of these stereotypes gives access to a heroic identity premised on the recognition of difference and the simultaneous disavowal of that difference.

The political point generated by Bhabha's analysis is his argument that the stereotype does *not* offer '*at any one time*, a *secure* point of identification'.[145] Bhabha suggests instead that 'the stereotype is a complex, ambivalent, contradictory mode of representation, as anxious as it is assertive'.[146] The stereotype must be endlessly rehearsed and invited into consciousness so that the unstable colonial subject can be secured – 'the *same old* stories . . . *must* be told (compulsively) again and afresh, and are differently gratifying and terrifying each time'.[147] As we have seen, this is precisely the way in which humanitarian narratives operate. Each new situation in which the international community intervenes is described according to the same old stories, which are nonetheless 'differently gratifying and terrifying each time'.

Bhabha's reading of the productivity of colonial stereotype reveals 'the boundaries of colonial discourse and . . . enables a transgression of these limits from the space of that otherness'.[148] The human rights victim memorialises the splitting at the heart of colonial subjectivity, and thus can bring to consciousness the desire that is embodied in the imaginary world of colonial societies. As Bhabha suggests:

The stereotype is at once a substitute and a shadow. By acceding to the wildest fantasies (in the popular sense) of the colonizer, the stereotyped Other reveals something of the 'fantasy' (as desire, defence) of that position of mastery . . . it is in all cases a desire to return to the fullness of the mother, a desire for an unbroken and undifferentiated line of vision and origin.[149]

The fetish refers back 'through displacements of the signifier, to vulnerable or highly charged areas in the social fantasy that produced it'.[150] Because the fetish not only disavows the traumatic sight of the mother's body, but also commemorates or mourns that thing which is thought to be missing, Laura Mulvey stresses that 'a fetish still stays in touch with its original traumatic real and retains a potential access to its own historical story'.[151] As a result, if we read the glossy salvation story of humanitarian intervention as a colonial discourse, and the human rights victim as a 'fetish', it is this potential access to the original trauma that

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[144] *Ibid*., p. 90–1.   [145] *Ibid*., p. 69 (emphasis in original).   [146] *Ibid*., p. 70.
[147] *Ibid*., p. 77 (emphasis in original).   [148] *Ibid*., p. 67.   [149] *Ibid*., p. 82.
[150] Laura Mulvey, *Fetishism and Curiosity* (London, 1996), p. 10.   [151] *Ibid*., p. 5.

is the most productive element of that narrative. Humanitarian intervention, as it is currently performed, serves to recuperate that potentially subversive recognition of difference. Yet the fact that this intervention must constantly be repeated suggests that the position of mastery of the international community is always contingent and unstable. In the next chapter, I want to suggest that the dream of humanitarian intervention holds out the promise of mourning this loss of unity, this separation from the Real, in a manner far less deadly than that offered by declaring a war on terror or other paranoid fantasies.

6   Dreams of human rights

To conclude a book about humanitarian intervention in the aftermath of the September 11, 2001 attacks on the United States feels a little like taking 'still the last train after the last train – and yet [being] late to an end of history'.[1] This sense of the end of an epoch was certainly the mood in which human rights warrior Michael Ignatieff wrote his widely circulated article entitled 'Is the Human Rights Era Ending?', published in the *New York Times* in February 2002.[2] For Ignatieff, 'the question after September 11 is whether the era of human rights has come and gone'.[3] In particular, Ignatieff fears that we are witnessing the end of 'the era of humanitarian intervention in Bosnia, Kosovo and East Timor'.[4] The attacks on the towers of the World Trade Centre and the Pentagon in the USA are treated by many other international lawyers as marking a turning point, the end of a humane and secure era in world affairs. In the words of Michael Reisman, 'with the end of the Cold War, many in America and throughout the industrialized world came to take national security for granted'.[5] For Reisman, the acts of September 11 'shattered the world view and, quite possibly, the emotional foundation on which that sense of security rested'.[6] They were an attack on 'all peoples who value freedom and human rights' and as a result we have all been 'forced into a war of self-defense'.[7] Similarly, Thomas Franck has argued that the

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[1] Jacques Derrida, *Specters of Marx: the State of the Debt, the Work of Mourning, and the New International* (New York, 1992), p. 15.

[2] Michael Ignatieff, 'Is the Human Rights Era Ending?', *The New York Times*, 5 February 2002.

[3] *Ibid.*   [4] *Ibid.*

[5] W. Michael Reisman, 'In Defense of World Public Order' (2001) 95 *American Journal of International Law* 833.

[6] *Ibid.*   [7] *Ibid.*

use of force by the USA against Afghanistan was lawful as an act of self-defense, or 'defensive self-preservation'.[8]

Costas Douzinas argues that, in a quite different sense, the era of humanitarian intervention itself meant the end of human rights.[9] For Douzinas, a significant shift occurs when rights 'are turned from a discourse of rebellion and dissent into that of state legitimacy'.[10] While on the one hand the appeal to human rights is used to undermine the legitimacy of 'rogue', 'failed' or target states in the context of intervention, that appeal also serves at the same time to authorise or legitimise the actions of those powerful states who collectively act as the 'international community'. Thus the revolutionary potential of human rights is radically circumscribed when rights become an apology for state violence.

This chapter uses these disparate notions of the end of human rights as a point of departure, to reflect upon what, if anything, has been lost in the move from 'the era of humanitarian intervention' to an international relations dominated by a war on terror. I explore the possibilities offered by humanitarian intervention for achieving justice, possibilities that are foreclosed by an international relations ordered around the need to fight all-powerful enemies. While the narrative of humanitarian intervention attempts to secure the boundaries between the international community and its others, the figure of the human rights victim works to unsettle that imaginative geography. Intervention in the name of humanitarianism prohibits this figure from becoming the refugee, a claimant for justice and sanctuary in the name of humanity. Yet as we will see, this suffering figure haunts the texts of international lawyers – the demands made by her of the international community in the name of justice cannot be contained by the official narratives of intervention.

The end of the human rights era?

To what extent did the adoption of humanitarian intervention as a basis for justifying military action serve human rights ends? Certainly it is difficult to read detailed accounts of the slaughter and atrocities committed in Rwanda in 1994, Bosnia and Herzegovina during 1995, or East Timor in 1999, without being moved to support the use of force to protect human rights. In the language of the UN Secretary-General,

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[8] Thomas M. Franck, 'Terrorism and the Right of Self-Defense' (2001) 95 *American Journal of International Law* 839.

[9] Costas Douzinas, *The End of Human Rights* (Oxford, 2000), pp. 129–41.

[10] *Ibid*., p. 7.

'a deliberate and systematic attempt to terrorize, expel or murder an entire people must be met decisively with all necessary means, and with the political will to carry the policy through to its logical conclusion'.[11] Or as the Report of the Independent Inquiry into the Actions of the UN during the 1994 Genocide in Rwanda states, 'there can be no neutrality in the face of genocide'.[12] The use of force in response to violence and intimidation in places such as East Timor is in part an example of humanitarian impulses driving foreign policy and the actions of international organisations. Yet attention to the cultural and material effects of humanitarian intervention and post-intervention reconstruction suggests that we have not lost a human rights age with the emergence of a war on terror. As I have argued throughout this book, the performance of humanitarian intervention during the 1990s constrained any radical potential of human rights as the ends of intervention.

For instance, humanitarian intervention and post-conflict reconstruction has enabled continued material exploitation, and entrenched economic liberalisation. As I argued in Chapter 3, the narrative of intervention masks the involvement of international economic institutions and development agencies in shaping those societies that later erupt into humanitarian and security crises. The failure to explore the relationship between economic globalisation and insecurity means that the international community appears purely in the role of saviour and humanitarian when it intervenes militarily. Similarly, Chapter 4 showed that the post-intervention administration and reconstruction of territories by the international community in turn entrenches an unjust international economic order and a neocolonial mode of governance. Reading the texts of humanitarian intervention alongside those of post-conflict reconstruction reveals the dream of a world of sameness or, to adopt the language of free trade, harmonisation. In the 'Single Economic Space' of this imagined future, any national or indigenous differences, or technical barriers to trade, will be swept away by an all-powerful international community in its relentless march towards standardised regimes of privatisation, investment deregulation, intellectual property

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[11] *Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: the Fall of Srebrenica*, UN Doc A/54/549, 15 November 1999, para 502 (hereinafter Srebrenica report), http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/ 4e8fe0c73ec7e4cc80256839003eeb04?Open document (accessed 24 July 2002).

[12] *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda,* UN Doc S/1999/1257, 15 December 1999 (hereinafter Independent Inquiry Report), http://www.un.org/News/ossg/rwanda_report.htm (accessed 2 May 2002), p. 33.

protection, and limited health and safety regulations.[13] As with classical colonialism, the threatening underside of this dream of harmonisation is that, in its name, local or indigenous cultures are destroyed, resources are exploited and resistance is quashed. Thus while humanitarian intervention seems to promise a world in which self-determination and human rights will be privileged over national interests or imperial ambitions, we nonetheless see exploitation, domination, invasion and governance legitimised in its wake.

The narrating of humanitarian intervention has had conservative effects in another sense. This narrative involves the deployment of colonial stereotypes, according to which the native other is represented as in need of reform, protection, education and governance. The human rights victim is put on display for those who identify with the international community. As Rey Chow comments, '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".'[14] The narrative of humanitarian intervention relies upon colonial stereotypes of suffering natives or human rights victims as the pivot for establishing the identity of the heroic international community.[15] It exploits these victims as a resource with which to produce narratives about valuable selves and unified communities (national and international), and to make the relations underpinning the international order appear just and natural. The plot of these narratives masks the role played by international organisational priorities in contributing to humanitarian crises, the power relations that intervention effects and the exploitation enabled through the new regimes put in place post-intervention.

As I argued in Chapter 3, the performance of humanitarian intervention also operates to draw boundaries between 'us' and 'them' as a means of distancing the other, and locating suffering and violence elsewhere.

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[13] The phrase 'Single Economic Space' has been adopted by officials of the Office of the High Representative of the international community in Bosnia-Herzegovina to describe their vision for the future of the country. See 'Speech by the High Representative, Paddy Ashdown at a workshop on the Single Economic Space', 14 June 2002, http://www.ohr.int/ohr-dept/presso/presssp/default.asp?content_id=8931 (accessed 30 July 2002); 'Statement by PDHR Don Nays on the Occasion of OHR Business Forum', 24 June 2002, http://www.ohr.int/ohr-dept/presso/presssp/default.asp?content_id=9145 (accessed 30 July 2002). See further the discussion in Chapter 4 above.

[14] 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, p. 81.

[15] See further the detailed argument in Chapter 5 above.

For example, Renata Salecl comments that Western media reporting of the war in Bosnia and Herzegovina focused on the image of women dressed in traditional, religious dress and wearing headscarves. Salecl comments that these photographs were often staged, and that women in traditional dress are not often seen on the streets of Bosnia. The function of such images was to re-establish racist cultural boundaries between 'us' (the civilised observers) and 'them' (the fighting savages).[16] For Salecl:

In this attitude of the observer, one encounters a desperate attempt to artificially create cultural differences: as if the most horrible thing for the observer is the recognition that the 'other' (the Muslim, for example) is too similar. It is similarity not difference that produces the need to distance oneself from the other.[17]

This attempt to draw distinctions between us and them works to erase the violence of practices authorised by the international community, such as aerial bombardment, economic sanctions or forced economic restructuring. In the texts of humanitarian intervention, the heroic subject is produced according to the logic of a narrative which legalises (or at least legitimises) the violence carried out in the name of the international community. This is not to condone the violent acts of those involved in committing rapes, murders, mutilations, torture and destruction in places subject to humanitarian intervention. Yet one of the effects of the ways in which the plot of intervention narratives develops is to condemn that violence, while legitimising or ignoring the violence conducted by the international community in the name of human rights.

The military strategies for conducting humanitarian warfare in the post-Cold War era contribute to this erasure of the violence of the international community. For instance, the refusal to provide official 'body counts' of those killed or injured during humanitarian intervention is a striking feature of many of those military actions.[18] As Margot Norris has argued, the censorship of activities of the Pentagon during the Gulf War (treated by at least some commentators as an early example of humanitarian intervention) made it impossible to specify the number of

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[16] Renata Salecl, *The Spoils of Freedom: Psychoanalysis and Feminism after the Fall of Socialism* (London, 1994), p. 135.

[17] *Ibid*.

[18] Margot Norris, 'Military Censorship and the Body Count in the Persian Gulf War' (1991) *Cultural Critique* 223.

Iraqis killed in that conflict.[19] Instead, the Pentagon provided extremely detailed information about attacks on 'hard' targets such as weapons, machines and infrastructure, while refusing to provide or verify information about the damage done to Iraqi soldiers and civilians.[20] Norris argues that it was the desire to censor information about the wounded and dead bodies of Iraqis – 'the control of necrology' – that was behind the extraordinary degree of influence exercised by the Pentagon over media attempts to report the war.[21] Philip Knightley has argued that a similar degree of control by NATO commanders over the reporting of the military intervention in Kosovo meant that war correspondents effectively became part of the military propaganda machine in that conflict.[22] This was further enabled by the nature of the NATO intervention – since it was conducted 'entirely from the air by means of a high-altitude bombing campaign...no-one except the victims really knew what was happening on the ground'.[23] Knightley describes correspondents 'either gathering at NATO headquarters or clustered along the borders of those countries surrounding Kosovo [trying] to peer over'.[24] This censorship contributes to a form of 'technological utopianism', based on 'an illusion that a ludic substitute for war has already been discovered, and that technology has ushered in a new Enlightenment in which a set of rational and logical strategies designed to disarm the enemy...can be implemented with weapons that greatly minimize, if not totally eliminate, human killing'.[25] Humanitarian intervention conducted as 'virtual war' may contribute to this belief that our violence is clean and surgical, while their violence is cruel and destructive.[26] Indeed, our 'targets' are converted into something other than flesh and blood as part of the technologies that enable warfare to be conducted so apparently safely and efficiently. As Michael P. Clark suggests:

More traditional forms of censorship that simply suppressed disturbing images of the battlefield have been rendered obsolete by the military use of video images of targets that convert the object into information as a condition of the violence directed toward it. Sighting the target and censoring its reality become one with the technology that transmits its image...This technology, used so extensively

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[19] *Ibid*., 224.   [20] *Ibid*.

[21] See the discussion of complaints by war correspondents in Norris, 'Military Censorship', 228–30.

[22] Philip Knightley, 'Fighting Dirty', *Guardian Weekly*, 30 March–5 April 2000, p. 23.

[23] *Ibid*.   [24] *Ibid*.   [25] Norris, 'Military Censorship', 231.

[26] On the NATO intervention in Kosovo as 'virtual war', see Michael Ignatieff, *Virtual War: Kosovo and beyond* (London, 2001).

during the Gulf War (and now in the bombing of Yugoslavia), allows the viewer at home to participate in the sighting and elimination of the enemy target without conveying even the mediated sense of presence and context experienced by the soldiers viewing the same image in their cockpits and tanks.[27]

This sense that our military victories in the name of human rights are bloodless is reproduced through the partial nature of the accountability mechanisms established as part of the post-intervention environment. The logic of war crimes trials is that they establish a respect for authorised forms of violence, while questioning those forms of violence that are outlawed by the international community.[28] This logic has meant that the practices of warfare that are used by militarily powerful states, such as aerial bombardment, are not outlawed by the laws of war.[29] Bombing campaigns must instead be conducted according to norms of international humanitarian law. These norms of air war merely require attackers to direct their actions against broadly defined 'military objectives' rather than civilian objects, and to ensure that the risk of endangering civilians and civilian objects is not disproportionate to the military advantage to be gained by the attack.[30] The utilitarian language of this balancing test reveals that the lives of civilians can be sacrificed if the value of their existence is weighed against the importance of 'military objectives' and found wanting. The nature of this calculation is even more striking in cases of humanitarian intervention, where protection of these 'civilian objects' is the declared purpose of the military

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[27] Michael P. Clark, 'The Work of War after the Age of Mechanical Reproduction' in Michael Bibby, *The Vietnam War and Postmodernity* (Amherst, 1999), pp. 17–47 at p. 28.

[28] Simon Chesterman, 'Never Again . . . and Again: Law, Order, and the Gender of War Crimes in Bosnia and beyond' (1997) 22 *Yale Journal of International Law* 299. This quarantining of 'our' actions from reflection is undergoing a challenge as a result of the move towards using humanitarian justifications as a basis for intervention. While major human rights NGOs such as Amnesty International and Human Rights Watch have not been willing to question the use of human rights rhetoric in justifications for intervention, both Amnesty International and Human Rights Watch have prepared detailed reports documenting the breaches of international humanitarian law by NATO during its bombing campaign. Amnesty International, '*Collateral Damage*' or *Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force* (2000); Human Rights Watch, *Civilian Deaths in the NATO Air Campaign* (2000).

[29] For a history of the colonial fantasy that 'punishment from the air', 'bombing the savages' or 'control without occupation' has a moral purpose, see Sven Lindqvist, *A History of Bombing* (London, 2001). The book is constructed as a 'labyrinth', with twenty-two entrances to 'ways of reading' the book. See particularly the 'ways of reading' entitled 'Bombing the Savages' and 'The Bomb on Trial'.

[30] See further W. J. Fenrick, 'Targeting and Proportionality during the NATO Bombing Campaign against Yugoslavia' (2001) 12 *European Journal of International Law* 489.

action being undertaken.[31] Yet it has proved difficult for victims alleging violations of even these limited norms to bring those engaged in humanitarian intervention before war crimes tribunals or human rights courts.

To take one example, several human rights NGOs, legal teams and international bodies have criticised the conduct of the NATO bombing campaign, Operation Allied Force, carried out against the Federal Republic of Yugoslavia from 24 March to 10 June 1999. During that seventy-eight-day campaign, NATO dropped more than 25,000 bombs, killing an estimated 500 Yugoslav civilians. These deaths resulted partly from the use of cluster bombs, attacks on targets in densely populated urban areas, attacks on mobile targets, attacks on civilian targets and the practice of dropping bombs from extremely high altitudes to avoid pilot deaths.[32] Attempts to bring the issue of whether this conduct violated international humanitarian law before international judicial fora have been remarkably unsuccessful. The Office of the Prosecutor (OTP) at the International Criminal Tribunal for the Former Yugoslavia (ICTY) received 'numerous requests that she investigate allegations that senior political and military figures from NATO countries committed serious violations of international humanitarian law' during the bombing campaign.[33] On 2 June 2000, the Chief Prosecutor announced to the Security Council her decision not to initiate an investigation of the claims that NATO had engaged in serious violations of international humanitarian law in the former Yugoslavia, based upon the report of a committee she had established to investigate the matter.[34] Commentators have criticised this decision as one designed to 'legitimate NATO's war on Yugoslavia', and have unfavourably compared the reasoning in the OTP report with the careful case made substantiating the allegations by NGOs such as Amnesty International and Human Rights Watch.[35]

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[31] Michael Bothe, 'The Protection of the Civilian Population and NATO Bombing on Yugoslavia: Comments on a Report to the Prosecutor of the ICTY' (2001) 12 *European Journal of International Law* 531 at 535.

[32] Human Rights Watch, *Civilian Deaths*.

[33] Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia, para 1, available at http://www.un.org/icty/pressreal/nato061300.htm (accessed 20 July 2002).

[34] *Ibid*., para 91 (recommendation by the Committee 'that no investigation be commenced by the OTP in relation to the NATO bombing campaign or incidents occurring during the campaign').

[35] Michael Mandel, 'Politics and Human Rights in International Criminal Law: our Case against NATO and the Lessons to Be Learned from It' (2001) 25 *Fordham International*

Similarly, the families of victims of the controversial NATO bombing of the television station Radio Televizije Srbije (RTS) in Belgrade, in which sixteen civilians were killed and sixteen more seriously injured, attempted to have that matter heard before the European Court of Human Rights. Their application was brought against the seventeen member states of NATO which are also Contracting States to the European Convention on Human Rights (ECHR).[36] It argued that the bombing of the RTS headquarters violated Articles 2 (right to life), 10 (freedom of expression) and 13 (right to an effective remedy) of the ECHR.[37] The Grand Chamber of the Court declared the case inadmissible, on the grounds that the impugned act did not take place within the territorial jurisdiction of the respondent states as required under Article 1. The Court distinguished this case from situations where a respondent State had invaded and occupied a territory, had effective control over its inhabitants and exercised all or some of the public powers normally exercised by the government.[38] It held that the Convention operates: 'in the legal space of the Contracting States. The FRY clearly does not fall within this legal space. The Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States.'[39]

In this sense, those Contracting States that carry out their military campaigns through aerial bombardment are less accountable for human rights violations than are those Contracting States who have to rely upon military occupation to gain control over a territory and its inhabitants. This poses a serious limitation on the capacity of the European human rights system to constrain the abuses perpetrated by European states outside the territories over which those states exercise what the law recognises as 'effective control'. As the historian of bombing Sven Lindqvist has shown, European powers long ago realised that bombing allowed them to exercise 'control without occupation' to pacify 'restless

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Law Journal 95 at 97. See also Andreas Laursen, 'NATO, the War over Kosovo, and the ICTY Investigation' (2002) 17 *American University International Law Review* 765. For the Human Rights Watch and Amnesty Reports, see above n. 28.

[36] *Bankovic, Stojanovic, Stoimenovski, Joksimovic and Sukovic* v. *Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey and the United Kingdom*, Application no. 52207/99, Admissibility Decision, 12 December 2001, available at http://hudoc.echr.coe.int/ hudoc/ViewRoot.asp?Item=0&Action=Html&X=806064118&Notice= 0&Noticemode=&RelatedMode=0 (accessed 20 July 2002).

[37] *European Convention for the Protection of Human Rights and Fundamental Freedoms,* opened for signature 4 November 1950, Rome, 213 UNTS 222 (entered into force 3 September 1953) ('ECHR').

[38] *Ibid*., para 71.   [39] *Ibid*., para 80.

natives' – for instance in the French and Spanish bombing of their respective parts of Morocco in 1912, and in Britain's bombing of India's northwest in 1915, Egypt in 1916, Afghanistan and Somalia in 1919, Trans-Jordan in 1920, and Iraq in 1920.[40] It is only those seeking to resist this form of imperial control who are not yet able to translate into international law the realisation that 'the point of political action is not to seize space, but to transform it'.[41]

In addition, the gathering of evidence for war crimes trials in the aftermath of humanitarian intervention is a performance that generates meanings and allocates guilt and innocence. The reproduction on television and in photographs of images of the mass exhumation of bodies from unmarked graves in Rwanda, the former Yugoslavia and East Timor is accompanied by texts that secure the meanings to be made of these bodies. The scene of recovery of buried bodies is always one of European experts in front of a freshly dug pit. It is often followed by an image of unnamed people in mourning, sometimes carrying photographs of their relatives or friends. Just as the bodies of dead soldiers operated to secure national communities in Europe and its colonies following World War 1, the bodies of those civilians slaughtered by our enemies operate to secure the international community in the era of peace-keeping and military intervention.[42] Those mass graves are one site of the constitution of the international community. The serial, regular, unidentified bodies recovered from those graves are made to represent a failure of law and an absence of rights.

This pattern can be traced back to the founding texts of international law. Internationalists relate the story of the birth of international law in Western Europe as a triumph of reason and order over barbarism and religious intolerance.[43] In particular, this ordering effect of humanitarian intervention derives from the use of the language of human rights to justify the use of force. The natural law tradition from which human rights derives has long been used as a means of resolving the central problem that defines modern international law – how are 'we' (Europeans/the

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[40] Lindqvist, *A History*, sections 74, pp. 100–2.

[41] Steve Pile, 'Freud, Dreams and Imaginative Geographies' in Anthony Elliott (ed.), *Freud 2000* (Melbourne, 1998), pp. 204–34 at p. 207.

[42] On the 'commemorative fate of the obscure masses of the nation's war dead' in Britain and France following World War 1, see Benedict Anderson, *The Spectre of Comparisons: Nationalism, Southeast Asia and the World* (London, 1998), pp. 51–7.

[43] 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), p. 137 at pp. 138–9.

West/the international community) to recognise difference while still maintaining legal authority to rule a colony and acquire land?[44]

As Antony Anghie has shown, the natural law of jurists such as the Spanish theologian Francisco de Vitoria proved useful in establishing an overarching legal system 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.[45] Vitoria portrays the Spaniards and the peoples of the Americas (referred to by Vitoria as Indians) as the same, to the extent that both are capable of reason and thus of discerning the universal, secular natural law which Vitoria posits as founding relations between sovereigns. In this regime, 'natural law' is no longer treated as deriving from divine law, but rather as representing a universal system of law that is accessible to any peoples capable of reason. For Vitoria, Spaniards and Indians are different to the extent that Indians do not comply with the universal norms of the system, norms which now require the Indians to treat the Spanish invaders as 'ambassadors of the Christian peoples' and thus inviolable. The Indians engage in illicit violence when they repel the friendly advances and proselytising of these Christian ambassadors, so that 'any Indian resistance to Spanish presence is a violation of the law of nations'.[46] The Spanish are justified in waging perpetual war against the Indians in response to these illicit acts of violence. Thus Anghie comments that 'violence originates within Vitoria's system through the deviance of the Indian'.[47] The international legal order founded on the work of Vitoria is thus premised upon respect for the lawful forms of violence exercised by European ambassadors against natives.

The patterns that Anghie has identified in Vitoria's writing are employed in current legal and political texts about humanitarian intervention 'in the supposedly post-imperial world'.[48] In those texts, as in the older texts of natural law, lawful forms of violence originate through the 'deviance' of those against whom the international community decides to use force, today in the name of human rights. At the heart of the establishment of international law was, and is, the legitimacy of the violence exercised as sacrifice or punishment of those constituted as law's savage, barbaric, others. In this sense, the international community shares something with those national or 'tribal' communities against which it constitutes itself – the wounding and killing of

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[44] Antony Anghie, 'Francisco de Vitoria and the Colonial Origins of International Law' (1996) 5 *Social and Legal Studies* 321 at 322.
[45] *Ibid.*   [46] *Ibid.*, 328.   [47] *Ibid.*   [48] *Ibid.*, 332.

its others as an organic and necessary part of its foundation. As Elaine Scarry has argued in her extraordinary meditation on the meaning of war, this is an essential part of war's telos.[49] This helps to explain the vehemence with which those who identify with or as the international community come to dismiss the leaders of 'rogue' or 'failed' national or tribal communities as less than human. That characterisation is necessary precisely because these communities in fact share that which the international community rejects as illegitimate: an originary violence deployed against those who are marked out on the grounds of race, ethnicity and gender. As David Campbell argues, 'the intensification of so-called ethnic and nationalist conflict in places such as Bosnia, while clearly horrific, is an exacerbation rather than an aberration of the logic behind the constitution of political community'.[50] The narrative of humanitarian intervention authorises and thus erases the violent foundations of the international community. The absence of representations of the wounded or dead bodies of our enemies, particularly when juxtaposed against detailed reporting of the bodies wounded by more 'primitive' acts of vicious ethnic cleansing, reassures us of the civility of our society and the barbarity of those others upon whom we have inflicted violence.

Finally, the perception that the international community is present in conflict situations as a protector of civilians can itself pose a threat to human rights if it is relied upon. An example of the damage caused to those who put their faith in the international community as a humanitarian protector when it fails to perform that role can be seen in the case of the Rwandan genocide. As I discussed in Chapter 3, the UN Assistance Mission in Rwanda (UNAMIR) was in place when the genocide began. The *génocidaires* began their mission by first killing ten Belgian peace-keepers guarding the Prime Minister. As they had anticipated, the response from Belgium, and ultimately the UN, was to order the withdrawal of most of the peace-keepers then in Rwanda. Even before this withdrawal began, the first priority for foreign governments, the UN and foreign companies once the genocide in that country began was to evacuate foreign workers, putting the lives of Rwandans at risk in the process. While in some cases members of UNAMIR did provide protection to civilians during massacres, there are also infamous instances

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[49] Elaine Scarry, *The Body in Pain: the Making and Unmaking of the World* (New York, 1985).

[50] David Campbell, 'Violence, Justice, and Identity in the Bosnian Conflict' in Jenny Edkins, Nalini Persram and Véronique Pin-Fat (eds.), *Sovereignty and Subjectivity* (Boulder, 1999), pp. 21–37 at p. 23.

in which they failed to do so. Perhaps the most striking example of this is the incident at the Ecole Technique Officielle at Kicukiro, where UNAMIR troops were stationed.[51] During the early days of the genocide about 2,000 Rwandans had gathered there under the protection of about ninety Belgian soldiers. About a fifth of those seeking protection were children, and many of the Rwandans were suffering machete wounds. The school was surrounded by Rwandan militia and government forces. On 11 April, UNAMIR troops 'were ordered to regroup at the airport to aid the evacuation of European civilians' and obeyed.[52] In so doing, they knowingly abandoned the thousands of refugees who were left behind 'at the mercy of the waiting forces of the Interahamwe'.[53] Samantha Power notes:

> Knowing they were trapped, several Rwandans pursued the jeeps, shouting, 'Do not abandon us!' The UN soldiers shooed them away from their vehicles and fired warning shots over their heads. When the peacekeepers had gone out through one gate, Hutu militiamen entered through another, firing machine guns and throwing grenades. Most of the 2,000 gathered were killed.[54]

As the Independent Inquiry Report recognises, this withdrawal 'caused pain to the Rwandan people' and damaged trust in the UN.[55] It was part of a broader pattern in which the US government and many European governments made evacuation of their nationals a priority. Perhaps most strikingly, France, Belgium and Italy sent soldiers to secure Kigali Airport just long enough to allow their personnel to evacuate by air. Those troops were withdrawn immediately after the evacuation was complete. As General Romeo Dallaire, the Canadian commander of UNAMIR, notes, 'Mass slaughter was happening, and suddenly there in Kigali we had the forces that we needed to contain it, and maybe even to stop it . . . Yet they picked up their people and walked away.'[56] Indeed, the UN Department of Peacekeeping Operations also ordered Dallaire to make evacuation of foreigners his priority.[57] The overall effect, as Power notes, was that 'in the three days during which some 4,000 foreigners were evacuated, about 20,000 Rwandans were killed'.[58]

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[51] Independent Inquiry Report, p. 29.
[52] Samantha Power, 'Bystanders to Genocide: Why the United States Let the Rwandan Tragedy Happen', *The Atlantic Online*, September 2001, http://www.theatlantic.com/issues/2001/09/power.htm, accessed 4 April 2002, 10.
[53] Independent Inquiry Report, p. 29.   [54] Power, 'Bystanders', 10.
[55] Independent Inquiry Report, p. 29.   [56] Power, 'Bystanders', 10.   [57] *Ibid*., 9.
[58] *Ibid*., 10.