MORAL AND POLITICAL GROUNDS OF ARMED HUMANITARIAN INTERVENTION***

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ABSTRACT

The argument that engaging military in another country to save citizens would not violate international law is not new to international community.[1] This idea was entertained in the works of classical authors such as Grotius[2], Vattel[3], Pufendorf[4], Suarez[5] or de Vitoria[6], and it was repeatedly used by States[7], by most occasions since the mid- 19th century.

Over time as well as depending on the context, different names have been used to designate this practice erected in doctrine: intervention of humanity, humanitarian intervention, right or duty to interference, and was for a short time, responsibility to protect (R2P). Following the United Nations Charter, the argument turned out to be unsupportable, but it subsists with the notions of "intervention of humanity" or “Humanitarian intervention”. The history of the interventions itself bears witness that human rights are always instrumentalized. It is therefore important to analyse its causes justified on moral and political grounds.

Keywords: Humanitarian Intervention, Responsibility to Protect (R2P), Humanitarian Grounds, Moral Grounds, Political Grounds

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1 MURPHY, Sean D., Humanitarian Intervention. The United Nations in an Evolving World Order, Philadelphia, Univ. of Pennsylvania Press, 1996, p. 32; SCHWEIGMAN, David, “Humanitarian Intervention under International Law: The Strife for Humanity”, *Leiden Journal of International Law.*, vol. 6, no.1, 1993, p. 92; KABIA, John M*,* Humanitarian Intervention and Conflict Resolution in West Africa From ECOMOG to ECOMIL, Farnham, Ashgate, 2009, pp. 13-14

2 GROTIUS, Hugo, On the Law of War and Peace (A.C. Campbell trans., London 1814) (1625), Book II, Chapter XXV, VIII, p.2.

3 DE VATTEL, Emer, The Law of Nations or the Principles of Natural Law: Applied to the Conduct and to the Affairs of Nations and of Sovereigns, Carnegie Institution of Washington, 1916, vol. I, Book II, chap. IV, parag. 56, p. 298

4 PUFENDORF, Samuel, On the Duty of Man and Citizen According to Natural Law (edited by James Tully: translated by Michael), 1632-94, Cambridge University Press, NEW YORK, 1991, p. 170

5 SUAREZ, Francisco, Selections from Three Works (Translated by Gwladys L. Williams), Oxford: Clarendon Press, 1944. (*De bello*, S.5, n°5-8)

6 DE VITORIA, Francisco, Political Writings, Cambridge: Cambridge University Press, 1991 (*De Jure Belli*, 1, 22, 26.)

7 COADY, Cecil Anthony John, The Ethics of Armed Humanitarian Intervention, the United States Institute of Peace, Peaceworks No. 45. First published July 2002, pp.1-47

SİLAHLI İNSANİ MÜDAHALENİN ETİK VE SİYASİ GEREKÇELERİ

ÖZ

Uluslararası ilişkiler alanında insan doğasının tüm kararsızlığını tek başına yansıtan bir eylem varsa, o da insanlık adına şiddet kullanmaktan ibarettir. Sivilleri kurtarmak için başka bir ülkede askeri görevlendirmenin uluslararası hukuku ihlal etmeyeceği argümanı uluslararası toplum için yeni değildir. Bu fikir, Grotius, Vattel, Pufendorf, Suarez veya de Vitoria gibi klasik yazarların eserlerinde ve on dokuzuncu yüzyılın ortalarından bu yana States tarafından birçok olayda defalarca tartışıldı.

Zamana ve bağlama bağlı olarak doktrinde inşa edilen bu uygulamayı aşağı yukarı doğru bir şekilde tanımlamak için farklı isimler kullanıldı. 19 yy da insanlığın müdahalesi İngilizce konuşma geleneğinde insani müdahale ve Fransızca konuşma geleneğinde müdahale hakkı ve görevi ve kısa bir süre için koruma sorumluluğu(R2P) olarak geçti. BM şartının kabul edilmesi ve bunun hemen ardından güç kullanımı yasağının tesisinden sonra, bu argümanın desteklenmesi güçleşmiştir. Fakat bu argüman yabancı uyrukların güvenliği için sürekli takibi, kontrolü gözardı etmeden mevcudiyetini korumaya devam etmektedir.

Müdahalelerin tarihi, insan haklarının her zaman ve çeşitli nedenlerle araçsallaştırıldığına bizzat tanıklık etmektedir Müdahele eden devletin tarafsızlığı tam anlamıyla kesin değilse, tüm bu sebeplerden ötürü tarafsızlık şartları gözardı edilebilir mi? Doktrinin yanıtı hayırdır. Çünkü tarafsızlığın göreceli olması yeterlidir. Bu nedenle, ahlaki ve siyasi zeminde gerekçelendirilen askeri bir müdahalenin haklı nedeninin ne olması gerektiğine dair ayrıntılı bir analiz yapmak önemlidir.

Anahtar Kelimeler: İnsani Müdahale, Koruma Sorumluluğu (R2P), İnsani Gerekçeler, Ahlaki Temeller, Siyasi Zeminler

INTRODUCTION

Under international law, the principle of non-intervention means the right of any self-governing state to conduct its internal activities without facing any external interferences,[8] it is a customary principle which is universally applicable. Considering a wide and non-legal explanation of the concept, the international arena today often appears as a world of multi-faced intrusions. If the concept of interference is often applied way beyond its legal context in the domain of humanitarian action, it is because it has pushed so far to be theoretically asserted as a right and this made it inconsistent to already existing customary principle of non-intervention.

Following the new international economic order in the 1970s, the Gulf War in 1991 ended with a new international humanitarian order, calling specifically the world governed in respect of rule of law. That year, in January, US President G. Bush asserted that the "just war" against Iraq should lead to the advent of a "*new world order, of a world where the rule of law, and not of the jungle, govern the conduct of nations*".[9]

The emerging concept of new world order supposed to guarantee respect for human rights still sees a resurgence of this doctrine, in particular with a part of Civil law doctrine (French doctrine in this case), which forges the concepts of right or duty to interference[10] which, like the previous ones (humanitarian intervention, intervention of humanity and responsibility to protect), remains highly disputed.[11] The 1999 Kosovo conflict manifested yet another stage in this old debate, which would lead to the emergence of the notion of the "responsibility to protect", the last conceptual avatar of humanitarian military engagement.[12]

The two pillars on which contemporary humanitarian ideology is based are the universality of human rights and, the valuation of biological life and its duration as a measure of human dignity. The resulting morality is characteristic of the end of the twentieth century, even if it recycles previous values. Its relative specificity results from the particular assembly of several values. Here we look at two of these values that underpin and legitimize humanitarian ideology and the actions it develops. In this regard, it should be emphasized that humanitarian values justify action just as action produces these values.

This "new order" is cleverly anchored in a discourse resolutely shaded with humanism without, however, strictly referring to humanitarian law for the situations it

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[8] ŞAK, Yıldıray, "Humanitarian Intervention in International Law and Libya Case: Lessons for Syria Today and Tomorrow", Uluslararası İlişkiler, vol. 11, no. 44 (2015), p.126. Available at https://dergipark.org.tr/tr/download/article-file/693211 accessed 26 July 2020.

[9] The day after the victory over Saddam Hussein, on March 6, 1991, he again announced to the US Congress: "Now we can see a new world coming before our eyes." Cited by André Fontaine, *Après eux, le déluge : de Kaboul à Sarajevo, 1979-1995*, Fayard, 1995, pp. 587-588.

[10] KOUCHNER, Bernard, Le malheur des autres, Odile Jacob, Paris, 1991, p.12-19; BETTATI, Mario, "*Un droit d'ingérence* ?", *R.G.D.I.P.*, 1991, pp. 639-670.

[11] CORTEN, Olivier and KLEIN, Pierre, Droit d'ingerence ou obligation de reaction? Les possibilites d'action visant a assurer le respect des droits de la personne face au principe de non-intervention, Etablissements Emile Bruylant, S.A., Bruxelles, 1992, p. 58

[12] FEINSTEIN, Lee., and SLAUGHTER, Anne-Marie, A Duty to Prevent, Foreign Affairs, 2004, p. 136.

could have concerned. On the contrary, the enthusiasm of the speeches took them away from the original sources, to merge the notion of humanitarianism in a conceptual network, certainly attractive, but in the end not always beneficial to the victims of crises and conflicts. In particular, drawing lessons from the Rwandan tragedy[13], the new era postulates that a better response to crises requires the "coherent" integration of humanitarian action into political and military strategies.

The above two paragraphs show us two main grounds (moral and political) from which, violating the principle of sovereignty of states could be justified. In this paper, we will discuss both grounds and all concerns implicated in them. Under this paper, we will not defend neither of those grounds, in contrary we will explore and assess available arguments backing both grounds and link them to international law.

A. Moral Grounds

By considering that intervention is not a crime itself but its consequence that must be the criterion of moral consideration, we subscribe to the consequentialist tradition, according to which an action is good if it produces good results. Utilitarianism is one version of this, which asserts that an action is good when it maximizes the happiness (hedonistic utilitarianism) or the satisfaction of preferences (preference utilitarianism) of all the individuals concerned. Consequentialism is opposed to the two other great traditions in ethics: deontology (Kantian paradigm), according to which an action is morally good if it is performed out of duty or out of respect for a norm, and the ethics of virtue, which further assesses the moral character of the actor (his ethos according to Aristotle).

In the ethics of international relations, consequentialism is associated most of the time with the realist tradition, from Machiavelli to Kenneth Waltz, and with the tradition of just war, even with the justification of terrorism[14], and in return with torture in the context of the war on terrorism[15].

What is referred to as "human rights" is a very large and diverse set of civil, political, economic, social and cultural rights, not all of which are considered to justify military intervention. This is why it is preferable to define humanitarian intervention intended to prevent or stop grave and massive violations of the most important human rights, that is to say applicable to everyone and everywhere. In international human rights law, this hierarchy is questionable. Rather, the consensus is that there is no hierarchy of human rights, that they are indivisible. However, practice tends to show the opposite. The notion of jus cogens for example, that is to say of “binding norm”, which designates an absolute *norm of international law carrying a universal value of vital*

[13] KABANO, Jacques, “Birleşmiş Milletler Sisteminin Uluslararası Barış Koruma Sorumluluğu’nda Zaafiyeti: Ruanda Örneği”, Journal of law, vol. 1, No 1, (2017), pp.1-17 available online http://journaloflaw.online/wp-content/uploads/2018/07/jack-JL-1.1-1.pdf accessed 30 August 2020.

[14] BELLAMY, Alex J, Just Wars. From Cicero to Iraq, Cambridge, Polity Press, 2006, p. 141-142.

[15] TERESTCHENKO,Michel, Du bon usage de la torture, ou comment les democraties justifient l’injustifiable, Paris, La Decouverte, 2008, p.68

interest [16], is officially recognized only for the prohibition of torture[17]. In all, only 4 rights fall under the category of non-derogatory by the International Human Rights Law and appear in all three main international conventions (art. 4 of *the International Covenant on Civil and Political Rights-ICCPR;* art. 27 of *the American Convention on Human Rights - ACHR and art. 15 of the European Convention on Human Rights - ECHR*): *the right to life, the right not to be tortured or not to be subjected to inhuman or degrading treatment, the right not to be held in slavery or servitude and the right to non-retroactivity of criminal law.*

The question which then arises is to determine whether the intervening State invokes for this purpose a specific moral reason to justify its action or, the international community of States in one way or another, has been satisfied by the validity of this moral ground.

Several remarks should be made here. First of all, having the status of non-derogatory norm does not automatically indicate gaining the status of jus cogens. Non-derogatory rights can indeed be the question for reservations, because the prohibition of derogation does not imply a prohibition of reservation. Therefore, reservation is incompatible with jus cogens itself. Secondly, non-derogatory does not mean absolute, as art 2 of the ECHR shows in the case of the right to life: death can be inflicted legally, by virtue of the law (death penalty) or the necessity of the use of force (self-defence, arrest, escape, insurrection).

In fact, there is no precise list of rights, with the above four rights only appearing to be more fundamental than the others under which state A would be legally justified to intervene in state B. Humanitarian intervention does not positively appear to be a right at all, mainly because it has got no rules of engagement stipulating which rights are aimed to achieve, it has no impartial basis and is not a triggered response automatically whenever a certain right is violated in the world. Rather, it results from a subjective assessment of a given situation. The most fundamental right that has motivated interventions considered "humanitarian" in history is the right to life. It is not about freedom of expression, the right to private property or education that one state sends troops to another state. Military intervention will cost human lives, and this can only be justified if it saves more.

The abovementioned question remains particularly controversial, as evidenced by the debates that have been conducted in the past few years by the *Institute of International Law*. In 1989, during the Santiago de Compostela conference, the Institute approved a resolution on "*The protection of human rights and the principle of non-intervention in the internal affairs of States*", a text which seemed to exclude any right

[16] Art. 53 of the Vienna Convention on the Law of Treaties, 1969

[17] See the case laws of the Trial Chambers of the ICTY (The Prosecutor v. Milorad Krnojelac - Case No. IT-97-25-T, 2002), the House of Lords (in Re Pinochet judgment of 24 March 1999) and the European Court of Human Rights: "The prohibition of torture is recognized as a mandatory rule of international law" (Al Adsani v. the United Kingdom judgment of 21 November 2001, § 61).

of humanitarian intervention[18], like two other resolutions adopted in 1999[19] and 2003, and the Bruges declaration[20] adopted the same year. Shortly afterwards, however, a subgroup entitled "Humanity's Intervention" was tasked with adopting a resolution on this topic. However, the latter, adopted in Santiago in 2007, expressly refrained from commenting on "*the question of the legality of military questions which have not been authorized by the United Nations, but whose declared objective is to end genocide, large-scale crimes against humanity or large-scale war crimes*".[21] An evaluation of the debates prior to the adoption of this text, allows us to understand its limited nature[22], due to persistent disagreements.

Understanding that any military intervention will necessarily take lives, the question is then to know from how many murders, and from what types of murders, we can speak of massacre and intervene in the name of this particular right to life which is that of not being massacred. How much, even, should numbers count in the legal and moral assessment of a situation? This is a classic debate in moral philosophy[23], which moreover finds application in the case of the characterization of genocide, since it does not depend so much on the number of victims as on the intention of the murderers (mens rea).[24] Any criterion involving "counting the dead" however, would be an admission of failure since "the international community would find itself in the morally unjustifiable situation where it would have to wait for genocide to begin before taking measures to end it."[25]

In the eyes of international society, and particularly the public, genocide epitomises the mother. There is, however, no pyramid of the gravest crimes on

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[18] See especially article 2 § 2 of this resolution, providing, in the event of an abuse of human rights, the possibility for member states to adopt "diplomatic, economic and other measures, admitted by international law and not involving the use of armed force in violation of the United Nations Charter "(resolution of September 13, 1989; http://www.idi-iil.org/idiF/resolutionsF/1989_comp_03_en.PDF); v. also article 5, commented on by WELLER, Marc, Iraq and the Use of Force in International Law, Oxford, O.U.P., 2010, p. 64.

[19] *The application of international humanitarian law and fundamental human rights in armed conflicts in which non-state entities are parties*: Berlin Resolution of 25 August 1999 (commented by Robert Kolb) Collection ''resolutions'' n˚ 1, Pedone, Paris, 2003, p. 43.

[20] WOOD, Michael, "International Law and The Use of Force: What Happens in Practice?", Indian Journal of International Law, vol. 53, 2013, pp. 345-367. https://legal.un.org/avl/pdf/ls/Wood_article.pdf accessed 24 August 2020.

[21] Present Problems of the Use of Force in International Law A. Sub-group on Self-defence, Santiago de Chili session 2007, Editions A.Pedone - 13 rue soufflot - 75005 Paris – France, https://www.idi-iil.org/app/uploads/2017/06/Roucounas.pdf accessed 31 August 2020.

[22] CORTEN, Olivier, « Les Résolutions De L'institut De Droit International Sur La Légitime Défense Et Sur Les Actions Humanitaires », REVUE BELGE DE DROIT INTERNATIONAL 2007/2 – Éditions BRUYLANT, Bruxelles, pp : 598-626.

[23] TAUREK, John M, "Should the Numbers Count?", Philosophy and Public Affairs, 6 (4), 1977, p. 293-316.

[24] JEANGENE VILMER, JB., « *La responsabilite de proteger et le debat sur la qualification de genocide au Darfour ≫, dans La responsabilite de proteger, Actes du 41e colloque annuel de la Societe francaise pour le droit international (SFDI), Paris, Pedone, 2008, p. 233-241.*

[25] HARFF, Barbara, Genocide and Human Rights: International Legal and Political Issues, Denver, Graduate School of International Studies, University of Denver, 1984, p. 12.

international level, and there is no reason to consider that, if genocide is a just cause, crimes against humanity in general cannot be one too.

As we have seen before, in ethics, the morality of a particular action is determined only by its consequences, while rule consequentialism holds that an action is moral when it respects a rule or rules which, when followed, have the best global consequences. The problem is that when the decision to intervene is made, it is not known what the real consequences of the intervention will be, or of non-intervention. The system is therefore probabilistic. The decision to intervene is based on an estimate of the likely consequences of the intervention.[26] It is the question of the positive effect, of the reasonable chances of success, which falls under the criterion of proportionality but which is therefore closely linked to that of just cause. The bottom line is what the consequentialist principle tells us concretely about the just cause: the situation must be such that it cannot worsen as a result of the intervention. This means that only the extreme cases, where a million people are killed in a hundred days, for example as in Rwanda[27], constitute clear and fairly unchallengeable causes, since it seems difficult to conceive that a military intervention aimed at stopping the massacres has the perverse effect of making them worse. We therefore defend a minimal conception of the just cause, which concerns only the most serious abuses, without specifying them a priori but, once again, on one condition that the intervention will never be a reason the situation has been worsen. The first paradoxical consequence of the return of the notion of "just war" which underlies humanitarian intervention is that the interveners are convinced that they are right, that they are invested with a "just"[28] mission and that to accomplish the "humanitarian" goal, they are even authorized to ignore humanitarian law ... We see that the more the interveners consider their cause just, the more they tend to take liberties with humanitarian law, undoubtedly considering that the nobility of their cause authorizes some sprains of the law. At the same time, they do not understand that the law can apply to them, whose cause is just, and who fight inevitably evil enemies.

An international standard is therefore emerging[29] concerning the adoption of an ethics of long-term engagement in order to strengthen the legitimacy of international intervention and allow it to succeed. It will be difficult to implement and even to respect given the political contingencies specific to each State or international organization. However, the stakes are high: the credibility of the intervention and the lives of millions of people are at stake.

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[26] HIMES, Kenneth R., "The Morality of Humanitarian Intervention", *Theological Studies*, 55 (1), 1994, p. 82-105,

[27] Kabano, Jacques, 2018.

[28] In 2013, President Hollande spoke of "punishing" the Syrian leaders: an incongruous term in the mouths of a head of state, but very revealing of an imperialist vision because which state can claim to embody a higher morality?

[29] BARNETT, M, KIM, H, O'DONNELL, M and SITEA, L, "Peacebuilding: What Is in a Name", *Global Governance*, vol. 13, 2007, p. 35. Available at https://home.gwu.edu/~barnett/articles /2007_peacebuilding_gg.pdf accessed 16 August 2020.

B. Political Grounds

The socio-political fundamentals of humanitarian intervention are predominantly obvious in France and the United States: both appealing to the universality, these countries tend to play a messianic position in world matters. The "right or duty of interference" in France parallels President Wilson's humanitarian intervention in the United States. Yet intervention is an old, constant and universal phenomenon. A French philosopher, Jean-Baptiste Vilmer[30] found in the texts of Chinese philosophers of the 6th century BC the story of real humanitarian interventions and the discourse that justifies them: in particular, the need to use force to remove a tyrant and save his population, or the imperative to wage war if it makes it possible to stop a killing. The doctrine of "just war" came to be secularized by Hugo Grotius and his follower Vattel[31]; both explicitly thought humanitarian intervention as an exception to violate the principle of non-interference or just cross the sovereignty of another country: "*nations are free and independent; neither has the right to meddle into the matters concerning other governments, except in the event that a tyranny becomes unbearable to the people."*[32] In this circumstance, any external state with the power to help, has the right to support a troubled people who ask for succour.

The situation changed completely at the beginning of the 1990s: the downfall of the Eastern bloc, the rise of democracy in the South, the progress of an international discourse on human rights, the practice of action humanitarian aid, the growing role of the media, which lessens the distance between the victim and the observer, promotes the advancement of humanitarian interventions. It must be added that it becomes impossible for the great powers to violate the sovereignty of weak states without having to justify themselves; the only way to intervene is then to do so in the name of humanitarian pretexts. Just as the term "genocide" is used to draw attention to a massacre and to elicit an intervention, just as "terrorism" is used to frighten and pass liberticidal measures in the name of security, "humanitarian" is a word whose connotation is very positive; it is therefore used to legitimize an action, by constituting a kind of guarantee. Thus, since the end of the 1990s, the great powers no longer launch military intervention without qualifying it, almost inevitably, as humanitarian. The term presupposes that the intervention is justified.

It is remarkable that the "just war" theory reappeared during the Gulf War, first in the course catalogues of the international relations departments of North American universities, then in political discussions.[33] This renewed interest can indeed only surprise since war has become illegal, and the idea that a State facing a threat of aggression holds jus ad bellum has been eliminated in favour of the concept of collective security, especially in the United Nations Charter. The same applies when a State finds massive abuses of human rights in another State and under no circumstance, it cannot

[30] VILMER, Jean Baptiste, La guerre au nom de l'humanité, Tuer ou laisser mourir, , PUF, Paris, 2012, p.79-82

[31] Emer de Vattel, 1916, supranote 1

[32] Id.

[33] WALZER, Michael, Just and unjust wars, New York, basic Books, 1992, Basic Books; 5th edition (August 11, 2015), pp. 256-269.

take advantage of these violations to intervene unilaterally. Among the central principles of international relations, the United Nations Charter sets out those of the autonomy of States and of non-interference in their internal matters of other states.

The intervention must be decided and carried out by a legitimate authority, in reaction to obvious violations; it is only a last resort. Despite their apparently objective nature, these criteria are not necessarily absolute and may be the subject of different interpretations.[34] According to traditional doctrine, it is not for a private person to wage war; only the sovereign can do it because it is responsible for the common good in the country. This question of legitimate authority is more complex today since there is no equivalent, on the international scene, of the sovereign of classical doctrine.

The criterion of legitimate authority today is therefore both moral and legal: a democratic authority (that is to say democratically elected) and respectful of human rights is legitimate. This authority must have legal authorization. Internationally, the legalistic position is to consider that the intervention is legitimate if it is sanctioned by the Security Council. But is the latter legitimate? Many dispute it: they criticize first of all its lack of representativeness, and therefore of democratic legitimacy (the Security Council reflects the balance of the world in 1945, not that of today); they find that several of its members - including permanent ones - do not meet the elements of moral legitimacy (democratic nature, respect for human rights); Finally, they note that the right of veto excludes the intervention from taking place against one of the permanent members, or the States protected by one of its permanent members.[35] Therefore, what is considered legal in this perspective, only makes sense if you call it political.

As negotiations between states and governments are often secret, how do you know if diplomatic means have all been exhausted? This would imply knowing how the conditions on the ground will evolve: some observers will claim that the military intervention takes place too soon and that diplomacy (accompanied by sanctions) would have achieved its goal if it had been pursued; In Kosovo, for example, the bombing campaign and the extent of the collateral damage it caused prompted a priori observers to consider that the intervention had occurred too soon.[36] Others, on the contrary, will argue that the intervention should have taken place earlier: this is the case in East Timor, where it took place under good conditions, with less violence. A failure to intervene early also has been witnessed in 1994 Genocide perpetrated against Tutsis where only in 100 days, Rwanda lost more than a million lives.[37] As we can see, the criterion is subjective: the situation is always interpreted according to the interests of each one, as

[34] ARSAVA, A. Füsun, "Sovereignty and Responsibility to Protect", Gazi University Law Faculty Journal, C. XV, 2011, *Vol. 1, p. 108.* Available at http://webftp.gazi.edu.tr/hukuk/dergi/15_1_5.pdf accessed 10 August 2020.

[35] KIRDIM, Şahin Eray, "Failed Efforts to Reform Humanitarian Intervention System in the United Nations", Journal of Economics and Administrative Sciences-Volume: XIX Issue: 1 Year: June 2017, p.76 https://dergipark.org.tr/en/download/article-file/315261 accessed 19 August 2020.

[36] ÇAKIR, Mustafa, İnsani Müdahale Hakkı, Unpublished PhD Dissertation, AÜSBE, Ankara 2003, pp.105-123

[37] KABANO, Jacques, 2018

evidenced by the opposition of Russia and China to an intervention in Syria in 2012 and 2013.[38]

Just cause, right intention, proportionality of means: satisfying these criteria amounts to legitimizing an armed intervention on the moral level. It is still necessary to judge a doctrine by its consequences. From this point of view, the results are paradoxical to say the least: it reveals a perversion of humanitarian rules by those who are supposed to enforce them, a regression of international law and the instrumentalization of humanitarianism by the political and the military.

Interference, even "humanitarian", remains illegal today. There is indeed in international law an obligation for each State to react to violations of fundamental human rights; it is corroborated by a whole series of legal sources, in particular, the provisions relating to human rights found in the Charter of the United Nations (in particular its article 55 according to which "*the United Nations will promote ... universal and effective respect for human rights and fundamental freedoms… "*); the Universal Declaration of Human Rights of 1948 (especially its article 28 which establishes a right for everyone to the establishment of an international order of human rights); the 1948 Genocide Convention; the statute of the International Criminal Court of 1998; and other international human rights agreements and covenants.

Nonetheless, this obligation relates to unarmed intervention; it does not call into question the ban on armed intervention. Advocates of the "right of interference" argue that the charter's ban on the use of force provision is erased in the face of the protection of human rights.[39] It is therefore difficult to see why we should abandon positive international rules which postulate non-involvement in the internal matters of a State and the non-use of force.[40] The introduction of a "responsibility to protect" by force only serves to mask the very real existence of an obligation of unarmed reaction on the part of the international community to grave abuses of human rights and humanitarian law, and the non-fulfilment of this obligation by States in most cases. In most cases, the problem is less the lack of legal means than the lack of political will to use existing mechanisms.

The international texts, in particular the reports of the Secretary General of the United Nations relating to the concept of "responsibility to protect"[41] are clear: the distress of a population calls for humanitarian assistance, then when a common conclusion between concerned parties is not reached, a political intervention of the United Nations to diplomatically find a political solution. But the military should only be

[38] See more with states' supports for interventions in Syria: *DOST,* Süleyman, Suriye'deki Silahlı Çatışmalara Diğer Devletlerin Destek ve Müdahaleleri ile Uluslararası Hukuki Sonuçları, Sosyal Bilimler Dergisi (SOBİDER) 4 (12), 354-372. Available at https://sobider.com/DergiTamDetay.aspx?ID=3542 accessed 10 August 2020.

[39] Olivier Corten and Pierre Klein, 1992, p.165

[40] DWORKIN, Ronald, Justice in Robes, Cambridge: Harvard University Press, 2006, at 26-33

[41] NATO Multimedia Library: The Responsibility to Protect. (Thematic Bibliography No. 4/11). (2011, March) URL:https://www.nato.int/nato_static/assets/pdf/pdf_library_them/20110330_them0411.pdf

employed in extreme and extremely rare cases.[42] But the opposite is happening: armed humanitarianism has been generalizing for a decade in two main forms.

Civil-military operations are the first form of instrumentalization of humanitarianism.[43] The reflection leading to a militarization of humanitarian aid began in the 1990s in the United States.[44] This model was then disseminated in Europe in the name of interoperability between allies within NATO.[45] The dissemination of Anglo-Saxon standards is further facilitated by the European security and defence policy: the latter is based on the principle of a global and coherent capacity for the prevention and management of crises, comprising military capabilities but also civilian crisis management capacities, to carry out the so-called Petersberg tasks (humanitarian tasks, peacekeeping or evacuation of nationals missions; disarmament and stabilization).[46] The European Union emphasizes the complementarity between the military and the humanitarian for the achievement of this type of mission.[47] The second form of instrumentalization consists of "integrated"[48] peacekeeping missions. Because the practice of Western armies is spreading and is winning over peacekeeping troops. Looking at the activities of the UN since the mid-1990s[49], we realize that humanitarian operations are increasingly militarized; recourse to the armed forces in humanitarian assistance tasks is now the rule.

These integration actions are often unfavourably received because of the kinds of confusion they create in the minds of the populations. The damaging effects of this confusion are obvious, both for civilian populations and for humanitarians. For civilian populations: either they refuse humanitarian aid and food, because they are attacked in

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[42] SABA, Arif & AKBARZADEH, Shahram, "The Responsibility to Protect and the Use of Force: An Assessment of the Just Cause and Last Resort Criteria in the Case of Libya", International Peacekeeping, 25:2, 242-265, (2018) https://doi.org/10.1080/13533312.2017.1404908 accessed 7 September 2020.

[43] CAICEDO, Juan Pablo, "*The Instrumentalization of Humanitarian Action By Western Militaries In Contemporary Peace Operations",* Revista de Relaciones Internacionales, Estrategia y Seguridad 2009, 4(1), 115-128 available online at https://www.redalyc.org/pdf/927/92712970007.pdf accessed 7 September 2020

[44] DAVEY, E et al., "History of The Humanitarian System, Western Origins and Foundations", HPG Working Paper, Overseas Development Institute; London: 2013. http://www.odi.org/publications/7535-global-history-humanitarian-action accessed 7 September 2020.

[45] EDWIN, Bakker; MALEY, William and BOEKE, Sergei, "Transitioning from Military Interventions to Long-Term Counter-Terrorism Policy", (ICCT Report; NATO Project), (2016, September) URL: https://icct.nl/publication/icctresearch-report-nato-project-transitioning-from-military-interventions-to-long-term-counter-terrorismpolicy accessed 7 September 2020.

[46] Strategic Communications, Shaping of a Common Security and Defence Policy, 8 July 2016. Available online at https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp/5388/shaping-of-a-common-security-and-defence-policy-_en accessed 7 September 2020.

[47] Official Journal of the European Union, Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, (2008/C 25/01), https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42008X0130(01):EN:HTML accessed 7 September 2020.

[48] Caicedo, Juan Pablo, 2009

[49] GAO, George, UN peacekeeping at new highs after post-Cold War surge and decline, PEW Research Center 2 March 2016, https://www.pewresearch.org/fact-tank/2016/03/02/un-peacekeeping-at-new-highs-after-post-cold-war-surge-and-decline/ accessed 7 September 2020.

reprisal if they accept it; or they divert them for the benefit of the belligerents (and therefore do not profit from them). For humanitarian workers: either they are confused with the military; either they are not considered neutral and impartial; in any case, they are attacked by the belligerents.

Conclusion

We must return to the law, abandon vague moral precepts, reject the hazy academic debates on intentions and motives, as well as political ideologies surrounding the concept of humanitarian intervention. “Humanitarian” intervention has long served as an excuse for Western powers to maintain their control over peripheral regions that they consider important to their interests. It is no surprise then of why a bloated humanitarian rhetoric has developed. It has not modified the foundations of international humanitarian law, but sometimes concealed it, behind the rhetoric, inaction and repeated failures to meet the expectations of the populations. The law must be freed from politics. We are aware that legal texts may always show gaps in relation to certain real-life situations, in particular because they are addressed to state actors, while conflicts engage groups of all types. The responsibility to protect means, first of all, for states to show a real will to apply international humanitarian law, without possible political derogations.

International Community tried many ways to deal with situations that happened in countries like Kosovo, Rwanda, Haiti and Darfur (South Sudan). As long as the practice of intervention is there, it is only logical to expect more successes and failures which will result in those future interventions. However, if intervention is deemed to be a necessity, then those who intervene must also be placed in positions where their intervention in question gives rise to responsibility of those violations that are likely to happen from it. This implies of course established a reconstruction plan and execute it after the intervention is over. Under this circumstance the only principle that matters is “justice”. Of course, when it comes to intervention, the international community cannot set all the rules and standards, given the fluidity inherent in a conflict situation. A viable ethical intervention will only be the one where members of international community decide to invest a continuous political will to the already started intervention, otherwise intervention would mean to destroy those which have been built for centuries and no plan for a reconstruction: Another Libya where intervention left ruins and political unrest.

BIBLIOGRAPHY

ARSAVA, A. Füsun, "Sovereignty and Responsibility to Protect", Gazi University Law Faculty Journal, C. XV, 2011, *Vol*. *1, p. 108.* Available at http://webftp.gazi.edu.tr/hukuk/dergi/15_1_5.pdf accessed 10 August 2020.

BARNETT, M, KIM, H, O'DONNELL, M and SITEA, L, "Peacebuilding: What Is in a Name", *Global Governance*, vol. 13, 2007, pp: 35-58

BELLAMY, Alex J, Just Wars. From Cicero to Iraq, Cambridge, Polity Press, 2006

Berlin Resolution of 25 August 1999 (commented by Robert Kolb) Collection ''resolutions'' n˚ 1, Pedone, Paris, 2003

BETTATI, Mario, "*Un droit d'ingérence* ?", *Revue Générale de Droit International Public.*, 1991, pp. 639-670.

CAICEDO, Juan Pablo, "*The Instrumentalization of Humanitarian Action by Western Militaries in Contemporary Peace Operations",* Revista de Relaciones Internacionales, Estrategia y Seguridad 2009, 4(1), 115-128 available online at https://www.redalyc.org/pdf/927/92712970007.pdf accessed 7 September 2020

ÇAKIR, Mustafa, İnsani Müdahale Hakkı, Unpublished PhD Dissertation, AÜSBE, Ankara 2003

COADY, Cecil Anthony John, The Ethics of Armed Humanitarian Intervention, the United States Institute of Peace, Peaceworks No. 45, 2002

CORTEN, Olivier & KLEIN, Pierre, Droit d'ingérence ou obligation de réaction ? Les possibilités d'action visant à assurer le respect des droits de la personne face au principe de non-intervention, Etablissements Emile Bruylant, S.A., Bruxelles, 1992

CORTEN, Olivier, « Les Résolutions De L'institut De Droit International Sur La Légitime Défense Et Sur Les Actions Humanitaires », REVUE BELGE DE DROIT INTERNATIONAL 2007/2 – Éditions BRUYLANT, Bruxelles, pp : 598-626.

DAVEY, E et al., "History of The Humanitarian System, Western Origins and Foundations", HPG Working Paper, Overseas Development Institute; London: 2013. http://www.odi.org/publications/7535-global-history-humanitarian-action accessed 7 September 2020.

DE VATTEL, Emer, The Law of Nations or the Principles of Natural Law: Applied to the Conduct and to the Affairs of Nations and of Sovereigns, Carnegie Institution of Washington, 1916.

DE VITORIA, Francisco, Political Writings, Cambridge: Cambridge University Press, 1991

DOST, Süleyman, Suriye'deki Silahlı Çatışmalara Diğer Devletlerin Destek ve Müdahaleleri ile Uluslararası Hukuki Sonuçları, Sosyal Bilimler Dergisi (SOBİDER) 4 (12), 354-372. Available at https://sobider.com/DergiTamDetay.aspx?ID=3542 accessed 10 August 2020.

DWORKIN, Ronald, Justice in Robes, Cambridge: Harvard University Press, 2006

EDWIN, Bakker; MALEY, William and BOEKE, Sergei, "Transitioning from Military Interventions to Long-Term Counter-Terrorism Policy", (ICCT Report; NATO Project),

(2016, September) URL: https://icct.nl/publication/icctresearch-report-nato-project-transitioning-from-military-interventions-to-long-term-counter-terrorismpolicy accessed 7 September 2020.

European Court of Human Rights, Al Adsani v. the United Kingdom judgment of 21 November 2001

FEINSTEIN, Lee., and SLAUGHTER, Anne-Marie, A Duty to Prevent, Foreign Affairs, 2004

GAO, George, UN peacekeeping at new highs after post-Cold War surge and decline, PEW Research Center 2 March 2016, https://www.pewresearch.org/fact-tank/2016/03/02/un-peacekeeping-at-new-highs-after-post-cold-war-surge-and-decline/ accessed 7 September 2020.

GROTIUS, Hugo, On the Law of War and Peace (A.C. Campbell trans., London 1814) (1625)

HARFF, Barbara, Genocide and Human Rights: International Legal and Political Issues, Denver, Graduate School of International Studies, University of Denver, 1984

HIMES, Kenneth R., "The Morality of Humanitarian Intervention", *Theological Studies*, 55 (1), 1994, p. 82-105

House of Lords (in Re Pinochet judgment of 24 March 1999)

JEANGENE VILMER, JB., « La responsabilité de protéger et le débat sur la qualification de génocide au Darfour ≫, dans La responsabilité de protéger, Actes du 41e colloque annuel de la Société française pour le droit international (SFDI), Paris, Pedone, 2008, p. 233-241

KABANO, Jacques, "Birleşmiş Milletler Sisteminin Uluslararası Barış Koruma Sorumluluğu'nda Zaafiyeti : Ruanda Örneği", Journal of Law, vol. 1, No 1, (2017), pp.1-17

KABIA, John M*,* Humanitarian Intervention and Conflict Resolution in West Africa from ECOMOG to ECOMIL, Farnham, Ashgate, 2009

KIRDIM, Şahin Eray, "Failed Efforts to Reform Humanitarian Intervention System in the United Nations", Journal of Economics and Administrative Sciences-Volume: XIX Issue: 1 Year: June 2017, p.76 https://dergipark.org.tr/en/download/article-file/315261 accessed 19 August 2020.

KOUCHNER, Bernard, Le malheur des autres, Odile Jacob, Paris, 1991.

MURPHY, Sean D., Humanitarian Intervention. The United Nations in an Evolving World Order, Philadelphia, Univ. of Pennsylvania Press, 1996.

NATO Multimedia Library: The Responsibility to Protect. (Thematic Bibliography No. 4/11). (2011, March) URL:https://www.nato.int/nato_static/assets/pdf/pdf_library_them /20110330_them0411.pdf

Official Journal of the European Union, *Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission*, (2008/C 25/01), https://eur-

lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42008X0130(01):EN:HTML accessed 7 September 2020.

Present Problems of the Use of Force in International Law A. Sub-group on Self-defence, Santiago de Chili session 2007, Editions A. Pedone - 13 rue soufflot - 75005 Paris – France, https://www.idi-iil.org/app/uploads/2017/06/Roucounas.pdf accessed 31 August 2020.

PUFENDORF, Samuel, On the Duty of Man and Citizen According to Natural Law (edited by James Tully: translated by Michael), 1632-94, Cambridge University Press, NEW YORK, 1991

SABA, Arif & AKBARZADEH, Shahram, "The Responsibility to Protect and the Use of Force: An Assessment of the Just Cause and Last Resort Criteria in the Case of Libya", International Peacekeeping, 25:2, 242-265, (2018) https://doi.org/10.1080/ 1353 3312.2017.1404908 accessed 7 September 2020.

ŞAK, Yıldıray, "Humanitarian Intervention in International Law and Libya Case: Lessons for Syria Today and Tomorrow", Uluslararası İlişkiler, vol. 11, no. 44 (2015)

SCHWEIGMAN, David. "Humanitarian Intervention under International Law: The Strife for Humanity." Leiden Journal of International Law, vol. 6, no. 1 (1993): 91–110.

Strategic Communications, Shaping of a Common Security and Defence Policy, 8 July 2016. Available online at https://eeas.europa.eu/topics/common-security-and-defence-policy-csdp/5388/shaping-of-a-common-security-and-defence-policy-_en accessed 7 September 2020.

SUAREZ, Francisco, Selections from Three Works (Translated by Gwladys L. Williams), Oxford: Clarendon Press, 1944

TAUREK, John M, "Should the Numbers Count?", Philosophy and Public Affairs, 6 (4), 1977, p. 293-316.

TERESTCHENKO, Michel, Du bon usage de la torture, ou comment les démocraties justifient l'injustifiable, Paris, La Découverte, 2008

Trial Chambers of the ICTY (The Prosecutor v. Milorad Krnojelac - Case No. IT-97-25-T, 2002)

Vienna Convention on the Law of Treaties, 1969

VILMER, Jean Baptiste, La guerre au nom de l'humanité, Tuer ou laisser mourir, PUF, Paris, 2012

WALZER, Michael, Just and unjust wars, New York, basic Books, 1992, Basic Books; 5th edition (August 11, 2015).

WELLER, Marc, Iraq and the Use of Force in International Law, Oxford, O.U.P., 2010

WOOD, Michael, "International Law and The Use of Force: What Happens in Practice?", Indian Journal of International Law, vol. 53, 2013, pp. 345-367. https://legal.un.org/avl/ pdf/ls/Wood_article.pdf accessed 24 August 2020.