

# SOME CAUTION, PLEASE: APPLYING THE CONCEPT OF MORAL HAZARD TO HUMANITARIAN INTERVENTION

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*ABSTRACT: The concept of moral hazard, born in insurance studies, has recently been adopted by international relations theory where it is primarily applied to humanitarian intervention. This article cautions against too hasty an embracement of the concept by IR scholars. Arguing that important theoretical differences exist between the original and the new milieu in which the concept is used, the text suggests that the concept needs to be de(re)efined to better capture the reality of humanitarian intervention. Endorsing some of the proposals made by other scholars, the text also introduces two new variables (the probability of genocidal violence, and the probability of intervention) that should help to account for the role played in humanitarian intervention scenarios by the territorial state.*

**KEYWORDS:** moral hazard, humanitarian intervention, IR theory, genocidal violence

## INTRODUCTION

International relations theory has recently enriched itself with a host of new concepts originating in other areas of social and even natural sciences. One of them is the concept of moral hazard. This concept, in its modern shape, was formed under insurance studies in the 1960s and soon after became popular among economists. It postulates that the provision of insurance against a certain type of risk induces people to behave recklessly or fraudulently, giving rise to the materialisation of the very risk it was supposed to prevent. In other words, moral hazard denotes 'the lack of incentive to avoid risk where there is protection against its consequences' or 'the presence of incentives to take risk where there is protection ... against its consequences.'<sup>1</sup>

In international relations theory, the concept of moral hazard has been, so far, primarily applied to humanitarian intervention. It purports to show that the norm entitling states or other international actors to intervene with military force in the territory of another state without its consent in order to avert or halt large-scale violations of human rights can in fact increase the occurrence of such violations by pushing potential victims to rebel, thereby provoking the territorial state to retaliate with genocidal violence. Several humanitarian crises, particularly that of Kosovo in 1999, are called upon to corroborate this interpretation with empirical data. This article cautions against too hasty an embracement of the concept of moral hazard by IR scholars. Arguing that important theoretical differences exist between the original and the new milieu in which the concept is used, the text suggests that the concept needs to be de(re)defined to better capture the reality of humanitarian intervention. Endorsing some of the proposals made by other scholars, the text also introduces two new variables (the probability of genocidal violence, and the probability of intervention) that should help to account for the role played in humanitarian intervention scenarios by the territorial state.

#### THE CONCEPT OF MORAL HAZARD

The concept of moral hazard appeared in the 17th century, when it served to describe fraudulent or immoral behaviour in insurance contracts, normally on the part of the insured.<sup>2</sup> Research into the period's discourse indicates that "moral" was then largely equated to "subjective," and the term moral hazard therefore did not have primarily ethical connotations.<sup>3</sup> While the concept of moral hazard was very popular among the insurance companies in the 18th and 19th centuries, it receded into the background in the first half of the 20th century, to be rediscovered in the 1960s. It spread quickly in insurance studies<sup>4</sup> and in other areas of economics.<sup>5</sup> It has been conceptualised as one of two main sorts of market failure,<sup>6</sup> consisting in 'the tendency of people with insurance to change their behaviour in a way that increases claims against the insurance company.'<sup>7</sup> On a concrete level, it entails that 'people with insurance may take greater risks than they would do without it because they know they are protected, so the insurer may get more claims than it bargained for.'<sup>8</sup>

In principle, two different dynamics are encompassed by the concept of moral hazard.<sup>9</sup> The first rests in *fraudulent* behaviour elicited by over-insurance – for example, when a person destroys his or her car to get more than what the car's real value is. The other lies in *reckless and irresponsible* behaviour made possible by the existence of the insurance – for example, when a person parks his or her car in a dangerous area knowing that damage will be compensated. Although some authors seek to limit the meaning of the term to the latter dynamics, this approach is not prevalent.<sup>10</sup> Yet, it is important to keep in mind that recklessness and fraud are different in nature and that they can hardly be suppressed by the same means. The concept of moral hazard is closely related to, and intertwined with, other analytical concepts, especially those of perverse incentives, unintended consequences, asymmetric information, and negative precedents. Scholars differ significantly in what relevance they assign to these concepts.

*Perverse incentives* are incentives, i.e. stimuli to behaviour, which produce adverse consequences unanticipated and/or unintended by the incentives' makers. Those consequences result from social actions undertaken in order to receive the incentive, which in that way turns from a simple tool of positive motivation (a carrot) into the very goal of people's actions. Thus, for instance, making the funding of fire departments dependent on the number of fires they manage to extinguish can make fire-fighters either neglect prevention or, in a worse case, set fires themselves. In the insurance area, the insured persons' belief that they will obtain compensation if their car gets destroyed can induce them to drive carelessly (insurance) or, even, to intentionally cause a car crash (over-insurance). Perverse incentives play a crucial role under the concept of moral hazard. They are what makes risk-taking acceptable or, in a worse case, even welcome for insured or over-insured actors.

*Unintended consequences* are consequences, that is, effects resulting from a certain action, which have not been desired by the actor whose behaviour has brought them about. They can be foreseen or unforeseen, and foreseeable or unforeseeable, depending on whether the actor did/did not or could/could not predict them. Another way of categorising unintended consequences is to distinguish between positive, negative and perverse ones. Positive unintended consequences are unplanned but welcome and beneficial.

Negative unintended consequences are both unplanned and unwelcome; they often occur in addition to the intended effects of the action and constitute the price to pay in order to reach the main goals. Perverse unintended consequences are not only unplanned and unwelcome, but also directly contrary to the intended effects. The two examples mentioned above both have perverse unintended consequences. Those consist in the fire-fighters' failure to prevent fires or their setting them on purpose in the first case, and in the insured car owners' recklessness or intentional causing of car accidents in the second case. Unintended consequences are, again, an important component of the concept of moral hazard. They explain, in terms of causality, the link between the original incentives and the materialisation of the risk, while at the same time divesting the insurer of the direct responsibility for the risk materialisation.

Closely linked to unintended consequences is the concept of *asymmetric information*.<sup>11</sup> This term describes a situation in which important information is available and known to some, but not all, relevant actors. Some authors view this factor as a key driver in the moral hazard theory, claiming that 'for a moral hazard to exist, there must be a situation where the insuring party is not able perfectly to observe or monitor the insured party's behaviour.'<sup>12</sup> The insurer need not be objectively unable to get information; it suffices that getting information would be subjectively impossible or too difficult. As a result of asymmetric information, the insurer 'cannot directly or perfectly observe the insured party's actions, but instead must infer them from the outcomes that result from both the insured party's actions and exogenous events.'<sup>13</sup> Finally, negative precedents are examples of past practice that 'guide behaviour in an undesirable direction.'<sup>14</sup> For instance, if insurance companies do in several cases compensate car drivers who have behaved recklessly or even intentionally caused accidents, such cases set negative precedents that will most probably be emulated in future. Negative precedents give rise to perverse incentives, yet perverse incentives can also arise in fully unprecedented situations. As important as past practice, if not more, is the general context, including the specific contract between the insurer and the insured, the promises made explicitly or implicitly by the former, etc.

Situated at the intersection of these different concepts, the concept of moral hazard combines their elements while giving them

a new quality. It implies that the existence of insurance aimed at protecting people against risks and at minimising the negative effects thereof has, in circumstances of asymmetrical information, the unintended consequence of creating perverse incentives for the insured to behave recklessly or fraudulently, incurring or provoking the very risk against which they are insured. The insurance theory has witnessed many attempts to buttress the concept of moral hazard with empirical evidence. These attempts so far remain inconclusive. Scholars disagree as to whether the concept materialises in practice or not,<sup>15</sup> whether it is purely negative or has positive implications as well,<sup>16</sup> and whether and how the perverse incentives and unintended consequences could be reduced.<sup>17</sup> All these questions are not merely technical but have important political implications. They permeate discussions on such important and diverse issues as national health care<sup>18</sup> or the IMF system of bailouts.<sup>19</sup> This article does not plan to rehearse the arguments raised in these discussions. Instead, it focuses on the possibility of using the concept of moral hazard to study humanitarian intervention.

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The concept of moral hazard postulates the existence of insurance. Yet, as stressed by Baker insurance 'is not simply something provided by "insurance companies."' <sup>20</sup> Rather, it 'is provided any time that one party's actions have consequences for the risk of loss borne by another.'<sup>21</sup> It thus seems *prima facie* possible to use the concept of moral hazard in other areas of social sciences and to apply it to any social relationship revealing the organisational and functional logic analogous to that between an insurer and an insured. One of the candidates for testing the concept is humanitarian intervention.

Humanitarian intervention has been high on the research agenda of academics with an international relations or political science background for several decades. Yet, the attempts to analyse it by means of innovative conceptual tools are of a more recent date, starting, in a more systematic way, only in the aftermath of the Cold War. As a consequence, practically all texts looking at humanitarian intervention through moral hazard lenses have been published over the last ten to fifteen years. These texts include, among others, the pivotal study by Rowlands and Carment,<sup>22</sup> a monographic

volume edited by Crawford and Kuperman,<sup>23</sup> and a series of articles by Crawford,<sup>24</sup> Kuperman,<sup>25</sup> and other authors.<sup>26</sup> Although the number of available titles increases relatively quickly, the whole area is still quite fresh and practically free of dogmatic canons that would limit the debate to only a couple of unresolved questions. Since high stakes, in both theoretical and practical terms, are in play here, it is certainly worth taking on this challenge and inquiring into how pertinent the concept of moral hazard is for humanitarian intervention. Before doing so, a short presentation of humanitarian intervention is necessary, in view of the plurality of meanings the term has been assigned by scholars.

Humanitarian intervention has passed through an interesting evolution, whose beginnings according to some views go as far back as to the antiquity.<sup>27</sup> As a term of art, however, it appeared only in the 19th century,<sup>28</sup> when “humanitarian intervention” (or, more exactly, “intervention of humanity” from the original French “intervention d’humanité”) served to describe military interventions by European states in territories of non-European countries, especially the Ottoman Empire, aimed at protecting local Christian communities. Examples include the intervention by European powers in support of the Greek war of independence in the 1820s and the Anglo-French intervention in support of the Lebanese Maronites in the 1860s. In the course of the 20th century, the scope of the notion gradually expanded to include actions with an intent to save not only people of the same religious, ethnic or national affiliation, but any group of human beings threatened with or exposed to large-scale violations of fundamental human rights. What is thus defined as humanitarian intervention today is ‘the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.’<sup>29</sup>

Examples of such interventions during the Cold War period include the Indian action in Eastern Pakistan in 1971, the Vietnamese action in Cambodia in 1978, and the Tanzanian action in Uganda in 1979. Post-Cold War examples encompass the UN interventions in Somalia (1992), Bosnia and Herzegovina (1991–1995), and East Timor (1999); the NATO intervention in Kosovo (1999); the ECOWAS interventions in Liberia (1990) and Sierra Leone (1997–1998); and the

repeated cases of the use of military force by the USA and the UK in Iraq from 1991–2003.<sup>30</sup> Cases of humanitarian intervention are often classified in function of their presumed legality into two groups consisting of, on the one hand, legal interventions authorised by the UN Security Council under Chapter VII of the UN Charter, and on the other hand, illegal interventions which lack such authorisation and are therefore unilateral in nature. This classification, though crucial for international legal scholars, has a limited relevance from the perspective of moral hazard. It merely influences the stability of the “insurance contract” and the probability that the “insurers” (that is, the interveners) will comply with their part of the contract.

Some authors, including some of those dealing with the concept of moral hazard, have a broader understanding of humanitarian intervention. For instance, for Kuperman, humanitarian intervention ‘encompasses the full spectrum of potential international action motivated primarily by the humanitarian desire to protect civilian targets of state violence.’<sup>31</sup> This spectrum covers both military actions and a host of pacific measures such as condemnations, diplomatic protests, political pressure, arms embargoes, or sanctions. While this approach has some proponents in international relations and international legal studies,<sup>32</sup> it is discarded here for two reasons. First, it deviates from the definition given by the majority of scholars who tend to include the use of force among the main features of humanitarian intervention. Second, a broad understanding of humanitarian intervention does not correspond to the logic of moral hazard. The risk incurred here, namely genocidal violence and other large-scale violations of human rights, is so serious that rebels would hardly dare to behave recklessly or fraudulently, thereby provoking the materialisation of this risk, if anything short of military force would be contemplated, at least in the long-term, in response. Otherwise, their risk-taking behaviour would be irrational.

#### THE CONCEPT OF MORAL HAZARD AND HUMANITARIAN INTERVENTION

At first sight, humanitarian intervention seems well suited for the application of the concept of moral hazard. Under this concept, threatened groups play the role of the insured, and the potential interveners (foreign states, groups of states, international

organisations) act as insurers. Risks to be avoided consist of genocidal violence<sup>33</sup> or other large-scale violations of human rights. The compensation or guarantee to be provided for, if such risks materialise, is humanitarian intervention. Thus, in the logic of moral hazard, it may be claimed that 'threats of third-party intervention to protect minorities against state-sponsored violence provide minorities with perverse incentives to behave recklessly, and even to provoke the very violence that third parties were trying to protect the minority from.'<sup>34</sup> In other words, military action by outside powers which has been meant as a last resort cure to internal humanitarian disasters, becomes in itself a sufficient guarantee for, or even the very goal pursued by vulnerable groups. These groups do not seek to avoid the risk but voluntarily or unwittingly incur it, increasing in that way, intentionally or not, the probability that humanitarian intervention will be needed.

The concept of moral hazard has the merit of providing 'a new explanation for the escalation of ethnic conflict.'<sup>35</sup> Instead of viewing this escalation as a sign of irrational political barbarism on the part of the territorial state and equally irrational suicidal tendencies on the part of rebels, it presents it as a result of rational strategies undertaken by the two parties. The rebels endeavour to bring about a foreign intervention that not only would protect them against state-sponsored violence but would also change their relative power at the bargaining scale, helping them to accomplish their long-term goals related to their political status (autonomy, independence, etc.). The state, in turn, strives to prevent internal conflicts and, also, foreign intervention by means of political and if necessary physical elimination of its opponents. Although the role of the territorial state remains somewhat ambiguous, the fact that the concept proponents 'frame the issue as a problem of bargaining between states and minorities'<sup>36</sup> tends to be largely appreciated among international relations scholars.

The empirical case most frequently analysed in this context is that of Kosovo in 1999.<sup>37</sup> There is however considerable variation as to how the case is presented and accounted for under the concept of moral hazard. *Kosovo* became the scene of violent clashes between the Kosovo Liberation Army (KLA), representing the local Albanian population, and the government of the Federal Republic of Yugoslavia in the 1990s. These clashes culminated in the Račak



massacre, in which 45 Albanian civilians were allegedly killed by the Serbian forces in January 1999.<sup>38</sup> After an unsuccessful round of negotiations in Rambouillet, the NATO decided to resort to the use of force against the FRY and started, in March 1999, an 11-week aerial campaign against targets in Kosovo and Serbia. The campaign ended with the Belgrade capitulation in June 1999, followed by the establishment of an international mandate over Kosovo. After nine years of the international administration, Kosovo declared independence in February 2008. The total casualties of the conflicts in Kosovo are estimated at 10,000–12,000. The military intervention by the NATO cost some 1,500 lives.<sup>39</sup>

Kuperman is rather categorical in claiming that ‘an ethnic Albanian rebellion in 1998–1999 provoked retaliatory ethnic cleansing’ and ‘the rebels rejected pacifism on grounds that only a militant strategy could attract the intervention necessary for independence, based on the precedents of Bosnia and Croatia.’<sup>40</sup> The claim is disputed by Western and Grigorian. Western argues that the Kosovo case is ‘problematic on the question of who provoked whom’<sup>41</sup> and that it is one-sided to impute all the responsibility for the escalation of violence to the KLA side. Grigorian does not contest the presentation of facts, questioning rather whether the Kosovo case can fit the moral hazard scenario. In his view, Serbian violence against Kosovo Albanians was not unintended by the interveners, on the contrary, it was desired and actively prepared by them. Grigorian tries to prove this thesis by listing a set of measures that the NATO or the US could have adopted to avert the outbreak of hostilities but that they, most probably intentionally, decided not to pursue.<sup>42</sup>

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#### PITFALLS IN APPLYING THE CONCEPT OF MORAL HAZARD TO HUMANITARIAN INTERVENTION

The application of the concept of moral hazard to humanitarian intervention gives rise to several questions. Can the concept, formed in insurance studies, serve as a useful analytical tool in international relations? Does it address the mechanism of humanitarian intervention adequately, or does it fail in capturing some of its features? The concept of moral hazard refers to situations where ‘the provision of protection against risk (often by insurance) unintentionally promotes irresponsible or fraudulent risk-taking, and thereby

perversely increases the likelihood of the undesired outcome.<sup>43</sup> It therefore presupposes the presence of two parties (the insured and the insurer), the existence of a link (“contract”) between them, the presence of perverse incentives, the occurrence of unintended consequences, and the lack of symmetrical information. While classical insurance fits such a model well, humanitarian intervention is more problematic. Its mechanism differs from that of insurance by three factors pertaining to the number and quality of actors, the nature of the “contract,” and the actors’ behaviour and motivation.

Starting with the number of actors, the concept of moral hazard works with a two-player model including the insurer and the insured. The reality of humanitarian intervention is however more complex presenting at least<sup>44</sup> ‘a three-player game involving sub-state groups, states and potential intervenors.’<sup>45</sup> While potential intervenors (as insurers) and rebels (as insured) would fall under the concept, states are simply in surplus here. Yet, their role is far from being limited to that of a mere bystander, another victim of an incident, or of vis maior (fire, earthquake, hurricane) causing an incident. They are active and conscious participants in the game, with an autonomous and independent role to play. By deciding upon the way in which they react to the reckless or fraudulent behaviour of rebels, they co-determine the outcomes of the situation: whether genocidal violence (risk) takes place and humanitarian intervention (compensation) is at all needed.

Moreover, their participation in the game is all but accidental or unnecessary. States have a pre-set relationship toward sub-state groups with whom they have often over political or legal status for years. Sometimes, they also have a pre-set relationship with potential intervenors. This relationship, in addition to humanitarian elements, usually includes a substantive political, economical or military agenda. Thus, while the original concept of moral hazard is modelled along one single axis (insurer – insured), humanitarian intervention involves at least three different axes (rebels – state, state – potential intervener, and rebels – potential intervener), out of which ‘the interaction between the third-party and the domestic minority is usually the weakest of the three relationships.’<sup>46</sup> In that way, a relational couple is replaced with a relational triangle. Even those not specialised in international relations theory would

certainly guess that handling a (love or hate) triangle is much more difficult than handling a (love or hate) couple.

The differences are not limited to the quantity of actors but concern their quality as well. The concept of moral hazard normally focuses on individual human beings. Although it seeks to discover general patterns of behaviour, it does not treat the actors as members of any organised or coordinated collective entity. Rather, the concept presupposes that people, led by rational self-interest, behave naturally in a certain way (a perverse one here). Humanitarian intervention, in contrast, is not so much about individuals and their personal relationships, as important as they may be. It primarily deals with organised collective entities – states, sub-state groups, or international organisations. The concept therefore does not work with the same unit of analysis in international relations theory as in insurance studies. This makes the application of some of the categories (recklessness, intention, etc.), originally introduced for individuals, difficult. Furthermore, the collective nature of actors may increase the willingness of sub-state groups – and, in fact, states as well – to incur risks in a higher degree than insured individuals would do. While insured people are normally risk-makers and risk-takers at the same time, groups or states often manage to internally split these roles: those “in the palaces” are risk-makers, and those “in the streets” are risk-takers. Groups think and behave differently than individuals, and it is difficult to subsume the two under the same theoretical model.<sup>47</sup>

The second important difference concerns the nature of the “contract” between the insurer and the insured. This has several aspects. First, there are usually no doubts about the existence and form of a contract in insurance relationships. Such contracts are mostly formalised, often in an official written document that can be checked out. They are clear in identifying the parties, relevant risks and incidents and the corresponding rights and duties. In that way, both the insurer and the insured know in advance what concrete risk their contract relates to and what – and under which conditions or with what limitations – happens if this risk materialises. The contract is binding and can be enforced. Thus, in this schema, the relationships are specified, the behaviours relatively predictable and the rights enforceable.

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In contrast, the existence of a “contract” on humanitarian intervention is questionable. Such a “contract” could stem either from a general (legal or social) norm, or from concrete promises given in an ad hoc situation. While scholars often focus on the latter option,<sup>48</sup> it is rather rare in practice.<sup>49</sup> Most cases of genocidal violence or other large-scale violations of human rights occur in situations in which no promises to sub-state groups are given in advance. The existence of a general norm entitling or even forcing states to intervene in case of manmade humanitarian disasters abroad is also uncertain. States and scholars have different views on the current normative status of humanitarian intervention in international relations. International practice, even in its most recent variety relating to the responsibility to protect concept, is not conclusive either, since it does not reveal any consistent patterns of behaviour. Although Kuperman is right in stating that ‘their (rebels’) expectations of such intervention need not approach certainty to tip the balance in favor of launching or perpetuating rebellion,’<sup>50</sup> rebels – provided they are, as the concept of moral hazard asserts, rational actors – should have at least serious reasons to believe that humanitarian intervention is more probable to occur than not. Yet, in the absence of any well-settled norm, it is not clear where these reasons would come from.

Furthermore, even if a general norm on humanitarian intervention existed, it would be different from an insurance contract in terms of its parties, its nature and its content. Actors under an insurance contract are clearly identified or at least identifiable in advance. The insured knows which person or institution is to be addressed in case the risk materialises; and the insurer knows which persons or entities are covered by the insurance. In humanitarian intervention, the situation is more complicated. The circle of the insured includes any group potentially threatened with genocide violence; and the circle of the insurers may encompass any foreign state, international organisation, and the international community at large. Efforts to streamline the insurers’ competences into the UN Security Council have so far competed with criticisms of this organ and the interest in keeping states’ hands free in cases when the UN Security Council is unable or unwilling to act.

Insurance contracts are generally based on two principles, those of reciprocity and of the symmetry of rights and duties. The insured

person transfers the risks of a contingent, uncertain loss to the insurer, in exchange for payment. The insured has the obligation to pay a premium, and the insurer has the obligation to compensate the loss if the risk materialises. Non-compliance with the former obligation may lead to the termination of the contract. Non-compliance with the latter obligation gives rise to a claim, which is enforceable in courts. In humanitarian intervention, the relation between rebels and interveners are neither reciprocal nor symmetrical. There are no pledges on the part of rebels, who, technically speaking, would not even rank among the “parties” to the norm on humanitarian intervention. Rebels may benefit from the norm but, unlike insured persons, they have no influence upon its content. Interveners make no pledges either. Under the classical doctrine, humanitarian intervention is (at best) a right of third parties, which remain free to decide whether to act or not. The attempts to turn the (potential) right of intervention into a duty under the Responsibility to Protect doctrine has not met with success at the international scene, and the prospects that this could change in the nearest future seem scarce. States are reluctant to commit themselves to a behaviour that could be detrimental to their vital interests or even their survival.

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That means that the insured (rebels) operate in an atmosphere of a constant uncertainty as to whether genocidal violence against them would be met with humanitarian intervention or not. They also have no certainty whether the intervention would lead to the realisation of their long-term goals that is the desired change in their political status. Few people would set their house on fire if they did not have a realistic chance that the insurance would bring them more than what the real price of the house is. Identically, few non-state groups would provoke genocide violence if there were not a realistic chance of the interveners not only saving them, but also helping them achieve their political goals. The fact that this chance is rarely realistic makes their decision on whether to provoke violence more difficult and risky. Moreover, it somehow neutralises the disadvantages stemming from the asymmetric information. While insurers cannot know for sure whether the insured will behave responsibly or not (as under an insurance contract), the insured cannot in turn know for sure how the insurers will react to their behaviour (unlike under an insurance contract).

Finally, the norm of humanitarian intervention and the insurance contract do not pertain to the same risk; nor do they preview the same premium. The risks under an insurance contract are in principle better defined and more easily assessable than those in humanitarian intervention. Genocidal violence or large-scale violations of human rights may be difficult to clearly recognise in practice, and there is more space for misrepresentation of facts and for fake stories. Moreover, the provision of an insurance premium can hardly be equated with the use of force in humanitarian intervention. Whereas the former should have no negative consequences for the insured or any other actors, this is not the case with military action.

Such action usually causes substantial collateral damage in terms of people killed or injured and property destroyed, either on the side of the rebel group (for instance the Kosovar Albanians in Kosovo) or among other actors (Serbian civilians killed and the Chinese embassy in Belgrade destroyed during the NATO air campaign against Serbia). Furthermore, there is a much looser and less obvious link between insurance and over-insurance, on the one hand, and humanitarian intervention and the change of the rebels' political status, on the other. Over-insurance is often a component of an insurance treaty. A change of political status is, by contrast, rarely seen as integrated into the norm of humanitarian intervention.

The third mismatch which makes the concept of moral hazard difficult to apply to humanitarian intervention, has to do with the actors' behaviour and motivation. This has two aspects. First, a frequent scenario under insurance contracts (and classical moral hazard) is people behaving recklessly. Recklessness refers to cases in which actors foresee that particular consequences may occur but proceed with a given conduct anyway, not caring whether those consequences materialise. Such behaviour is less probable in humanitarian intervention, since rebels usually care whether genocidal violence occurs or not (because they seek to either prevent it or bring it about). Consequently, fraudulent behaviour is more frequent here, fraud being understood as intentional deception made either for personal gain, or to damage other individuals. Moreover, humanitarian intervention cases do not have to reveal signs of deception. Sometimes, rebels are clear in their purpose to provoke violent repression but the resulting suffering of innocent people,

coupled with a CNN effect, can make it impossible for third parties not to react even in such a situation.

Secondly, the concepts of unintended consequences and perverse incentives have a more prominent place in insurance contracts than in humanitarian intervention. It is possible to presume that for an insurer, paying a premium to an insured or even an over-insured person has very few positive aspects. The insurer has no (independent) interest in the materialisation of the risk, which is normally unanticipated, unwelcome, and unintended by him. In humanitarian intervention, conversely, interveners may have their own stakes in the game and, consequently, their own direct or indirect interest in the materialisation of the risk (genocidal violence) which would allow them to intervene. This is closely linked to the three-players scheme of humanitarian intervention encompassing two additional axes besides that between the sub-state group and the intervener, namely the sub-state group – target state axis and the intervener – target state axis.

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#### RE(DE)FINING THE CONCEPT OF MORAL HAZARD?

The previous section demonstrated that accommodating humanitarian intervention within the concept of moral hazard is not an easy task, since humanitarian intervention differs from the scenarios in which the concept has been applied traditionally, in three important areas (actors, contract, and behaviour). This fact has not gone unnoticed among scholars who have mainly tried to address it by, on the one hand, seeking to re(de)fine the concept of moral hazard, while on the other hand, delimiting more precisely its scope of application and while excluding some types of humanitarian intervention from this scope. The most comprehensive proposal in this context is the one put forward by Crawford.<sup>51</sup> This proposal is a useful one. Yet, since it only addresses some of the pitfalls faced in the application of the concept of moral hazard to humanitarian intervention, it needs to be complemented by other proposals.

Crawford primarily focuses on the behaviour and motivation of the interveners. Taking these factors into account, he suggests differentiating between two versions of moral hazard. The thin version relates to situations in which interveners indirectly induce perverse and unanticipated behaviour, or directly induce perverse

and anticipated behaviour. The thick version pertains to situations in which interveners directly induce perverse and unanticipated behaviour.<sup>52</sup> The distinction is important, because it allows scholars to make better account of the range of stances which may be adopted by (potential) interveners. At the same time, the distinction sets the limits to the scope of application of the concept. Instances of interventions which would not correspond to any of the three scenarios simply fall outside this scope. The situation, in which interveners directly induce perverse, anticipated, and intended behaviour, would be a typical example of such an instance.

While refining the concept of moral hazard with respect to the role of interveners, Crawford also makes interesting suggestions relating to the “contract.” More substantively, he introduces two variables which were not present in the original concept. The first variable relates to the proximity of the cause of internal war. It indicates whether the contract is a remote and underlying or immediate and proximate cause of internal war. The second variable relates to the domain of influence. It indicates whether the contract is country and/or conflict-specific (singular scope) or whether it is applicable to a broader range of countries and/or conflicts (plural scope). Combining these variables, Crawford comes to a four-fold typology of moral hazard. Moral hazard is *acute*, if (potential) intervener makes a specific threat/ promise to act in a particular country. It is *chronic*, if there is a long-term involvement of the (potential) intervener in this country. It is *contagious*, if intervention in one state spurs a rebellion in another state. Finally, it is *pervasive*, if a rebellion is induced by a general norm on humanitarian intervention.

This typology is useful, because it takes account of different types of “contract” that can exist between the interveners and the rebels. The “contract” can stem from a specific threat of intervention, a long-term tradition of interventions in a particular country, a recent pattern of interventions in other countries, or a general social or legal norm of humanitarian intervention. The nature of “contract” has an impact upon the prospects of intervention and, hence, also upon the prospects of rebellion. It is thus an important factor to reckon with both in the theoretical research, and in real-life situations. One may nonetheless ponder whether the four types of “contract” can truly be so easily classified on the basis of the proximity criterion. While concrete threats/promises will most probably



always serve as a proximate cause, it is less certain whether a long-term involvement or a general norm on humanitarian intervention would necessarily be only remote causes. Further questions relating to the type of the involvement (e.g. Is there a tradition of a constant intervention in support of a certain group?) and the nature of the general norm (e.g. How deeply has the norm been internalised? Does it preview a right or a duty of intervention?) should be asked in this context.

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While addressing the pitfalls faced in the application of the concept of moral hazard to humanitarian intervention relating to the contract and the behaviour, Crawford fails to deal with the pitfalls concerning the actors. This area seems to be largely overlooked by other scholars as well, although some admit that closer scrutiny would be warranted here.<sup>53</sup> So far, the role of the interveners and the rebels (insurers and insured), and their mutual relationship, has attracted virtually all attention. Yet, as already shown, there is another actor always present in humanitarian intervention, the territorial state.<sup>54</sup> Unlike the factors bringing about the materialisation of the risk in the insurance context (such as fire, earthquake, or another participant in a car accident), the territorial state is an active player with its own will and interests. Its role therefore needs to be accounted for under, and integrated into the concept of moral hazard.

It is submitted that this could be done by introducing two variables which reflect the relationship between the state and the rebels on the one hand, and the state and the interveners on the other hand. The first variable pertains to the probability of genocidal violence by the state in reaction to internal rebellion. This variable can be measured along a scale, reflecting both the long-term factor of how the state has traditionally settled disputes on its territory, and the immediate factor relating to the character, position, and goals of the (potential) rebels within the state. The probability of genocidal violence increases, if the state has a tradition of settling its internal disputes by violent means. It decreases, if the (potential) rebels themselves have preference for peaceful settlement of disputes, if they do not enjoy a strong support within the population in the state, or if their requirements do not jeopardise the vital interests of the state and can be reasonably accommodated. This variable helps explain why two situations, which are *prima facie* very

similar, can take on a very different dynamic and be vulnerable to moral hazard in a different degree.

The second variable relates to the probability of intervention in the territory of the territorial state. This probability is partly determined by the type of “contract.” Other factors, however, enter in play as well. On a general level, these factors include the size of the state, its military and economic power, its political organisation, the ideology it adheres to, and the position it occupies at the international scene. On a more specific level, these factors also encompass the specific link between the territorial state and the (potential) interveners. The probability of the intervention – and, hence, the stimulus for rebels to provoke genocidal violence – increases, if the territorial state is not a world or regional power, if it does not possess weapons of mass destruction, and/or if it does not plead adherence to the rule of law and respect of human rights. It decreases, if the state has strong military, economic, or political ties with (potential) interveners. Thus, the most probable candidate for humanitarian intervention is a weak pariah state that due to its political system, ideology or past behaviour, is regarded with suspicion by other states and have few allies at the international scene.

The Federal Republic of Yugoslavia in the late 1990s offers a good example of such a pariah state. Due to its nationalistic and autocratic regime of the then president Milošević and its previous engagement in the civil war in Bosnia and Herzegovina, the FRY had a bad reputation at the international scene. Very few states were ready to openly side with it and even those which had an interest in supporting the Milošević regime or in preventing any foreign military engagement in the region, were not ready to fight a war for the FRY. At the same time, the FRY did not have the military power comparable to that of the interveners, the NATO countries, and was not seen as an important political or economic partner of these countries. These factors made the probability of intervention rather high. Simultaneously, the probability of genocidal violence seemed high as well. The FRY showed an inclination for violent solution of ethnic problems in the 1990s wars in the dissolution of the former Yugoslavia. The rebels, members of the KLA, did not hesitate to resort to violence either. Neither the FRY nor the KLA, moreover, showed reluctance to make the civilian Albanian population pay the price of the conflict. Thus, the conditions were “ideally” set for the concept

of moral hazard to apply, making the NATO countries intervene in support of the rebels to stop genocidal violence brought about, or exacerbated, by those very rebel.

The two new variables also help explain why the concept of moral hazard could not be applied, or rather did not work, in situations which were *prima facie* similar to that of Kosovo, especially that of the Former Yugoslav Republic of Macedonia (FYROM). The FYROM, also had a substantive Albanian minority, whose leaders were not satisfied with the political situation in the country. Encouraged by events in Kosovo, Macedonian Albanians resorted to violent means in the hope that the FYROM would retort in kind and NATO would be forced to intervene. Yet, events took a different course and resulted neither in genocidal violence, nor in foreign intervention. The nature of the contract and the relationship between the rebels and the (potential) interveners were virtually identical in Kosovo and the FYROM and cannot therefore account for the difference in the outcomes. Yet, this difference becomes understandable when the two new variables are included in the analysis. The probability of genocidal violence was much lower in the FYROM than in the FRY, particularly due to the position of the country which showed more reticence to use force in its own territory. The probability of intervention was lower as well, since the FYROM was (seen as) a decent, law-abiding state with close military, political, and economic ties to the NATO countries. This prevented the concept of moral hazard from being applicable in this case or, rather, from capturing the dynamics of the evolution.

The empirical evidence from the Balkans wars confirm that the two variables measuring the probability of genocidal violence and the probability of intervention would play a useful role in further re(de)fining the concept of moral hazard. More specifically, they would make it possible to account for the specific role that the third actor, the territorial state, plays in humanitarian intervention and that is not reflected in the classical concept of moral hazard. The new variables are useful both from the theoretical and practical perspective. At the theoretical plan, they help to better understand the specific dynamics of humanitarian intervention and to better identify the model situations, in which moral hazard would be applicable. At the practical plan, the variables make it easier for decision-makers to determine which of the situations having *prima*

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*facie* the same features are truly vulnerable to moral hazard and which are not.

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#### NOTES TO PAGES 111-129

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- 28 Garry J. Bass (2008), *Freedom's Battle: The Origins of Humanitarian Intervention*, New York: Alfred A. Knopf.
- 29 Holzgrefe and Keohane (2003), p.18.
- 30 These examples are heterogeneous. Some were "humanitarian" in terms of their motivations, others in terms of their justifications or (probably unintended) consequences. While a more rigorous

methodology would certainly be a great asset here, it is not the task of this article to propose one.

- 31 Kuperman (2008a), p. 220.
- 32 Fernando R. Teson (1997), *An Inquiry Into Law and Morality*, Irvington-Hudson: Transnational Publishers.
- 33 Kuperman claims that genocidal violence encompasses genocide, as defined by the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, and ethnic cleansing, i.e. “*the expulsion of members of an identity group from a territory by force or threat thereof*” (2008a), p. 220.
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- 37 Other cases invoked in this context are those of Iraq in 1991, Bosnia and Herzegovina in 1991-1995, Darfur in 2003-2005, and Libya in 2011.
- 38 Human Rights Watch (1999), *Yugoslav Government War Crimes in Racak*, HRW Report.
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- 40 Alan J. Kuperman (2006), ‘Suicidal Rebellions and the Moral Hazard of Humanitarian Intervention,’ in Crawford and Kuperman (2006), pp. 9 and 11.
- 41 Western, Jon. (2006) ‘Illusions of Moral Hazard: A Conceptual and Empirical Critique’. In Crawford and Kuperman (2006), p.78.
- 42 Grigorian (2006), pp. 45-63.
- 43 Kuperman (2008b), p. 50.
- 44 In reality, humanitarian intervention is usually even more complicated, since actors other than the territorial state, the rebels and the intervener often interfere in it trying to secure their interests.
- 45 Crawford and Kuperman (2006), p. viii.
- 46 Rauchhaus (2009), p. 877.
- 47 This could even lead to the so-called exception fallacy, which occurs when conclusions about groups are drawn from data about individuals.
- 48 Crawford and Kuperman (2008), Rauchhaus (2009).
- 49 The canonical example cited in this context concerns the (implicit) promise given to the Iraqi Kurdish and Shia minorities by the then US

president George Bush in the aftermath of the First War in the Gulf in 1991. This case is clear in showing that even such premises may remain unrealised, which increases the uncertainty in the area.

50 Kuperman (2008b), p. 54.

51 Timothy W. Crawford (2006), 'Moral Hazard, Intervention, and Internal War: A Conceptual Analysis,' in Crawford and Kuperman (2006), pp. 26-44.

52 Direct consequences are reflected in the behaviour of rebels, indirect consequences appear in other's reactions to such behaviour.

53 Kuperman (2006), p. 6.

54 The anomalous situation of so called failed states is not paid attention to in this text. While the situation in such states can give rise to humanitarian intervention, it is questionable whether in this context the concept of moral hazard would be applicable.

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