

Establishing the Norm of Humanitarian Intervention in International Relations

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International relations are presently in the midst of impressive change. Whether discussing traditional geopolitics, political and economic globalisation, international institutions, the rise of religious extremism, energy security, or enviro-politics, it is sure that the 21st century offers new challenges, and thus presents international relations scholars with new problematics to consider and address. The changing characteristics of violent conflicts require new approaches to their resolution; the use of force is no longer interpreted exclusively in terms of self-defence but also due to humanitarian necessity. This article is meant to contribute to the wide discussion on humanitarian interventions (HI) by exploring some aspects of how they may acquire international legitimacy. The main controversies surrounding this issue, stems on one hand, from the changing practice of international relations, and from the absence of uniform decision-making system for evaluating necessity, legitimacy and success by concrete interventions on the other.

Although an exact definition of HI is absent from international conventions, it may be understood as ‘coercive interference in the internal affairs of a state involving the use of force with the purposes of addressing massive human rights violations or preventing human suffering.’² According to this specificity, the post-WWII period offers various empirical cases of HI. Nonetheless, there is, in general, insufficient support of the norm through purely legal lenses; revealing obstacles and restrictions by particular actions. Thus, the normative development of HI will be explored in this research by adopting a legitimacy approach, enabling a wider perspective to understanding the changing nature of both international order and justice. In this context, the more traditional

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² Welsh, J., *Humanitarian Intervention in International Relations* (Oxford: Oxford University Press, 2003).

approaches of realism and liberalism also demonstrate explanatory poverty in terms of norm- and idea-shifts that can be supplemented by the more comprehensive theory of social constructivism. Accordingly, attention will be paid to linking HI, legitimacy and international consensus building and mobilisation.

First, it is crucial to demonstrate the changing atmosphere in international politics during and after the Cold War through selected cases of HI that were undertaken with a focus on the extent of international acceptance and legitimacy each case obtained. The empirical results will be followed by evaluating the quality of the popular framework for both justifying and criticising various HI's namely, Just War Theory (JWT). Recently, there has been important progress achieved in defining this concept and applying it to international relations. The *Commission on Intervention and State Sovereignty* recommended in its report entitled 'Responsibility to Protect' six points that could be applied for identifying legitimacy of a HI: (i) just cause, (ii) right intention, (iii) last resort, (iv) proportional means, (v) reasonable prospects, and (vi) authorisation. The main task of this research is to identify the main advantages and limitations within this legitimacy framework to be possibly reformed to establish a more in-sync, universal applicability for future large-scale humanitarian issues.

Interventions During and After the Cold War

During the Cold War there were empirical cases of interventions, which were deemed, in a post-hoc manner, to conform with HI that were later viewed as humanitarian interventions, even though the primary justifications were dominated by security concerns rather than demands for human rights. For example, India's intervention into East Pakistan (Bangladesh) was a reaction to Pakistan's repression of the Bengali population in 1971, which had resulted in a mass exodus of a primarily Muslim community to India.³ This particular intervention is interesting for several reasons. First, India relied primarily on the justification of self-defence because the refugee crisis threatened India's national security and economy. This justification was *not* widely accepted by the rest of international society. According to Wheeler, the problem was the weak argument presented by the Indian authorities. On one hand, he argues that military repressions may be ended by intervention if they invoke strong moral concerns.⁴ This parameter was achieved by the Bengali population, and moreover since India forcibly halted civilian massacres, the intervention is qualified

³ See more in: Sisson, R., Rose, L. E., *War and Secession: Pakistan, India and the Creation of Bangladesh* (Los Angeles: University of California Press, 1985), and Jackson, R., *South Asian Crisis: India-Pakistan-Bangladesh* (London: Chatto and Windus for the IISS, 1975).

⁴ Wheeler, *Saving Strangers*, p.63.

by Wheeler as humanitarian. On the other hand, however, he insists that India made a mistake by explaining its actions without highlighting its humanitarian reason. Nevertheless, there were other political circumstances influencing the international view of India's use of force and the author adequately explains, using this example, that the Cold War order and the significance of alliances did not permit an objective evaluation of the situation or the protection of universal values.⁵

In contrast, there is also the interesting case of India's intervention in Sri Lanka (1987-90), which represents an illegitimate intervention based on humanitarian claims. India justified the so-called *Operation Pawn*, in terms of preventing an ethnic crisis through forced disarmament. Another reason was, once again, the sharp rise of Tamil refugees who had escaped from atrocities being committed by the Liberation Tigers of Tamil Eelan (LTTE). The problem was that India had openly supported this militant organization until their actions resulted in ethnic violence (1987). Also, international responses to India's intervention reflected the strategic position of India – it still enjoyed the wide support of the USSR, which politically enabled India and muted the US – rather than weighed by its own merit. Nonetheless, Pakistan, Bangladesh and China accused India of violating international law, as the UN Security Council (UNSC) would not authorise the action. From the humanitarian perspective, the intervention brought more violence to the region, especially between Tamil and Sengali communities.⁶

Additional evidence for HI may be found in Vietnam's intervention in Cambodia (1979), where the justification for the action was, as in the case of India and Pakistan, based purely on the security of Vietnam – related humanitarian issues were not prioritised.⁷ Vietnam's use of force should have been treated as an *exception to the rule*, and legitimated because it ended atrocities taking place inside of Cambodia. Nonetheless, the intervention received heavy criticism. After Tanzania's intervention against Uganda (1979), international society was more sensitive to violations of human rights and, in contrast to reactions to Vietnam's intervention earlier that year, did not impose any tangible sanctions against Tanzania.⁸ Although the Tanzania case met more requirements of humanitarian intervention, and considering international reactions to Vietnam, it

⁵ Ibid . p.72.

⁶ See Akhtar, S., Humanitarian Intervention in a fragile state: A Case Study of Indian Intervention in Sri Lanka, Institute of Regional Studies in Islamabad: http://www.bipss.org.bd/download/Presentation_of_Dr_Shaheen_Akhtar_Pakistan.ppt#261,10,Nature/Implications_of_Indian_Humanitarian_Military_intervention_in_Sri_Lanka_1983-1990

⁷ More about the intervention: Evans, G. and Rowley, K., *Red Brotherhood at War: Vietnam, Cambodia and Laos since 1975* (London: Verso, 1990).

⁸ For details of Tanzania's intervention see: Hassan, F., "Realpolitik in International Law: After Tanzanian – Ugandan Conflict 'Humanitarian Intervention' Reexamined", *Willamette Law Review*, 17, 1981.

is clear that international society during the Cold War was extremely selective in applying humanitarian principles to political and military actions. Power interests largely determined the actions of states and thus international society, at that time, may be better understood through more pluralist and realist approaches.

Furthermore, there is evidence of ‘purely’ self-interested interventions during this period. For instance, Belgian troops were transported by the US to the Democratic Republic of Congo (DRC) in 1964, to rescue 1800 European hostages. The criticisms levelled at African states and the USSR led to UNSC Resolution 199, which appealed to the countries involved to cease interventions.⁹ Similarly, France sought to keep its post-colonial international advantages and thus assisted in removing Jan Bedél Bocassa – a brutal tyrannical leader – from power in the Central African Republic in 1979. France’s actions met little international consternation as it was able to disguise the extent of its involvement due to the close relations it maintained with Bocassa before his regime’s atrocities became publicly known.

Finally, the clearest demonstration of bipolar politics is the intervention of Indonesia in East Timor (1975). As part of containing communism, the US, along with Australia and the United Kingdom, supported the removal of the Timorese Fretilin Party, which had a left-wing orientation. UNSC appealed on Indonesia to withdraw immediately, but response by sanctions was blocked by the US veto. Moreover, the following rule over East Timor was extremely cruel and violent, and the justifications too poor to be legitimate, but Western sympathies ‘backed up’ the occupation. Consequently, it is understandable that although there were already good examples of humanitarian intervention with positive outcomes in practice (India-Pakistan, Vietnam-Cambodia), the atmosphere of that time restrained the development of new norms based on international consensus.

After the end of the Cold War the discourse changed significantly, especially due to the fact that particular actions were undertaken collectively by Western states. Firstly, intervention aimed at resolving the crisis in Northern Iraq – state-level violence directed against the Kurdish population (1994) – was evaluated as successful in the sense that Operation Provide Comfort harboured Kurds in ‘safe havens’ and later fostered a return to their homes.¹⁰ However, this situation also demonstrated a lack of long term resolution to a conflict and invoked the question of whether an intervention in emergency situations alone

⁹ For the full text of the Resolution 199 see: <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/211/57/IMG/NR021157.pdf?OpenElement>

¹⁰ Stromseth, J.E., “Iraq”, in Damorsch, L.F., *Enforcing Restraint: Collective Intervention in International Conflicts* (New York: Council on Foreign Relations, 1993), p. 81, and Freedman, L., Boren, D., “Safe Havens for Kurds”, in Rodley, N.S., *To Loose the Bands of Wickedness* (London: Brassey’s 1992).

is enough for socio-political improvements over a longer term.¹¹ Similar discussions were also undertaken in another post-Cold War example: humanitarian intervention in Somalia.¹² Besides cultural sensitivity in rebuilding failed states, there were other problems related to societies with eroded state structures – a typical consequence of civil war. And, moreover, the miscalculations of the US to the actual threat faced by its forces, and the unsuccessful results of UN missions, definitely influenced future decision-making regarding intervention on humanitarian grounds.

The genocide in Rwanda (1994) is a near-perfect example of what may happen if international society – especially the United Nations Security Council (UNSC) – remain bystanders of brutal violations of human rights.¹³ France's involvement received sharp criticism based on the argument that intervention is disqualified as humanitarian if it leads to means being employed that conflict with its humanitarian purposes. This event was perhaps the most important when considering further normative developments, because the atrocities that occurred in Rwanda revealed the gap between human rights discourses and effective mechanisms for enforcement.

The breaking point was represented by NATO intervention in Kosovo (1999). As it was collective action of a regional organization with the aim of stopping large-scale humanitarian crisis, much attention was paid to this particular case of HI. The mostly criticised practical impact of Operation Allied Force cannot overshadow the long-term positive outcomes this action brought. Moreover, the justifications were based on humanitarian necessity and learning from mistakes in Bosnia and Herzegovina. The HI was not authorised by UNSC because the decision was blocked by the vetoes of Russia and China. Nonetheless, it was post-hoc authorised by UNSC Resolution 1244. This document adopted on 10th June 1999 determined that 'the situation continues to constitute a threat to international peace and security and emphasized the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure

¹¹ The Iraq intervention also put into dispute the effectiveness of UN Sanctions, which in this case caused another humanitarian crisis. For more information see Rose E.A., "From a Punitive to a Bargaining Model of Sanctions: Lessons from Iraq", In *International Studies Quarterly*, 2005, 49, p.549-479

¹² See more in Clark, J., "Somalia" in Damorsch, L.F., *Enforcing Restraint: Collective Intervention in International Conflicts* (New York: Council on Foreign Relations, 1993), p. 107, and Lyons, T., Samatar, A. I., *Somalia: State Collapse, Multilateral Intervention, and Strategies for Political Reconstruction* (Washington: Brookings Institute, 1995).

¹³ O'Halloran, P. J., "Humanitarian Intervention and the Genocide in Rwanda", *Conflict Studies*, 277, 1995, and Lemarchand, R., "Rwanda: The Rationality of Genocide", *Issue: A Journal Opinion*, 23(2), 1995.

the fast and effective delivery of international aid;¹⁴ This intervention was fundamental for greater flexibility in understanding and evaluating the use of force in international relations.

In addition it should also be mentioned that neither intervention in Afghanistan nor in Iraq, provided by Western coalitions of the willing under the leadership of the US, acquired the requisite legitimacy and international acceptance to be labelled as humanitarian intervention. In both countries there was just reason to intervene in the 1990's, when the extent of the violence reached the point of genocide, but the interventions in 2003 were originally meant as revenge after 9/11 and later interpreted in humanitarian terms. Hopefully the catastrophic consequences for US credibility (not to mention the impact on local populations) will serve in the future as deterrent cases of intervention.

Political 'Climate Change'

The end of the bipolar confrontation in the 1990s resulted in the *great success* of Western liberal-democratic values and their spread to other regions of the world. Besides the possible negative effects accompanying this trend, such as so-called "cultural imperialism" and political hegemony, there was one extremely important positive consequence: that international society largely accepted norms such as human rights protection, the promotion of peace, and sentiments of collective responsibility. It should be said that such values, among others, were incorporated into the international discourse to the extent that even the strongest states and, paradoxically, the promoters of these norms are currently criticised for hierocracy and breaches of the very norms they helped spawn.¹⁵ This should not cast doubt on the norm itself; contrarily it confirms the legitimacy of the norm, because the non-respect of one state generates heavy criticism from other international and local actors.

The current international system is also different in the sense that states remain the most important actors in decision-making, but political and economic globalisation has brought new, non-state actors into the fold. Such bodies are either based on economic interdependence or on the collective will to defend certain values. In addition, there is also a concurrent process of constructing unique socio-political identities, among various actors, which are the result of deepening shared economic interests and cooperation. This is best represented by the EU, which has managed to construct a viable political culture stemming

¹⁴ Resolution 1244(1999) par.12 see <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

¹⁵ The Iraq war and the responses to the US approach to human rights, which was negatively judged in the context of the treatment of prisoners in Guantanamo bay.

from post-WWII economic integration, successfully avoiding violent conflicts among its members.

In contrast to this trend, the end of bipolar confrontation also brought new types of conflicts into the regions that were previously under the control of superpowers and became independent. Lederach, in this context, argues that after the Cold War new states emerged, which brought new disputes over territory, governmentalities and/or ethnic discrimination, and altered conflict trends with a majority of ‘new wars’ gravitating along interstate lines.¹⁶ This explanation is common in analyses of current conflicts; nonetheless, the statistics show contradicting results. In 1989 there were 38 intrastate conflicts, of which 4 become internationalized and 2 were already interstate, compared to 2005 when 25 intrastate conflicts occurred, of which 6 become internationalized.¹⁷ Accordingly, the number of active conflicts has decreasing tendencies, which is good news for conflict resolution theorists. The change is also rooted in greater attention, supported by media and/or academic circles, and widespread access to information available to masses of increasingly concerned people. Thus, current conflicts seem closer and more important to international society. Further, some conflicts contribute to regional instability and insecurity leading, through “spill-over,” to the internationalization of conflicts. Finally, and most importantly, international society has changed, and the promotion of new norms and values by both traditional states and new international actors has brought visible normative shifts.

Constructivists rightly argue that besides material forces, values may also cause shifts and alterations in international society. Before becoming incorporated into common norms, they first have to acquire legitimacy from actors.¹⁸ For instance, Martha Finnemore claims that ‘state interests are defined in the context of internationally held norms and understandings about what is good and appropriate ... The normative context also changes over time, and as internationally held norms and values change, they create coordinated shifts in state interests and behaviour across the system.’¹⁹

Taking into account the efforts of particular actors to promote human rights (i.e. the UN, the Red Cross, Amnesty International, and Human Rights Watch, etc.), the military defence provided by international actors, and the acute attention paid to this issue, one may be surprised that there is no effective and legitimate norm of humanitarian intervention. Constructivism bases the legitimacy of norms on a collective intentionality in the minds of individuals

¹⁶ Lederach, J.P. *Building Peace: Sustainable Reconciliation in Divided Societies*, p. 16.

¹⁷ Interstate and Intrastate Armed Conflicts 1989-2005 on <http://www.prio.no/cscw/ArmedConflict>

¹⁸ Ruggie, J.G., “What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge”, *International Organisation* 52.4, 1998, p.872

¹⁹ Finnemore, M., *National Interests in International Society*, p.2-3

that creates new rights and responsibilities and leads consequently to collective legitimation. It is thus crucial to observe the sources of legitimacy in more depth and to further investigate such a potential basis in the principles used for the justification of humanitarian intervention.

The Legitimacy of Humanitarian Intervention

International legitimacy is especially focused on by constructivists. This is contrary to the traditional assumption that international relations are largely governed by power relations. The two concepts are complementary since the inverse of the legitimacy of power is the ‘power of legitimacy.’²⁰ Claude argues that legitimacy is important to power-holders because it makes them more secure. Another opinion, more related to the constructivist approach, is provided by Wheeler who stipulates that ‘legitimacy is constitutive of international action.’²¹ In Wheeler’s view, state actions will be constrained if they cannot be justified in terms of plausible legitimating reasons. He further disagrees with realist writers, like Carr, that states are always able to create legitimacy convenient to themselves, and he maintains the relationship between power and norms.²² In conclusion, norms, once established, will serve to constrain even the most powerful states in the international system, and, moreover, can pull the actions of states towards positive outcomes. On the other hand, there must first be found an agreed-upon source of legitimacy within international society to be able to set the criteria of legitimate intervention. On this point, Clark significantly contributes to the brewing discourse on legitimacy by defining the latter as implying a measure of social consensus.²³ He develops this thesis through an analysis of the nature of consensus as being a product of political construction, not of philosophical discovery. From a normative perspective, he argues that ‘the importance of a consensus inherit in its being assumed to express in some rational determined way, an ultimate value or norm.’²⁴ In his study Clark, reaches the conclusion ‘that of greater consequence is the identification of behaviour that acts consciously to maintain an international society defined by its principles of legitimacy and reflects a belief in being bound by such a social enterprise.’²⁵ Accordingly, the principles leading to legitimacy, mediated through politics and consensus, retain a fundamental value. Clark also applies his claim concretely to humanitarian intervention and argues that the models derived from international law

²⁰ Claude, I., Collective Legitimation as a Political Function of the United Nations, *International Organization*, 20, 1966, p. 368.

²¹ Wheeler, N., *Saving Strangers*, p.4.

²² *Ibid.* p.6.

²³ Clark, I., *Legitimacy in International Society*, p. 190.

²⁴ *Ibid.* p. 193.

²⁵ *Ibid.* p. 247.

and just war theory (JWT) have much to offer but do not represent *the* criteria of legitimacy.²⁶

The argument that actors attempt to provide justification for their actions confirms the importance of legitimacy in international society. To affirm the claim of Clark regarding principles used as legitimating criteria for humanitarian intervention, it is essential to analyse the level of consensus and universality in the principles commonly used in international discourses. The most complex and useful framework for evaluating the legitimacy of humanitarian intervention is derived from just war principles. The effort to define such norms in a more comprehensive way led, for example, Canada to initiate the International Commission on Intervention and State Sovereignty. Its members were highly experienced and well-known analysts from around the world whose expertise and scholarly independence guarantees more objective insights into the problem.²⁷ The final report, entitled *Responsibility to Protect*,²⁸ aimed at bringing intellectual satisfaction and new conclusions and attempted to avoid disputable questions over what is legal and what is legitimate. At the centre of attention were placed people who need support and protection from systemic mass killing, women from serial rape, and children from deprivation and starvation. Besides honing reactive capabilities, the commission was also occupied with assessing possibilities of prevention and reconstructing conflict-plagued areas. The commission also stressed the importance of finding a common language accessible to everyone, taking into account the fact that the controversial nature of humanitarian intervention is often ethnic-, religion-, history-, or language-based. The result was a set of six criteria, which could answer questions such as: ‘what are the extreme conditions requiring the use of force?’, ‘who may decide?’ or ‘when is an action just?’ Those principles defined by the *Responsibility to Protect* report will be presented as the most comprehensive system employed for justification in practice. However, they actually do not provide any significant improvements on traditional JWT. Consequently, its value is based more on clarity and reliability; otherwise the content does not bring any normative progress. On the other hand, efforts to highlight not only the ‘right’ but also the ‘responsibility’ to act confirmed the tendency to create a universal norm of humanitarian intervention and produce a level of solidarity among states to that end.

²⁶ Ibid. p. 255.

²⁷ For example, Gareth Evans (Australia), Co-Chair, has been President and Chief Executive of the Brussels-based International Crisis Group since January 2000, Gisèle Côté-Harper (Canada) is a barrister and professor of law at Laval University, Lee Hamilton (United States) is Director of the Woodrow Wilson International Centre for Scholars, Klaus Naumann (Germany) served as Chairman of the North Atlantic Military Committee of NATO (1996-99), and Ramesh Thakur (India) has been Vice-Rector of the United Nations University, Tokyo, since 1998, and is in charge of the University’s Peace and Governance Program.

²⁸ See full version of the Report: <http://www.iciss-ciise.gc.ca/pdf/Commission-Report.pdf>

Table 1: Six principles of Humanitarian Intervention

REQUIREMENT	DEFINITION
Just Cause	Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind: A. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or B. large scale 'ethnic cleansing,' actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.
Right Intention	The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.
Last Resort	Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.
Proportional Means	The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.
Reasonable Prospects	There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.
Authorization	There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.

Source: *Responsibility to Protect*

Just Cause

It is necessary to strictly set this limitation for both conceptual and practical political reasons (if the intervention should occur when it is necessary, it cannot be used very often). Military action may be a legitimate mechanism, as a reaction, on clear evidence, to actual or probable large-scale murder or ethnic cleansing. Without options of prevention, international society would be in a morally reprehensible position to await the commencement of genocide before taking any steps to defend civilians. This criterion is sufficiently broad to be applied not only to deliberate atrocities that were committed in, for instance, Rwanda, Bosnia and Herzegovina or Kosovo; it may also be implemented when state structures collapse and consequentially mass starvation or civil war erupts, as witnessed in Somalia.

‘Just cause,’ in this formulation, cannot be used in instances of human rights violations that do not lead to large-scale killing, or to the overthrowing of democratic government. As a result, individual cases of human rights violations or racial discrimination would not provide a sufficient ‘just cause’ for humanitarian intervention. The crucial point is to recognize the dividing line between internal conflicts that do not invoke an international responsibility to react, and those that stay in exclusive competition of intrastate institutions. Walzer responds to this problem by determining the justification to cases that ‘shock the moral conscience of mankind.’²⁹ Although morality is a relative term, even conventional law recognises crimes against humanity are strongly opposed, for example in the Nurnberg Laws (1938).

Right Intention

According to the report, there is a range of ways to ensure the fulfilment of this condition. First is collective or multilateral action, rather than unilateral intervention. Second is the assurance that there is a great level of support for intervention by people whose protection the action is directed at. And thirdly, to what extent were the opinions of state representatives from a given region considered, and how far were those opinions in support of the intervention? The absence of non-humanitarian interests would be ideal and is suggested as being necessary, but taking into account the financial costs involved in military actions in addition to the risks to involved military personnel, maintaining absolutely selfless motivations would be unrealistic. In a similar spirit, Seybolt argues that the side-motivations may have a positive impact on the success of an operation, because once states have particular interests accompanying the main humanitarian motivations, they will put more emphasis on the strategic and technical part of the intervention leading to a greater probability of success.³⁰

Last Resort

This condition seems logical, in that if cases of HI are generally exceptional, HI or military intervention must be the last option after diplomatic efforts have failed. But the condition has to be interpreted within reason. The character of current conflicts that would require intervention for humanitarian purposes would not give enough space to try all the other mechanisms before deploying military force. In short, there may not be enough time to allow this process of “all peaceful measures first” to bear fruit. There is an extensive range of preventive mechanisms via operations “just short of” conflict (not

²⁹ Walzer, M, *Just and Unjust Wars*, p. 107

³⁰ Seybolt, T.B, *Humanitarian Military Intervention: The Conditions for Success and Failure*, p.13

necessarily peaceful in appearance), including, for example, limitations on weapons use, the monitoring of militarisation, peace agreements, the establishment of preventive peacekeeping zones, economic and military embargos, and/or sanctions.

Moreover, institutional procedures enabling such instruments could decrease operational efficiency, and before consensus over alternative solutions could be reached – other than intervention – a humanitarian catastrophe in the region of conflict may already be unfolding. As a result, this principle may restrict the effectiveness and rapid reaction needed to counter atrocities, as happened during the genocide in Rwanda (1994).

Proportional Means

An intervention must be proportionate to its declared purpose and must be in parity with the level of provocation which resulted in the intervention. The effects on the political system of the targeted state should be limited to the means, which are strictly necessary for the achievement of an intervention's goals. Consequently, the action can be undertaken only under circumstances such that the planned operation will have an impact only on conflicting parties and victims of the conflict. This requirement is again not in conformity with the reality of armed conflicts, where developments are largely unpredictable. It would be almost impossible to decide about intervention on proportionality grounds as there will always be a risk that the intervention will, in practice, look different from the planned operation. This may occur on both sides, as either military capacities can be exaggerated and may result in the growth of aggression, or insufficient capacities may also cause unacceptable losses to the intervening state.³¹

Reasonable prospects

Military action may be justifiable only if it has a reasonable chance of succeeding and will not lead to a general worsening of civilian conditions. This is connected with hypothesis 4, and introduces more obstacles than simplifications to the decision-making process. Again, this principle is more useful in post-intervention justifications but cannot serve as an objective principle to intervene. The latter option occurred in Somalia, where the escalation of violence among clans was underestimated by the US and resulted in a CNN campaign against sacrificing one's own soldiers in situations without national interest.

³¹ The latter option happened in Somalia where escalation of violence among clans was underestimated by US soldiers and led to unnecessary losses on the intervener's side.

Authorisation

In terms of authorising humanitarian interventions, there is a sufficient legal basis to claim that, in the first instance, the UN, and particularly its Security Council, must be deeply involved. The question remains over whether it should be the last possibility to obtain the appropriate legitimate permit needed for HI. According to the opinion of the Commission, the question of principle is indisputable and the UN should certainly be the main institution for building, strengthening and applying the supreme authority of international society. Those who attack or do not respect the competences of the UN as the only legitimate guardian of international peace and security may risk undermining its authority generally, and consequently will be responsible for a breach of international society based on norms and consensus. Thus, according to the report, there are only two institutional options in case that the Security Council is unable or willing to act whilst there is a sufficient humanitarian reason for intervention. The first option is the negotiation of the issue in the General Assembly in the form of the *Uniting for Peace* procedure.³² The second possibility is the actions of regional or sub-regional organizations based on Chapter VII of the UN Charter, but with the assumption they will afterwards seek the approval of the UN Security Council.³³

The interventions provided by ad hoc coalitions or unilaterally, without the UN's approval, do not have broader international popularity. Nonetheless, there is presently a strong wave of criticism directed at the role of UN in its peace enforcement role, caused by the unevenness of influence in the UNSC – a non-representative UN organ whose configuration is based on the post-WWII international environment – with veto power held by the five permanent members (China, France, Russia, the US, and the UK) which tend towards using the UNSC for the achievement of self- rather than international interests. The aim of the Commission is to reform the Security Council so that it becomes more effective and operationally capable, better able to react to unforeseen events and, moreover, the report leads to the conclusion that it is necessary to preserve the position of the Security Council in matters related to the use of force.

This claim is logical for the protection of international order, but what if the UN fails in its responsibility to prevent and punish significant breaches of international peace? Then the organisation itself contributes to the weakening of norms and destroys its own credibility. In such situations, questions arise over which of the two evils is worse: the consequences for international order caused by the ignorance of the Security Council, or the consequences for international order caused by mass killings with the silent agreement of the international society.

³² This procedure was applied as solution for the Operations in Korea in 1950, on Egypt in 1956 and Congo in 1960.

³³ This possibility was used in the case of West-African Interventions in Liberia in 60's and in Sierra Leone in 1997.

Evaluation of the Just War Framework

The international legal order is not adequate for defining or understanding justice, because it tends to equate legitimacy with legality. Grotius, Vitoria, and Suarez all argued that ethical concepts of justice bear at least the same relevance as the legal concepts of justice.³⁴ Firstly, purely legalistic literature fails to recognize this dual concept of legitimacy when discussing the right of intervention. Secondly, in this discourse, authors prevalingly focus on the dilemma of how to balance state sovereignty with human rights.³⁵ Finally, the claim that, whereas making legislation is political, the implementation of law is not, is problematic. This assumption would perhaps be valid within international bodies such as the EU, which is actually based on a legal framework, but when one or more states decide to use legal norms to justify intervening in another state's internal affairs, the procedure of decision-making is both political *and* legal. In short, giving law a central place in the discourse on intervention leads to disregarding other aspects important for analyses of this issue.

In contrast, JWT offers a more flexible and complex framework for dealing with problems associated with determining the legitimacy of deploying force for humanitarian purposes. Many of the arguments regarding humanitarian intervention use, as their analytical base, JWT, although some of them do not provide direct reference to that tradition in particular studies.³⁶ The framework has several advantages: foremost, it recognizes the political dimension, including the reality of power combined together with ethics. It also reflects the moral importance of consequences differentiated by three major ethical traditions: consequentialism, deontology, and virtue ethics. In deontology, actions are judged on the basis of whether they conform to standards derived from various concepts like natural law, whereas according to consequentialism actions are judged by whether they promote happiness, welfare or other good effects. In virtue ethics the author is judged rather than the action, for example if he has a good character and good intentions.

³⁴ See Grotius Hugo, *De Jure belli ac Pacis*, Translated by A.C.Campbell (London: Hyperion, [1625] 1990), Victoria,F., *Political Writings*, Edited by Anthony Pagdem and Jeremy Lawrence (Cambridge: University Press, [1557] 1991), p.299.

³⁵ See Reisman, M.W., "Sovereignty and Human Rights in Contemporary International Law", *American Journal of International Law*, 1990, 84, p.866-876, Donnelly, J., "Human Rights, Humanitarian Crisis, and Humanitarian Intervention", *International Journal*, 1993, 48, p. 607-640, and Pease, K.K, Forsythe, D.P, Human Rights, Humanitarian Intervention, and World Politics, *Human Rights Quarterly*, 1993, 15, p. 290-314

³⁶ Nicholas Hopkinson lists several criteria identical with JWT without making direct reference to it. See Hopkinson, N, *The United Nations in the New World Order* (Wilton Park Paper, London: HMSO, 1993). Oliver Ramsbotham and Tom Woodhouse use twelve principles of Humanitarian Intervention, several of which are based on JWT even though they also do not comment on the theory itself much. See Ramsbotham, O, and Woodhouse, T, *Humanitarian Intervention in Contemporary Conflict* (Cambridge Polity Press, 1996).

JWT is also flexible regarding the discursive basis able to react to complex challenges regarding intervention in current conflicts. Similarly, Fixdal argues that:

Just War traditions build on the idea that the imperfections of the world and the discrepancies that often exist between virtuous intentions and uncertain consequences encourage us to ponder each case before making firm judgments about the legitimacy of an intervention. It meets the challenge through its distinctive, case-specific form of argument.³⁷

On the other hand, this flexibility leads to different interpretations of JWT and various prioritizations of particular principles. Mervyn Frost ignores its relevance to civil war or intervention. In contrast, Charles Stevenson views the principles as absolute conditions. Nicolas Wheeler agrees with the advantages of the Just War framework, but uses only particular requirements fulfilling legitimacy: just cause, last resort, proportionality and positive humanitarian outcome.³⁸ Thus the framework is used differently in its application to particular cases and leads to different ways of justification or critique. A more significant problem lies in some particular requirements of JWT that are useful for regressive analyses of legitimacy but cannot serve as relevant criteria for decision-making at the time.

Conclusion

In this article the defence of HI is based on the remarkable development to the international system following the Cold War, which significantly changed the characteristics of international conflicts, and consequently requires also alternative responses. During the Cold War the dominant feature was not direct conflict between the superpowers, but rather proxy wars between allied states or sub-state groups. On the one hand, the two spheres of influence suppressed many latent conflicts, but on the other hand, and more importantly, such involvement increased instability in “penetrated” regions, mostly through massive militarisation programmes.³⁹ Nowadays, international society faces the consequences of bipolar division and competition in the post-WWII international order, but the activity of intervening states motivated prevalingly by self-interest was replaced by collective passivity and insufficient responses to

³⁷ Fixdal, M, “Humanitarian Intervention and Just War,” in *Mershon International Studies Review*, 42, 1998, p. 288

³⁸ See Frost, M, *Ethics in International Relations* (Cambridge: University Press, 1996), p.199-200, Stevenson, C, “The Evolving Clinton Doctrine on the Use of Force,” in *Armed Forces and Society*, 1996, 22, p.511-535, Wheeler, N.J, *Saving Strangers*, p.34.

³⁹ For example the US militarization of rebelling groups in Afghanistan in 1979, aimed at defeating the USSR led to increased violence in the region caused by the militarization of extremist groups.

conflicts. The paradox here is that the literature on HI could theoretically fulfil this gap, whilst the development of the norm has not brought any significant formal codification.

Social constructivism suggests the decisive aspects of the process of ideas becoming internationally accepted norms are: the international recognition of legitimacy; prominence and quality of the norm, including some high-minded aim; and, finally, its characteristics, clarity, and specificity. Accordingly, the analysis of the Just War framework shows gaps in all aspects except the quality and prominence of HI, as the main purpose is to avoid bodily harm and stop violations of human rights. Unfortunately, the ability to objectively evaluate the legitimacy of an intervention is limited due to the irrelevance of several requirements for universal recognition of the just reason to act. Some of the criteria can be applied only during the intervention, but they may be miscalculated, misinterpreted or simply not fulfilled under critical circumstances of violent conflict.

This study presupposed there exists an international consensus in these extreme examples that something has to be done, but this shared opinion is not sufficient because it does not answer problematic questions, such as: who should intervene and under what conditions? The answers could be found in an alternative framework that would be applicable in respect of the need to intervene when humanitarian catastrophe occurs. The greater importance of the norm could help to avoid international by-standing to internal conflicts in Rwanda, Bosnia and Herzegovina, Angola, Darfur or Myanmar that resulted in huge amounts of deaths. The world is changing, and whilst promoting the universal importance of peace, security and human rights, there should also exist a will to enforce these principles. If there is even a small or risky option to save people who are victims of similar crises, the improved concept of humanitarian intervention is fundamental for international society to be prepared for such crises that may and surely will emerge.

Ultimately, it seems that such problematics will not be fully solved in the very near future. Instead, it is likely that JWT will continue to largely occupy the realm of ideas and only slowly start to impact on the international relations of states. Such developments, however slow, are important for the long-term development of an international society that values the rights of individuals over the sovereign rights of states. This is an essential step towards establishing a truly international regime that supports the rule of law, international justice and democratization; values that assist in syncing the demands of citizens with the policies of their states.