

# The Ethics of humanitarian interventions

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Since the end of the Cold War, the debate on humanitarian interventions has gained strength. The legitimacy and legality of this kind of war have been brought into question. The argument presented in this paper is that even though the society of states is based on the sovereignty of its members as an ordering principle, contributing generally to the achievement of common goals of states, sovereignty is only relevant as a mechanism to achieve the well-being of mankind as a whole, or what recently has been known as 'human security'. When this instrumental role is not being exercised responsibly or effectively and fundamental human rights are being disrespected in large-scale, humanitarian interventions can be justified in a society of states as long as the basic requirements of just cause, measure of last resort, proportionality and reasonable probability of success are satisfied.

Humanitarian intervention is commonly defined as a "military action, employed without consent by a target sovereign state, to prevent or halt large-scale violence perpetrated or permitted by its government" (Lu, 2005, p. 188). This is a narrow definition since it limits its use in

3 dimensions. With this definition, the term is not used to address 'interventions' that do not use force, such as diplomatic measures, economic sanctions, public statements, etc. Since the term is used only to designate actions against or to prevent human rights abuses "perpetrated or permitted" by a government, actions to limit violence where there is no established government or in those cases in which the large-scale violence is perpetrated despite the government's will and the measures taken by the state to control it are not comprehended. It also does not account for actions aimed at protecting or rescuing the intervening state's own nationals.

In order to discuss the justifiability of the humanitarian intervention, this definition may be useful, because it limits the term to the controversial actions. Actions that do not involve the use of force, actions permitted by the government of the state in which they will happen and actions to rescue the intervening state's own nationals are less contentious than those comprehended by the definition. I would, however, complement the definition, with the objectives of this essay in mind, by adding the interventions that take place in situations of lawlessness.

Fernando Tesón's definition also includes these situations. According to him, "the situations that trigger humanitarian intervention are acts such as crimes against humanity, serious war crimes, mass murder, genocide, widespread torture, and the Hobbesian state of nature (war of all

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against all) caused by the collapse of social order” (Tesón, 2005, p. 95). The last situation mentioned by Tesón comprehends cases where there is no established government anymore (or it is so weak that cannot effectively protect its people).

It is worthwhile to stress that there is an important difference between the definition of humanitarian intervention and the characterization of a legitimate humanitarian intervention. As argued by Lu, “the legitimacy of any kind of intervention in situations of humanitarian catastrophe, however, cannot be answered by labeling the action humanitarian.” This label “does not automatically equal ‘ethical’ or ‘legitimate’” (Lu :189). Further qualifications are required.

Some scholars have argued that humanitarian interventions can disturb the international order and the stability of the society of states. However, these are not undisputed issues. Bull, who developed one of the most coherent accounts of international order, affirms that “the starting

### **Even though the society of states is based on the sovereignty of its members as an ordering principle, sovereignty is only relevant as a mechanism to achieve the well-being of mankind as a whole.**

point of international relations is the existence of states, or independent political communities, each of which possesses a government, and asserts sovereignty in relation to a particular portion of the earth’s surface and a particular segment of the human population” (Bull, 1977, p. 8). He also argues that the international order is “a pattern of activity that sustains the elementary and primary goals of the society of states” (Bull, 1977, p. 8). For Bull, the primary goal of the modern society of states is the preservation of the system itself. Other two goals that are elementary for this society but are subordinated to the first mentioned goal are the maintenance of the independence or external sovereignty (independence of outside authorities) of individual states and peace. Finally, he also categorizes the “limitation of violence”, the “keeping of promises” and the “stabilization of possessions” as primary goals of the international society (Bull, 1977, pp. 16-19). Therefore, the society of states, according to Bull, is the arrangement of a group of states in a way that maximizes the achievement of its goals, being the primary one the preservation of the society of states itself. In this sense, it can be argued that, since the international society is based on sovereignty of its members and one of its primary goals is the protection of the external sovereignty of its members, humanitarian interventions have no room in a society of states, since they can, potentially, jeopardize the international order by violating its basis – the principles of sovereignty and non-intervention.

However, Bull, after defining world order as “patterns

or dispositions of human activity that sustain the elementary or primary goals of social life among mankind as a whole”, argues that world order

is something wider than order among states; something more fundamental and primordial than it; and also, I should argue, something morally prior to it. (...) It is order among all mankind which we must treat as being of primary value, not order within the society of states. If international order does have value, it can only be because it is instrumental to the goal of order in the human society as a whole (Bull, 1977, p. 22).

Therefore, when Bull discusses the international order, we can understand it as a description of the reality. But when he addresses moral concerns, he claim that the morally prior order is the one based on the well-being of individual human beings and on the goals of mankind. In this sense, it seems that Bull’s ethics of international relations reserve a place for humanitarian interventions, even though

its description of the modern international politics and international order does not and he criticizes arguments in favor of humanitarian interventions in a later writing. It is also important to stress, however, that Bull wrote *Anarchical Society* in 1977

and edited *Intervention in World Politics* in 1984, and as Wheeler argues, the end of the Cold War can be seen as a turning point in the history of the humanitarian intervention legitimacy. For Wheeler, interventions before the end of the Cold War were partially justified on humanitarian grounds but greeted by international skepticism. But, in the 1990s, a new norm of U.N. Security Council-sanctioned intervention was developed (Wheeler, 2000, p. 8).

Walzer, who defends the sovereignty as a mean of self-determination, recognizes that “against the enslavement or massacre of political opponents, national minorities, and religious sects, there may well be no help unless help comes from outside. And when a government turns savagely upon its own people, we must doubt the very existence of a political community to which the idea of self-determination might apply” (Walzer, 1992, p. 101). Tesón, a scholar presenting a liberal argument for intervention in anarchical or tyrannical conditions, argues that “anarchical conditions prevent people, by reason of the total collapse of social order, from conducting meaningful life in common or pursuing individual plans of life” and “tyrannical conditions prevent the victims, by the overuse of state coercion, from pursuing their autonomous projects” (Tesón, 2003, p. 97). Because sovereignty only has value because “it is instrumental to the goal of order in the human society as a whole” (Bull, 1977, p. 22), the state legitimacy and its right of non-intervention collapse in conditions of anarchy and tyranny.

According to Owen, “to many, there is little doubt that (in and of itself) the traditional state-based security paradigm is failing in its primary objective – to protect people.” (Owen, 2004, p. 374) This perception has led scholars to develop the concept of “human security” as an alternative to the traditional approach to international security based on the absence of wars between sovereign states. Mack argues that

In theory, states are responsible for protecting their citizens; in reality, they often violently repress them. Indeed, in the last one hundred years, far more people have died at the hands of their own governments than have been killed by foreign armies. (...) This is the primary reason why proponents of human security argue that the individual should be the referent object of security. (Mack, 2004, pp. 366-367).

As Alkire defines it, the “objective of human security is to safeguard the vital core of all human lives from critical pervasive threats, in a way that is consistent with long-term human fulfillment.” (Alkire, 2001, p. 2) This concept highlights the main objective of human life arrangement in society (which is not a new notion, since it dates at least as far as Hobbes’ writings): the protection of human life. In cases when the social arrangement in sovereign states is indeed threatening the achievement of this goal, the rationale for the respect for the principles on which this social organization is based ceases to exist.

Lu’s defense of “sovereignty as responsibility” – an alternative view of sovereignty as an instrument to achieve the goal of order in the mankind as a whole – is drawn in similar lines. According to it, “sovereignty as responsibility’ highlights the international accountability of sovereigns

## **In cases when the social arrangement in sovereign states is indeed threatening the protection of human life, the rationale for the respect for the principles on which this social organization is based ceases to exist.**

for how they exercise that power, especially with respect to the protection of the human rights and humanitarian interests of their members.” In this sense, “the power of sovereigns to order their domestic realms” and the rule of non-intervention are only valid as ordering principle of the society of states as long the sovereigns empowered by it “exercise that power in ways that meet the basic human rights and humanitarian interests of their members” (Lu, 2005, pp. 197-198).

Once admitted the legitimacy of violations of the principles of sovereignty and non-intervention for humanitarian causes, it is necessary to analyze in which circumstances the humanitarian intervention can be seen as a “just war”

or an action that contribute to the primary goal of protection of human life. Wheeler argues that there are four requirements that an intervention must meet to qualify as a justified humanitarian intervention:

First, there must be a just cause, or what I prefer to call a supreme humanitarian emergency (...); secondly, the use of force must be a last resort; thirdly, it must meet the requirement of proportionality; and, finally, there must be a high probability that the use of force will achieve a positive humanitarian outcome (Wheeler, 2000, pp. 33-34).

Evans and Sahnoun present some additional requirements. For them, “to justify military intervention, 6 principles have to be satisfied: 1. the just cause threshold, 2. right intention, 3. last resort, 4. proportional means, 5. reasonable prospects, and 6. the requirement of right authority.” (Evans & Sahnoun, 2002, p. 102) They argue that

Military intervention for human protection purposes is an extraordinary measure. For it to be warranted, civilians must be faced with the threat of serious and irreparable harm in one of just two exceptional ways. The first is large-scale loss of life, actual or anticipated, with genocidal intent or not, which is the product of deliberate state action, state neglect, inability to act, or state failure. (Evans & Sahnoun, 2002, p. 102).

For Evans and Sahnoun, the primary purpose of a justified intervention must be “to halt or avert human suffering” (Evans & Sahnoun, 2002, p. 102). For Wheeler, in contrast, even though the intervention must have a humanitarian cause in order to be justified, he argues that this does not have to be the primary motive, as long as the

non-humanitarian motives do not undermine a positive humanitarian outcome (Wheeler, 2000, p. 52). This line of reasoning is based on his consequentialist approach to the subject, according to which the intervention can still be considered justifiable as long as the results of the intervention in terms of humanitarian rescue are not jeopardized by the other motives of intervention (even if these other motives take precedence over the humanitarian motivation). Because primary purpose is so difficult to be accurately identified, it seems valid to judge the morality of the action on the basis of its consequences. The only problem with this consequentialist approach is that it only provides a moral verdict after the occurrence of the action and, therefore, does not provide a moral guidance for future actions. This is the *raison d'être* of establishing probability of positive outcomes as a requirement for a legitimate humanitarian intervention.

His third requirement concerns the rules of *jus in bello*: “the level of force employed should not exceed the harm that it is designed to prevent” (Wheeler, 2000, p.

35). Similarly, Evans and Sahnoun argue that “the scale, duration, and intensity of the planned military intervention should be the minimum necessary to secure the defined objective of protecting people” (Evans & Sahnoun, 2002, p. 103). They also agree that “there must be a reasonable chance of success (...); the consequences of action should not be worse than the consequences of inaction” and that military action can be only justified “when the responsibility to prevent has been fully discharged” (Evans & Sahnoun, 2002, p. 102). But they recognize the problem of time pressure in humanitarian crisis and when they argue that intervention must be a last resort, they do not mean that all other alternative procedures available must be tried, but only those that have a reasonable chance of

### **According to the consequentialist approach, an intervention can still be considered justifiable as long as its results in terms of humanitarian rescue are not jeopardized by other motives of the intervention, even if these other motives take precedence over the humanitarian one.**

success, since in some cases the delay of military actions may have as consequence the loss of many lives (Wheeler, 2000, p. 35, Evan & Sahnoun, 2002, p. 103).

The last requirement presented by Evans and Sahnoun is probably one of the most controversial issues in the specialized literature. For them, the action must be approved by the UN, especially by the Security Council, to be considered legitimate, even if all the other requirements are fulfilled. They recognize the problems involved in considering the UN Security Council the ‘right authority’, such as the Council’s “uneven performance, its unrepresentative membership, and its inherent institutional double standards with the permanent-five veto powers”. However, they still defend it, because, for them, “those who challenge or evade the authority of the UN run the risk of eroding its authority in general and undermining the principle of a world order based on international law and universal norms” (Evans & Sahnoun, 2002, pp. 104-105). On the other hand, Wheeler argues that “a practice of unilateral humanitarian intervention can support a new solidarity in the society of states based on the reconciliation of the imperatives of order and justice” (Wheeler, 2000, p. 17).

Even though the legitimacy of a humanitarian intervention is not eliminated by the lack of UN approval, the damage to UN authority caused by unilateral interventions is well known after NATO intervention in Kosovo. One of the essential problems about ‘judging’ a humanitarian intervention is that, even though “a new norm of UN-authorized humanitarian intervention developed in the 1990s” (Wheeler, 2000, p. 8) through a pattern of UN deliberations, the subject is still largely unregulated in the UN context, and most of the Security Council resolutions

authorizing humanitarian interventions are based in a very loose interpretation of the UN Charter. Further regulation of the subject, establishing well defined parameters for judgment in a consensual basis, would facilitate equal and fair assessments, and maybe even diminish some of the negative implications of power asymmetry in the UN for the evaluation. But, until clear rules are established, it is unreasonable to argue that lives should not be saved by humanitarian interventions that fulfill all legitimacy requirements simply because of the inefficiency of the United Nations Security Council.

I have argued in this essay that humanitarian interventions comprehend military actions, taken up without the permission of the invaded state, to prevent or stop large-scale violence perpetrated or permitted by its government, or to reestablish order in a Hobbesian state of nature (lawlessness). Humanitarian interventions do not present a threat to order in a society of states because only those sovereigns that do not use its power in ways that meet the

basic human rights of their members have their right to non-intervention invalidated, as a consequence of their own actions. In this context, I have argued in favor of the just war tradition requirements to qualify an intervention as a justified action. Humanitarian interventions are justifiable in a society of states as long as they are a last resort to rescue people that are suffering with a ‘supreme humanitarian emergency’, meeting the requirement of proportionality in the use of force and having a reasonable probability of success. The humanitarian reason as a primary motive is not considered a requirement; humanitarian interventions that do not have humanitarian concerns as their primary motive can still be considered justified as long as the other requirements are met, especially the probably of positive outcomes. It was suggested that further regulation, especially within the UNSC, about humanitarian intervention and the institutionalization of evaluation tools for specific cases in the international level would provide more solid basis for judgment. Until then, innocent people should not be condemned to death because of the inefficiency of this forum in reestablishing security.

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