

Philosophical and Moral Justification of Humanitarian Intervention

Ljupcho Stojkovski, M.Sc.¹

Abstract: *this paper examines the question of humanitarian intervention and its justification from a philosophical and moral standpoint. The concept of humanitarian intervention is highly disputed and seemingly contrary to some well established institutes and concepts. The main focus in this paper are questions such as – does the sovereignty of a state offers absolute protection that extends even in cases of mass violations of human rights? Should we care about the suffering of others? Why? What should we do in such cases? Can the use of force be considered as a legitimate solution to a problem? If yes, under what conditions?*

The paper tries to deconstruct and offer answers to these dilemmas. It concludes that under certain circumstances, it is morally justified for a humanitarian intervention to be undertaken.

Keywords: *humanitarian intervention, sovereignty, use of force, human rights.*

Introduction

The question of humanitarian intervention has been highly disputed and controversial ever since it was brought to life. A great many, still dislike this concept – to use force in order to save lives. They dislike it, because it seems paradoxical to use war as a means to stop some other evil. They dislike it, because it touches upon the age-old and basic principle of international relations – the sovereign ruling of a state. Finally, they dislike it because it can be easily abused and used for other, non-humanitarian purposes. Even those of the ruling elites which look favorable to this idea, usually pay lip service to the concept and don't do much in practice. Thus, it is more than obvious that the subject at stake here affects some of the most sensitive areas in international law and international relations. Moreover, questions regarding issues like sovereignty, the use of force or human rights “are not just technical or morally neutral, precepts. Instead, they speak to some of our most basic moral principles, convictions and intuitions”.² This is why it is important to scrutinize the humanitarian intervention from philosophical and moral point of view. Although these aspects of the problem are inevitably

¹Teaching and Research Assistant and PhD candidate at the Department of International Law and International Relations, Faculty of Law “Iustinianus Primus”, University “Ss. Cyril and Methodius”, Skopje, Macedonia.

²Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality* (Transnational Publishers, Inc., 2005, Ardsley, N.Y.), p. 14.

connected to its legal dimensions, the legal aspects of the issue (except when needed) will be deliberately omitted in this paper.

The underlying assumption on which the moral justification for humanitarian intervention will be built is a (soft) realist perspective of the world, which occasionally will be complemented with cosmopolitan arguments. That is to say, states (and not individuals) are treated like basic subjects in international relations but only because it is assumed that they – as oppose to other entities like the international community as a whole or individuals themselves – can provide the highest level of human rights protection. Indeed, this is exactly how the international human rights law is intended to work – states are primary responsible for the human rights of its populations, while international law serves as an additional guarantor and is activated only when the domestic law fails. Besides, if we take a completely cosmopolitan point of view that “deletes” state borders, it would make no sense to talk about “intervention” whatsoever.³

In this paper, humanitarian intervention shall be defined as:

*The use of force by a state or a group of states in another which is in a condition of armed violence, for the purpose of stopping the massive (and systematic) violations of fundamental human rights, especially the right to life, of individuals other than its own citizens, without the (voluntarily) consent of the state within whose territory force is applied.*⁴

This definition contains several elements, for which a short explanation is necessary.

Use of force: Humanitarian intervention, in its essence, is a military action. Although some scholars understand humanitarian intervention to be broader and comprise measures which sometimes do not include violence, like economic and political sanctions or the delivery of humanitarian aid, it is more accurate if we place these measures in other sectors related to the issue of humanitarian intervention (for instance, as measures for conflict prevention or as measures to ameliorate the suffering of the victims of an ongoing conflict) and not categorize them together with the military aspects of the problem.

Outside intervener: The military action aimed at stopping the human rights violations is undertaken by a subject acting outside the borders of the state in whose territory force is applied. That subject could be the UN, some regional organization (like NATO, ECOWAS or the AU), a “coalition of the willing”, or a single state.

The affected state: For an action to be classified as an instance of humanitarian intervention two requirements should be fulfilled in the affected state – the state should be in a *condition of armed violence*,

³Terry Nardin *Humanitarian Imperialism: Response to “Ending Tyranny in Iraq”*, in ‘Ethics and International Affairs’ 19, no.2 (2005), p. 23.

⁴ Similar definition is offered by J.L. Holzgrefe and Robert O. Keohane in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, 2003, New York), p.18.

which in turn, would produce *massive (and systematic) violations of fundamental human rights, especially the right to life*, to its population. The phrase, “*condition of armed violence*”, points out to two things. First, it comprises only human-made situations (natural disasters are excluded). Second, these human-made situations can be divided in two groups: the first group includes situations in which the government of a state (and/or groups in some way related to the government) *plans* or conducts, systematic, repressive policies involving the use of force of massive proportions towards its population – for example, genocide, ethnic cleansing, mass murder, mass expulsion, forced migration or various other crimes against humanity. The second group does not include governmental violence, but situations where the state apparatus does not function properly and there is no effective government. Here, the authorities are unable to stop the violence in the country and to protect its people (for example, civil war between two factions, or anarchy like the one in Somalia at the beginning of the 90’s).⁵

The armed violence ought to result in “*massive (and systematic) violations of the fundamental human rights, especially the right to life*”. Even if there is no agreement regarding the scope of fundamental rights that are breached in situations of armed violence, the universal right to life is always in danger in these situations. Whether we talk about persons who have died, been wounded or sick, didn’t have food or clean water to drink; been refugees and left or lost their homes and loved ones, what is ultimately in jeopardy is the right to life. The right to life which every human being enjoys because it is inherent to its nature and not because someone granted it to her/him and has the right to arbitrarily take it away from her/him.

So, to sum up this element of the definition – humanitarian intervention encompasses those situations where a state is in a condition of an armed violence, which results or *is expected to result*, in massive (and systematic) violations of the fundamental human rights, especially the right to life. It is important for the two conditions to be cumulatively fulfilled, in order to avoid situations like North Korea, for example, where there are massive (and systematic) violations of the fundamental human rights, but those are not as a result of a condition of armed violence.

Purpose of the intervention: Humanitarian intervention is carried out with the primary purpose of ending the bloodshed and the massive violations of the fundamental human rights. Problems regarding other possible purposes of the intervention as well as the relation motives-intentions-outcomes will be elaborated later on in the paper.

Individuals other than its own citizens: Having in mind the purpose of the humanitarian intervention, every act of saving lives and stopping human rights violations no matter whether they are citizens of the state that intervenes or not, undoubtedly has humanitarian effect. However, military actions undertaken for saving its own citizens can be classified as rescue missions that one country conducts under its right of self-defense. Besides, “the question of whether states may use *force* to

⁵ Many pundits offer similar two-fold distinction of the situations where it is justifiable to use force. These include the International Commission on Sovereignty and State Intervention, Fernando Teson, Nicholas Wheeler, etc.

protect the human rights of individuals other than their own citizens is more urgent and controversial.”⁶

Without the (voluntarily) consent of the affected state: Humanitarian intervention is an action that is undertaken without the consent, or at least without the voluntary and unambiguous consent of the state in which the intervention takes place (the intervention in East Timor is an adequate example here).

Thus, the definition of humanitarian intervention presented above seemingly collides with some well-established philosophical understandings about the nature and existence of the state, the international community, the use of force and other related institutes. We will begin the deliberation with the question of sovereignty and the use of force in a state.

Sovereignty and the Use of Force

At the quintessence of the formation of every state lies the principle of self-determination – a group of people that resides on a certain territory and shares common history, culture, tradition and customs of life, exercise its individual right of self-determination (which is exercised collectively) and decides to create a state. In addition, self-determination also covers the freedom of the community to choose its form of government. This decision is protected by the principle of sovereignty – all other states ought to respect this choice, and ought not to interfere in the “union of people and government”⁷ in that state. Hence, given that sovereignty has two aspects – internal and external, we can speak of two types of legitimacy of the government in one state – internal or legitimacy towards its own citizens, and external or legitimacy towards the international community.

Exercising the right to self-determination presupposes that the new state is founded and organized according to the tradition and the history of its people. As a result, all states should assume that “there exists certain “fit” between the community and its government and that the state is “legitimate” for themselves.”⁸ This “fit” indicates the “degree to which the government actually represents the political life of its people.”⁹ Hence, those states under which the institutions are functioning as they were originally contemplated, pursuant to the wishes of the community in question should be considered as completely legitimate–fit1. In this case, it can be said that a state possesses both –the internal and the external legitimacy. Or to use Arendt’s words, in this instance,

⁶J.L. Holzgrefe, *The Humanitarian Intervention Debate*, in J.L. Holzgrefe and Robert O. Keohane in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* p. 18.

⁷Michael Walzer, *The Moral Standings of States: A Response to Four Critics* in ‘Philosophy and Public Affairs’ 9, no.3 (1980), p. 212.

⁸Ibid. Walzer speaks about two types of “fit”. Following Teson, from here on, they will be named “fit1” and “fit2”.

⁹Ibid, p.214.

both, the horizontal and the vertical dimension of the social contract are upheld.¹⁰

According to Walzer, however, self-determination and political freedom are not identical terms. Namely, “a state is self-determining even if its citizens struggle and fail to establish free institutions”¹¹. Here, some sort of “cultural correspondence between (the) people and (the) government” still exists – “fit2”.¹² Even if the government is non-democratic and authoritarian, even if the institutions are not completely free or legitimate, they still represent the struggle of that community for their establishment and are in some way, natural reflection of the history, culture and religion of that particular community.¹³ So, even in cases where a state has no internal legitimacy, foreigners are obligated to respect “fit2” as long as it is not “radically apparent” that there is no fit at all. This means, as Locke points out, that the “society remains intact even if “the government is dissolved” or breaks its agreement with society, developing into a tyranny”.¹⁴ Situations that include “ordinary, routine abuse of human rights that tragically occurs on a daily basis” are not radically apparent, but only “those extraordinary acts of killing and brutality that belong to the category of ‘crimes against humanity’.”¹⁵ These extreme forms of human rights violations are crossing the threshold for humanitarian intervention (hereinafter referred to as “the threshold”). In cases of “fit2”, however, every individual in that country can use its individual right to revolution (exercised in a group) against its government’s tyranny, but foreigners are not allowed to artificially speed up or inflame the revolution (although they can support it).¹⁶

The endorsement of “fit2” is based on two arguments. Firstly, “fit2”, contrary to the unitary perception of a state in the international community offered by its critics, puts forward a pluralistic image. This pluralism reflects “our recognition of diversity and our respect for communal integrity and for different patterns of cultural and political development”.¹⁷ The legitimacy of this state (in accordance with “fit2”) is pluralistic too, and it stands against the notion that equal or similar type of government should be attributed for every political community. One could ask here, however, whether under the veil of respecting different cultural and political practices, serious violations are being

¹⁰The horizontal dimension of the social contract alludes to the contract between the individuals by which (contract) they restrict their individual powers and “create” the society, while the vertical dimension comes after the horizontal “playing ground” has been established and it refers to the creation of the legitimate state institutions. Hannah Arendt, *Civil Disobedience*, in *Crises of the Republic* (Harcourt Brace & Company, 1972), pp 85-87.

¹¹Michael Walzer, *Just and Unjust Wars* (Penguin Books, 1977, New York, 4th ed., 2006.), p. 87.

¹²Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality*, p.82.

¹³Michael Walzer, *The Moral Standings of States: A Response to Four Critics*, p.225.

¹⁴Hannah Arendt, *Civil Disobedience*, in *Crises of the Republic*, p.87.

¹⁵Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press Inc., 2000, New York), p.34.

¹⁶Michael Walzer, *The Moral Standings of States: A Response to Four Critics*, p.215.

¹⁷*Ibid*, pp.215,216.

allowed to happen and whether sovereignty is nothing more than “organized hypocrisy”¹⁸ that covers the wrongdoers? The answer is that “fit” doesn’t preclude the employment of other measures, unlike the use of force, by foreigners (such as diplomatic pressure, economic sanctions, etc.) to try to improve the democracy and human rights record of that state. This is the reason why, Walzer states that, towards these states, “foreign officials must act as if they were legitimate” – although they are not, and – “must not make war against them”.¹⁹ This claim also supports the second argument in defence of this concept – in line with the tendency to limit the use of force in the realm of international relations – states should not employ force as a remedy for every single violation of human rights, but only in those occasions that go beyond “the threshold”. When the threshold is surpassed then, either “there is no “fit” between the government and the community or there is no community” at all.²⁰ Therefore, in these situations of “supreme humanitarian emergency”,²¹ force can be applied to thwart them. The sovereignty, understood in its correct, non-absolute meaning, offers no protection here to those who abused it or failed to uphold it.²²

But why is it justified to intervene in the name of those who are in need? The concept called “common morality”²³ provides the answer to this question.

Common Morality

Common morality is a concept that is the foundation of the civilized world, and is recognized as such in almost every community and tradition. The common morality doesn’t deny the fact that people belong to one or another culture or tradition, but it points out that the rights enjoyed by an individual, especially the fundamental, core rights, do not emanate from the membership of a certain community but from

¹⁸The phrase is by Stephen Krasner, used in his book *Sovereignty: Organized Hypocrisy*.

¹⁹Michael Walzer, *The Moral Standings of States: A Response to Four Critics*, p.216.

²⁰*Ibid*, p.217.

²¹ The phrase is by Nicholas J. Wheeler, *Saving strangers: Humanitarian Intervention in International Society*.

²²A perfectly example to support the validity of Waltzer’s theory are the developments in the Arab spring. Most of the states that were caught up in this wave of protests were *par excellence* examples of “fit” between their communities and governments. As such, authoritarian regimes were eligible for (and some in fact were subjected to) the imposition of various non-violent measures in order to improve the level of democracy and the human rights record in their countries, but not for an intervention. Finally, when the citizens of these states decided to use its right to revolution, without any artificial incitement from outside, the foreigners (without intervening) supported those attempts. In the two instances where no fit existed at all any more, where the threshold was surpassed – Libya and Syria – the conditions for humanitarian intervention emerged.

²³Terry Nardin, *The Moral Basis of Humanitarian Intervention* in ‘Ethics and International Affairs’ 16, no.1 (2002), pp. 57-70.

the membership of the human community.²⁴ In this context, the common morality does not have its origins in any positive law or custom, but it is “the product of critical reflection on laws and customs, and in this sense may be said to be known by ‘reason’”.²⁵ This morality is common, not because of some contract (between communities or individuals), but because it is “required by the conception of the person and of what is owed to persons”²⁶.

Starting from the two traits that are immanent to human nature – dignity and self-reflective reason – the concept of common morality builds on the assumption that all human beings are born as rational, free and equal agents. As such, they are free to decide on their own and everyone else is obliged to respect their choice. When someone forcefully violates this principle of respect for others’ freedom of choice then under the common morality, the use of force is allowed in order to protect the victim. Force can be applied only when there are good reasons to do so, and in this case, it is a matter of helping people that “are in great danger of serious injury, whether by accident or as victims of wrongdoing”.²⁷ Persons who have committed serious wrongs, lose the protection that derives from the common morality, because “they have, by their own actions, lost the moral right to act as they choose”.²⁸

In accordance with the concept of common morality, individuals should respect and support each other and that means not only not interfering in one’s free choice, but also helping in achieving one’s goals. When one is the object of an unjustified attack, we all have the duty, assuming that our personal loss won’t be enormous, to use force against the violence if that is the only way for the victim to be protected. The underlying idea for the use of force to protect the innocent is the “idea of beneficence”. The idea of beneficence differentiates itself from simple “charity” because unlike the latter, the former signifies moral imperative – “one is morally obliged to save a person in danger, at least if it can be done without undue risk or cost to oneself”.²⁹ When the risks or costs are excessive to ourselves, then that “duty turns into a permission”³⁰, or a right to undertake some action.

The correlation between the concept of common morality and the question of humanitarian intervention is more than obvious. The basic principle that people freely exercise their right to self-determination remains the leading norm. In situations that are eligible for humanitarian intervention, however, there are people, “victims of tyranny, ideological zeal, ethnic hatred, who are not determining anything for themselves, who urgently need help from outside.”³¹ The sovereignty is no longer a barrier for outsiders to help, because the perpetrators

²⁴Ibid, p.64.

²⁵Ibid.

²⁶Ibid.

²⁷Ibid, p.66.

²⁸Ibid, p.65.

²⁹Louis Henkin, *The Age of Rights* (Columbia University Press, 1990, New York), p. 10.

³⁰Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality*, p. 154.

³¹Michael Walzer, *The Politics of Rescue*, in ‘Arguing About War’ (Yale University Press, 2004, New Haven & London), p. 81.

abused their freedom by doing harm to others, and with that they lost the protection that comes with this principle.

Applied in the sphere of international relations, morally desired state conduct in this area, as Teson points out, ought to include:

1. *The obligation to respect human rights at home and abroad;*
2. *The obligation to promote respect for human rights globally;*
3. *The prima facie obligation to rescue victims of tyranny or anarchy, if they can do so at a reasonable cost to themselves.*³²

Use of Force as a Means to Save Lives

So far, we were able to delegitimize the potential barrier for intervention (the sovereignty) and to demonstrate why, in situations of supreme humanitarian emergency, we are morally compelled to act (common morality). Nonetheless, we still have not provided answer why military action should be used as a mean to save lives? Considering that war is a rather destructive occurrence, we need to determine the circumstances under which its use is justified. For this purpose, we will use the tenets of the Just War theory: *just cause, right authority, last resort, proportionality, reasonable prospects of success* and *right intention*.³³

³²Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality*, p. 150 (emphasis in the original). The question concerning the costs or the risks to the one that intervenes should not be used as an excuse for not intervening. The concept of common morality does not require from anybody to play the role of a “saint”, although if one cares to do so, she/he can - meaning to intervene and help others no matter what. However, if the risk is not that great, than everybody has the moral obligation to do so. If we transfer this discussion in the domain of humanitarian intervention, this issue becomes relevant only when the burden to intervene is left to a single state (if that situation is possible at all in practice). In cases where the role of intervener is shared by a group of states (UN or regional organization for example), then the question becomes less relevant, considering that with the increase of the number of actors, their individual responsibilities and their military and financial costs and risks of intervention will be decreased to a bearable degree (from a common morality standpoint).

³³ The Just War Theory, according to some authors, has a 2000 year-old tradition but it has become more noticeable during the St. Augustine’s period. Regarding the question of use of war as a method, the theory positions itself in the middle between two schools of thought – pacifism, which considers war to be completely forbidden under any circumstances and realism, which considers it as a part of human existence and do not find anything disputable in its use. The purpose of the Just War theory is to evaluate war and it does not serve as an excuse for starting, promoting or justifying wars. On the contrary, the theory portrays the war as a lamentable occurrence that deserves complete condemnation. However, “there are some wrongs that are worse than the wrong of war itself” and that is why war has to be considered as a mean. For more on the Just War theory, see Aidan Hehir, *Humanitarian Intervention: An Introduction* (Palgrave Macmillan, 2010, New York), pp. 22-40.

Just cause –The just cause criterion for the use of force essentially requires an answer for the following question: what are the cases in which it is justified for force to be used? Without going into details on this question again, we will only reiterate that those are the two situations that shock the conscience of humankind where the governmental authorities are performing or they are unable or unwilling to prevent the massive and systematic violations of the fundamental human rights of its population.

Right authority – Who should intervene in these types of situations? – is one of the most challenging questions in the concept of humanitarian intervention. Having in mind the concept of common morality, though, the answer lies in the maxim – “who can, should!”³⁴ Of course, further clarification is needed, otherwise we could be faced with one of the following two problems: either there will be too many potential interveners (because they can all do it) and we would not know who and in what capacity should do what or there will be no one capable of doing anything (at least declaratively). Unfortunately, the practice has shown that, the latter is far too often the case and not because there weren't any capable agents but because there was lack of political will among them to intervene.

Also, the issue of the right authority to intervene is problematic from a legal perspective. For many, a key condition for the legitimacy of an intervention is its legal authorization by the Security Council. Conversely, unauthorized intervention is legally prohibited and thus, morally unjustified. Here, however, we won't deal with the otherwise pretty significant, dilemma regarding the legitimacy and the legality of an issue and whether the legitimacy of an intervener can be drawn from its perceived legality. Nevertheless, some problematic moral aspects will be scrutinized. In particular, keeping in perspective the horizontal structure of international relations, two issues are being exposed: potential abuse and selectivity of the interventions.

Alongside the “who can, should” maxim, there are no *a priori* limitations concerning who should intervene (if the other five criteria are satisfied, of course).³⁵ In practice, the selection will be reduced to those states (and international organizations) that are financially and militarily capable but also have some interest to stop the crisis. The possession of an interest means that sometimes there will be an intervention in one place but the same response will lack in another, often more in a need, place. On the accusations of the selectivity of the humanitarian interventions two points should be emphasized. First, as Wheeler suggests, we should distinguish between two types of selectivity – one that is due to prudence and one that is due to interest.³⁶ If we take into account the criteria that requires reasonable prospect of success before

³⁴Michael Walzer, *The Argument About Humanitarian Intervention*, in *Dissent Magazine* (winter, 2002), p. 31.

³⁵Pattison, for example, does some sort of ranking of the potential interveners based on their legitimacy, effectiveness, and other criteria. See James Pattison, *Humanitarian Intervention and The Responsibility to Protect: Who Should Intervene?* (Oxford University Press, 2010, New York), particularly pp.181 – 212.

³⁶Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, p. 48.

an intervention be employed, then, we will conclude, unfortunately, that sometimes, even when it is necessary, it will be wise not to intervene. This “privileged” status of states or situations where it is not prudent to intervene because of fear of potential forceful response from the affected state or of further worsening of the crisis, is reserved to the five permanent members of the Security Council and their closest allies. That doesn’t mean, however, that nothing should be done here in attempt to settle the crisis, but the option to use force is practically off the table.

The second type of selectivity – non-intervening because of lack of interest – is the more problematic one. Here, knowing that states cannot and will not intervene everywhere and every time, another dilemma arises – should we intervene only in those cases or not intervene at all? Is it morally right to have this double standard in the international community? Probably not, but since the international relations are horizontal in their structure and there is no monopoly on the use of force in the international community, this type of selectivity is not that problematic as it seems. If someone possesses the monopoly of the use of force and applies it selectively, that causes greater injustice than not to apply it all. The rationale behind this reasoning is that those who have the exclusive power also have a responsibility to use it impartially and objectively, whereas using it selectively would be tantamount to abuse of that power. Since no one possesses that monopoly in the arena of international relations (there is no “world cop”) when a state (or a group of states) is willing to help, in accordance with the common morality, it should be allowed to do so. Therefore, keeping in mind the international relations configuration, in this realm, the so-called selective justice is justice on a small scale. As former American president Clinton said in one occasion – “we can’t respond to every tragedy in every corner of the world,” but that doesn’t mean that “for the sake of consistency, we should do nothing for no one.”³⁷ To this some warn that when we allow states to act unilaterally, to take the law in their own hands, we undermine the legal system itself. However, to insist upon an intervention to be always legally authorized or not taken at all (even when it is obvious that it is necessary), poses the question – when does the law suffers more – when one individually, guided only by its own understanding of the law and its own interests implements it or when the legal system itself, guided by the desire to prevent potential abuses, permits the unfolding of an enormous injustice?!

Last resort – Having in mind the negative effects of war, this criterion calls for all other non-military measures to be explored before adhering to the use of force. This does not mean that “every such option must literally have been tried and failed”. Instead, it means that there should be “reasonable grounds for believing that, in all the circumstances, if the measure had been attempted it would not have succeeded.”³⁸

Proportionality – The criteria of proportionality requires that the means used during the war are commensurate with the goals that the

³⁷http://articles.chicagotribune.com/1999-04-02/news/9904020230_1_jewinsky-matter-white-house-yugoslav-president-slobodan-milosevic

³⁸*The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre, 2001, Ottawa) p.36.

intervention aims to achieve. Hence, “the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question”³⁹, in addition to the observance of the rules of the international humanitarian law.

Reasonable prospects of success – Assuming that all the other conditions are satisfied, force can be used only in those situations where the chances of success are pretty high. Thus, a humanitarian intervention can be employed if by doing it we can expect the bloodshed to end. Conversely, if by intervening we can reasonable anticipate that the crisis would be prolonged or exacerbated (for example, into some regional or world conflict) we ought not to use force.⁴⁰

Right intention–This element of the Just War theory demands that “the primary [*but not exclusive*] purpose of the intervention must be to halt or avert human suffering”.⁴¹ It is also one of the mostly contested elements in the doctrine of humanitarian intervention. The justification of various military actions based on rhetoric filled with (alleged) humanitarian motives, has provoked a lot of criticism of the doctrine and has regarded the whole thing as nothing more than hegemonic military action disguised under the language of humanity. In short, this critique can be summarized in the following way: those that intervene are not doing it out of altruism or out of some humanitarian motives, instead, they are doing it for their own sake and for their own interests, hence, this type of intervention is morally unjustified. This claim is erroneous, however, mainly because it fails to distinguish between the motives and the intentions of an act, but for some other reasons too. We will begin with the later.

The basic problem concerning the motives of an act is the issue of their assessment – how can we assess what are the true motives for any intervention? Usually, the answer to this question is a combination of the justification offered for the intervention and “facts from the ground”. Nevertheless, the trouble with the publicly stated justification is that it is very difficult to assess it objectively. We can never be certain in advance whether the declared motives are genuine and why they are stated publicly – to offer honest account of the matter, to appease the domestic or world public opinion or for some other (for example personal) reasons.⁴² Relying on some actions along with the offered justification can serve as a strong indication for a certain motive. For example, a huge influx of refugees from a neighboring country that plunges into a civil war that is becoming financially unbearable for the host state is a more obvious indication of the possible motives of that country if it decides to intervene. Still, this does not change the fact that the evaluation of the motives *at the moment* when there is a situation for humanitarian intervention is an activity based on the author’s personal

³⁹Ibid, p.37.

⁴⁰See the discussion about prudent selectivity, *supra*, pp. 10,11.

⁴¹*The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, p.35. Emphasize added.

⁴² For example, some authors brought up the dilemma whether the USA intervention in Kosovo was motivated from the idea to save lives or from Clinton’s desire to distract the domestic public from the Lewinsky affair. James Pattison, *Humanitarian Intervention and The Responsibility to Protect: Who Should Intervene?* p.157.

assumptions. The authors, who “conclude” the existence of non-humanitarian motives at this moment, are probably guided by the notion that “upon assuming power, statesmen and stateswomen undergo a highly effective socialization process which filters all altruistic impulses.”⁴³ This attitude also shows the very limited and narrow perception on the question of national interest and it is too deterministic.⁴⁴ It is true that states act out of their own national interests, but “the promotion of self-interest and humanitarianism are not mutually exclusive”.⁴⁵

The awareness of some new facts regarding the intervention in question *after certain amount of time has passed* (through the opening of the diplomatic cables, public confessions during interviews or personal memoirs, whistleblowers, etc.), can give a more accurate and plausible picture of the real motives. However, discrediting some past interventions through this type of *ex post facto* analysis, with the single purpose to disclose the motives of an intervention, is useless – it will not do us any good because we were interested in knowing the motives that were dominant at the moment when the intervention was undertaken (not after it finished). Moreover, as a consequence of the discovery of the “genuine” motives, the critiques conclude that as a matter of principle, interventions ought not to be allowed, and by doing so, they *a priori* disregard and treat all future interventions as unjustified without assessing them anew. This in turn means that the critiques do not leave open the possibility for a “genuine” humanitarian intervention to occur in the future.

Their definition of “genuine” humanitarian intervention based on the requirement of exclusive humanitarian motives, is also incorrect. The abovementioned *ex post facto* analysis, now becomes relevant – by performing that analysis on numerous past cases of intervention, it can be concluded that “the motives behind humanitarian interventions are almost invariably mixed”,⁴⁶ humanitarian and non-humanitarian, and that “a pure moral will doesn’t exist in political life, and it shouldn’t be necessary to pretend to that kind of purity”⁴⁷. Furthermore, some authors claim that the existence of non-humanitarian motives is not only unproblematic, but it is a necessary condition, since those countries that are motivated to intervene out of humanism only, “are likely to withdraw their troops once they sustain casualties, whereas if there is some degree of national interest involved, such difficulties will be tolerated”.⁴⁸ Also, it can be argued that an intervention could be categorized as

⁴³Aidan Hehir, *Humanitarian Intervention: An Introduction*, p. 156.

⁴⁴There is no place here, for example, for the idea, promoted by Gareth Evans and the ICISS, that it is in the national interest of each state to be a “good international citizen” and be involved in solving world (and not only its own) problems.

⁴⁵James Pattison, *Humanitarian Intervention and The Responsibility to Protect: Who Should Intervene?* p.161.

⁴⁶Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Polity Press, 2007, Cambridge), p. 7.

⁴⁷Michael Walzer, *The Argument About Humanitarian Intervention*, p. 33.

⁴⁸Taylor Seybolt, cited in Aidan Hehir, *Humanitarian Intervention: An Introduction*, p. 153. USA intervention in Somalia is often stated as an example of this.

humanitarian even if humanitarian motives are completely absent while performing it.⁴⁹ This can be true, if we uphold the thesis, that what is important is the existence of humanitarian *intentions* not *motives*.

As pointed out by John Stuart Mill:

The morality of the action depends entirely upon the intention –that is, upon what the agent wills to do. But the motive, that is, the feeling which makes him will so to do, when it makes no difference in the act, makes none in the morality: though it makes a great difference in our moral estimation of the agent, especially if it indicates a good or a bad habitual disposition – a bent of character from which useful, or from which hurtful actions are likely to arise.⁵⁰

What this distinction shows us is that we should make a difference between the morality of an act and the feeling because of which the act is undertaken. The difficulty of their separation arises when we ask the question – *why* an action was undertaken? The answer can be seen from the aspect of the intention – to prevent a humanitarian crisis, or from the perspective of the motives – to achieve some personal or political gain.⁵¹ Thus, the intention is relevant when we assess the act itself and the motive is more relevant when we assess the behavior of the agent that carries out the act. Only by upholding this distinction we can provide an answer whether an act – the use of force to save lives –is justified by itself. Besides, the intervener and its motives are incorrectly becoming the focus of the analysis as opposed to the victims that should be rescued. Motives are useful, though, to provide us with better knowledge of the interveners and their credibility for some future interventions.⁵²

Thus, genuine or humanitarian intention exists when the intervention is undertaken with the purpose of saving the victims whose

⁴⁹A good example in support of this claim is the following: let us suppose that India's intervention in Pakistan in 1971 was guided completely by non-humanitarian motives – keeping the economic and financial stability of its country (that was heavily burdened due to the huge number of refugees), maintaining the stability inside her own borders and in the region, the return of the refugees from its territory, etc. If we accept the differentiation between the intention and the motive for an action, we can still qualify this intervention as humanitarian, since the intention, the goal that was to be achieved was to stop the massacres on the Bengali population.

⁵⁰Cited in Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality*, p. 116.

⁵¹*Ibid*, p.118.

⁵² It is precisely the intention and not the motive of the act that is at the centre of the justification for many other occasions where force can be used in the international law, situations like self-defense or the anti-colonial wars. In these instances, the use of force is estimated and justified (rightfully so), according to the prevailing circumstances and the goal that the action wants to achieve. Hence, there needs to be an act of aggression or a colonial regime in place (just cause) that by using force will be reversed. Doubts about possible ulterior motives of those that use force –the leaders, for example, of the anti-colonial war that wanted the liberation only to grab the power afterwards and establish authoritarian regime – are correctly left out.

lives are in imminent danger. The International Commission on Intervention and State Sovereignty stresses that,

[a]ny use of military force that aims from the outset, for example, for the alteration of borders or the advancement of a particular combatant group's claim to self-determination, cannot be justified. Overthrow of regimes is not, as such, a legitimate objective, although disabling that regime's capacity to harm its own people may be essential to discharging the mandate of protection – and what is necessary to achieve that disabling will vary from case to case. Occupation of territory may not be able to be avoided, but it should not be an objective as such[.]⁵³

Several things should be underlined here. First, similarly as with the motives, it is very difficult to assess the intentions before or during the intervention. Second, however, this evaluation of the rightness of the intention – the goals that the intervention is expected to achieve – should be conducted exactly at that moment.⁵⁴ Every *ex post facto* analysis of the intentions of an intervention (and its appraisal or condemnation) after it had finished and after the goals that it achieved (or failed to achieve) are known, is unfair and not useful for the evaluation of its justifiability and even more so, for the justifiability of future interventions. This *ex post facto* analysis can answer whether the intervention was successful and properly carried out or unsuccessful and abused for some other purposes, but it cannot claim, based on the outcomes, whether the intervention should have been taken in the first place or not.⁵⁵ In other words, the *intention* should be separated from the *motives* but it should also be separated from the *outcomes* of the intervention.⁵⁶

Third, knowing the current restrictions on the use of force in international law, even if some of the other purposes at which the Commission points out – change of regime, occupation, etc. – do exist, no one would publicly declare these goals, so, their significance here

⁵³*The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, p. 35.

⁵⁴This is what Pattison calls “expected consequentialism” as opposed to “actual consequentialism”. James Pattison, *Humanitarian Intervention and The Responsibility to Protect: Who Should Intervene?* p.169.

⁵⁵It can do that too, but only with the benefit of hindsight. For example, Teson, doubts whether Vietnam's intervention in Cambodia can be qualified as humanitarian, knowing that after the change of the Pol Pot's regime, Vietnam imposed its own dictatorial regime in the following thirty years. But, as the author proceeds further on, he (contradictory, but rightfully) concludes that if we include only the actual humanitarian outcomes in the definition of the humanity (and rightness) of an action, then “some actions could not be judged when they are contemplated, since we would have to wait for all the consequences of the action to unfold”, which in the case of Vietnam's intervention, would mean around thirty years - period in which plenty of other interventions (or situations for intervention) would have occurred. Fernando Téson, *Ending Tyranny in Iraq*, in ‘Ethics and International Affairs’, 19/2, 2005, p. 7, 8.

⁵⁶This does not imply of course that the outcomes are the only thing that matters in the concept of humanitarian intervention.

remains mostly theoretical. Most likely, the idea of the Commission (and some other authors) to include this element in the debate about the humanitarian intervention is in order to exclude as cases of humanitarian intervention those situations where, first there is a regime change (without having a supreme humanitarian emergency on the ground) and then a justification of its potential benefits, in terms of democracy and human rights, for the population. These situations, however, cannot be qualified as instances of humanitarian intervention because they do not even pass “the threshold” condition – the just cause criteria - which is an essential one.⁵⁷

The Doctrine of Double Effect

Despite justifying the use of force as a means to save lives that still doesn't change the fact that war is a devastating event– innocent people will get killed and objects destroyed. Assuming that we can meet the criteria set by the Just War theory and that we can implement them consistently, we still ought to answer why is it justified for some innocent civilians to get killed during the rescue of other innocent civilians? The concept of common morality does not allow for some individuals to be used as means to protect others. To answer this dilemma, we turn to the doctrine of double effect. According to this doctrine, the killing of innocent civilians is justified only when the following conditions are satisfied:

- 1) The desired end must be good in itself (ending a humanitarian disaster);
- 2) Only the good consequences of the action are intended – any bad consequences (like the killing of innocent civilians) are not intended and are not used as a means to achieve the good consequences;
- 3) The good of the good consequences must outweigh the bad from the bad consequences (proportionality).⁵⁸

In order to provide answers to two reasonable remarks at its address, the doctrine, as presented above, needs to be adjusted. First, it needs to explain the dying of innocent civilians that was not intended, but it was expected to happen (is there any difference then between those

⁵⁷A paradigm case for this is the intervention in Iraq in 2003. Although some authors claim to the contrary, the situation in Iraq in 2003, did not pass “the threshold” for humanitarian intervention (unlike, for example the Al-Anfal campaign against the Kurds or the violence against the Shia population, dozens of years ago). As such it was not eligible for humanitarian intervention (although some other, non-military, measures to improve the devastating human rights record could have been taken). For arguments that the 2003 intervention in Iraq was humanitarian, see Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality*, pp. 390-415.

⁵⁸The version of the doctrine of double effect laid out here is a combination of those elaborated extensively by Michael Walzer, *Just and Unjust Wars*, p. 153; Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality*, p. 103 and Aidan Hehir (who cites Bellamy), *Humanitarian Intervention: An Introduction*, p.29.

killed with intention and those killed without one?). Next, it needs to reply to the claim that doctrine is nothing more than utilitarian counting of lives.

Trying to answer the first critique, Walzer offers the following amendment to the second element:

2) The intention of the actor is good, that is, he aims narrowly at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends, and, *aware of the evil involved, he seeks to minimize it, accepting costs to himself*.⁵⁹

As for the second critique, Teson and Wheeler correctly emphasize that apart from saving lives, the goal of humanitarian intervention is to restore justice and human rights as well.⁶⁰

Preservation of International Order

Despite all the above-mentioned justifications, some critics of the concept of humanitarian intervention remark that it is still not justified because of another, higher goal – the preservation of international order.⁶¹ The rather obsolete thesis states that as long as there is order between states, we should not care what is happening inside the states. But this claim cannot be sustained in situations of supreme humanitarian emergency. The price to be paid for the preservation of interstate order is simply too high. In cases like these, the stability of the international system does not stand higher on the scale of values than the saving of innocent lives and the protection of human rights. Besides we can claim without doubt that nowadays, when the interdependence among states is higher than ever, precisely not intervening and not doing basically anything to stop a crisis from happening, can lead to additional regional or worldwide destabilization.⁶² Finally, if the number of cases appropriate for humanitarian intervention

⁵⁹Michael Walzer, *Just and Unjust Wars*, p. 155. Emphasize added.

⁶⁰Fernando Teson, *Humanitarian Intervention: An Inquiry into Law and Morality*, pp. 104, 105; Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, p. 37.

⁶¹Robert Jackson advocates this critique as follows: “The debate on humanitarian intervention is not a debate between those who are concerned about human rights and those who are indifferent or callous about human suffering States who are in a position to pursue and preserve international justice have a responsibility to do that whenever and wherever possible. But they have a fundamental responsibility not to sacrifice or even jeopardize other fundamental values in the attempt... the stability of international society, especially the unity of the great powers, is more important, indeed far more important, than minority rights and humanitarian protections.” Cited in *The Responsibility to Protect: Research, Bibliography, Background*, Supplemental Volume to the Report of the International Commission on Intervention and State Sovereignty (International Development Research Centre, 2001, Ottawa) p. 133.

⁶²The crisis in Syria is perfect example of this.

grows that much and consequently so too does the number of the interventions conducted, which in turn would result in complete destabilization and eventual collapse of the international system, then we should seriously re-examine whether such system is worth preserving at all.⁶³

Domestic Justification for Humanitarian Intervention

At the end, we need to address one more question that is often mentioned as a reason against humanitarian intervention. Namely, why is it justified for states to risk the lives of their soldiers and spend the money of their citizens in order to save some “strangers”? For the supporters of this claim the concept of common morality is not plausible enough. They stress that the state has a duty to take care *exclusively* for its own citizens and satisfy their needs because it draws its legitimacy out of the social contract that they concluded. Thus, every state action that is against the interest of its citizens is not justified.⁶⁴

This reasoning however, presupposes quite narrow understanding of the social contract and the national interest and is thus, incorrect. The fact that there are, so to speak “local” social contracts – of a group of people in certain territory – does not exclude the existence of a “global” social contract – founded on justice and universal, fundamental human rights. Consequently, the authorities of one state have primary, but not exclusive duty towards its citizens. Under certain conditions, such as the instances of humanitarian intervention, states have a duty toward “strangers” too.

We can arrive at the same answer, even if we exam this critique from a more practical, narrowly-perceived national interest perspective. Ignoring and failing to address the problems of “the others, somewhere far away”, can have subsequent consequences on those that could but did not intervene when they should have (and these are primarily the developed countries). Problems like international terrorism or the massive legal and illegal migration are partly as a result of the growing gap between the developed and the developing world but also due to the ignorance of the international community of these parts of the world. Perhaps, for cases like these, the famous saying – act locally, think globally – should be reversed into – “act globally, think locally”, and on the long run.

Nonetheless, if we reduce the problem of intervention on two elements – spending money and using military force for the protection of human rights in some part of the world, we can arrive to the conclusion that states have already agreed to and probably have an interest in achieving this. Namely, states are already spending huge amounts of money in various governmental and non-governmental organizations for the promotion and improvement of human rights and democracy, in

⁶³Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality*, pp. 127,128.

⁶⁴ One can pose the question here, whether, in order to satisfy the needs of its population, this means that it is justified for a state to undertake immoral and even illegal acts?

financing international tribunals for human rights or in aid packages for the development of some (friendly) counties.⁶⁵ As for the use of force, we can make an analogy with the system of collective security. The basic idea of this system is for all states to give support and/or participate in the maintenance of peace or in the defense of a state from aggression, no matter which state or whether they have any (narrowly understood) interest in doing so. Knowing that states have long ago agreed upon this concept, it is not clear why it is justified for them to send their soldiers at the battlefield “somewhere far away” in order to stop some interstate conflict, but at the same time it is not justified to send them into some intrastate conflict to protect “strangers”?! The same underlying values for their deployment on behalf of the international community – peace, justice, dignity, stability, helping innocents – are even more applicable when they are deployed on behalf of the human community.

Conclusion

To sum up, the moral justification of the humanitarian intervention could be explained in the following manner. States are the primary subjects in international relations because they offer the best prospect for the protection of human rights. According to the principle of self-determination, states decide for themselves how their country will be organized and ruled. As long as there is at least “fit2” between the people and the government of a country, the sovereignty stands as protection against intervention. When “the threshold” is passed, the sovereignty is no longer a legitimate (or legal) barrier against intervention. The intervention is undertaken on behalf of the common morality of the human community and war as a method is justified by the Just War theory and the doctrine of double effect. Perceiving the state as a subject that aside from the national has also at least some international interest (although it can be claimed that this is national interest in the long run), we rejected the claims for the preservation of the international order and the ignorance of the problems of “the others” as unfounded. Taken all together, the outlined argumentation was an attempt to “reintroduce a rationalist version of natural law rooted in[...]a sociologically demonstrable universal sense of right and wrong.”⁶⁶

In principle, the justification was deontological regarding the three principles in international relations – the sovereignty of states, the respect and protection of human rights and the non-use of force – but at times it was amended with consequence-utilitarian exceptions. Given all the arguments presented, it can be concluded that in exceptional situations that “shock the conscience of humankind”, when prevention fails and all other less violent measures than military action are exhausted, properly undertaken humanitarian intervention is justified. It

⁶⁵Fernando Téson, *Humanitarian Intervention: An Inquiry into Law and Morality*, pp. 131, 132.

⁶⁶The citation is by Lon Fuller and although it was originally used in a different context, it can be applied here as well. Cited in J.L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, p. 210

is far worse, for the dominant behavior in these situations of “supreme humanitarian emergency” to be “inhumanitarian non-intervention”⁶⁷.

⁶⁷ The phrase was first used by Simon Chesterman in his *Just War or Just Peace?: Humanitarian Intervention and International Law*.

Bibliography

1. **Arendt, H.** (1972). Civil Disobedience. In *Crises of the Republic*. Harcourt Brace & Company.
2. **Hehir, A.** (2010). *Humanitarian Intervention: An Introduction*. Palgrave Macmillan.
3. **Henkin, L.** (1990). *The Age of Rights*. Columbia University Press.
4. **Holzgrefe, J.** (2003). The Humanitarian Intervention Debate. In J. Holzgrefe, & R. O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. Cambridge University Press.
5. **International Commission on Intervention and State Sovereignty.** (2001). *The Responsibility to Protect*. International Development Research Centre.
6. **International Commission on Intervention and State Sovereignty.** (2001). *The Responsibility to Protect: Research, Bibliography, Background, Supplemental Volume to the Report*. International Development Research Centre.
7. **Nardin, T.** (2002). The Moral Basis of Humanitarian Intervention. *Ethics and International Affairs* 16, no.1.
8. **Nardin, T.** (2005). Humanitarian Imperialism: Response to "Ending Tyranny in Iraq". *Ethics and International Affairs* 19, no.2.
9. **Pattison, J.** (2010). *Humanitarian Intervention and The Responsibility to Protect: Who Should Intervene?* Oxford University Press.
10. **Simon, R.** (1999, April 2). *Chicago Tribune*. Retrieved April 30, 2014, from http://articles.chicagotribune.com/1999-04-02/news/9904020230_1_lewinsky-matter-white-house-yugoslav-president-slobodan-milosevic
11. **Téson, F. R.** (2005). Ending Tyranny in Iraq. *Ethics and International Affairs*, 19/2, .
12. **Téson, F. R.** (2005). *Humanitarian Intervention: An Inquiry into Law and Morality*. Ardsley, N.Y: Transnational Publishers.
13. **Walzer, M.** (1977). *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. Penguin Books.
14. **Walzer, M.** (1980). The Moral Standings of States: A Response to Four Critics. *Philosophy and Public Affairs* 9, no.3.
15. **Walzer, M.** (2002, winter). The Argument About Humanitarian Intervention. *Dissent Magazine* .
16. **Walzer, M.** (2004). The Politics of Rescue. In M. Walzer, *Arguing About War*. Yale University Press.
17. **Weiss, T. G.** (2007). *Humanitarian Intervention: Ideas in Action*. Polity Press.
18. **Wheeler, N. J.** (2000). *Saving strangers: Humanitarian Intervention in International Society*. Oxford University Press.