



University of Dundee

Winning Humanitarian Interventions?

Mills, Kurt

Published in:
Moral Victories

DOI:
[10.1093/oso/9780198801825.003.0010](https://doi.org/10.1093/oso/9780198801825.003.0010)

Publication date:
2017

Document Version
Peer reviewed version

[Link to publication in Discovery Research Portal](#)

Citation for published version (APA):

Mills, K. (2017). Winning Humanitarian Interventions? Problematizing Victory and *Jus Post bellum* in International Action to Stop Mass Atrocities. In A. Hom, C. O'Driscoll, & K. Mills (Eds.), *Moral Victories: The Ethics of Winning Wars* (pp. 156-174). Oxford University Press.
<https://doi.org/10.1093/oso/9780198801825.003.0010>

General rights

Copyright and moral rights for the publications made accessible in Discovery Research Portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

CHAPTER 10

Winning humanitarian interventions? Problematizing victory and *jus post bellum* in international action to stop mass atrocities

Kurt Mills

Introduction

If one is engaging in the use of military force in a situation which defies the hallmarks of war as traditionally conceived—clear enemies, which are usually state-based or state-like, and a clear understanding of what an end to the war means (i.e. what constitutes victory for one side or another)—how do we know when it is over or how to evaluate when someone has won? What counts as victory? What should happen when the application of force ends? These questions are particularly relevant in a particular type of the use of force: humanitarian intervention, or the use of military force to protect people at risk of significant and widespread human rights violations. Humanitarian intervention is frequently situated within the just war tradition as a potentially permissible instance of war to protect people (Walzer, 1977: 101–108; Hehir, 2013), although, as will be made clear, this is a misapplication of the concept of war.

Taking this particular instance of the application of military force to protect people, which I assert is not 'war' in the traditional sense, I will address three questions: why is this type of the use of force fundamentally different from war as traditionally conceived?; how does this understanding of the use of force impact understandings of victory?; and what are the responsibilities of those who engage in such activities—and others—once the conflict ends? The first question relates to how the legitimacy of the use of force is constructed (as Campbell and Steele, cross-ref to 'The Probability of Success in Just War Theory', discuss in this volume, 'social narratives about war and its purposes' are changing), as well as the realities of conflict involving peacekeepers and others legitimated by the UN Security Council to protect people. The second question problematizes the idea of victory as a practical and normative ideal (as opposed to Patterson in this volume, cross-ref to 'War Aims, Jus Ad Bellum, and Victory', who argues for the imperative of victory). The third addresses the so-called *jus post bellum*: what should be done when a conflict ends and who should do it. This might include physical and institutional rebuilding as well as transitional justice. The argument will draw on examples from contemporary conflict, including in particular the Democratic Republic of the Congo.

Problematizing war and victory when protecting civilians

The concept of just war, which seeks to determine when it is permissible for one state to wage war upon another state, does not necessarily correspond to the dynamics of humanitarian intervention and other protection of civilian situations, or much contemporary violent conflict more generally. For humanitarian intervention is not a state or group of states waging *war* against another state. Rather, it is potentially a state, group of states, or an international organization like the United Nations or African Union (AU) intervening—using force—to prevent large numbers of people being killed. It is not *war* in the traditional sense, although there may be war-like elements. War is about expanding territory, gaining access to resources, defending oneself from attack, or punishing a state. The situation I am talking about is more akin to police action (Mills, 1998: 158), where the entity using force is acting on behalf of the international community to enforce international norms; in this case, norms against genocide and other atrocities as found in the Genocide Convention, the Geneva Conventions, and other principles of international law. Indeed, this is how it has been conceptualized in evolving practice through the UN, AU, and elsewhere. The 2005 World Summit Outcome document (UN General Assembly, 2005), through which the UN established the principle of the responsibility to protect (R2P), asserts that states have a responsibility to protect people within the state from mass atrocity crimes, and that when they fail, the international community has a responsibility to act, including by military means, to protect people within those states. It does not confer any right to wage war against the state; rather, it ties action directly to stopping international crimes. And any state or group of states authorized by the UN to take action to protect people from these crimes would be acting on behalf of the UN in order to implement internationally recognized human rights norms. The AU Constitutive Act gives the AU the right to intervene in situations of war crimes, crimes against humanity, and genocide. Both the UN and AU specifically forbid the use of force—i.e. war—against other states, but they give to themselves the right to use force to uphold specific international norms. That is, they have the right to act as police to stop certain international crimes. Note that this is an argument over conceptualising the actions described above, and thus would fall within *jus ad bellum* considerations, as opposed to Chris Brown’s (cross-ref whole article) critique of the revisionist constabulary model of the conduct of war which focuses on *jus in bello* considerations and the moral equivalency of combatants. Further, related to revisionist just war theorists (see Brown [cross-ref to Brown whole chapter]), this conceptualisation of such instances of the use of force as police upholding the law is firmly grounded in the real world and the realities of contemporary conflict.

Such activities used to be called humanitarian intervention, which may be defined as ‘the threat or use of force across state borders by a state (or a group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory the force is applied’ (Holzgrefe, 2003). Yet, as international norms and practices

have developed over the last two decades, the concept of humanitarian intervention developed into the aforementioned R2P. Whereas humanitarian intervention was seen as potentially a transgression of one global norm (sovereignty or undermining territorial integrity) in support of another (human rights), such interventions are now conceived of as an upholding of sovereignty since protection of human rights is now conceived of as a component of sovereignty (Evans, 2008).

R2P was invoked in the intervention of Libya in 2011, resulting in a situation that looked like war, but was conceived of as action taken by a coalition of states upholding international human rights norms on behalf of, and authorized by, the international community. It began with a focus on protection but expanded to overthrowing the Libyan government. This attracted significant criticism, but one might argue that in extreme situations such action might be the only sure way to ensure the protection of civilians. But such activities may also look like the action taken by the United Kingdom (UK), France, and the United States (US) in Northern Iraq after the first Gulf War ended in 1991 where military force (in this case airpower) was used against the wishes of the state (Iraq) to protect people (Kurds) (Akhavan, 1993). The intervention looked like a limited humanitarian intervention; people were protected while the state/government itself was not directly threatened. Yet, this situation also highlights the dangers of mission creep—using an end perceived as righteous and legitimate to engage in other goals—in this case, punishing and undermining the Iraqi regime. But, the more limited type of protection would be potentially useful in a situation such as Syria. Protection could be provided for people in a limited area without attacking the state itself and overthrowing the government. This becomes more complicated with so many different actors on the ground, with different agendas and all threatening different groups of people (Murphy, 2015). While some states have materially supported one side in the war, such actions may entrench the fighting rather than protect people. In a situation such as Syria, a safe zone would require ground troops to physically protect people, representing an escalation of commitment on the part of the intervener(s), but, again, this would not necessarily threaten the state, although the government would likely see it as a threat.

Further, some actions to protect people, which may resemble war, may have at least some consent on the part of the state. This is the case of peacekeeping, where states accept a military force on their territory to help deal with a conflict. Recent years have seen the protection of civilians at the core of peacekeeping activities (Holt et al., 2009). But such activities, while perhaps also conceptualized as police enforcement, may include very robust military activities that resemble war. This has been the case in the Democratic Republic of the Congo (DRC) in recent years, in particular with the introduction of the Force Intervention Brigade (Vogel, 2014). Yet, even though not war in the traditional sense, such activities still raise questions about what to do when the civilians have been protected and there is no more need for military force. Do the interveners or peacekeepers simply pack up and leave,

or should they be doing more to help society get back on its feet? Further, again referring to the DRC, what happens when the conflict appears never-ending, when dozens of armed groups are vying for power, and all efforts seem like a drop in the ocean (Mills, 2015)?

Indeed, the concept of ‘victory’ may be meaningless here (or at least significantly problematized, as Brunstetter [cross-ref to whole chapter] notes in this volume), certainly in its traditional understandings of vanquishing an enemy. And although Patterson’s chapter in this volume (cross-ref to ‘War Aims, Jus Ad Bellum, and Victory’) finds a concept of victory in humanitarian intervention, it is not clear exactly what this is. When the goal is to protect people or ensure that humanitarian assistance can be delivered, there is no victor and vanquished, and it is unclear what winning would look like. Furthermore, the mission may be undermined when it is framed in those terms, as the US found in Somalia when one particular warlord, Mohamed Farrah Aidid, was identified as the enemy. In this instance, the US was not tasked with fighting one or more particular ‘enemies’. Rather, it was there to ensure that humanitarian aid could be delivered. It was acting as an impartial peacekeeper. Once that impartiality ended and it started confronting identified enemies, its mission was undermined. The US was there to fill in when a UN peacekeeping mission failed. As such, from the outset the mission had no concept of victory in terms of defeating an enemy.¹

Traditional concepts of victory in armed conflict usually involve the identification of enemies over which one is victorious. Politicians and military leaders are comfortable with the idea of enemies, and frequently rely on constructions of enemies to justify their actions. Yet, when trying to protect people in a context where there are dozens of armed groups fighting the government and themselves, and people are being killed and raped by the thousands, is identifying an ‘enemy’ useful? The Congolese military identifies various groups as enemies (although this can change depending upon political expediency), but when UN peacekeepers get caught up in this dynamic, its civilian protection mission can be undermined by calling into question its impartiality and drawing it into situations antithetical to protecting civilians. The Congolese military was responsible for widespread violations of human rights, including in missions where the UN Organization Mission in the Democratic Republic of the Congo (MONUC) cooperated in pursuing particular groups. In fact, MONUC identified the Congolese army—Forces Armées de la République Démocratique du Congo (FARDC)—as being responsible for 40% of human rights violations, and had to institute guidelines for which elements of the military it would cooperate with and which it would not because it was too risky (Mills, 2015: 98–102). In this situation, who is the enemy, and of whom? Is it the armed rebel groups who the government identifies as the enemy (except when

¹ Somalia was a conflict situation which illustrated that new wars (Kaldor, 2005) and evolving situations where traditional understandings of peacekeeping are problematic—including neutrality and the non-use of aggressive force—do not fit into the category of traditional war with traditional enemies and goals and pathways to ‘victory.’

periodically the government tries to co-opt them into the government military), and who are responsible for much of the human misery seen in eastern DRC over the last 20 years? Are they also the enemy of MONUC? Can the UN have enemies? Is the Force Intervention Brigade fighting against particular 'enemies', or is it trying to subdue a variety of actors so that it can fulfil its primary mission of protecting civilians? Are the armed groups the enemies of the civilians caught in the midst of the fighting? Given that FARDC is responsible for so many civilian deaths, is it the enemy? Of whom? The civilians who are supposed to be under its protection? MONUC? If the latter, this is particularly problematic since UN peacekeepers are not normally going to fight against government troops. And what about the DRC's neighbours? This includes in particular Rwanda, which has been deeply embedded in the conflict in the aftermath of the Rwandan genocide which essentially spilled across the border, as well as Uganda which has also been fighting against its own 'enemies' on the territory of the DRC and beyond, and a number of other countries which have been deeply implicated in the fighting, in particular through supporting various groups, for both political and economic reasons. Are they the enemy? If so, how can they be vanquished since the fighting is not against them directly? Fighting against government and government-supported forces may be exactly what is needed in Darfur where a weak peacekeeping operation has failed to stand up to those most responsible for the suffering: government forces and government-sponsored militias (Mills, 2015). Is the Sudanese government the enemy of the UN Mission in Darfur (UNAMID)? These are vital questions that thinking in terms of victory, and consequently enemies, leaves unanswered.

What does victory mean in these situations? In the DRC, one of the armed groups, M23, has been subdued by the Force Intervention Brigade, but given that there are dozens more rebel groups, this hardly seems like a victory. And although Patterson in this volume (cross-ref to 'Victory Matters Prudentially and Morally') discusses the importance of victory in 'civil wars, or other long-enduring, slowly simmering conflicts', since the conflict(s) in eastern DRC has been going for two decades, with no end in sight, it does not seem reasonable to talk about victory. Rather, if and when the fighting ends, it will be as a result of a combination of the military elimination of *some* of the groups and political accommodation with *others*, as well as political agreement with Rwanda and Uganda to stop supporting rebel groups. It will also require some sort of economic settlement since much of the fighting has been driven by access to resources. And given the contingent and unsatisfactory endings—or lack of endings—in such situations, is it possible to talk about the vindication of values, as Patterson (cross-ref to 'Defining victory in war') and Hom and O'Driscoll (cross-ref to 'Reconstructing victory and the just war tradition') do in this volume? The values of human rights and human dignity are almost never upheld in a resounding and comprehensive way such that a clear new worldview reigns in the (former) zone of conflict with, as Patterson argues for, 'a new status quo, one that is more secure than the previous conditions of instability and/or injustice' ('Victory Matters Prudentially and Morally'). Indeed, such victories may, following Patterson ('The Scandal of Winning'), be Pyrrhic at

best, given the human (and material) destruction which occurs in conflicts today, even when some participants are motivated by humanitarian concerns. And, as Heuser (cross-ref to whole chapter), Scheipers ('Moral Victories'), and Campbell and Steele ('The Appomattox Myth and the permanent endurance of war') note in different ways, there is also nothing to guarantee that these victories will durably resolve the conflicts that spawned them.

The case of Libya is also problematic. The interveners were given the authority by the UN Security Council, in the context of R2P, to protect civilians. The tipping point in favour of action was a potential imminent massacre in the city of Benghazi. In a sense, the precursor resolution (1970) which referred the situation to the International Criminal Court (ICC), and then the resolution authorizing the intervention (1973), implicitly identified Muammar Gaddafi as the enemy, since it was clear that the responsibility for the killing of civilians lay with his government. Yet, again, is it possible for the UN to have enemies *per se*? Further, the focus of these resolutions was protecting civilians, not removing the government from power. At the same time, this may have been a situation where the only way to ensure the on-going protection of civilians was to remove the leader responsible for ordering the killing of civilians—Gaddafi—from power. Gaddafi thus occupied an ambiguous and important place in the interpretation of the intervention; he was not the enemy of the body which authorized actions that ended up entailing his removal/vanquishing. It is difficult to understand what victory means in this regard, particularly given the aftermath, where the country divided into competing factions and the flow of fighters and weapons out of the country led to increased destabilization across the Sahel.

Thus, even though many of these activities look superficially like war—they involve the use of military force—they are not. They do not involve fighting against an enemy as such, the goals of the military actions are not the same as war, and the basis on which they are fought—police action upholding international human rights norms—is different from normal interstate war. Most armed conflict today does not fit the traditional understanding of war (Bellamy, 2008: 61); it is now primarily intra-state (or indeed global, as Brunstetter [cross-ref to 'The Principles Of *Jus Post Vim*'] notes in this volume in the context of the 'war on terror'), and involves a variety of state and non-state entities (including private military companies, as Eckert's chapter notes [cross-ref to whole chapter]) and rather than having to do with territory or other interstate disputes, it has more to do with identity and access to resources. And peacekeepers, with differing rules of engagement, are frequently present in these internal conflicts. This raises serious questions about underlying assumptions in just war theory. Indeed, as Labonte argues, just war theory has by and large failed to come to grips with this reality, instead generally assuming that contemporary conflict 'occurs mainly between states' (Labonte, 2009: 213). Further, however, while interveners may be involved in an internal conflict, the intent, scope, authority basis, and intended outcome are vastly different from anything we normally call war.

Responsibilities After Humanitarian Interventions

When R2P was first formulated by the International Commission on Intervention and State Sovereignty (ICISS) (ICISS, 2001), it put forth a tripartite set of responsibilities for the international community in cases of genocide and other mass atrocities. States and the international community were expected to prevent such atrocities, react—potentially with military force when such atrocities were imminent or occurring—and rebuild states and societies after an intervention. As R2P has evolved in both conceptualization and practice, the latter responsibility has disappeared. The ICISS argued that: ‘The responsibility to protect implies the responsibility to not just prevent and react, but to follow through and rebuild. This means that if military intervention is taken . . . there should be genuine commitment to helping rebuild a durable peace, and promoting good governance and sustainable development’ (ICISS, 2001: 39). Instead, the focus has become prevention and initial response. Yet, as has been clearly demonstrated by the case of Libya, if interveners simply pack up and leave after protecting people or removing a leader from power who had been abusing their people, the conditions for further instability and atrocities may well be present. While there is debate within just war theory regarding whether victors in war *may* or *must* participate in post-conflict reconstruction (Bellamy, 2008), as I argue, the types of conflicts discussed here require a connection between those participating in a humanitarian intervention and actions after the intervention to ensure that the outcome is better than before, although that connection may be context-specific.

One very significant question is: who holds these responsibilities? The common refrain is the international community, but what does this actually mean? From where do these responsibilities arise? R2P holds that when states fail in their duty to protect civilians, the international community must step in. This would happen primarily through the UN Security Council, although the AU has made a similar claim to authority to transgress sovereignty to protect civilians in Article 4h of its Constitutive Act. Other states or groups of states have made similar arguments for intervention without Security Council approval, such as the ECOWAS intervention in Liberia or the NATO intervention in Kosovo. But does identifying rebuilding as an international responsibility let some actors off the hook? Perhaps those who undertake the intervention should bear significant responsibility *post bellum*. The intervener may accrue special responsibilities, but it is not clear that the burden should fall completely or significantly on them. Yet, they must also bear some responsibility.

Interveners have a particular burden to ensure that the situation is ‘better’—however that may be defined—and not just leave behind chaos. This higher standard means that not only should the situation be ‘better’ than before the intervention, the interveners have a special responsibility to ensure that the conditions for a peaceful society are much more likely than the human rights abuses that justified the intervention in the first place. This does not necessarily mean installing a Western style liberal democracy—indeed the precursor

conditions may make this very difficult and unlikely—but it does mean the development of a peaceful, human rights protecting society in whatever ultimate form it might take (perhaps along the lines of the re-establishment principle that Brunstetter discusses below, cross-ref to ‘The Principles Of *Jus Post Vim*’). But this obviously also excludes many types of highly authoritarian governance. This puts a very heavy burden on protectors, to such an extent that some potential protectors might be deterred from engaging in protective activity in the first place. Indeed, Pattison (2015: 638) argues that it is ‘unfair’ that the intervening entity ‘should have to bear the costs of rebuilding, simply because it intervened’, particularly since it has already assumed a significant cost in the intervention itself. And it also raises the prospect of criticisms of neo-colonialism (Gheciu and Welsh, 2009: 121). Nevertheless, those who engage in an intervention face a high threshold for the *post bellum* situation, which may also create a link to the justification for the intervention (a linkage which Pattison [2015: 642] rejects). Indeed, Bass argues that ‘When the victorious state fails to assist in reconstruction in such post-genocidal cases, it calls in question its claim to have waged a just war of humanitarian intervention, for it has failed to finish what it began in waging the war’ (Bass, 2004: 401).

Yet, can we say an intervention is not justified if the intervener attempts to make the situation better but fails? Obviously not. No intervener can say with perfect clarity and foresight what will happen, and it would be difficult to hold interveners to account for everything that happens after an intervention. But, the intervener must do everything within its power to ensure that things are better afterwards. This would include, most fundamentally, planning for the *post bellum* period, including both actions that the intervener might take but that other actors, such as the UN, might also take. The intervener must not assume that a situation will automatically right itself and that a positive authority will be able to readily assume power. The UK, US and other intervening states failed to do this in Libya, with disastrous consequences: a splintered country controlled by multiple centres of power, a base in North Africa for ISIS, and regional fighting as a result of the flow of fighters and guns out of Libya and into the surrounding countries. President Obama indicated that his worst foreign policy mistake was ‘failing to plan for the day after’ the intervention (BBC News, 2016). A UK Parliamentary inquiry noted that the UK ‘had a particular responsibility to support Libyan economic and political reconstruction’ because it led the intervention, which it failed adequately to carry out (House of Commons, 2016: 29). Does this undermine the justification for the intervention? There was a real and imminent risk of massacres in Benghazi—and probably elsewhere in Libya—which would justify protective military action. And one could make the case that permanent protection of civilian lives might have justified the removal of Gaddafi. Yet, the swift move to regime change without adequate planning for what came after Gaddafi was not justified and indicates the necessity of considering how humanitarian interventions end. When Gaddafi became the enemy and his removal the goal of the intervention, a sense of ‘victory’ might

have become more discernible, but the goal—and potentially the legitimacy—of the intervention was undermined.

What rebuilding might look like is not entirely clear, and will vary from case to case. The aftermath of the R2P actions in Libya demonstrate very clearly a need for such rebuilding. Evans argues that those who engage in a war and are ‘victorious’ must engage in the following activities:

1. Set proportional peace terms to ‘ensure a just and stable peace as well as to redress the [original] injustices’ (e.g. the genocide or other human rights abuses which led to the intervention in the first place);
2. Contribute to the costs of material rebuilding;
3. Participate in national and international conflict prevention activities;
4. Participate in reconciliation activities;
5. Restore self-determination (Evans, 2009: 155–157).

Labonte provides a more detailed overview of necessary *post bellum* actions, framed within a human security perspective which goes beyond traditional just war theorising, and focuses on the individual rather than the state as the key referent (Labonte, 2009: 211-218). While Evans’ list (as perhaps modified and extended by Labonte) broadly describes the variety of activities necessary after a humanitarian intervention, the burden does not fall alone on individual states who may engage in protection, and indeed there may be prudential reasons for others to carry out some of these activities. To the extent that their activities are authorized by some other agent—e.g. the UN or AU—these other agents also have significant responsibilities at the end of the conflict. They bear responsibility for actions they have authorized. They also bear responsibility as representatives of the international community, either globally (the UN) or regionally (the AU), regardless of whether or not they played a role in the initial intervention.² Indeed, Bellamy (2008: 616) argues that the UN has recognised, or is in the process of recognising, such a responsibility, as seen in the creation of the UN Peacebuilding Commission.

These other entities may be better placed to undertake the required activities—both in terms of resources and capacity and in terms of authority—although as Gheciu and Welsh (2009: 135–36) note, both the UN and regional organizations are also problematic because of deficiencies in legitimacy and effectiveness. Indeed, there may be situations where the intervening entity does not have the ability to adequately support rebuilding; one would not want to rule out a protective intervention because the intervening entity was not able to fulfil potentially onerous rebuilding activities (Bellamy, 2008: 620-621). Thus, the individual protecting states must work with the authorising agent—or other relevant agent, such as

² See Pattison (2015: 646-658), for philosophical arguments, in particular from cosmopolitan perspectives, to support an international duty to rebuild.

the UN—to ensure the rebuilding phase progresses, rather than just leaving when ‘mission accomplished’ is declared, although this will come into tension with the imperative to leave as soon as is practicable to allow for self-determination (Bass, 2004: 412). This self-determination imperative—as well as pragmatism—also requires that a variety of non-state actors be involved in the rebuilding process, including both civil society and possibly former combatants, even as these non-state actors may endanger the process (Labonte, 2009: 221). There may be cases where normal governance can be restored very quickly. In this case, the responsibilities of the protectors may involve merely refraining from meddling in the process and supporting other types of post-conflict rebuilding activities. Other situations may demand more involvement—starting with pre-intervention planning—while also keeping in mind the problem of mission-creep (Evans, 2009: 157-58), which can undermine Evans’ fifth activity (quick restoration of self-determination), although what self-determination may detail, and which ‘self’ should be prioritized is significantly more problematic than is frequently assumed (Gheciu and Welsh, 2009: 140–42; Mills, 1998).

One important element which is frequently overlooked but which has risen to prominence in recent years is the question of post-conflict justice. This relates to Evans’ fourth point, but is broader than his more limited focus on reconciliation. But even this is a misnomer because many activities related to justice and holding people accountable for their actions *in bello* take place while conflict is still happening. Indeed, the ICC has intervened in multiple ongoing conflicts, including those where an intervention or peacekeeping force has been involved, such as the Central African Republic, Darfur, the DRC, Libya, and Uganda. The argument for such activities are four-fold. First, holding people accountable during conflict can remove them from the arena of conflict. They are no longer able to commit mass atrocities such as widespread killing of civilians, recruit child soldiers, etc. Yet, there are also worries that targeting military—and civilian—leaders in the middle of conflict may make it harder to come to a political accommodation to end the conflict. Second, holding war criminals accountable for their crimes may deter future crimes. There is little evidence that such deterrence happens, and that evidence is anecdotal at best, such as in the case of recruitment of child soldiers in the Democratic Republic of Congo (DRC) (Mills, 2015: 116). Third, it is important to remove those who commit atrocities from society so they do not act as spoilers after conflict has ended and undermine attempts at political reconciliation and rebuilding. Finally, such retributive justice is necessary for both individual and societal reconciliation. This drive toward justice has come to be known as the responsibility to prosecute (Mills, 2013): a recognition that widespread gross violations of human rights (war crimes, crimes against humanity, and genocide) are an offence to international law and must not go unpunished.

More generally, the responsibility to prosecute has become a general expectation incumbent on the international community, and, again, interveners may have special obligations here: not to try individuals themselves, which might be seen as victor’s justice

(even though we have problematized the concept of victor), but to support relevant domestic and international mechanisms to promote post-conflict justice and reconciliation. This would include supporting the work of the ICC, which is complementary to the work of domestic courts. In the case of one frequent intervener in particular, the US, this presents particular issues. While it has been more supportive of the work of the Court over the last few years,³ it has a history of antagonism, and it has not ratified the Rome Statute, leading to accusations of hypocrisy. One might question whether, given this new norm in the context of R2P, such countries like the US must become party to the ICC to fully implement their *post bellum* responsibilities, or is it enough just to provide other support and not work to undermine the Court in any way?

Further, however, upholding the responsibility to prosecute may come into conflict with negotiations necessary to end the war (Bass, 2004: 405) or other domestic considerations regarding post-conflict reconciliation. As Labonte (2009: 208) notes, the indeterminate nature of the ending of conflicts lead to 'difficult normative trade-offs and reflect a 'host of injustices' which complicate the responsibility to prosecute imperative. While the trade-off between peace and justice or truth and justice is not as stark as it is sometimes made out to be, interveners and others must tread a fine line between respecting local imperatives and wishes and upholding international norms.⁴ This will further call into question understandings of victory where victors punish the vanquished for their misdeeds. Any punishment would be done on behalf of the international community rather than any notional victor, and there may be situations where punishment is delayed or forgone as a result of domestic considerations. Beyond ensuring criminal justice and reconstruction of physical infrastructure, rebuilding also entails reconstruction of political institutions and social justice to ensure that the roots of the conflict, including social and economic inequities, are addressed. This is a very tall order with a potentially unlimited scope.

If in the course of protecting people a conflict ends, the intervener must contribute to creating an environment where people continue to be protected and not subject to the same threats to their personal security. This can be very difficult for a number of reasons. First, there may well be accusations of neo-imperialism on the part of some or many whose sovereignty was transgressed, even though the intent of the intervention was to restore the sovereignty of the individuals in the country. Thus, any presence after the intervention must not be conducted in such a way as to be perceived as an occupation. Any reconstruction must be a true partnership where local actors are respected and play a leading role in deciding the way forward; outside actors must thus 'render themselves accountable to the population they purport to assist' (Bass, 2004: 401). This was an important issue in Libya. The interveners, who had a Security Council mandate and thus were acting on behalf of the international community, decided early on that there would be

³ Which may change as a result of the 2016 US presidential election.

⁴ As seen in the debate over the role of the ICC in northern Uganda, for example (Mills, 2015).

no 'boots on the ground'; no military forces would step foot on Libyan soil. This was for fear of taking casualties, but also because of a fear of being seen as a neo-imperial invading and occupying force. Such perceptions would have been heightened since it would have been Western countries invading and occupying a Muslim country, a sure-fire recipe for increased global tensions.

Second, in the context of peacekeeping operations, rather than being a clear distinction between *in bello* and *post bellum* phases, there may be a practical continuum, where some activities traditionally defined as post-conflict are undertaken while the conflict is going on. These might include traditional development activities or 'quick impact projects' which are intended to lay the foundation for more durable post-conflict solutions to displacement. Or a situation may be identified as being much closer to a post-conflict phase, such as stabilization, as the situation in the DRC was rather optimistically identified when MONUC became MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo), rather than 'pacification.' Further, as noted above, international criminal justice mechanisms may also come into play. In the DRC, several individuals have had ICC arrest warrant issued against them. UN peacekeepers have been reluctant to participate in apprehending suspects, although they have participated in the handover of suspects in a couple of instances (Mills, 2015: 126). While the peacekeepers have obvious concerns regarding neutrality (although when they engage in active hostilities against particular armed groups they may lose that neutrality) and not wanting to get into major fire fights *a la* Mogadishu to arrest one individual,⁵ there will be a clear moral connection between their protection mandate and the responsibility to prosecute.

As noted, in post-conflict situations there will be broader responsibilities with regard to rebuilding on the part of interveners and authorisers – as well as in situations where there has been no authorisation legitimating the action. Most often, regardless of whether it has been the authoriser or not, the UN gets tasked with reconstruction and development responsibilities. Yet, this does not absolve the primary interveners from their responsibilities. Further, such rebuilding activities are frequently taken over by non-state actors—NGOs—either as contractors for the UN and other state actors implementing their *post bellum*, or of their own accord. In some situations, NGOs function as what Fiona Terry (2002) calls 'humanitarian shadow states', taking over many of the functions of the state and running civil infrastructures. This raises very significant concerns since it may absolve states of some of their responsibilities; a moral hazard which may allow states to redirect funds otherwise used for the good of their people into other endeavours, including the military. More generally, Recchia (2009) provides cautions about the depth and length of international trusteeship and other international paternalistic arrangements which may characterize post-conflict reconstruction situations.

⁵ Indeed, Walzer (1977: 119) notes that rounding up people to put on trial might prolong a conflict.

Problematizing Victory and *jus post bellum*

The above discussion is not comprehensive. But hopefully it does demonstrate that the concept of ‘victory’ in the context of many contemporary conflicts is highly problematic. Further, it raises issues with regard to the potential responsibilities many participants in these conflicts may have *post bellum*. In today’s conflicts, in particular various types of peace operations, there may be particular expectations for how states will act. Further, the traditional distinction between *jus ad bellum* and *jus post bellum* may disappear as what happens after peace operations end is intimately tied into justifications for the operations in the first place.

But, there is one final issue to be addressed. I have made reference to situations like Libya where the initial mission—protecting people from massacres on the part of the government—has been achieved and the government replaced. Yet, given the state of armed conflict and genocidal situations today, such situations are a minority. Rather, most situations where an outside force may participate in actions to protect civilians will involve much more indeterminacy. The DRC, by its very nature, calls into question the concept of victory. The multitude of both internal and external groups fighting each other and the government problematizes any notion of victory. Armed conflict has been going on for two decades, and even though there have been lulls in the fighting, and the situation is now classified as stabilization, it is anything but stable. How would we know when ‘victory’ had been achieved, and by whom? When each and every non-state armed group has been defeated? When other states who have been meddling in the multiple conflicts are finally expelled? Further, one of the main actors in eastern DRC is the UN. As noted, it is difficult to find ‘enemies’ that it might have a victory over. Relatively early on in the conflict, in May 2003, the European Union sent in a UN Security Council-authorized Chapter VII mission called Operation Artemis (Ståle, et al, 2004). Its mission was to engage in peace enforcement and protect civilians in the north-eastern city of Bunia. It accomplished its mission during the three months it was deployed. The security situation in Bunia was stabilized and the civilian population (at least in Bunia itself) was protected. And then it left. It accomplished its mission, but there was no sense of ‘victory’, unless one counts temporarily protecting tens of thousands of people a victory, which would probably be stretching the concept too far. MONUC took over after Artemis troops left, and it (and then its successor MONUSCO) has been trying to enforce the peace and protect civilians with variable success ever since. Again, this reflects the nature of contemporary conflict: multiple actors—both state and non-state based—engaged in armed conflict with a variety of goals focused more on resource extraction than traditional territorial gain or defence. One might say they are engaged in war—if a new variant—but it is not clear that MONUC or Operation Artemis count as war. Their focus was stabilization and civilian protection. While they may have engaged in some of the same activities we associate with war, they did not

have the same goals as war, and victory in this context really only means relative stability and relative safety for civilians. Peacekeepers cannot hope for much more.

One initiative where peacekeepers did look to achieve more is the aforementioned MONUSCO Force Intervention Brigade. It had a ‘victory’ of sorts over the M23 rebel group which disbanded, although much of this might also be attributed to a revived FARDC. Yet, while this group was the one that was making the headlines, there continue to be many other groups of various sizes and backed by various internal and external actors operating. There is little prospect of a comprehensive military victory over all the various groups. And protection of civilians is also significantly incomplete because of resources, the environment, and the nature of the conflict and the actors, both those who threaten civilians and those who protect them. Peace—or at least stability—has been declared multiple times even though it does little to describe the reality on the ground. Any notion of victory is illusory (e.g. Campbell and Steele, cross-ref to ‘Affective familiarization’).

While R2P has not been officially invoked in the DRC, it is emblematic of the kind of situation where military responses have been used to protect civilians at risk of atrocities. The very indeterminacy of the conflict is a direct challenge to the notion of victory in just war theory and to the theoretical models for ending humanitarian interventions. Unlike Libya, there has been no endpoint to the use of military force by external actors to protect civilians. While the peacekeeping operations in the DRC do not conform to previous notions of humanitarian intervention where individual states or groups of states might intervene in a situation without UN authorization (or even *post facto* authorization), it is the face of conflict response and civilian protection today—protection which is radically imperfect and response which seems to have no endpoint—even if versions of victory are declared along the way.⁶

Libya, on the other hand, is traditional humanitarian intervention for the modern R2P age: relatively quick response to an evolving atrocity situation, authorized by the UN Security Council, and then a quick withdrawal. In past interventions, this quick withdrawal was key. Even though in situations like the Tanzanian intervention in Uganda to oust Idi Amin or the Indian intervention in what would become Bangladesh were not, at the time, justified by the interveners on humanitarian grounds, retrospectively they are considered to be instances of humanitarian intervention (Mills, 1998; Wheeler, 2000). In each situation the intervention was relatively swift and an endpoint—victory—was declared. India withdrew quickly, and a new country was created. In Uganda, the Tanzanian intervention was limited, and a victory—the ousting of Amin—could be declared. But while Libya was swift, it was precisely the lack of follow-up that undermined any claims to victory. Today, humanitarian

⁶ For a related discussion of ‘little, insignificant truncated “victories”’, see Brunstetter, cross-ref to ‘Conclusion: Limited Force and the Question of Peace’.

intervention requires continued engagement—and advance planning of that engagement—before the intervention takes place. Yet, the DRC, Somalia, and Kosovo and many other places demonstrate the ambiguity and potentially long-term nature of the engagement.

The present situation in Syria similarly illustrates the problematic nature of the concept of victory in potential humanitarian intervention situations. While the need for an intervention is great, the UN has failed to act to stop the killing and protect civilians. Even those states which have expressed a willingness to act in the absence of UN authorization, such as the US and UK, have demonstrated a reluctance to actually do so. Part of the reluctance has to do with the fact that there is no clear endgame; no vision of victory after which the interveners could pack up and go home. Rather, apocalyptic scenarios are envisioned, involving an expanded war with multiple regional actors—Iran, Lebanon, Saudi Arabia, Turkey, Israel among others—as well as a multitude of non-state actors—various rebel groups, Hezbollah, Al Qaeda, ISIS—and those trying to protect civilians caught in the middle, having to fight multiple groups simultaneously. Any intervention to protect civilians might have been easier when things kicked off in 2011 in the context of the Arab Spring, but the prospect of Iran becoming involved seemed to call for prudence. But the failure to act then has allowed many elements of the complex apocalyptic scenario to come to fruition. ISIS has dramatically expanded the areas under its control (in neighbouring Iraq as well), and Russia has taken advantage of the lack of Western response to multiple ‘red lines’ to intervene clearly on the side of the Syrian government, dramatically increasing the risk to civilian populations in places like Aleppo. Without a clear concept of victory and the associated exit strategy—which not even the world’s last remaining superpower could imagine—it appears that apocalypse becomes a self-fulfilling prophecy.

Conclusion

The nature of contemporary conflict calls into question the concept of victory. The dynamics of conflict and the multiplicity of actors and motivations for engaging in conflict blurs the line on when conflict ends and who (if anybody) has actually ‘won’. The perceived imperative of bringing in former enemies to sustain the peace radically undermines the idea of victory over a foe. The role of UN and other multilateral peacekeeping forces engaged in protection of civilian activities—and those involved in more robust humanitarian interventions—calls into question the idea of enemies over which one can be victorious in the first place.

And when the conflict ends—if indeed it does have a definitive endpoint (situations like that in the DRC call this assumption into serious question)—there are unresolved questions about the nature and quality of that ending. There is likely to be a need for rebuilding, yet it is unclear who should do that rebuilding and whether the commitment to and effectiveness of that rebuilding is related to justifications for engaging in a humanitarian intervention in the first place.

The idea of victory is thus rendered problematic in the best instance, and completely irrelevant in the worst. Those needing protection from a ruthless despot may not care who is 'victorious' as long as they are no longer subject to mass killing, although they will care what the post-intervention situation looks like. But any 'victory' in these situations is likely to be highly imperfect. Operation Artemis had a short-term positive impact, but more than thirteen years later, civilians in north-eastern DRC are still under threat from a variety of armed groups. The seemingly clear 'victory' against Gaddafi continues to have widespread negative repercussions across North Africa. In most contemporary conflict, in particular including those involving protection of civilians operations, which may bear little resemblance to classical understandings of war, it is difficult to find clear conceptions of victory.

References

Akhavan, Payam. 1993. 'Lessons from Iraqi Kurdistan: Self-Determination and Humanitarian Intervention Against Genocide'. *Netherlands Quarterly of Human Rights* 11 (1) pp. 41–62.

Bass, Gary. 2004. 'Jus Post Bellum'. *Philosophy & Public Affairs* 32 (4) pp. 384–412.

Bellamy, Alex J. 2008. 'The responsibilities of victory: Jus Post Bellum and the Just War'. *Review of International Studies* 34 (4) pp. 601–625.

Evans, Gareth. 2008. *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington, DC: Brookings.

Evans, Mark. 2009. 'Moral Responsibility and the Conflicting Demands of Just Post Bellum'. *Ethics & International Affairs* 23 (2) pp. 147–164.

Gheciu, Alexandra and Welsh, Jennifer. 2009. *Ethics & International Affairs* 23 (2) pp. 121–146.

Hehir, Aidan. 2013 *Humanitarian Intervention*, 2nd ed., New York: Palgrave Macmillan.

Holzgrefe, J. L. 'The humanitarian intervention debate.' 2003. In *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, edited by Holzgrefe, J. L. and Keohane, Robert O., Cambridge: Cambridge University Press.

Holt, Victoria and Taylor, Glyn with Kelly, Max. 2009. *Protecting Civilians in the Context of UN Peacekeeping Operations: Successes, Setbacks and Remaining Challenges*. Independent study jointly commissioned by the Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs, United Nations. November. Available at: http://reliefweb.int/sites/reliefweb.int/files/resources/B752FF2063E282B08525767100751B90-unocha_protecting_nov2009.pdf Accessed 25th November 2016

International Commission on Intervention and State Sovereignty. 2001. *The Responsibility to Protect*, Ottawa: International Development Research Centre.

Kaldor, Mary. 2007. *New and Old Wars: Organized Violence in a Global Era*, 2nd ed., Stanford: Stanford University Press.

Labonte, Melissa. 2009. 'Jus Post Bellum, Peacebuilding, and Non-State Actors: Lessons from Afghanistan.' In *Authority and War: Non-State Actors and the Just War Tradition*, edited by Heinze, Eric A. and Steele, Brent J., New York: Palgrave Macmillan.

- Mills, Kurt. 1998. *Human Rights in the Emerging Global Order: A New Sovereignty?* Basingstoke: Macmillan.
- Mills, Kurt. 2103. 'R2P³: Protecting, Prosecuting or Palliating in Mass Atrocity Situations?' *Journal of Human Rights* 12 (3) pp. 333–356.
- Mills, Kurt. 2015. *International Responses to Mass Atrocities in Africa: Responsibility to Protect, Prosecute, and Palliate*. Philadelphia: University of Pennsylvania Press.
- Murphy, Dan. 2015. 'Syrian "safe" zone: what does that really mean?' *The Christian Science Monitor*, 27 July. Available at: <http://www.csmonitor.com/World/Security-Watch/Backchannels/2015/0727/Syrian-safe-zone-What-does-that-really-mean> Accessed 25th November 2016.
- Pattison, James. 2015. 'Just Post Bellum and the Responsibility to Rebuild'. *British Journal of Political Science* 45 (3) pp. 635–661.
- 'President Obama: Libya aftermath "worst mistake" of presidency'. 2016. *BBC News*. 11th April. Available at: <http://www.bbc.co.uk/news/world-us-canada-36013703> Accessed 25th November 2016.
- Recchia, Stefano. 2009. 'Just and Unjust Postwar Reconstruction: How Much External Interference Can Be Justified?' *Ethics & International Affairs* 23 (2) pp. 165–187.
- Terry, Fiona. 2002. *Condemned to Repeat? The Paradox of Humanitarian Action*. Ithaca: Cornell University Press.
- Ulriksen, Ståle, Catriona Gourlay and Catriona Mace. 2004. 'Operation Artemis: The Shape of Things to Come?' *International Peacekeeping* 11 (3) pp. 508–25.
- House of Commons, Foreign Affairs Committee. 2016. 'Libya: Examination of intervention and collapse and the UK's future policy options.'
- United Nations General Assembly. 2005. *2005 World Summit Outcome*. Available at: <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf> Accessed 25th November 2016.
- Vogel, Christoph. 2014. 'DRC: Assessing the performance of MONUSCO's Force Intervention Brigade.' *African Arguments*, 14th July. Available at <http://africanarguments.org/2014/07/14/drc-assessing-the-performance-of-monuscos-force-intervention-brigade-by-christoph-vogel/> Accessed 25th November 2016.

Walzer, Michael. 1977. *Just and Unjust Wars*, New York: Basic Books.

Wheeler, Nicholas J. 2000. *Saving Strangers: Humanitarian Intervention in International Society*. Oxford: Oxford University Press.