INTERNATIONAL ETHICS AND WAR:

A HISTORY

Seven lectures on

Just War and Humanitarian Intervention

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NOTE: The seven lectures are based on the author's recent and forthcoming publications. The text is unedited. References and quotations are not permitted.

Lecture 1.

Introduction to international ethics

The difference between what 'is' (reality) and what 'ought to be' (ethics and norms) in international politics has a long history. What 'ought to be', that is ethical considerations on the basis of principals and morals have always been part of international affairs[1] in theory as well as in practice, be it in order to base international behaviour on norms and morals or in order to repudiate any such prospect.[2]

Historically the first view (what 'is') had more adherents among scholars and diplomats from antiquity until the nineteenth century, with exponents in antiquity Thucydides, the Indian Kautilya and the Chinese Sun Tzu, followed in the Renaissance by Machiavelli, Hobbes and Spinoza and in the nineteenth century by Clausewitz and the exponents of *Realpolitik*. Within this school of thought conflict and war is an everyday reality at the inter-state level in an international system which is by definition anarchical. The interstate level constitutes 'a moral vacuum'[3] and does not contribute to the pursuit of behaviour based on international norms and ethics within a setting that would limit and ultimately ban war and injustice.

The alternative viewpoint, international behaviour by states on the basis of ethics and norms, was voiced in antiquity by the Greek and Roman Stoic philosophers (Zeno of Citium, Chrysippus, Cicero, Seneca, Marcus Aurelius) and Siddhartha Gautama (Buddha), in the Middle Ages by Thomas Aquinas and others Christian students of theology and canon law, in the Renaissance by Erasmus and by the founders of international law, Vitoria, Suarez, Gentili and Grotius, followed during the Enlightenment by Pufendorf, Wolff, Vattel, Kant and Bentham. These enlightened thinkers posited that norms and morals were relevant to international state behaviour and would ultimately dominate the scene, limiting or eliminating war and the use of armed violence by the strong against the weak.

Initially in the inter-war period, as International Relations (IR) became a distinct scientific field (from 1919 onwards), idealism, with its emphasis on international law and ethics dominated the scene. But as idealism and the League of Nations failed in their task of

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[1] T. Nardin, 'Ethical Traditions in International Affairs', in T. Nardin and D.R. Mapel (eds), *Traditions of International Ethics* (Cambridge: Cambridge University Press, 1992), 1.
[2] M. Cohen, 'Moral Skepticism and International Relations', in L.A. Alexander et al, *International Ethics* (Princeton: Princeton University Press, 1985), 3.
[3] M. Hoffman, 'Normative International Theory', in A.J.R. Groom and Margot Light (eds), *Contemporary International Relations: A Guide to Theory* (London: Pinter, 1994), 28.

securing peace on the basis of norms, realism entered the scene as the predominant paradigm in the discipline of IR. From the 1940s until the early 1970s the subject of international ethics, international morality and normative international political theory was a subject of considerable debate and initially on the defensive with realism carrying the day during the early Cold War until the détente of the mid-1970s.

<u>Realism: skepticism regarding ethics</u>

A substantial body of thought in the discipline of IR and practical diplomacy doubts or outright rejects the possibility of ethics and moral principles[4] or norms in the foreign policy decision-making of states.[5] Predictably this is one of the core theses of the paradigm of political realism and began in the 1930s and 1940s, with Reinhold Niebuhr, Edward Hallett Carr, Georg Schwarzenberger, Hans Morgenthau and George Kennan and was followed during the Cold War by Henry Kissinger, Kalevi Holsti, John Herz and by the structural realists (Kenneth Waltz, Robert Gilpin and others).

For U.S. diplomat George Kennan, the conduct of nations is not 'fit' for moral judgment'. There is no reason, he writes, to believe that morality can serve 'as a general criterion for the determination of the behavior of states and above all as a criterion for measuring and comparing the behavior of different states … Here other criteria, sadder, more limited, more practical, must be allowed to prevail'.[6] The *reason d'état* of each state is self-preservation, national security and securing the core national interests.

This overall approach of 'international moral skepticism'[7] regarding international ethics and norms in international politics does not deny the importance of ethics internally (within states and societies). Rather it denies the salience of morality at the international (inter-state) level. It regards preoccupation with morality and standards of ethics in international affairs and the conduct of foreign policy irrelevant, misleading or when alluded to by decision-makers as hypocritical window-dressing and ex post facto rationalization for internal or international consumption. According to this approach international politics 'occupies an autonomous realm of power politics exempt from moral judgment and immune

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[4] Ethics and morality are almost coterminous. We will follow Terry Nardin's approach. He uses 'ethics' to refer to a wide range of considerations affecting choice and action and 'morals' for the more limited rules of conduct. See Nardin, 'Ethical Traditions in International Affairs', 3.

[5] C.R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), 13-14; Cohen, 'Moral Skepticism and International Relations', 3-50; D. Little, 'Morality and National Security', in *Morality and Foreign Policy: Realpolitik Revisited* (Washington, D.C.: United States Institute of Peace, 1991), 1-19.

[6] Quoted in *ibid.*, 3.

[7] C.R. Beitz, 'Bounded Morality: Justice and the State in World Politics', *International Organization*, 33:3 (1979), 406-7.

to moral restraint'.[8] The desire for an alternative to power politics, says Morgenthau, for a better and more principled kind of international politics 'is, at best, utopian'.[9]

In it most extreme form this approach amounts to 'might is right' (according to Spinoza's famous dictum), to the predominance of power politics. As Benedetto Croce had put it echoing Machiavelli, 'in the realm of international politics lies are not lies, or murders murders'.[10]

There are several grounds for this line of reasoning. One is cultural pluralism: the premise that morality is different depending on the people and culture involved; morality is by definition culturally-bound not universal. Hence any attempt to generalize, present and apply one type of morality across the world, in this case Western ethics based to a great extent on Christian roots, the idea of natural law and the Enlightenment, is a form of cultural imperialism. Even if this is not the case (or if it can be proven not to be the case) in a particular case, it is bound to be seen as a form of imperialism and vehemently resented by the receiving side. Mere good intentions however genuine will not suffice.

A second ground for rejecting ethics in international politics is the tendency to moralize, idealize, sermon and point a figure, which is more often than not controversial, arbitrary, misleading and unlikely to provide the basis for a rational foreign policy aimed at enhancing and securing national interest. Overzealousness on moral, ideological or emotional grounds can obscure the salient features of a situation and lead to ineffective and self-defeating policies internationally (this criticism had originally come from Machiavelli).[11]

A third ground is that the main aim of foreign policy is national security and national interest, the promotions of which can only be achieved outside the realm of ethics. States and governments, whose main goal is self-preservation and *raison d'état* in an anarchical world society, do not have the option or luxury to act on the basis of ethics and norms.

As Robert Gilpin has put it:[12]

power and security are [not] the sole or even the most important objectives of mankind; as a species we prize beauty, truth, and goodness. Realism does not deny the importance of these and other values … What the realist seeks to stress is that all

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[8] Cohen, 'Moral Skepticism and International Relations', 11.

[9] *Ibid.*, 12.

[10] In Cohen, 'Moral Skepticism and International Relations', 3.

[11] Beitz, *Political Theory and International Relations*, 20-2.

[12] R.G. Gilpin, 'The Richness of the Tradition of Political Realism', in R.O. Keohane (ed.), *Neorealism and its Critics* (New York: Columbia University Press, 1986), 305.

these noble goals will be lost unless one makes provision for one's security in the power struggle among social groups.

Put differently, the highest ethical norm for a state in a situation of international anarchy is national interest. There is no higher morality: 'my country right or wrong', self-help is the name of the game. As Hobbes had famously argued one cannot act on the basis of morality internationally for one would endanger one's own survival for the other side is highly unlikely to act on the same grounds and observe the same restraint.[13] And as Spinoza had put it, if a government fails in securing a country's survival and self-interest and follows instead ethical criteria in its behaviour it is acting improperly and violates the tacit contract between government and people.[14]

<u>Ethics and norms as an essential part of international politics</u>

The criticism of realism and its skepticism regarding ethics and norms has come from several quarters in the study of IR and not least from liberalism and liberal institutionalism (James Rosenau, Robert Keohane, Joseph Nye, John Vasquez and others), world society pluralism (John Burton), the world order approach (Richard Falk) as well as the English realist school (Martin Wight, Hedley Bull, R.J. Vincent and others), and the various strands of constructivism and post-positivism (reflectivism), such as feminist studies and especially normative international relations also known as international ethics (John Rawls, Michael Walzer, Charles Beitz, Terry Nardin and others).

Interestingly even Carr, the harsh critic of inter-war idealism (which he dubbed 'utopianism') in the very book in which idealism is criticized, had made the following pertinent point in a chapter entitled 'The limitations of realism':[15]

> we cannot ultimately find a resting place in pure realism; for realism … does not provide us with the springs of action which are necessary even to the pursuit of thought … In politics, the belief that certain facts are unalterable or certain trends irresistible commonly reflects a lack of desire or lack of interest to change or resist them … Consistent realism excludes four things which appear to be essential ingredients of all effective political thinking: a finite goal, an emotional appeal, a right of moral judgment and a ground for action.

The normative international relations approach or international ethics is the main school of thought and sub-field of IR that regards morality and norms of considerable

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[13] *Ibid.*, 27-36.
[14] Cohen, 'Moral Skepticism and International Relations', 4.
[15] E.H. Carr, *The Twenty Years' Crisis 1919-1939* (London: Macmillan, 1946) [1939[, 89.

importance and hardly irrelevant to international politics. There are two main trends in this field of study. One is 'cosmopolitanism', 'cosmopolitan morality' whose origins are to be found mainly in Kant.[16] The other is 'communitarianism', the 'morality of states' approach which has its origins in Rousseau, Herder, Hegel and arguably John Stuart Mill.

According to Chris Brown:[17]

The cosmopolitan/communitarian divide relates directly to the most central question of any normative international relations theory, namely the moral value to be credited to particularistic political collectivities as against humanity as a whole or the claims of individual human beings. Communitarian though either denies that there is an opposition here, or is prepared explicitly to assign central value to the community; cosmopolitan thought refuses central authority to the community, placing the ultimate source of moral value elsewhere.

The cosmopolitan approach which has its roots in the Enlightenment focuses on the reasoning of the human individual as an autonomous moral agent and claims that there is a universal set of self-evident moral truths accessible to all people via human reason. The ultimate source of moral values is the individual as part of wider humanity. The point of reference is the individual and humankind as a whole and not the state, nation or community.[18]

The communitarian approach is more culture-bound, arguing that the source of human values is inherent in the community and it is only through membership in a political community (or nation) that the individual finds meaning and gains rights. As argued by Hegel only through the state can individuals realize their freedom.[19]

Following a famous distinction made by Martin Wight,[20] one could also add a third variant of the normative international relations approach or international ethics, the 'Grotian tradition' or 'internationalism',[21] the approach of generally accepted international legal,

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[16] Beitz, 'Bounded Morality', 406, 408-9; Hoffman, 'Normative International Theory', 2; C. Brown, *International Relations Theory: New Normative Approaches* (New York: Harvester Wheatsheaf, 1992).

[17] Brown, *International Relations Theory*, 12.

[18] Hoffman, 'Normative International Theory', 29.

[19] *Ibid.*, 29-30.

[20] Martin Wight distinguished three schools of thought in IR: what he called the Machiavellian, the Grotian and the Kantian traditions. See M. Wight, *International Theory: The Three Traditions*, edited by G. Wight and B. Porter (New York: Holmes and Meier, 1994).

[21] According to Jack Donnelly, see J. Donnelly, 'State Sovereignty and International Intervention: The Case of Human Right', in G.M. Lyons and M. Mastanduno (eds), *Beyond*

political and ethical norms, that is the international law of paradigm starting with Grotius and the other founding fathers of international law and its implied ethical foundations.

All three variants more or less agree on the following points which make normative and moral principles relevant and important in international politics and foreign policy.[22]

In the post-1945 world based on the United Nations Charter, most states (governments to be exact) recognize most of the time the authority of international law and ethical principles and make appeals to these norms to justify their behaviour and criticize other states if they do not conform to the generally accepted norms. Occasionally this posture may be a mere façade.[23] But this is the exception rather than the rule and used in specific circumstances when the view prevails that a 'bad behaviour', one marring a states reputation (its image internationally), is in a particular case inevitable due to the exigencies of national interest or sheer survival (the survival of the state and of its territorial integrity).

For instance when a state, be it Russia, China or Turkey trample upon a numerical minority or oppress a region in their midst (Chechnya, Xinjiang and Tibet or the Kurds respectively) and violate basic human and minority rights that are well-established internationally since 1945 and particularly since from the 1970s onward, they do so because they believe that they have no other choice if they want to avoid dismemberment and the shrinking of their territory. These three states appear threatening to their neighbours because they themselves feel vulnerable and threatened (and also feel that they are treated unjustly and disrespectfully, however absurd this may appear to outsiders). Another case in point is Israel vis-à-vis the Palestinians and the Arab states which has routinely violated an array of international law principles in the name of survival (misguided though it is). All these policies can also be seen as 'the end justifies the means' or that higher values (such as survival seen as the ultimate value) override other values and not as deliberately acting immorally and brutally.[24]

Westphalia: State Sovereignty and International Intervention (Baltimore: Johns Hopkins University Press, 1995), 120-21.

[22] The points that are to follow are based and inspired mainly by the following: N.J. Wheeler, 'Pluralist and Solidarist Conceptions of International Society: Bull and Vincent on Humanitarian Intervention', *Millennium: Journal of International Studies*, 21:3 (1992), 463-7; Beitz, *Political Theory and International Relations*; and more generally by the works of John Burton and his world society school.

[23] It can also be aimed at putting the adversary in the corner as violating international law and international ethics, and discrediting it internationally, as often seen in conflict dyads (e.g. Greece-Turkey, India-Pakistan, China-Japan, USA-USSR).

[24] Note for instance that even the ultra-patriots that had used the expression 'my country right or wrong' use it somewhat differently. For example, U.S. commodore Stephen Decatur

The basic rules of international society, namely sovereignty, territorial integrity, non use of force and so on, have been adopted by states for their own interests (above all their survival) so they are reluctant to act in a way which shows disrespect for these principles. States are bound by moral and legal obligations in their relations with each other. Thus under normal circumstances they refrain from acting in such a way as to undermine or weaken the society of states of which they are a part. The preservation of international society is to their benefit and is a function of their behaviour. As Martin Wight had argued, 'morality is the fruit of security, but lasting security as between many Powers depends on their observing a certain common standard of morality'.[25] When a state and not least a superpower acts, as in the case of the George Bush Jr. Administration, in an unprincipled and immoral manner, akin to 'a rogue superpower', than the very foundations of world society are at stake.

States have rights as well as duties and abiding by them is a reality and no mere fiction. Indeed states pay far more than lip-service to legal and moral rules, and prefer, if they can, to attain the moral high ground and act as a positive example internationally. Even from the realist perspective, the moral and legal authority of a state, its reputation and expectation of acting in a peaceful, constructive, principled and moral manner (including an active role in peacekeeping, mediation, good offices and so on) pays; it is an asset and an important aspect of power. It amounts to moral or ethical power which enhances its clout internationally, as seen in the foreign policy of the Nordic states. In this sense one can speak in terms on 'enlightened self interest' or a more sophisticated form of realism.

States and governments, like individuals are rarely so cynical as to regards themselves on the wrong, as inhuman, beastly and barbarian, even if they clearly are monstrous, as in the case of Hitler's Germany or Stalin's Soviet Union. With rare exceptions they are convinced of their good intentions. If they sometimes act in an extreme and violent manner (e.g. Israel towards Gaza, Turkey during its second military occupation of northern Cyprus in August 1974 or Russia towards the Chechens they regard this as inevitable (they are convinced that that they have no other choice) and blame the other side for having started the dispute and having provoked them.

(apparently the first to have used the expression) at a dinner toast between 1816 and 1820 said 'Our Country! In her intercourse with foreign nations may she always be in the right; but right or wrong, our country!'. Decades later, in 1872, Senator Carl Schurz (also U.S. ambassador in Madrid, major general in the American Civil War and cabinet minister under President Rutherford Hayes) had put it thus: 'My country, right or wrong; if right, to be kept right; and if wrong, to be set right'.

[25] M. Wight, *Power Politics* (London: Royal Institute of International Affairs, 1946), 67.

Even if some governments or specific leaders may not regard norms and ethics essential in their foreign policy, they have to reckon with the attitude of their home public, which may call for initiatives in instances of massacres and other abhorrent acts in other countries. In such instances governments (leaders, the governing party) might want to avoid a public outcry of being seen as callous and indifferent to human suffering. Thus at the end they may act in a principled and moral manner to gain greater popularity at home.

The human rights discourse starting with the various normative documents on human rights and many articles in wider normative texts (in the UN, the CSCE, the Council of Europe) as well as deliberate foreign policy based in part on human rights and democracy, can also be a driving force leading to policies based on principles, even though non-Western societies may see this as a form of cultural imperialism. The Western states or to be more accurate most Western states, most of the time do not regard themselves as acting in a haughty imperialistic manner especially if their perspective at a given moment happens to be liberal and cosmopolitan rather than hard-nosed realist.

It has also been argued, among others by non-Western diplomats, politicians and scholars that differences in moral principles and values are not all that great between different moral traditions, the Western tradition by comparison to the Islamic, Confucian or African traditions. There are several points of convergence such as human dignity, the sense of self-respect, freedom from oppression, justice, effective political participation and so on. Moreover if instead of culturally-bound values we speak in terms of 'universal human needs' (Abraham Maslow, John Burton) or common 'human nature' and the quest for 'self-actualization' (along the humanistic psychology of Carl Rogers, Erich Fromm, Eric Erikson, Karen Horney, Melanie Klein and others) than it is even easier to detect communalities across cultures.

Lastly, it pays to be principled and moral in one's behavior and to be seen as such. If a state is unprincipled, callous and aggressive towards one's neighbour or within one's country it is highly likely that the state or government will not get away with it even if it takes decades for retaliation to take place (as in the case of the Armenians toward the Turks or the Chechens towards the Russians). The other side is bound to react accordingly and the spiral of conflict will continue indefinitely as seen with several conflict dyads or ethnic conflicts.

Today the scientific field of international ethics, international morality or normative international political theory covers a wide spectrum, including the autonomy and sovereignty of states, peace, war and the use of armed violence, human rights, intervention, distributive

justice and environmental degradation.[26] To this should also be added a whole discipline, international law, whose whole approach is normative.

War and intervention

One of the original themes of international ethics and international law is war and how it can be banned, limited or justified. Another related theme is military intervention and when is it acceptable and justified or not. In this introductory study of the history international ethics we will focus our attention on the just war doctrine and on the question of humanitarian intervention, both of them difficult and highly controversial themes yesterday as well as today.

Before proceeding further two points are worth making (a) normative attitudes toward war from antiquity until today; and (b) the wider concept of intervention.

The normative views on war has evolved through several stages: (1) the just war doctrine of antiquity, the Middle Ages and the Renaissance (300 B.C.-1648); (2) the positivist phase where war was a sovereign right of states (1648-1919); (3) the League of Nations period (1919-1928); (4) the Kellogg-Briand period (1928-1939) against aggressive wars; and (5) the United Nations Charter period in which the threat or use of force is banned save in self-defense and following a UN mandate to use force in cases of threats to peace and security, which in recent decades also includes ethnic cleansing, crimes against humanity and genocide (see Lecture 7).[27]

As for intervention from its inception in the eighteenth century until 1939, it was 'Protean', covering an array of manifestations from a speech in Parliament by British Prime Minister Palmerston to the partition of Poland.[28] Not only was the scope of intervention wide, but its meaning and consequences remained contentious.[29]

The problem with intervention continued following the Second World War in the international law and international relations literature.[30] In the post-Cold War era, with

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[26] Hoffman, 'Normative International Theory', 30.
[27] A.C. Arend and R.J. Beck, *International Law and the Use of Force* (London: Routledge, 1993),11-36.

[28] P.H. Winfield, 'The History of Intervention in International Law', *British Year Book of International Law*, 3 (1922-1923), 130, 135-6, 141.
[29] *Ibid.*, 130.
[30] See C.G. Fenwick, 'Intervention: Individual and Collective', *American Journal of International Law*, 39:4 (1945), 645-51; R.J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974); R. Little, *Intervention: External Involvement in Civil Wars* (London: Robert Robertson, 1975); H. Bull (ed.), *Intervention in World Politics* (Oxford: Clarendon Press, 1984).

increasing interventionism by the UN, regional intergovernmental organizations or 'coalitions of the willing', interest has hardly diminished, the main focus now being on *humanitarian* intervention, which is even more contentious.

But two things are clear. Intervention meant then – and today[31] – 'coercive', 'dictatorial interference by a State in the [internal or external] affairs of another State for the purpose of maintaining or altering the actual conditions of things'.[32] Moreover, non-intervention was – and is – the rule, intervention the exception.[33] In the context of humanitarian intervention in particular as used today intervention is almost by definition armed or military intervention.

It is often assumed that the non-intervention norm was established in the Treaty of Westphalia (1648). In fact non-intervention was established as an international law principle in the first half of the eighteenth century mainly by jurists Christian Wolff and Emer de Vattel.[34] Thereafter non-intervention became a fully-fledged legal principle associated with the principles of sovereignty and independence. Half a century later, Kant lent considerable weight to this new norm in his quest for principles assuring peace, with his Preliminary Article 5 on non-intervention in his *Toward Perpetual Peace* (see Lecture 5).

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[31] See H. Bull, 'Introduction', in Bull (ed.), *Intervention in World Politics*, 1; S. Hoffmann, 'The Problem of Intervention', in *ibid.*, 7-28.

[32] L. Oppenheim, *International Law: A Treatise* (5th edition, edited by H. Lauterpacht) (London, New York, Toronto: Longmans, Greene and Co., 1937) [1905], vol.I, 249.

[33] Winfield, 'The History of Intervention in International Law', 139.

[34] *Ibid.*, 132, 135.

Lecture 2.

The just war doctrine from antiquity until today

Introduction

The Western just war doctrine has its origins in Roman, Christian and Medieval Catholic thinking, in Cicero, Saint Augustine and Thomas Aquinas, respectively, and was further elaborated by natural law jurists, in particular by Francisco de Vitoria, Francisco Suarez, Alberico Gentili and Hugo Grotius.

Just war as we have said can be regarded as the first normative phase regarding war.

The just war doctrine in its long history has developed along two pillars: what is known as *jus ad bellum*, that is 'when' and 'whether' to resort to war, when resorting to war is justified and what is the war's purpose; and *jus in bello*, that is the war's means, the appropriate conduct in the use of armed force, how the war can legitimately be fought, above all non-combatant immunity (no direct attacks against innocent civilians) and the rule of proportionality that is not overdue damages in pursuit of military victory incommensurate with the original damage inflicted.[35]

More generally the just war tradition in Western thought 'is the tradition for addressing moral questions about when and how to use force'.[36] According to Fixdal and Smith it is:[37]

> the name for a diverse literature on the morality of war and warfare that offers criteria for judging whether a war is just and whether it is fought by just means. This tradition, thus, debates our moral obligations in relation to violence and the use of lethal force. The thrust of the tradition is not to argue against war as such, but to surround both the resort to war and its conduct with moral constraints and conditions.

The just war approach can be seen as a middle road between two polar opposites: the tradition of classic and modern *Realpolitik* (Thucydides, Machiavelli, Hobbes, Spinoza, Clausewitz and the modern realists) that regards moral dilemmas and the ethics of war

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[35] R.B. Miller, *Interpretations of Conflict: Ethics, Pacifism, and the Just War Tradition* (Chicago: The University of Chicago Press, 1991), 13; M. Fixdal and D. Smith, 'Humanitarian Intervention and Just War'*, Mershon International Studies Review*, 42:2 (1998), 286.

[36] *Ibid.*, 285.

[37] *Ibid.*, 285-6.

irrelevant in international politics; and the alternative world view of pacifism (from the Stoics, Buddha and Christ to Erasmus, Bentham, Tolstoy and Gandhi). According to this middle road, war is deplorable but under certain circumstances justified and necessary as a last resort.[38]

Just war in antiquity

The Romans were the main progenitors of the concept, but other civilizations of Antiquity are also known to have moved in that direction, including the Chinese, the Hindu, the Egyptians, the Babylonians and the Greeks.[39]

Plato and Aristotle

Plato (428-347 B.C.) regarded war as a necessary evil aimed at leading to peace and put limits to how war could be conducted, namely that is should not be extreme or indiscriminate.[40]

Aristotle (384-322 B.C.) should probably be credited as having been the first to use the term 'just war' (*dikaios polemos*).[41] The position of 'the Philosopher', as Aristotle was known in the Middle Ages and the Renaissance, regarding a just war is not very clear and at times seems contradictory. It can be summarized as follows: (a) a war is just if we are the victims of aggression[42] or put differently to prevent men from becoming enslaved (defensive war in present-day parlance);[43] (b) if we have been 'wronged' or in order to help our allies that had been wronged; and (c) if the aim of the war is to end up leaving in peace. He also regarded the use force justified to establish a rule that would benefit the people more (presumably democratic rule). As he put it 'to put men in a position to exercise leadership – but leadership directed to the interests of the led, and not to the establishment of a general system of slavery'.[44] Some British scholars in the nineteenth century had claimed that this meant the establishment of a hegemonic state and conquest to the benefit of the conquered,

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[38] K.W. Kemp, 'Just-War Theory & its Non-Pacifist Rivals', ISA-South Regional Meeting, Montgomery, Alabama (10 October 1993); J.B. Elshtain, 'Just War and Humanitarian Intervention', *American University International Law Review*, 17:1 (2001-2002), 2-4; J.T. Johnson, 'The Just War Idea: The State of the Question', *Social Philosophy and Policy*, 23:1 (2006), 167-8.

[39] P. Christopher, *The Ethics of War and Peace* (Saddle River: Prentice Hall, 2004, 3rd edition), 8-9.

[40] *Ibid.*, 9-10.

[41] In his *Nichomachean Ethics*, see Christopher, *The Ethics of War and Peace*, 10 and 15 note 11.

[42] From *Rhetorica ad Alexandrum*, see Christopher, *The Ethics of War and Peace*, 10.

[43] From *Politics*, see Arend and Beck, *International Law and the Use of Force*, 12.

[44] Quoted from *Politics*, in Arend and Beck, *International Law and the Use of Force*, 12. See also F.D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Oxford University Press, 1995), 86.

the parallel drawn being British imperial rule. Aristotle also seemed to regard a war just if it was aimed at gaining advantage, glory and power for the *polis*, a stance which makes his overall position on the matter inconsistent.[45]

Moreover he regarded a war justified and just if it was waged 'against those who naturally deserve to be slaves',[46] for Aristotle like most of his contemporaries believed that some people were slaves by nature, 'natural slaves',[47] a view that resonated in Europe until the Renaissance and beyond (as seen by the practice of the terrible slave trade and slavery in the Americas well into the nineteenth century).

Cicero

It was the Romans who rendered the just war idea more precise, 'a definite legal theory of just war',[48] and most of all Marcus Tullius Cicero (106-43 B.C.), whom most commentators regard as the father of the concept of *jus ad bellum*. According to Cicero there are two main just causes for resorting to war: redressing an injury and repelling an invader,[49] or put differently for revenge against previous damage, defense, including defense of one's honour. Peace should be the ultimate aim of war. Unjust wars are those that take place without provocation. For wars to be regarded just the following additional conditions are necessary: declaration by the proper authority, previous notification of the declaration of war and the antagonist should be offered the possibility of a peaceful settlement before a war is launched. Moreover the Romans provided for an elaborate procedure before going to war, such as first asking for reparations and if they were not forthcoming to threaten war and wait for a while before resorting to force.[50]

War and just war in the early Christian period

The situation until the Edict of Milan (313)

For the early Christians and as long as Christianity was not the official religion of the Roman Empire, war was condemned. War was seen as 'punishment which God inflicts upon the

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[45] *Ibid.*, 86 fn.33; J. von Elbe, 'The Evolution of the Concept of the Just War in International Law', *American Journal of International Law*, 33:4 (1939), 666; A. Nussbaum, 'Just War – A Legal Concept?', *Michigan Law Review*, 42:3 (1943), 453; Christopher, *The Ethics of War and Peace*, 10; Arend and Beck, *International Law and the Use of Force*, 12-13.

[46] Quoted from *Politics*, in Arend and Beck, *International Law and the Use of Force*, 12.

[47] T. Nardin, 'The Moral Basis for Humanitarian Intervention', in A.F. Lang (ed.), *Just Intervention* (Washington, D.C.: Georgetown University Press, 2003), 15.

[48] Nussbaum, 'Just War – A Legal Concept?', 454.

[49] Arend and Beck, *International Law and the Use of Force*, 13.

[50] Christopher, *The Ethics of War and Peace*, 10. See also Elbe, 'The Evolution of the Concept of the Just War in International Law', 666; Nussbaum, 'Just War – A Legal Concept?', 454; Arend and Beck, *International Law and the Use of Force*, 13.

sinful world'[51] and as 'intrinsically evil and opposed to the will of God'.[52] Consequently Christians should not resort to war or participate in warfare, as propounded by Christian pacifists, such as Tertullian (160-240 A.D.) and Origen (185-254 A.D.). Yet well before the advent of Constantine the Great, a growing number of Christians had participated as soldiers in the Roman legions and were killed in the name of Rome (regarded as soldier-martyrs by the Christians),[53] and some eminent Christians, such as St. Clement of Rome, St. Clement of Alexandria, St. Ignatius of Antioch and Celsus, urged them to become soldiers in defense of their country.[54] Even Origen in his debate with Celsus, while repudiating war and participation in the army, made a distinction between righteous and unrighteous wars, the former being those fought for the defense of the fatherland.[55]

With the Edict of Milan (313) and with Christianity now the official religion of the Eastern and Western Roman Empires, a more positive stance regarding war in defense of the empire became more urgent. Ioannis Chrysostomos (347-407 A.D.) pointed out that when attacked by barbarians the Christians could fight against them. But others went to greater lengths, most of all, St. Ambrose and more comprehensively St. Augustine, Bishop of Hippo, who tried to combine Roman tradition (Cicero) with Christianity by accepting that Christians could legitimately participate in wars or resort to the use of force while at the same time stipulating that wars had to be just to be waged.[56]

<u>Ambrose and Augustine</u>

For Ambrose (340-397 A.D.) a war was just if it defended the state from a barbarian invasion, if it was intended to protect those unable to do so, if peace war established following the war and if it was a divine command; but wherever possible disputes had to be resolved peacefully.[57]

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[51] Elbe, 'The Evolution of the Concept of the Just War in International Law', 668.

[52] J. Eppstein, *The Catholic Tradition of the Law of Nations* (London: Burns, Oates & Wahsbourne, 1935), 38.

[53] *Ibid.*, 29-30, 33-4, 45-7.

[54] *Ibid.*, 40-1.

[55] *Ibid.*, 41-43.

[56] Eppstein, *The Catholic Tradition of the Law of Nations*, 43, 53; Elbe, 'The Evolution of the Concept of the Just War in International Law', 667; Nussbaum, 'Just War – A Legal Concept?', 455; Josef L. Kunz, 'Bellum Justum and Bellum Legale', *American Journal of International Law*, 45:3 (1951), 530; L.H. Miller, 'The Contemporary Significance of the Doctrine of Just War', *World Politics*, 16:2 (1964), 254; Arend and Beck, *International Law and the Use of Force*, 13; Fixdal and Smith, 'Humanitarian Intervention and Just War', 286.

[57] Eppstein, *The Catholic Tradition of the Law of Nations*, 61-4; J.M. Mattox, *Saint Augustine and the Theory of Just War* (London: Continuum, 2006), 19-22, 74, 78, 82.

Augustine (354-430 A.D.) is generally regarded as the father of the Christian just war doctrine and his approach retains its salience until today even though he did not formulate a systematic theory of just war.[58] Augustine, following Cicero and his mentor Ambrose, maintained that war is evil but in some instances permitted by God and ordained by Providence. This is the case if there was a just cause, namely to defend a state from invasion, to defend the safety and honour of the state, to avenge injuries and punish another state or to obey a divine command as understood by the head of state; if war is not aimed at seeking power, territorial aggrandizement or revenge and is not motivated by a delight for violence; and if it is decided and waged by the sovereign ruler of a state. In principle the arbiter of whether a war was just or not was God, which in reality meant human conscience.[59] Furthermore disputes should be solved peacefully when this is possible so as to avoid war and the final aim of all wars should be the restoration of peace, order and tranquility.[60]

Just war in the Middle Ages

The Augustinian approach was revived several centuries later, in the Middle Ages by the jurist and teacher of theology, Gratian of Bologna, in the mid twelve century, who reproduced Augustine's views on just war within a wider collection of canon laws that came to be known as *Decretum Gratiani*. It was from there that Augustine's ideas on just war were picked up a century later by St. Thomas Aquinas.[61]

<u>Thomas Aquinas</u>

The Dominican theologian and philosopher Thomas Aquinas (1225-1274), taking the lead from Augustine, presented the just war tradition in a coherent set of rules and principles. Political rulers were under the obligation to ensure the safety and welfare of their people, to

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[58] *Ibid.*, 1-4; Elbe, 'The Evolution of the Concept of the Just War in International Law', 667-8; Fixdal and Smith, 'Humanitarian Intervention and Just War', 404; Christopher, *The Ethics of War and Peace*, 30; Arend and Beck, *International Law and the Use of Force*,13.
[59] Eppstein, *The Catholic Tradition of the Law of Nations*, 80.
[60] *Ibid.*, 69-80; Elbe, 'The Evolution of the Concept of the Just War in International Law', 668-9; Nussbaum, 'Just War – A Legal Concept?', 455; Miller, 'The Contemporary Significance of the Doctrine of Just War', 254-55; R.S. Hartigan, 'Noncombatant Immunity: Reflections on its Origins and Present Status', *The Review of Politics*, 29:2 (1967), 207-209; G.I.A.D. Draper, 'Grotius' Place in the Development of Legal Ideas about War', in H. Bull et al., (eds), *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 1990), 18-81; R.B. Miller, *Interpretations of Conflict: Ethics, Pacifism, and the Just War Tradition* (Chicago: The University of Chicago Press, 1991), 18-23; W.G. Grewe, *The Epochs of International Law*, translated and revised by M. Byers (Berlin: Walter de Gruyter, 2000), 106-108; Christopher, *The Ethics of War and Peace*, 40-42; Mattox, *Saint Augustine and the Theory of Just War*, 45-85.
[61] Eppstein, *The Catholic Tradition of the Law of Nations*, 81.

uphold justice, to redress injustices committed by outsiders and on the basis of all of these they could be obliged to resort to war under certain circumstances.[62]

Aquinas in his *Summa Theologiae* presents three conditions as necessary and sufficient for a just war to occur: (1) a declaration of war by the proper authority (*auctoritas principis*), among others in order to give time to the other side to reach a peaceful settlement by making amends for the damage inflicted; (2) a just cause (*justa causa*), namely to avenge wrongs committed by another state, to punish the state that is guilty and unwilling to make amends and to return what is seized unjustly; and (3) a right intention (*recta intento*), the motive of resort to armed force being 'to do the good and avoid the evil', to secure peace and not to be motivated by lust for power, thirst for revenge or a readiness to injure.[63] Motives of this latter kind can make an otherwise just war unjust due to a wicked intention.[64]

Aquinas did not accept Aristotle's stand that just war could be waged against so called 'natural slaves' but in reverence to the Philosopher he came out with a formula to the effect that the criteria of just war had to first be met before natural slaves could be subjected.[65] Aquinas also made a clear distinction between those that were 'guilty' and those that were 'innocent', maintaining that the latter could not intentionally be killed even though in practical terms, in the course of, say, a siege against a city the innocent could be killed together with the guilty.[66] This bring us to another lasting contribution of Aquinas, the famous 'double effect': if an action results in both an evil and good effect it was permitted if the former was not disproportionate to the good and insofar as the good effect is intended while the evil effect is unintended and there is no other way to achieve the good effect.[67] Finally contrary to Augustine, he was a reluctant supporter of rebellion against extreme tyrannical rule for a tyrannical government is unjust and against the common good. Such a rebellion

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[62] Von Elbe, 'The Evolution of the Concept of the Just War in International Law', 669.

[63] There were religious reasons for this criterion. At stake was 'the health of the soul and the prospects for eternal life. Motives are important even if other people cannot know what you think or the real reason that you act … but nothing is hidden from the deity'. See Fixdal and Smith, 'Humanitarian Intervention and Just War', 299-300.

[64] Christopher, *The Ethics of War and Peace*, pp.49-51. See also Eppstein, *The Catholic Tradition of the Law of Nations*, 83-88; Nussbaum, 'Just War – A Legal Concept?', 456-7; von Elbe, 'The Evolution of the Concept of the Just War in International Law', 669; Miller, 'The Contemporary Significance of the Doctrine of Just War', 255; Miller, *Interpretations of Conflict*, 23-7; Hartigan, 'Noncombatant Immunity', 209-10; Draper, 'Grotius' Place in the Development of Legal Ideas about War', 181-2; Nardin, 'The Moral Basis for Humanitarian Intervention', 13.

[65] See R. Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), 70-1.

[66] Hartigan, 'Noncombatant Immunity', 209-11.

[67] *Ibid.*, 210; Christopher, *The Ethics of War and Peace*, 52.

could take place if the subjects were not to suffer greater harm from the uprising and its successful outcome by comparison to the tyrant's rule.[68]

Raymond of Penyafort

Aquinas' contemporary, the Catalan Dominican Raymond of Penyafort (c.1175-1275), an eminent canon lawyer, presented his own version of just war which included the following: (a) if war must be aimed at redressing an injury; (b) if resorting to war is the only way to redress an injury; (c) if it is motivated by a desire for justice and not by greed or hate; and (d) provided it is waged by a valid authority, that is the Emperor, the Pope or a sovereign prince.[69]

Just war during the Renaissance

Vitoria

The next major contribution to the just war debate has come from the Spanish Dominican, Francisco de Vitoria (1480-1546), professor of theology at the University of Salamanca and father of the philosophical school of the University of Salamanca.

Vitoria's approach was triggered by the Spanish conquest and harsh treatment of the 'Indians recently discovered'. Vitoria tried to follow a middle path between the initial justification of the conquest put forward by Spain under Charles V (King of Spain and Holy Roman Emperor), in particular by the Aristotelian philosopher Juan Ginés de Sepúlveda (1489-1573), and the doubts about the conquest on ethical grounds raised by his fellow academics in Salamanca, Domingo de Soto (1494-1560)[70] and Diego de Covarubias (1512-1577),[71] and the more forthright criticism by the Dominican monk and later bishop of Chiapas in Mexico, Bartolomé de Las Casas (1474-1566), 'the protector of the Indians'. Las Casas did his utmost to abolish Indian slavery and stop the atrocities and cruelties committed by the Spanish *conquistadores* (he crossed the perilous Atlantic Ocean several times to plead with Charles V to take measures to protect the Indians).[72]

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[68] Christopher, *The Ethics of War and Peace*, 52.
[69] Draper, 'Grotius' Place in the Development of Legal Ideas about War', 182.
[70] Tuck, *The Rights of War and Peace*, 73, 75.
[71] B. Kingsbury, 'Confronting Difference: The Puzzling Durability of Gentili's Combination of Pragmatic Pluralism and Normative Judgment', *American Journal of International Law*, 92:4 (1998), 721.
[72] C. van Vollenhoven, *The Law of Peace* (London: Macmillan, 1936), 61-3; Elbe, 'The Evolution of the Concept of the Just War in International Law', 674; Nussbaum, 'Just War – A Legal Concept?', 358-9; J. Graven, 'Les Crimes contre l'humanité', *Recueil des Cours*,

At this point a parenthesis is in order. When Charles V was confronted with contrasting views regarding the Spanish conquest he summoned a debate in the city of Valladolid (the then capital city of Spain) in 1550, between Sepúlveda and Las Casas, which was judged by a panel of jurists chaired by de Soto. Sepúlveda predictably maintained that the conquest was fully justified for the Indians were natural slaves and barbarians and amply referred to Aristotle's approach on the matter. Las Casas countered these claims and asserted that the Indians were human beings, reasonable and competent and consequently had to be treated as such on the basis of Christian morality as was the case with other human beings.[73]

But let us revert to Vitoria. According to Vitoria the various reasons put forward by the Spanish King for the conquest were not 'adequate'. He examined and rejected the 'seven titles' for conquest put forward by Spain and came up with 'seven or eight' titles which were, according to him 'just and legitimate', such as taking action when denied to engage in commerce or accept Christianity following a detailed presentation of its merits which was rejected.[74] As to the fact that the Indians were 'barbarians' and had committed various atrocious acts against some of their countrymen, such as human sacrifices (that is acts against the 'law of nature') this did not justify waging war against them and committing atrocities, which Vitoria denounced in the name of Christianity. However his conclusion was that the Spanish conquest was ultimately beneficial for the 'American aborigines' for it brought to the new world a higher civilization and punished sinners against nature.[75]

More generally for Vitoria only adequate cause can justify the killings and other devastations perpetuated by war and this cannot be the difference of religion (to bring Christianity to the unbelievers), expansion of empire or the personal glory of the ruler, but

Académie de droit international, 76, (1950), 438-9; Tuck, *The Rights of War and Peace*, 75; Nardin, 'The Moral Basis for Humanitarian Intervention', 15.

[73] L. Hanke, *Aristotle and the American Indians: A Study in Race Prejudice in the Modern World* (London: Hollis & Carter, 1959), 28-73; L. Hanke, *All Mankind is One: A Study of the Disputation Between Bartalomé de Las Casas and Juan Ginés de Sepúlveda* (DeKalb: North Illinois University Press, 1974), 67-112; T. Todorov, *The Conquest of America: The Question of the Other* (New York: Harper Perennial, 1992) [French edition 1982], 151-7, 186-90.

[74] Fransisco de Victoria [*sic*], *De Indis et Ivre Belli, Relectiones*, Second section, E. Nys ed., John Pawley Bate trans. (Washington, D.C.: Carnegie Institution of Washington, 1917), http://en.wikisource.org/wiki/De_Indis_De_Jure_Belli.

[75] Nussbaum, 'Just War – A Legal Concept?', 'Just War – A Legal Concept?',459; P. Haggenmacher, 'Sur un passage obscure de Grotius' *Revue d'Histoire du droit*, 51 (1983), 302-3; Tuck, *The Rights of War and Peace*, 73-5; Nardin, 'The Moral Basis for Humanitarian Intervention', 14; Christopher, *The Ethics of War and Peace*, 54; A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 21-3; B. Bowden, 'The Colonial Origins of International Law. European Expansion and the Classical Standard of Civilization', *Journal of the History of International Law*, 7 (2005), 9-12.

only wrong received. Before resorting to war a careful examination has to be made of the reasons and causes of the war and in this process those opposed to war should be heard. The king was not to be the sole judge but the monarch together with a committee of wise men. In practical terms three rules were applicable: (a) the prince should not seek occasion to go to war and if he resorts to war (a just war) this should be done reluctantly; (b) when a just war is under way the aim should not be to ruin the people against whom it is directed but to obtain one's own rights, defend one's own country and establish peace and security; and (c) when one is victorious there should be moderation and humility on the part of the victor and punishment should be limited to those individuals responsible for the original offence that gave ground for the just war in question.[76]

Vitoria observed that it could well be that both opposing sides believe in the justice of their cause. However it is impossible for both sides to have objectively a just cause for if this was the case it is unlawful for either party to resort to war. He was of the view that one side is objectively righteous while the other is under what he called 'invisible ignorance' (*ignorantia invincibilis*), and in this sense a war may be subjectively (but not objectively) just to the other side.[77] Vitoria was also a supporter of what we now call 'preemption' as distinct from 'prevention'[78] and was very strict as to the criteria of preemption (preemption had to be exercised in the heat of the moment, simultaneously or just prior to the attack and conducted on the basis of proportionality).[79] He is also well-known for the principle of distinction (noncombatant immunity), namely that the innocent and guiltless cannot be the object of deliberate killings, and he explicitly referred to children, women, foreigners, travelers, harmless agricultural folk and the rest of the innocent (non-combatant) civilian population. He does allow for non-intended accidental casualties (today's 'collateral damage') if a just war cannot be carried out and won without the death of some of the guiltless.[80]

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[76] Elbe, 'The Evolution of the Concept of the Just War in International Law', 674-5; Christopher, *The Ethics of War and Peace*, 53-5, 58; Draper, 'Grotius' Place in the Development of Legal Ideas about War', 187-8; H. Legohérel, *Histoire du droit international public* (Paris: Presses Universitaires de France, 1996), 26.

[77] Von Elbe, 'The Evolution of the Concept of the Just War in International Law', 675-6; Nussbaum, 'Just War – A Legal Concept?', 460; Grewe, *The Epochs of International Law*, 204; Draper, 'Grotius' Place in the Development of Legal Ideas about War', 187.

[78] Preemption is an offensive act against an imminent attack, while prevention places the matter in a longer time span that is to react aggressively to a future attack (which is still undetermined) or to a military capability that could be devastating in the future. See G.M. Reichberg, 'Preventive War in Classical Just War Theory', *Journal of the History of International Law*, 9 (2007), 6-7.

[79] *Ibid.*, 12.

[80] Hartigan, 'Noncombatant Immunity', 215-16; Christopher, *The Ethics of War and Peace*, 55-6.

<u>Suarez</u>

After Vitoria, the main Spanish jurist to contribute the ongoing discussion on just war was by the Jesuit Francisco Suarez (1548-1617) who taught at various Spanish universities.

For Suarez a just war has to be (1) waged by a legitimate authority; (2) the cause itself and the reason must be just; and (3) 'the method of its conduct must be proper, and due proportion must be observed at its beginning, during its prosecution and after victory'.[81] As regards the third factor, the principle of proportionality, not all causes are sufficient to justify resorting to war but only serious causes and the war must lead to equivalent and not excessive injuries.[82] Moreover the innocent should be spared, such as the children on the basis of the law of nature and the ambassadors on the basis of the 'law of nations'.[83] Denial by a state 'without reasonable cause of the common rights of nations, such as the right of transit over highways' or 'trading in common' were a cause for a just war, as was aid to a friendly country if that country was justified in going to war.[84] Furthermore, Suarez was aware of the abuse factor. As in the case of Las Casas before him, he did not condone waging war against backward non-Christian peoples with the aim of civilizing them (a right advocated by many of his contemporaries).[85]

<u>Gentili</u>

The Italian Protestant Alberico Gentili (1552-1608), professor of law at the University of Oxford was responsible for secularizing the just war doctrine, a trend followed by Grotius and others after him.[86]

For Gentili defensive wars are the most obvious just wars, but offensive wars could also be just. In essence a war 'cannot be just, unless it is necessary'.[87] He placed just wars under three headings: honour, necessity and expediency.[88] War was to be a last resort and he

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[81] B. Kingsbury and A. Roberts, 'Introduction', in H. Bull, et.al., (eds), *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 1990), 20.

[82] Arend and Beck, *International Law and the Use of Force*, 14.

[83] Legohérel, *Histoire du droit international public*, 27.

[84] M. Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', *American Journal of International Law*, 85:1 (1991), 113.

[85] T.B. Knudsen, 'The History of Humanitarian Intervention: The Rule or the Exception?', 50th ISA Annual Convention, New York (15-18 February 2009), 5.

[86] A. Nusssbaum, *The Concise History of the Law of Nations* (New York: The Macmillan Company, 1947), 79; 'Bellum Justum and Bellum Legale', 530.

[87] G.H. J. van der Molen, *Alberto Gentili and the Development of International Law: His Life and Times* (Amsterdam: H. J. Paris, 1937), 116-17.

[88] G. Schwarzenberger, 'Jus Pacis ac Belli? Prolegomena to a Sociology of International Law', *American Journal of International Law*, 37:3 (1943), 463; M. Forsyth, 'The Tradition of International Law', in T. Nardin and D.R. Mapel (eds), *Traditions of International Ethics* (Cambridge: Cambridge University Press, 1992), 32.

presented an extended discussion of arbitration.[89] He also maintained that one could wage war to protect the freedom of the seas, for the sea and the air is open to all,[90] and if a people totally refused to engage in trade with other peoples (this he took from Vitoria though he pointed out that this was not the real reason for the Spanish conquest).[91] He approved of the Spanish wars against the Indians on the grounds that the latter practiced abominable acts 'contrary to human nature'.[92]

As for religious reasons (to try to impose one's religion on other peoples) they were not, according to Gentili, a proper (just) cause to resort to war.[93] He was also a supporter of anticipatory actions and in the spectrum between preemption and prevention was nearer to the latter, to preventive war.[94] He also elaborated on *jus in bello*, arguing that the innocent, and above all children, women, merchants, travelers and prisoners of war, could not be killed or molested.[95] More crucially Gentili argued – contrary to Vitoria – that it is possible, even objectively for both belligerents to have a just cause, as was the case in instances of a 'disputed right'.[96] Law could be subjectively just for both sides and there were degrees of justness. And in any event one side could have a comparatively more just cause but this did not make the other side automatically unjust.[97]

Grotius

For the Dutch diplomat and jurist Hugo Grotius (1583-1645), just causes that rendered a war just are primarily the following: (a) defense of persons and territory, (b) recovery of what is due to the aggrieved state and (c) inflicting punishment on the wrongdoer. For Grotius war

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[89] Kingsbury, 'Confronting Difference', 720.

[90] Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', 113-14; Legohérel, *Histoire du droit international public*, 31.

[91] Kingsbury, 'Confronting Difference', 721-2; Legohérel, *Histoire du droit international public*, 30.

[92] Tuck, *The Rights of War and Peace*, 35-36; Kingsbury, 'Confronting Difference', 721.

[93] Legohérel, *Histoire du droit international public*, 30.

[94] Tuck, *The Rights of War and Peace*, 18. This whole idea had its origins in Cicero. See *ibid.*, 19-23.

[95] Grewe, *The Epochs of International Law*, 212-14.

[96] G. H. J. van der Molen, *Alberto Gentili and the Development of International Law: His Life and Times* (Amsterdam: H. J. Paris, 1937), 116-20, 125-6, 143-49; G.

[97] Elbe, 'The Evolution of the Concept of the Just War in International Law', 676-7; Schwarzenberger, 'Jus Pacis ac Belli?', 463-4; Nussbaum, 'Just War – A Legal Concept?', 467-8; Kunz, 'Bellum Justum and Bellum Legale', 531; Forsyth, 'The Tradition of International Law', 31-3; Grewe, *The Epochs of International Law*, 211; Draper, 'Grotius' Place in the Development of Legal Ideas about War', 190; Kingsbury, 'Confronting Difference', 721. According to Tuck the origins of the idea that war can be just on both sides are Roman (the Romans often praised the struggle of their enemies). Prior to Gentili such views had been voiced by the Italian jurists, Raphael Fulgosius of Piazenca (1362-1427) and Andrea Alciato (1492-1550). See Tuck, *The Rights of War and Peace*, 31-3.

(just war) was a process aimed at the assertion of rights. Unjust causes were the desire to acquire richer lands or the desire to conquer others on the pretext that it is for their own good. He was also a guarded supporter of anticipatory self-defense (of preemption and not prevention as in the case of Gentili) if the danger was truly immediate and imminent.[98]

Grotius also referred to proportionality, that is the requirement that costs from the war and the evil that will result from the war will not be greater than the good towards which the war is aimed; and that war was indeed the last resort following attempts at arbitration or a conference aimed at resolving the conflict. Interestingly Grotius regarded the Augustinian 'right intention' as inapplicable for it did not refer to relationship between states but to individuals within states and as such could not alter the justice and justification of the war.[99] Grotius was also instrumental in developing the *jus in bello* aspects of just war, namely who can lawfully be attacked and not attacking the innocent (the noncombatants); what military means can be used; and the treatment of prisoners who once caught and without arms should be treated like noncombatants. He was also, contrary to Aquinas, prima facie against wars of liberation (see on this important question Grotius in Lecture 3).[100]

The just war doctrine: decline and resurgence

With the Peace of Westphalia (1648) and its aftermath, and above all with the advent of sovereignty in the seventeenth and eighteenth century, whereby waging war – even aggressive war – was an aspect of sovereignty, the just war *jus ad bello* approach gradually became obsolete.[101] However the *jus in bello* dimension remained on the table and from the mid-nineteenth century onward it was developed with the advent of the laws of war (humanitarian law as it became known in the twentieth century).

The just war doctrine made a surprising come-back from the late 1970s onwards, mainly due to the work of Michael Walzer's (starting with his 1977 book *Just and Unjust*

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[98] Elbe, 'The Evolution of the Concept of the Just War in International Law', 678-89; C. Edwards, 'The Law of War in the Thought of Hugo Grotius', *Journal of Public Law*, 19 (1970), 377-80, 390-7; Draper, 'Grotius' Place in the Development of Legal Ideas about War', 194-5; Arend and Beck, *International Law and the Use of Force*, 15. For the last point on preemption see in particular Reichberg, 'Preventive War in Classical Just War Theory', 19-21.

[99] Christopher, *The Ethics of War and Peace*, 88.

[100] Nussbaum, *The Concise History of the Law of Nations*, 106-7; Haggenmacher, 'Sur un passage obscure de Grotius', 164-6; Draper, 'Grotius' Place in the Development of Legal Ideas about War', 194-5; Christopher, *The Ethics of War and Peace*, 88, 91-2, 94-5.

[101] Elbe, 'The Evolution of the Concept of the Just War in International Law', 680-2; Nussbaum, *The Concise History of the Law of Nations*, 158; Nussbaum, 'Just War – A Legal Concept?', 469-70; Miller, 'The Contemporary Significance of the Doctrine of Just War', 257.

Wars).[102] Other authors whose works was influential in re-instating the just war tradition include Paul Ramsey,[103] Frederick Russell[104] and especially James Turner Johnson.[105]

<u>Walzer</u>

Walzer like most writers on international affairs (international lawyers in particular) regards the territorial integrity and sovereignty of states of paramount importance. According to Walzer war is justified and a 'just war', above all in a situation of aggression by another state if it is necessary in order to defend a state's territory, sovereignty and independence, that is what is known as 'defensive war' (which under the UN Charter is permitted).

Walzer argues that in the absence of a clear aggression a war is also justified and just if one of the following or a combination of the following occurs: (1) when the use of armed force is necessary to prevent actions that endanger a state's territorial integrity and independence, as in the case of pre-emption and he refers to the Israeli first strike in the June 1967 War; (2) to assist secessionist movements that have demonstrated their representative character as far as the community in question is concerned and when the state in question cannot be regarded as representing a community as whole; (3) in order to offset and balance a prior intervention by another state in a foreign state; and (4) to rescue people from acts that 'shock the moral consciousness of mankind' that is extended massacres and atrocities.[106] Walzer's contribution to the just war doctrine has been associated primarily with the controversial concept of 'humanitarian intervention'.

One may question the desirability of making the link between just war and humanitarian intervention, for instance that it can open a Pandora Box of subjectively defined 'just wars' and recurring interventionism by powerful states or NATO on controversial grounds and that just wars, humanitarian or otherwise are simply the construction of the powerful intervening party, but following the end of the Cold War, this approach is prevalent among advocates of humanitarian intervention (see end of Lecture 7).

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[102] M. Walzer, *Just and Unjust War: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

[103] P. Ramsey, *War and the Christian Conscience* (Durham: Duke University Press, 1961).

[104] F. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975).

[105] J.T. Johnson, *Just War Tradition and the Restraint of War* (Princeton: Princeton University Press, 1981).

[106] Walzer, *Just and Unjust War*, 85, 107-8. See also Walzer's views as summarized by Charles Beitz, in C.R. Beitz, 'Bounded Morality: Justice and the State in World Politics, *International Organization*, 33:3 (1979), 412.

Lecture 3.

The roots of humanitarian intervention: just war against tyranny

Introduction

In the sixteenth and seventeenth century non-intervention was not yet a principle of international law, thus armed interference (mainly for religious reasons or to combat tyranny and maltreatment) could more easily be condoned in inter-state relations and was placed squarely under the just war doctrine.

Later in the nineteenth century, when the controversial concept of 'humanitarian intervention' was hatched, contemporary legal scholars referred to their contemporaries as the fathers of the concept. But some of them also mentioned Grotius (but not Vitoria, Suarez or Gentili) as the progenitor of the idea, others mentioned the eighteenth century Swiss jurist Emer de Vattel and some mentioned both of them.

Following the Second World War, Grotius dominated the scene as the earliest proponent of the idea in international law and international relations literature, a trend that continued until the end of the Cold War,[107] and lingers on as the conventional wisdom.[108] This general tendency from 1945 onwards to regard Grotius the progenitor, is largely due to the authority of the great twentieth century international lawyer, Hersch Lauterpacht who, following the end of the Second World War, stated that in Grotius one finds 'the first authoritative statement of the principle of humanitarian intervention - the principle that exclusiveness of domestic jurisdiction stops when outrage upon humanity begins'.[109] But as Theodor Meron has conclusively shown, taking the cue from the Grotian scholar Peter

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[107] M. Ganji, *International Protection of Human Rights* (University of Geneva, 1962), 41; R.J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1971), 24.

[108] See e.g. B.M. Benjamin, 'Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities', *Fordham International Law Journal*, 16 (1992-93), 126-8; T.B. Knudsen, 'Humanitarian Intervention Revisited: Post-Cold War Responses to Classical Problems', in M. Puch (ed.), *The UN, Peace and Force* (London: Frank Cass, 1997), 147-8; N. Wheeler, *Saving Strangers. Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 45; S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 9.

[109] H. Lauterpacht, 'The Grotian Tradition in International Law', *British Year Book of International Law*, 23 (1946), 46.

Haggenmacher,[110] the notion is pre-Grotian. It appears in Suarez and particularly in Gentili, who, according to Meron should be regarded as the 'true progenitor' of the concept.[111]

Before the nineteenth century, as the French international lawyer Antoine Rougier had pointed out, the theory 'to combat tyranny in a neighbouring State' as propounded by Grotius and others was 'a vague theory based on examples from Greek antiquity, with a moral rather than a juridical character', within a school of thought (natural law) 'which did not separate law from its ethical foundation'.[112] Moreover this early approach did not have to reckon with the formidable barrier of non-intervention and sovereignty was still in its infancy. As John Vincent has argued, the development of the idea of humanitarian intervention is closely linked to the modern concept of 'intervention', a term not used by Grotius (and we would add Vitoria, Gentili or Suarez) hence, 'there is element of license in calling Grotius its first authoritative exponent' as claimed by Lauterpacht.[113]

The roots of the idea before the Renaissance

Traces of the whole idea of saving people in other countries from tyranny and oppression go further back, or so it seemed to Gentili and Grotius, who both referred to various dictums by Seneca. Grotius also mentions another unlikely precursor, Pope Innocent IV, and he names Vitoria and three of his Spanish contemporaries as opposed to this view.[114]

Cicero and Seneca

As regards antiquity Cicero also deserves mention. For Cicero there are two kinds of injustice, one resulting from injury and the other for not averting the injury against others, if one has the power to do so.[115] He asserted that 'those who say that we should think about the interests of our fellow citizens, but not those of foreigners, destroy the common society of the human race.[116]

As for Lucius Annaeus Seneca (4 B.C-65 A.D.), Gentili quotes his following dictum: that if another sovereign 'remote from my nation harasses his own … the duty which I owe to

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[110] Haggenmacher, 'Sur un passage obscure de Grotius', 313 and 313 fn.78.

[111] T. Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', *American Journal of International Law*, 85:1 (1991), 40.

[112] A. Rougier, 'La théorie de l'intervention d'humanité', *Revue générale de droit international public*, 17 (1910), 472.

[113] R.J. Vincent, 'Grotius, Human Rights, and Intervention', in Bull et al. (eds), *Hugo Grotius and International Relations*, 248.

[114] H. Grotius, *De Jure Belli ac Pacis*, Book II, Chapter XX, section XL, paragraph 4.

[115] Eppstein, *The Catholic Tradition of the Law of Nations*, 61.

[116] Quoted in Tuck, *The Rights of War and Peace*, 36.

the human race is prior and superior to that which I owe [that sovereign]'.[117] As Grotius out it: 'Seneca thinks that I may make war upon one who is not of my people but oppresses his own … a procedure which is often connected with the protection of innocent persons'.[118] Grotius also mentions to two other maxims by Seneca: 'Men have been born to aid one another',[119] and 'I shall come to the aid of the perishing'.[120]

Pope Innocent IV

In the early thirteenth century, Pope Innocent IV (c.1195-1254), an eminent cannon lawyer (Sinibaldo Fieschi before becoming Pope), justified the Crusades on the grounds that the use of armed force was permissible in order to prevent or punish the persecution of Christians in 'infidel' kingdoms and enforce natural law if it was violated (the Saracens though were also bound by natural law according to Innocent). This, according to Innocent, should not lead to wars of conversion to Christianity or annexation, for the rule of the infidels was legitimate to them. They were rational creatures capable of ruling themselves and choosing their religion (the only exception were the occupied Holy Lands, in which case the Church or any Christian prince could make war against them for the Saracen hold was an offense to all Christians).[121] Aware that this avenue was open to abuse Innocent added, for good measure, that Christians could resort to war against the Muslims only with prior papal authorization.[122]

Innocent's line was echoed by his student, Henry of Segusio (better known as Hostiensis), and followed in the next centuries by Antoninus of Florence and Sylvestre Mazzolini, the earliest Catholic critic of Luther.[123] The views of Innocent and his followers were obviously self-serving at a time when the papacy's power was at its zenith and poised to remain so. Innocent and his followers referred to Christians vis-à-vis 'infidels' – contrary to Gentili and Grotius (see below) who referred to humankind in general – thus it is difficult to treat their views though the logic of humanitarian intervention *per se*.

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[117] Quoted in Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', 115.
[118] H. Grotius, *De Jure Belli ac Pacis*, Book II, Chapter XXV, section VIII, paragraph 4.
[119] *De Jure Belli ac Pacis*, Book II, Chapter XXV, section VI.
[120] *Ibid.*, section VII, paragraph 2.
[121] Russell, *The Just War in the Middle Ages*, 199.
[122] *Ibid.*, 199-200; Haggenmacher, 'Sur un passage obscure de Grotius', 301-2; Nardin, 'The Moral Basis for Humanitarian Intervention', 13-14; Bowden. 'The Colonial Origins of International Law', 4-5.
[123] Haggenmacher, 'Sur un passage obscure de Grotius', 302; Grewe, *The Epochs of International* Law, 109; Russell, *The Just War in the Middle Ages*, 201.

Mainstream origins during the Renaissance

The forerunner of humanitarian intervention, the concept of assisting those suffering from tyranny and maltreatment, is basically a brainchild of the Renaissance. We will start with the presentation of what could be called mainstream views that is those of Vitoria, Gentili, Suarez and Grotius, and then from the first part of the seventeenth century return to the sixteenth century, to examine lesser known origins of this idea. These latter views and their advocates have rarely been entertained as the progenitors of the concept but as we will try to show, they are equally convincing as contributors to the idea in par with the mainstream sources.

Vitoria

In recent years Vitoria has increasingly been singled out (*contra* Grotius's view) by a rising number of scholars as the earliest proponent of the idea of what later (in the nineteenth century) came to be known as 'humanitarian intervention'.[124]

Vitoria pondered whether the practice of 'human sacrifice', 'cannibalism' and other such acts contrary to *jus gentium* and natural law (*jus naturale*) by the Indians in the New World justified armed intervention and replied in the affirmative; that it was justified in order to save those threatened by such acts, adding, incredibly, that this was the case even if the 'Indians assent to rules and sacrifices of this kind and do not wish the Spaniards to champion them'[125] (Las Casas took the opposite view, that interfering to rescue few by killing many was disproportionate and immoral, a remedy worse than the disease[126]). Vitoria, with the Indian case in mind, asserted that any Christian ruler could justifiably intervene to halt the injury of

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[124] See e.g. B. Parekh, 'Rethinking Humanitarian Intervention', *International Political Science Review*, 18:1 (1997), 50-1; F.K. Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International, 1999), 33-4; G. Reichberg, 'Just War or Perpetual Peace?', *Journal of Military Ethics*, 1:1 (2002), 21-2; Nardin, 'The Moral Basis for Humanitarian Intervention', 14-15; J. Muldoon, 'Fransisco de Vitoria and Humanitarian Intervention, *Journal of Military Ethics*, 5, 2 (2006), 123-43; D.J.B. Trim, "If a Prince Use Tyrannie towards his People": Intervention on Behalf of Foreign Populations in Early Modern Europe', in B. Simms and D.J.B. Trim (eds), *Humanitarian Intervention: A History* (Cambridge: Cambridge University Press, 2011), 32; B. Jeane, 'Humanitarian Intervention – What's in a Name', *International Politics*, 49:1 (2012), 44-5; W. Bain, 'Saving the Innocent, then and now: Vitoria, Dominion and World Order', *History of Political Thought*, 34:4 (2013), 590. See also A. Heywood, *Global Politics* (Basingstoke: Palgrave Macmillan, 2011), 318. It has been claimed that Vitoria first used the words 'intervention in the name of humanity' in a lecture at the University of Salamanca. See G. Sulyok, 'Humanitarian Intervention: A Historical and Theoretical Overview', *Acta Juridica Hungarica*, 41:1-2 (2000), 83 fn.12.
[125] Quoted in Anghie, *Imperialism, Sovereignty and the Making of International Law*, 22.
[126] Hanke, *All Mankind is One*, 92-5; Todorov, *The Conquest of America*, 186.

innocent people. But they could not by intervening end up ejecting the Indians from their ancestral lands and rob them of their habitation and property.[127]

Thus what for Innocent was the rescuing of Christians from 'infidels', for Vitoria it was rescuing innocent victims (Indians) from 'barbarians' (Indians). It would seem that in view of the context within which Vitoria was presenting his case, elaborately justifying Spanish conquest and imperial rule, and presenting it, *inter alia*, as 'good for the aborigines',[128] and moreover using 'the right of humanitarian intervention' as one of his main arguments in favour of the Spanish conquest,[129] makes it far-fetched to regard him as a genuine progenitor of the idea in par with Gentili, Grotius and a few others. Vitoria was well aware and personally deeply distressed by the news of the horrible deeds of the *conquistadors*,[130] the sheer 'destruction of the Indians' (major discussions were taking place at the time on this very subject in Spain, not least in the University of Salamanca).[131] Such acts could hardly be compared, as stressed by Las Casas, to occasional ritualized human sacrifices based on the Aztec religion.[132] In fact Vitoria acknowledged that the slaughters of innocent Indians 'undermined the claim that they were engaged in a humanitarian endeavour',[133] but did not appear to modify his views on 'humanitarian' intervention. One could go even further by referring to a scathing comment by Carl Schmitt: that by defining the enemy as 'an outlaw of humanity' because he presumably eats human flesh, a war against him can 'be driven to the most extreme inhumanity', hence the extermination of the Indians.[134]

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[127] Nardin, 'The Moral Basis for Humanitarian Intervention', 14-15; Tuck, *The Rights of War and Peace*, 73-4.

[128] In recent years Vitoria (and Grotius for that matter) is seen, not unjustly, as an apologist of colonization and imperialism. See Todorov, *The Conquest of America*, 149-50; Anghie, *Imperialism, Sovereignty and the Making of International Law*, 13-31; Anthony Pagden, 'Stoicism, Cosmopolitanism, and the Legacy of European Imperialism', *Constellations*, 7:1 (2000), 7-9; Bowden, 'The Colonial Origins of International Law', 9-13, 22-3; P. Keal, "Just Backward Children": International Law and the Conquest of Non-European Peoples', *Australian Journal of International Affairs*, 49:2 (2008), 196-7. For a more nuanced assessment see G. Cavallar, 'Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?', *Journal of the History of International Law*, 10 (2008), 181-209.

[129] See on this point *ibid.*, 188.

[130] Muldoon, 'Francisco de Vitoria and Humanitarian Intervention, 139, 141.

[131] F. Murillo Rubiera, 'The School of Salamanca and Human Rights', *International Review of the Red Cross*, 32:290 (1992), 454-64.

[132] Todorov, *The Conquest of America*, 186-90.

[133] Muldoon, 'Francisco de Vitoria and Humanitarian Intervention', 139.

[134] C. Schmitt, *The Concept of the Political* (translation, Introduction, and Notes by G. Schwab) (New Brunswick: Rutgers University Press, 1976) [original German version 1932], 54 and 54 fn.23.

<u>Suarez</u>

Suarez was more circumspect and barely fits the role of precursor attribute to him by Meron. He advocated, albeit reluctantly, that a prince could resort to war when 'a state worshipping the one God inclines towards idolatry through the wickedness of its prince' to the extent that the prince in question compels his 'subjects to practice idolatry'.[135] He also stated that 'it would always be permissible to declare such a war on the ground of protecting innocent little children'.[136]

<u>Gentili</u>

Gentili, based on Ambrose's postulate '*plena est justitia quae defendit infirmos*' (fulsome is the justice that protects the frail), regarded the subjects of other states as not 'outside of the kinship of nature and the society formed by the whole world … if you abolish that society, you will destroy the union of the human race, by which life is supported'.[137] According to his *De jure belli libri tres* (1589), 'if men clearly sin against the laws of nature and of mankind, I believe that any one whatsoever may check such men by force of arms'.[138] He was against wars of religion unless 'a right of humanity is violated [e.g., by the ritual of human sacrifice] at the same time … [W]ar is lawful against idolators, if idolatry is joined with the slaughter of innocent victims; for the innocent must be protected'.[139]

Gentili asserted that 'if subjects are treated cruelly and unjustly, this principle of defending them is approved by others as well. And they bring forward the familiar instance of Hercules, the subduer of tyrants and monsters'.[140] By 'others' Gentili almost certainly meant Bodin, whom he greatly admired[141] (for Bodin's similar phrase see next subchapter). Gentili also refers to Seneca's aforementioned statement (that if another sovereign 'remote from my nation harasses his own …'). Referring to a blood-thirsty tyrant in another country, he stated that 'If he does not assail my country, but is the bane of his own' on the basis of 'the duty that

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[135] Quoted in Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', 113.
[136] *Ibid.*, 113.
[137] Quoted in Chesterman, *Just War or Just Peace?*, 14.
[138] Quoted in Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', 114.
[139] Quoted in *ibid.*, p.114.
[140] A. Gentili, *De jure belli libri tres*, translation from the 1612 edition by J. C. Rolfe and Introduction by Coleman Phillipson (Carnegie Endowment for International Peace, 1933), 75.
[141] For Gentili's admiration of Bodin, see Forsyth, 'The Tradition of International Law', 27. Molen says that in 'this conclusion Gentili is in agreement with Covarruvias and Bodin' but does not elaborate on this point or give evidence. See Molen, *Alberto Gentili and the Development of International Law*, 131.

I owe to the whole human race ... I am free to act as I please toward him, from the moment when by violating all law he put himself beyond the pale of the law'.[142]

Gentili even claimed that aid could be provided to the subjects of another state 'even when they are unjust' if the purpose of the intervention was to save them 'from immoderate cruelty and unmerciful punishment; for it is the part of humanity to do good even to those who have sinned'.[143]

Grotius

The Dutch jurist and diplomat argued that war is lawful against those who offend the law of nature,[144] but made no reference in this regard to Gentili despite his more than obvious debt to him.[145] He is best known on this question for two passages in his celebrated *De Jure Belli ac Pacis* (1625).[146]

The first passage starts thus:[147]

The fact must also be recognized that kings, and those who possess rights equal to those kings, have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever.

Further down he adds:[148]

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[142] Quoted in Tuck, *The Rights of War and Peace*, 39-40. On Gentili's overall position regarding intervening to defend the suffering, see Molen, *Alberto Gentili and the Development of International Law*, 127-31.

[143] Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', 115. See also Molen, *Alberto Gentili and the Development of International Law*, 127.

[144] Tuck, *The Rights of War and Peace*, 103.

[145] On this omission by Grotius and the possible reasons for it, see P. Haggenmacher, 'Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture', in H. Bull et al. (eds), *Hugo Grotius and International Relations*, 137, 148-9; and Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', 110, 112.

[146] Meron, 'Common Rights of Mankind in Gentili, Grotius and Suarez', 110-12; B. Kingbury and A. Roberts, 'Introduction', in Bull et al. (eds), *Hugo Grotius and International Relations*, 30-42.

[147] *De Jure Belli ac Pacis*, Book II, Chapter XX, section XL, paragraph 1.

[148] *Ibid.*, Book II, Chapter XX, section XL, paragraph 1 and 2. Grotius also refers Theseus, another hero of Greek mythology with similar exploits.

Truly it is more honorable to avenge the wrongs of others rather than one's own …
And for this cause Hercules was famed by the ancients because he freed from
Antaeus, Busiris, Diomedes and like tyrants the lands which, as Seneca says, he
traversed, not from a desire to acquire but to protect, becoming, as Lysias points out,
the bestower of the greatest benefits upon men through his punishment of the unjust.

The second passage runs thus: 'If, however, the wrong is obvious, in case some
Busiris, Phalaris, or Thracian Diomede should inflict upon his subjects such treatment as no
one is warranted in inflicting, the exercise of the right vested in human society is not
precluded'.[149] And adds: 'If, further, it should be granted that even in extreme need subjects
cannot justifiably take up arms … nevertheless it will not follow that others may not take up
arms on their behalf'.[150]

Grotius was also aware of the danger of abuse. As he puts it: 'We know … from both
ancient and modern history, that the desire for what is another's seeks such pretexts as this for
its own ends', [151] adding pointedly 'but a right does not at once cease to exist in case it is to
some extent abused by evil men. Pirates also sail the sea; arms are carried also by
brigands'.[152]

The Dutch jurist was, as we have said, against wars of liberation from tyranny,
advocating 'a rigid doctrine of non-resistance'.[153] But as Vincent has put it, he 'made a
remarkable concession to the sovereign by denying his subjects the right to take up arms
when wronged by him', but compensated by not denying other states to 'to take up arms on
their behalf'.[154] Upon closer examination however, the contradiction is not as stark as it
appears. As Lauterpacht had pointed out, 'behind the façade of the general disapproval of the
resistance there lay qualifications so comprehensive as to render the major proposition almost
theoretical'.[155] Indeed Grotius mentions no less than seven exceptions, including a right of
resistance if he has become the enemy of a whole people; if he has abandoned his authority;
or if the people have reserved the right of resistance in some instances.[156]

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[149] *De Jure Belli ac pacis*, Book II, Chapter XXV, section VIII, paragraph 2.
[150] *Ibid.*, paragraph 3.
[151] *Ibid.*, section VII, paragraph 4.
[152] *Ibid.*, paragraph 4.
[153] Edwards, 'The Law of War in the Thought of Hugo Grotius', 391.
[154] Vincent, *Nonintervention and International Order*, 24. See also Jeffery, *Hugo Grotius in International Thought*, 41.
[155] Lauterpacht, 'The Grotian Tradition in International Law', 45.
[156] *Ibid*, 45. For more details on this question and extended quotes from Grotius, see Edwards, 'The Law of War in the Thought of Hugo Grotius', 391-4.

Lesser-known origins

Introduction

The American international lawyer Ellery Stowell had claimed, in his 1921 study of intervention in international law, that the earliest work propounding the legality of humanitarian interference is *Vindicae contra tyrannos* [Defense against tyrants],[157] which justified interference 'in behalf of neighboring peoples who are oppressed on account of adherence to the true religion or by any obvious tyranny'.[158] According to the French legal historian Adhémar Esmein, the first to bring *Vindiciae* to our attention under intervention (in 1900), in this polemical text armed intervention is permitted against religious persecution, tyranny and the massacres of the innocent.[159]

More

There is also an earlier possible candidate as the progenitor of the idea, Thomas More (1478-1535) in his famous book *Utopia* (1516).[160] According to More, the Utopians loathe fighting and fail to see anything glorious in war but 'go to war only for good reasons: to protect their own land, to drive invading armies from the territories of their friends, or *to liberate an oppressed people, in the name of humanity, from tyranny and servitude*'[emphasis added].[161]

However given More's tentativeness as to whether *Utopia* is in all its aspects 'the best state of a commonwealth'[162] (note that the Utopians had abolished property and were heathens, contrary to More who was a devote Catholic), not to mention his at times playful approach regarding the Utopians, and the fact that he does not elaborate on this particular point, makes him a very elusive procurer if at all.

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[157] E.C. Stowell, *Intervention in International Law* (Washington, D.C.: John Byrne and Co, 1921), 55.

[158] Quoted in *ibid.*, 55.

[159] A. Esmein, 'La théorie de l'intervention internationale chez quelques publicists Français du XVIe siècle', *Nouvelle revue historique, de droit français et étranger*, 24 (1900), 558, 562, 564-6.

[160] As pointed out by Tuck and Nardin. See Tuck, *The Rights of War and Peace*, 42; and Nardin, 'The Moral Basis for Humanitarian Intervention', 13.

[161] T. More, *Utopia* (1516), eds G.M. Logan and R.M. Adams (Cambridge: Cambridge University Press, 1989), 87-8.

[162] See Q. Skinner, 'Sir Thomas More's *Utopia* and the Language of Renaissance Humanism', in A. Pagden (ed.), *The Language of Political Theory in Early Modern Europe* (Cambridge: Cambridge University Press, 1987), 123-26, 152.

<u>The monarchomachs</u>

Vindicae was published in 1579 in Basle at the height of the religious wars in France as a reaction to *le Massacre de la Saint-Barthélemy* (24 August 1572), where for a period of several weeks from St. Bartholomew's Day August onwards, 5000 to 30000 Huguenots (French Calvinists) were assassinated in Paris and twelve other French cities. *Vindicae* is one of the polemical tracts written by the so called 'monarchomachs', those who fight monarchs, as coined by the Scottish jurist William Barclay (1546-1608).

The Huguenot author, writing under the pseudonym Stephanus Junius Brutus Celta (the Celt), is probably Hubert Languet (1518-1581), a noted French reformer, lawyer and diplomat. Another likely author is the French theologian and activist, Philippe de Mornay (1549-1623), better known as Duplessis-Mornay, who was close to Languet in the last years of his life.[163] The work in question was widely known in Europe (the original Latin text was translated into French, Dutch, German and English) and influential in the late sixteenth century and throughout the next century. It was known for its 'resistance theory' and less for invoking foreign intervention against tyrants, that is resistance and rebellion against tyranny as a 'divine right', including the doctrine of tyrannicide[164] and republicanism as popular sovereignty.

Others notable works in this tradition were by the Reformist theologian Theodore Beza (1519-1605), Calvin's successor in Geneva, with his anonymous pamphlet *De jure magistratuum* [The right of magistrates], written in French in 1574 and translated into Latin in 1576,[165] and by the humanist jurist Francois Hotman (1519-1590),[166] professor of law at the

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[163] E. Barker, 'The Authorship of the *Vindiciae contra tyrannos*', *Cambridge Historical Journal*, 3:2 (1930), 164, 167-79. Ernest Barker's conclusion is that Languet is more likely to have been the author, for the work, despite certain errors, seems to be that of a mature scholar, well versed in the legal discourse and the ancients, and with first-hand experience from the state of affairs in various countries (Languet had served there as a diplomat), while Mornay was relatively young and inexperienced in 1579, and mainly known ever since for his religious rather than his legal writings. In *ibid.*, 174-80.
[164] The need to kill a tyrant probably goes back to Aristotle, who had declared that 'great is the honour bestowed … on him who kills a tyrant'. See R. Boesche, 'Aristotle's "Science" of Tyranny', *History of Political Thought*, 14:1 (1993), 4.
[165] Barker, 'The Authorship of the *Vindiciae contra tyrannos*', 166.
[166] Initially Hotman, and a little later Beza, was regarded the author of the *Vindiciae*. Grotius regarded Mornay the author. See Barker, 'The Authorship of the *Vindiciae contra tyrannos*', 165-6, 171.

University of Geneva with his work *Franco-Gallia* (1573), which called for representative government and elective monarchy.[167]

Vindiciae and *De jure magistratuum* advocate outside intervention if a prince persisted in his violent course and if other remedies had been tried but failed.[168] According to both texts intervention was both a right and a duty of all princes, if another prince was a tyrant and 'persisted in his violent courses'.[169] A prince who stood idly by 'and beholdeth the wickedness of a tyrant, and the slaughter of the innocent … is worse than the tyrant him selfe'.[170]

But before jumping to the conclusion that Languet (or Mornay) and Beza and not Gentili and Grotius are the true progenitors of the concept, one must bear in mind that we are dealing with polemical tracts, whose agenda was to save Protestants 'persecuted for religious reasons'.[171] As Trim points out, 'the monarchomach authors conceived of "tyranny" in narrow confessional terms. Roman Catholic regimes were *assumed* to be tyrannical, because of the way they "oppressed" Protestants [emphasis in the original].'[172] This also included the Pope. Hotman for instance characterised Rome as 'innately, permanently tyrannical'.[173] True the monarchomachs were primarily concerned with the plight of their fellow Protestants but in their works they also referred to people in general and especially to suffering women and children. But as convincingly pointed out, 'whatever the propagandists and apologists intended, what many readers would surely have taken away from their reading was that extreme violence was intrinsically wrong because of the human suffering involved, and this was true for all (or at any rate most) human beings'.[174]

Bodin

Another alternative origin of the whole idea comes from another source, not entertained in recent decades in the discussion on the origins of humanitarian intervention. And it does not come from Huguenot authors with an axe to grind, but from no lesser figure than the French political philosopher Jean Bodin (1530-1596). The fact that he was (together with Thomas

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[167] A. McLaren, 'Rethinking Republicanism: *Vindiciae contra tyrannos* in Context', *The Historical Journal*, 40:1 (2006), 24-7; Trim, "If a Prince Use Tyrannie towards his People", 32-4.
[168] Trim, "If a Prince Use Tyrannie towards his People", 34.
[169] *Ibid*., 34.
[170] Quoted in *ibid.*, 34 (from both texts).
[171] Grewe, *The Epochs of International Law*, 180.
[172] Trim, "If a Prince Use Tyrannie towards his People", 36.
[173] *Ibid.*, 37.
[174] *Ibid.*, 38.

Hobbes) the father of the concept of sovereignty makes his contribution in this regard even more intriguing. According to Esmein, Bodin, together with the author of *Vindiciae*, are the first exponents of intervention on religious and humanitarian grounds.[175] Bodin approved of the killing of a tyrant by a foreign 'prince', but did not condone the revolt and killing of the tyrant by his own subjects, because the former (and not the latter) is an equal with the tyrant *qua* sovereign.[176]

Bodin was a moderate Catholic vexed by the French onslaught against the Huguenots.[177] In his celebrated *Six livres de la République* (1576) he took a middle road between absolute sovereignty without moral considerations and resistance theory, by equipping the state or rather a single individual, the monarch, with sovereignty that was absolute, indivisible and perpetual.[178] But the sovereign had to be just and his rule not arbitrary: (a) he was 'subject to the laws of God and nature as well as to certain human laws common to all peoples',[179] (b) bound by treaties and the common law of nature;[180] and (c) 'the ruler's sovereignty derived from the original sovereignty of the People'.[181] Moreover all states were equal irrespective of size and power, what came to be known as the principle of sovereign equality of states.[182]

Bodin posed the following question: 'whether a sovereign prince … can be killed if he is cruel, oppressive, or excessively wicked'. His answer was that that '[i]t makes a great difference whether we say that a tyrant can be lawfully killed by a foreign prince or by a

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[175] Esmein had actually claimed that Bodin 'adopted' the theory of *Vindicae* (see Esmein, 'La théorie de l'intervention internationale …', 573, repeated in Boegner, 'L'influence de la Réforme sur le développement du droit international', 294), even though the later was written three years after Bodin's *Six livres de la République*. If Bodin indeed took the idea from the monarchomachs than the most likely source is Beza's *De jure magistratuum*, whose original French edition appeared in 1574.

[176] Esmein, 'La théorie de l'intervention internationale …', 572-4. See also Boegner, 'L'influence de la Réforme sur le développement du droit international', 294.

[177] H. Legohérel, 'Jean Bodin et l'Europe de son temps', *Journal of the History of International Law*, 1 (1999), 38-9.

[178] J.H. Franklin, 'Introduction', in J. Bodin, *On Sovereignty: Four Chapters from The Six Books of the Commonwealth*, edited and trans. by J. H. Franklin (Cambridge: Cambridge University Press, 1992), xiii; Nussbaum, *A Concise History of the Law of Nations*, 56; Legohérel, 'Jean Bodin et l'Europe de son temps', 41.

[179] R. Lapidoth, 'Sovereignty in Transition', *Journal of International Affairs*, 45:2 (1992), 326; Legohérel, 'Jean Bodin et l'Europe de son temps', 41-2; A. Mandelstam, 'La protection des minorités', *Recueil des Cours de l'Académie de droit international*, 1 (1923), 383.

[180] *Ibid.*, 383.

[181] F.H. Hinsley, *Sovereignty* (Cambridge: Cambridge University Press, 2nd edition, 1986), 134.

[182] M. Forsyth, 'The Tradition of International Law', in Nardin and Mapel (eds), *Traditions of International Ethics*, 28; Gardot, 'Jean Bodin', 550-1, 611-76.

subject' and added that: 'it is a most beautiful and magnificent thing for a prince to take up arms in order to avenge an entire people unjustly oppressed by a tyrant's cruelty, as did Hercules, who travelled all over the world exterminating tyrant-monsters and was deified for his great feat. The same was done by Dion, Timoleon, Aratus, and other generous princes, who obtained the title of chastisers and correctors of tyrants'.[183] This was probably Bodin's answer to St. Bartholomew's Day Massacre. As an enlightened royalist he agreed with the Huguenots that the conflict had been provoked by the monarch but he feared for the existence of the sovereign state and regarded sanctioning resistance as the recipe for chaos and anarchy.[184] As he had put it for good measure: 'I conclude then that it is never permissible for a subject to attempt anything against a sovereign prince, no matter how wicked and cruel a tyrant he may be'.[185]

A tentative conclusion

To conclude, on the basis of the available evidence it would seem that the progenitors of humanitarian intervention, *qua* saving the oppressed from tyranny and maltreatment, are to be found, almost simultaneously, in Bodin, Beza and Languet (or Mornay), followed in greater detail by Gentili and Grotius, whose narratives intertwine, with Grotius further elaborating the points made by his predecessors.

From the seventeenth century until the French Revolution

Already during Grotius's lifetime, his contemporary, the German philosopher and diplomat Johann Angelius Werdenhagen (1581-1652), criticized Bodin's approach and accepted 'the repression of a tyrant by a neighbouring king' only 'when the States [*sic*] of the latter had been invaded by the tyrant'.[186] This, according to Esmain amounts to 'the negation of any right of internal intervention'[187] and according to Stowell it is 'an early exposition of the doctrine of absolute non-intervention'.[188]

In the same vein but more broadly, the English political philosopher Thomas Hobbes (1588-1679) was of the view 'that a state cannot injure a citizen, any more than a master could do injury to his slave'[189] and the sovereign is immune 'from temporal accountability in any legal sense'.[190] This was in line with Hobbes's absolute notion of sovereignty, with the

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[183] Bodin, *On Sovereignty*, 112-13 [from Book II, chapter 5].

[184] Franklin, 'Introduction', xxiii.

[185] Bodin, *On Sovereignty*, 120.

[186] Quoted in Esmein, 'La théorie de l'intervention international …', 574 fn.3.

[187] *Ibid.*, 574 fn.3.

[188] Stowell, *Intervention in International Law*, 537.

[189] Chesterman, *Just War or Just Peace?*, 16.

[190] *Ibid.*, p.16.

states in a 'state of nature', warring against each other, with no superior Leviathan or natural law rules binding them.[191]

A similar approach on sovereignty was followed by the Dutch philosopher Baruch Spinoza (1632-1677) who also espoused the notion of 'absolute sovereignty'.[192]

Spinoza's contemporary, the German jurist Samuel Pufendorf (1632-1694) opined that anyone 'may justly assist any victim of oppression who invites assistance'.[193] As he put it, '[k]inship alone [common humanity] may suffice for us to go to the use the defense of an oppressed party who makes a plea for assistance, so far as we conveniently may'.[194] Coming to the assistance of the oppressed is, in some instances, not only a right but even a duty, though an 'imperfect duty' that is not a specific obligation as in the case of a contract.[195]

The German political philosopher and jurist, Christian Wolff (1679-1754), the exponent of the concept of *civitas maxima* (a universal system of law *cum* universal union of states)[196] was against any form of intervention or 'punitive war' and thus has been regarded as perhaps the first jurist advocating a complete prohibition of intervention.[197] For Wolff non-interference was applicable even if a ruler treated his subjects harshly. Nevertheless he allowed for a right of intercession short of the use of armed force when subjects were harshly treated.[198]

The most important contribution after Grotius on the question under discussion, has come from the Swiss diplomat and jurist Emer de Vattel (1714-1767) in his two volume *Le droit des gens ou principes de la lois naturelle* (published in London in 1758), which enjoyed wide influence. For Vattel states were absolutely free and independent by nature, as in the case of individuals.[199] No foreign power has the right to intervene and no sovereign could judge the conduct of another sovereign. Yet he allowed for two exceptions to the norm of non-interference: (a) interference in the interest of the balance of power; and (b) interference

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[191] Lapidoth, 'Sovereignty in Transition', 326.
[192] Steinberger, 'Sovereignty', 506.
[193] Nardin, 'The Moral Basis for Humanitarian Intervention', 16.
[194] Quoted in *ibid.*, 16.
[195] *Ibid.*, 16-17.
[196] Nussbaum, *The Concise History of the Law of Nations*, 150-1; Vincent, *Nonintervention and International Order*, 28; Legohérel, *Histoire du droit international public*, 69; Grewe, *The Epochs of International Law*, 358.
[197] M. Wight, 'Western Values in International Relations', in H. Butterfield and M. Wight (eds), *Diplomatic Investigations: Essays in the Theory of International Politics* (London: Allen and Unwin, 1966), 113; Vincent, *Nonintervention and International Order*, 27-8.
[198] Tuck, *The Rights of War and Peace*, 189-90; Nardin, 'The Moral Basis for Humanitarian Intervention', 17; Chesterman, *Just War or Just Peace?*, 17.
[199] Vincent, *Nonintervention and International Order*, 29.

on the just side in a civil war.[200] As regards the latter case, he puts it thus: 'But if a Prince, by attacking the fundamental Laws, gives his people a legitimate reason for resisting; if the Tyranny, having become insupportable, brings about an uprising of the Nation; any foreign Power has a right to succour an oppressed people who ask for its assistance'.[201] Intervention can take place if requested by the oppressed (as with Pufendorf), and provided that the oppressed have already taken up arms and have justice on their side according to the prospective intervening state.[202]

Worth alluding to is also the possibility of intervention in the 'atheist' and 'regicidal' French revolution as conceived by the Irish political theorist and statesman Edmund Burke (1729-1797), one of the fathers of modern conservatism.[203] Burke 'in defending magnificently an historically doomed position',[204] tried to make it more convincing by referring to the arguments of Vattel on intervening on the side of the just party.[205] Burke also advocated a 'law of civil vicinity' as he called it: that if a state insisted on intervening in other states its 'civil neighbours' had the right to intervene against it militarily.[206]

The principles of sovereignty and non-intervention had come to stay, yet European states interfered in the seventeenth and in eighteenth century in the internal affairs of other European states, including the Ottoman Empire, for reasons of religious persecution. Their actions were diplomatic protestations and threats to interfere and not armed interventions, such as the protestations of Britain under Cromwell and the Netherlands in favour of the Vaudois in Mazarin's France in 1655 or the frequent protests of Russia, Prussia, Britain, Sweden and Denmark in favour of the Orthodox and Protestants in Poland. As for the Ottoman Empire, best known in this regard is the Treaty of Kutchuk-Kainardji (1774), between the Russian and Ottoman empires, which gave Russia a *droit de regard* regarding the Orthodox Christians,[207] though not the right of armed intervention as such.

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[200] *Ibid.*, 30.
[201] Our translation from the original French version cited in Wight, 'Western Values in International Relations', 119.
[202] On Vattel and intervention see *ibid.*, 119; Nardin, 'The Moral Basis for Humanitarian Intervention', 17; Tuck, *The Rights of War and Peace*, 194.
[203] I. Hampsher-Monk, 'Edmund Burke's Changing Justification for Intervention', *The Historical Journal*, 48:1 (2005).
[204] R.J. Vincent, 'Edmund Burke and the Theory of International Relations', *Review of International Studies*, 10 (1984), 215.
[205] *Ibid.*, 211; Hampsher-Monk, 'Edmund Burke's Changing Justification for Intervention', 66-68.
[206] Parekh, 'Rethinking Humanitarian Intervention', 51.
[207] S. Shaw and E. K. Shaw, *History of the Ottoman Empire and Modern Turkey* (Cambridge: Cambridge University Press, 1976), vol.I, 250.

Lecture 4.

International law: the humanitarian intervention debate, 1830-1939

Introduction

The English legal term 'humanitarian intervention' was coined by the British jurist William Edward Hall in 1880,[208] in 1880.[209] Other terms were also previously in use, such as 'intervention for humanity', which corresponds to the French *intervention d'humanité*"[210] or 'intervention on the ground of humanity', intervention 'on behalf of the interests of humanity'[211] and others all with the same meaning.[212]

Humanitarian intervention in the long nineteenth century and until the UN Charter, covered not only the use of force and other forms of dictatorial interference, but also diplomatic representations (peremptory demands) of a state against another state expressing concern or outrage and calling for the immediate cessation of acts against humanity (see case studies and *Table I* in Lecture 6). Interestingly this was done at a time when respect for human rights was not yet an international legal obligation for states.

Until the 1930s humanitarian intervention was understood as interfering 'for the purpose of vindicating the law of nations against outrage',[213] 'in the interests of humanity for the purpose of stopping religious persecution and endless cruelties it times of peace and war'.[214] According to Antoine Rougier 'intervention on the grounds of humanity is properly that which recognizes the right of one state to exercise an international control over the acts of another in regard to its internal sovereignty when contrary to the laws of humanity'.[215] Ellery Stowell defined it 'as the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is so arbitrary and persistently abusive as to

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[208] Stowell, *Intervention in International Law*, 51, fn.7; S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 24.

[209] W.E. Hall, *International Law* (Oxford: Clarendon Press, 1880), 247 fn. 1; W.E. Hall, *Treatise on International Law* (Oxford: Clarendon Press, 1884, 2nd edition) [1880], 266 fn. 1.

[210] Stowell, *Intervention in International Law*, 51.
[211] R. Phillimore, *Commentaries upon International Law*, vol.I, 3rd edition (London: Butterworths, 3rd edition 1879) [1854], 568; E.S. Creasy, *First Platform of International Law* (London: John van Voorst, 1876), 300.
[212] Chesterman, *Just War or Just Peace?*, 24.
[213] Stowell, *Intervention in International Law*, 51.
[214] Oppenheim, *International Law*, vol.I, 255.
[215] A. Rougier, 'La théorie de l'intervention d'humanité', *Revue générale de droit international public*, 17 (1910), 472.

exceed the limits of that authority within which the sovereign is presumed to act with reason and justice'.[216]

Humanitarian intervention was in its heyday in international law for some 60 years, from the 1870s until the 1930s, with the majority of publicists (international lawyers and other scholars concerned with international affairs from a legal prism) supportive of the use of armed force for humanitarian purposes.

This trend comes as surprise for before the UN Charter there was no international legal ban on internal massive violations of human rights (including the right to life) by states. Moreover, armed humanitarian intervention was applied rarely in the course of the long nineteenth century. At the time independence and sovereignty were well established cornerstones of international law. On the other hand aggressive wars were not prohibited and were part and parcel of sovereignty, thus taking the sting out of armed humanitarian interventions. There was also the parallel development of humanitarian law that stressed the humane treatment of combatants and civilians which no doubt influenced the thinking of jurists preoccupied with humanitarian intervention.

I have identified a hundred publicists from 1830 until the eve of the Second World War, who had addressed the question mainly with reference to the historical examples of the nineteenth century. Of those, 62 publicists were supportive of humanitarian intervention. The publicists supportive of armed humanitarian intervention can be distinguished into 48 claiming an exceptional legal right to intervene and 14 invoking moral or political reasons. There is also a substantial minority of 38 publicists against any such legal or moral right.[217]

Advocates of humanitarian intervention

The advocates of humanitarian intervention on legal, political or moral grounds regarded it as exceptional and acceptable only if it fulfilled criteria such as the following: (a) atrocities on a disturbing scale, (b) collective or quasi-collective intervention and only exceptionally unilateral intervention of it had attained international legitimacy; (c) disinterestedness or humanitarian concern as one of the main motives for becoming involved; and (d) that the intervening state does not end up clearly benefitting from the intervention in question.

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[216] Stowell, *Intervention in International Law*, 53.

[217] See A. Heraclides, 'Humanitarian Intervention in International Law 1830-1939: The Debate', *Journal of the History of International Law,* 16 (2014), 26-62; A. Heraclides and A. Dialla, *Humanitarian Intervention in the Long Nineteenth Century: Setting the Precedent* (Machester: Manchester University Press, forthcoming), chapter. 4.

The pace-setter on humanitarian intervention in nineteenth century international law is the American jurist and diplomat, Henry Wheaton, the founding father of international law in the U.S. As he put it a few years after the end of the Greek independence struggle (in 1836): 'The interference of the Christian powers of Europe, in favor of the Greeks, who, after enduring ages of cruel oppression, had shaken off the Ottoman yoke, affords a further illustration of the principles of international law authorizing such an interference not only where the interests of safety of other powers are immediately affected by the internal transactions of a particular state, but where the general interests of humanity are infringed by the excesses of a barbarous and despotic government'.[218]

In the 1850s and 1860s two British jurists emphasized the moral aspect of such interventions. Judge Robert Phillimore, the first major British jurist writing on international law in the nineteenth century, argued (in 1854) that a limitation of the principle of non-intervention arises 'from the necessity of intervention by Foreign Powers in order to stay the shedding of blood caused by protracted and desolating civil war in the bosom of another State', but 'it can scarcely be admitted into the code of International Law, since it is manifestly open to abuses'.[219]

A decade later, William Vernon Harcourt, an eminent politician of the Liberal Party, cabinet minister (under William Gladstone) and one-time professor of international law at Cambridge University, made the following pertinent remark: 'Intervention is a question rather of policy than of law. It is above and beyond the domain of law, and when wisely and equitably handled by those who have the power to give effect to it, may be the highest policy of justice and humanity'.[220]

On the other side of the Atlantic, the American legal authority, Theodor Dwight Woolsey of Yale University asserted (in 1860) that intervention was legitimate in extraordinary instances in which a crime of a government against its subjects a crime is committed by a government against its subjects.[221]

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[218] H. Wheaton (1785-1848), *Elements of International Law* (edited by R.H. Dana) (Boston: Little, Brown and Company, 8th ed., 1866) [1836], 113.

[219] R. Phillimore, *Commentaries upon International Law*, vol.I, 3rd edition (London: Butterworths, 3rd edition 1879) [1854], 568-9.

[220] Harcourt writing under the pen-name Historicus, in *Letters by Historicus on Some Questions of International Law. Reprinted from 'The Times' with considerable additions* (London and Cambridge: Macmillan and Co, 1863), 14.

[221] T.D. Woolsey, *Introduction to the Study of International Law* (London: Sampson Low, Marston, Searle & Rivington, 1879, 5th edition revised and enlarged) [1860], 44.

In the mid-1860s the major Italian authority Pasquale Fiore of Cremona and Naples universities, put it graphically: 'Let us assume … that a prince, in order to quell a revolution, violates all the generally recognised laws of war, kills the prisoners, authorizes plundering, rapine, arson, and encourages his supporters to commit those odious acts and others of the same kind; or let us suppose that it is the party that seizes power which is guilty of such crimes. The laisser-faire and indifference of other States constitutes an egoistic policy contrary to the rights of all; for whoever violates international law …violates it not only to the detriment of the person directly affected, but against all civilized States'. [222]

During the 1870s a legal (conventional law) right of humanitarian intervention was advocated by the Belgian jurists Egide R.N. Arntz and Gustave Rolin-Jaequemyns,[223] and the Swiss jurist Johann Caspar Bluntschli.

Arntz of the University of Brussels set the pace with the following statement: 'when a government, although acting within its right of sovereignty, violates the rights of humanity … by an excess of cruelty and injustice, which is a blot on our civilization, the right of intervention may lawfully be exercised, for, however worthy of respect are the rights of state sovereignty and independence, there is something yet more worthy of respect, and that is the right of humanity or of human society, which must not be outraged'.[224]

Rolin-Jaequemyns, the founding father of the first scholarly journal of international law and of the *Institut de droit international* agreed with Arttz and added that for 'a State to claim the principle of non-intervention it should be a State worthy of its name and a viable one'.[225]

Bluntschli of Heidelberg University, a revered figure in international law circles during his lifetime, asserted that 'intervention is legitimate if its purpose is to establish the respect of the individual rights recognized as necessary to humanity'.[226]

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[222] P. Fiore, *Nouveau droit internationale publics suivant les besoins de la civilization moderne* (Paris: A. Durant et Pedone-Lauriel, 1885 2nd edition, translated and annotated by Charles Antoine), vol.I [1865], 524-25.
[223] *Ibid.*, p.473.
[224] Arntz's letter to Rolin-Jaequemyns quoted almost in full in Gustave Rolin-Jaequemyns, 'Note sur la théorie du droit d'intervention, à propos d'une letter de M. le professeur Arntz', *Revue de droit international et de la législation comparée*, 8 (1876), 675.

[225] G. Rolin-Jaequemyns, 'Note sur la théorie du droit d'intervention, à propos d'une letter de M. le professeur Arntz', *Revue de droit international et de la législation comparée*, 8 (1876), 615.
[226] J.C. Bluntschli, *Le droit international codifié*, translated from the German by M.C. Lardy (Paris: Librairie de Guillaumin et Cie, 1874, 2nd French edition) [1868], 55 para 5..

From the 1880s onwards and until the 1920s the adherents of intervention increased considerably putting those opposed in a clear minority even among continental jurists. This was particularly the case with the French and Italian jurists, with their German colleagues still more inclined towards rejection.

Thomas Joseph Lawrence of Oxford University put it thus: 'Should the cruelty be so long continued and so revolting that the best instincts of human nature are outraged by it, and should an opportunity arise for bringing it to an end and removing its cause without adding fuel to the flame of the contest, there is nothing in the law of nations which will condemn as a wrong-doer the state which steps forward and undertakes the necessary intervention. Each case must be judged on its own merits … I have no right to enter my neighbor's garden without his consent; but if I saw a child of his robbed and ill-treated in it by a tramp, I should throw ceremony to the wind and rush to the rescue without waiting to ask for permission'.[227]

A year later, the acclaimed Swiss authority, Alphonse Rivier of Brussels University, referred approvingly to the views of Arntz and Rolin-Jaequemyns and asserted that '[t]he law of human society … represented by the Society of nations is superior to the law of a nation on its own. When a State violates the law of humanity, it is not for one state to intervene, on its own, and without a mandate. But States as a whole, representing human society, which is injured … have the right to intervene as in the case of one State on its own which intervenes when its proper right of preservation is injured'.[228]

The influential Cambridge international law professor, John Westlake referred (in 1904) to anarchy and misrule as grounds for intervention. As he crisply put it: 'It is idle to argue in such a case that the duty of neighboring peoples is to look on quietly. Laws are made for men and not for creatures of the imagination, and they must not create or tolerate for them situations which are beyond the endurance…'.[229]

Westlake successor at Cambridge, Lassa Oppenheim, was more guarded. In his seminal 1905 treatise, he asserted that 'Many jurists maintain that intervention is …admissible, or even has a basis of right, when exercised in the interest of humanity for the purpose of stopping religious persecution and endless cruelties in time of peace and war. That the Powers have in the past exercised intervention on these grounds, there is no doubt …[and

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[227] T. J. Lawrence, *The Principles of International Law* (Boston: D.C. Heath & Co, Publishers, 1905, 3rd edition, revised) [1895], 120.
[228] A. Rivier, *Principes du droit des gens* (Paris: Librairie Nouvelle de droit et de jurisprudence, 1896), 403.
[229] J. Westlake, *International Law*, *Part I, Peace* (Cambridge: at the University Press, 1904), 307.

he alludes to the Greek case with the battle of Navarino in 1827] … But whether there is really a rule of the Law of Nations which admits such intervention may well be doubted'.[230] But he adds that "should a State venture to treat its own subjects or some of them with such cruelty as would stagger humanity, public opinion of the rest of the world would call upon the Powers to exercise intervention for the purpose of compelling such State to establish a legal order of things within its boundaries…'.[231]

The French jurist, Antoine Rougier, argued that humanitarian intervention finds its basis on the existence of 'a society of nations' that does not tolerate anarchy and ill-treatment of human beings. [232] He was the first jurist to present a list of criteria for humanitarian intervention, including (1) 'a violation of the law of humanity and not merely a violation of positive national law';[233] and (2) 'exceptionally grave cases, as when the life of an entire population is menaced, when the barbaric acts are often repeated, when their character is particularly horrible that it violently shocks the universal consciousness'.[234] He also refers to considerations of opportunity, appeals by the victims and favourable conditions for intervening.[235]

Rougier's American contemporary, Ellery Stowell of Columbia University, maintained that in instances of 'deliberate violation of that minimum of security and justice to which every individual in a civilized state is entitled, it becomes the right and duty of other states to intervene in so far as is practicable to prevent or lessen such severities'.[236]

Hersch Lauterpacht of Cambridge University had the following to say on the matter: 'The sovereign and independent State receives from international law absolute autonomy as regards the treatment of its inhabitants; … But this exclusive right could be abused, in which case it ceases to be a right and the competence of international law to protect the individual reasserts all its force … humanitarian intervention is both a juridical as well a political principle of international society'. [237]

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[230] L. Oppenheim, *International Law: A Treatise*, vol.I (London, New York, Toronto: Longmans, Greene and Co, 5th edition, edited by H.Lauterpacht, 1937) [1905], vol. I, 255.
[231] *Ibid.*, 510-11.
[232] A. Rougier, 'La théorie de l'intervention d'humanité', *Revue générale de droit international public*, 17 (1910), 468, 471.
[233] *Ibid.*, 515.
[234] *Ibid.*, 523-4.
[235] *Ibid.*, 523-5.
[236] E.C. Stowell, "Humanitarian Intervention", *American Journal of International Law*, 33, 4 (1939), 734.
[237] H. Lauterpacht, 'Règles générales du droit de la paix', *Recueil des Cours de l' Académie de droit international*, 62 (1937), 238.

Nicolas Politis, one of the most innovative international jurists of the inter-war period,[238] professor at the University of Paris and later Greek foreign minister and ambassador, made the following point in his book on international morality published posthumously: 'Every people has the right to organise itself as it wants … without other countries being in the position to oppose or to intervene in what are internal affairs. …But … such a right will merit due respect on the principle that it makes reasonable use of it. If, on the contrary, it gives ground to abuses of power … and, in general, if the prescriptions of international morality and of international law are downtrodden, other countries are entitled to intervene; they could put into play the rules of international responsibility'.[239]

Opponents of humanitarian intervention

Those opposed to humanitarian intervention are equally authoritative jurists that make a strong case based on the norms of non-intervention, independence and sovereignty, as well as on practical grounds, namely abuse by the intervening states.

The father of the Italian school, Terenzio Mamiani was of the view that 'The doings or misdoings of a people … within the bounds of its own territory, and without detriment to others' rights, never afford any ground for legitimate intervention'.[240]

The Italian Catania professor and politician Giuseppe Carnazza Amari, a champion of 'absolute non-intervention' had the following to say: 'No case exists where a foreign sovereignty has the right to substitute national sovereignty; consequently intervention is never possible, neither as a rule nor as an exception … All coercive influence from abroad constitutes a violent intrusion of one's domain, a supreme tyranny of the powerful against the weak, the usurpation and the rapine of the sovereign powers on which we have no right, an exercise of illegitimate power, a servitude imposed by the oppressor on the oppressed'. [241]

As for civil wars, he maintains that 'whatever the good intention may be of the one who wants to intervene, he lacks the right, for he has no sovereign authority over other nations … the man with the best of intentions in the world cannot reconcile by force another family which leads a life of hate and troubles'.[242]

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[238] For the contribution of Politis to international law, see Koskenniemi, *The Gentle Civilizer of Nations*, 305-9, 314.
[239] Politis, *La morale international*, 144.
[240] Count Mamiani, *Rights of Nations, or the New Law of European States applied to the Affairs of Italy* (translated from the Italian by Roger Acton, and dedicated, by special permission, to Lord John Russell (London: W.Jeffs, 1860) [1859], 194.
[241] Carnazza Amari, 'Nouvel exposé du principe de non-intervention', 370.
[242] *Ibid.*, 375.

The French jurist, Paul Louis Pradier-Fodéré, one-time professor of international law at the University of Lima, summed up the main reasons against such forms of intervention: that it is an affront to independence; oppressive governments (tyrants) can legitimately represent a nation; backwards nations are entitled to chose and establish a political system of their own without outside interference; and acts of inhumanity do not directly harm other states so as to give cause for armed intervention.[243]

Louis Renault, the dean of the French school of international law in the last decades of the nineteenth century, argued that '[v]ery often the nations called civilized have abused their power with regard to the so called barbarians, having declared unjustified wars and having violated the most elementary rules of international law' and that a state 'must abstain from becoming involved in the internal affairs of these States, otherwise the independence and sovereignty of nations would be are no more than chimeras'.[244]

Overall assessment

Until 1914 all publicists, with very few exceptions, adhered to the widely held nineteenth century distinction between 'civilized' and 'uncivilized' or 'barbarian states'. The latter category included the Ottoman Empire, China, Japan, Persia (Iran), Siam (Thailand) and Abyssinia (Ethiopia). It is worth stressing however that most jurists that were advocates of humanitarian intervention avoided any distinction as to its application which implies that they considered, as a matter of principle, that intervention for reasons of humanity is applicable to all irrespective of degree of civilization. But some publicists supportive of humanitarian intervention, claimed that it is only applicable to 'civilized states' against 'non-civilized states'. They include the Russian jurists F.F. Martens and Leonid Kamarowski, Phillimore as regards the Muslim states and Rolin-Jaequemyns regarding the Ottoman Empire per se.[245]

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[243] As summarized by Rougier, in Rougier, 'La théorie de l'intervention d'humanité', 473-8, 499-526. See also for more details P.L. Pradier-Fodéré, *Traité de droit international public européen et américain, suivant le progrès de la science et de la pratique contemporaines* (Paris: A. Durand et Pedone-Lauriel, 1885), vol.I, 593-98, 655, 663.

[244] L. Renault, *Introduction à l' étude du droit international* (Paris: L. Larose, 1879), 21-2.

[245] Martens in Fonteyne, 'The Customary International Law Doctrine of Humanitarian Intervention', 219; Lorimer, *The Institutes of the Law of* Nations, vol.I, 101-2, vol. II, 54; Engelhardt, *Le droit d'intervention et la Turquie*, 61; Rolin-Jaequemyns, 'Le droit international et la phase actuelle de la question d'Orient', 295-85.

According to Phillimore, 'the right of Christian Intervention on religious grounds in a Mohammedan State rests upon an obviously stronger foundation'.[246] But he adds, to his credit, that '[t]he converse of this, viz., Mohammedan Intervention with Christian States, has, it is believed, never yet arisen in practice, but it would be subject on principle to the same law'.[247]

Ironically, the double standards of humanitarian intervention and the singling out non-Christian states for intervention, was criticized by opponents of the concept of humanitarian intervention who presented their peers as unprincipled.

As to the question whether *armed* humanitarian intervention had become part of customary international law at the time, the majority view of legal authors from 1920 until today claim that this is indeed the case.[248] This overall trend is accepted even by some of today's polemics of the concept.[249] Clearly the majority were in favour of humanitarian intervention be it on legal or moral grounds. However in order to claim that a *legal* right existed one should lump those advocating a legal right with those invoking moral or political grounds,[250] even though the latter explicitly deny such a legal right. Otherwise we have 48 supporters of a legal right and 52 opposed. Clearly in those days the views are 'divided';[251] it is 'debatable'[252] or 'doubtful[253] whether such a right existed in international law even in at the doctrine in its peak in the years 1870-1939.

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[246] Phillimore, *Commentaries upon International Law*, vol.I, 621.
[247] *Ibid.*, 624.
[248] Mandelstam, 'La protection des minorités', 391; Stowell, *Intervention in International Law*, 51-62; Fonteyne, 'The Customary International Law Doctrine of Humanitarian Intervention', 223; R. B. Lillich, 'Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives', in J. N. Moore (ed.), *Law and Civil War in the Modern World* (Baltimore: Johns Hopkins University Press, 1974), 232-5; T. E. Behuniak, 'The Law of Unilateral Humanitarian Intervention by Armed Force: A Legal Survey', *Military Law Review*, 79 (1978), 166; M. Bazyler, 'Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia, *Stanford Journal of International Law*, 23 (1987), 572-4; B. M. Benjamin, 'Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent human Rights Atrocities', *Fordham International Law Journal*, 16 (1992-93), 126; U. Beyerlin, 'Humanitarian Intervention', in *Encyclopedia of Public International Law*, Max Planck Institute for Comparative Public Law and International Law (Amsterdam: Elsevier, 1995), Vol. 2, 927; Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, 33, 43; C. F. Amerasinghe, 'The Conundrum of Recourse to Force – To Protect Persons', *International Organizations Law Review*, 3 (2006), 11, 23-26, 38.
[249] See e.g. I. Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963), 338. *Contra* see Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force*, 11; Chesterman, *Just War or Just Peace?*, 36, 43-4.
[250] As rightly pointed out in *ibid.*, 36.
[251] Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force*, 10.
[252] Beyerlin, 'Humanitarian Intervention', 927.

But when it comes to humanitarian intervention as conceived in the pre-UN Charter period, which also included peremptory demands and forms of dictatorial interference short of the actual use of armed force,[254] it appears that humanitarian intervention *lato sensu* was part of customary international law from the 1860s or 1870s onwards. In itself this is a striking finding for the international law of human rights was yet to come, with the exception of the minority treaties regime in the peace treaties signed in Paris (1919-1920) and Lausanne (1923), which hardly gave ground for intervention (their whole philosophy was minority rights in exchange for loyalty on the part of the minorities[255]).

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[253] Oppenheim, *International Law*, vol.I, 255. See also Ganji, *International Protection of Human Rights,* 43; Grewe, *The Epochs of International Law*, 494-5; Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force*, 11; G. Sulyok, 'Humanitarian Intervention: A Historical and Theoretical Overview', *Acta Juridica Hungarica*, 41:1-2 (2000), 88.

[254] Such as the naval blockade of Naples in 1857, the French expeditionary force sent to Lebanon and Syria in 1860-61, measures taken regarding misrule in Macedonia in 1903-8 and others, see *Table II* in Introduction to Part II).

[255] P. Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1991), 43.

Lecture 5.

Intervention in political theory during the long nineteenth century

Introductory remarks

Contrary to international law, international political theory and political philosophy had paid scant attention to the ethics of intervention in the long nineteenth century.[256] As for humanitarian intervention per se there is nothing, apart from a few cursory remarks by John Stuart Mill (1806-1873) and Giuseppe Mazzini (1805-1872). On the wider question of intervention and non-intervention we will refer to their views and to those of Immanuel Kant (1724-1804), Georg Hegel (1770-1831) and Richard Cobden (1804-1865).

Based on the present distinction between cosmopolitanism and communitarianism (see Lecture 1) one would expect that cosmopolitans would be inclined towards intervention for humanitarian and other ethical reasons, while communitarians would adhere to non-intervention.[257] Yet Kant, regarded as the father of modern cosmopolitanism,[258] is prima facie against intervention. Cobden, a cosmopolitan, is rigidly against any notion of intervention. Mazzini, a communitarian (though with a cosmopolitan bend) is a cautious supporter of intervention. J. S. Mill, arguably a communitarian,[259] places himself between non-intervention and intervention baffling commentators. Only Hegel, perhaps the father of the communitarian approach,[260] does not defy expectations, advocating non-intervention but inadvertently brings military intervention in by pointing to war's positive aspects.

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[256] P. Laberge, 'Humanitarian Intervention: Three Ethical Positions', *Ethics and International Affairs*, 9 (1995), 15.

[257] M. Hoffman, 'Normative International Theory: Approaches and Issues', in A.J.R. Groom and M. Light (eds), *Contemporary International Relations: A Guide to Theory* (London: Pinter Publisher, 1994), 33.

[258] Kant's cosmopolitanism is almost an article of faith in the International Relations and international ethics literature. See e.g. H. Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977), 25-6; M. Wight, 'An Anatomy of International Thought', *Review of International Studies*, 13:3 (1987), 223-4; T. Donaldson, 'Kant's Global Rationalism', in T. Nardin and D.R. Mapel (eds), *Traditions of International Ethics* (Cambridge: Cambridge University Press, 1992), 143-4; T. Mertens, 'Cosmopolitanism and Citizenship: Kant against Habermans', *European Journal of Philosophy*, 4:3 (1996), 329-34.

[259] For Mill as a communitarian, see C. Brown, *International Relations Theory: New Normative Approaches* (London: Harvester Wheatsheaf, 1992), 71; Hoffman, 'Normative International Theory', 33.

[260] Brown, *International Relations Theory*, 65.

Kant on non-intervention and republicanism

Kant, the advocate of a cosmopolitan existence, of a cosmopolitan confederation of republican states and of universal human rights,[261] has very little to say about intervention and does not refer at all to intervention for humanitarian reasons.[262]

In Preliminary Article 5 of his celebrated essay, *Toward Perpetual Peace. A Philosophical Sketch* (1795),[263] it is stipulated that 'No State Shall by Force Interfere with the Constitution or Government of Another State'. In explaining his stance Kant makes two points: (a) that who is to authorize interference, implying that there is no higher authority; and (b) if a state has fallen into 'evil', 'its lawlessness should serve as a warning'.[264] And he comes up with only one exception to non-intervention: 'if a state, through internal discord, should split into two parts, each …laying claim to the whole; in that case a foreign state could not be charged with interfering in the constitution of another state if it gave assistance to one of them (for this is anarchy)'.[265] He cautions that prior to this critical phase, such interference would amount to 'a violation of the right of a people', making 'the autonomy of all states insecure'.[266] Only when a state has collapsed into anarchy, with rival groups claiming sovereign authority, can other states intervene to assist in bringing about an end to the anarchy.[267] Apparently Kant had in mind classical civil wars and not national struggles at a time when the 'principle of nationality' (as national self-determination was initially called) was barely hatched.

Surprisingly Kant (like Grotius) was opposed to revolution against oppression,[268] despite his great enthusiasm for the French Revolution, the American Revolution and the Irish struggle, a contradictory position that has baffled scholars ever since.[269]

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[261] For a more nuanced view regarding Kant's cosmopolitanism see F.H. Hinsley, *Power and the Pursuit of Peace* (Cambridge: Cambridge University Press, 1963), 62-80; A. Hurrell, 'Kant and the Kantian Paradigm in International Relations', *Review of International Studies*, 16: 3 (1990), 183-205.

[262] A. Franceschet, 'Kant, International Law, and the Problem of Humanitarian Intervention', *Journal of International Political Theory*, 6:1 (2010), 3-4.

[263] For a succinct presentation of the various points raised by Kant in *Perpetual Peace*, see H. L. Williams, 'Back from the USSR: Kant, Kaliningrad and World Peace', *International Relations*, 20:1 (2006), 27-48.

[264] I. Kant, 'Toward Perpetual Peace', in I. Kant, *Practical Philosophy* (Cambridge: Cambridge University Press, 1996), 319.

[265] *Ibid.*, 319-20.

[266] *Ibid.*, 319-20.

[267] Williams, 'Back from the USSR', 37.

[268] F.R. Tesón, 'The Kantian Theory of International Law', *Columbia Law Review*, 92:1 (1992), 67-8; Laberge, 'Humanitarian Intervention', 18.

Kant does not address intervention in any other work and it is clear that he does not suggest any right or duty of humanitarian intervention[270] or intervention to promote 'republicanism'.[271] His position on intervention is in keeping with his overall position on state independence and autonomy akin to the freedom of the individual in a society.[272] It was also not unrelated to his position on war. For the German philosopher, war (in the sense of international war) is 'the scourge of mankind', 'the destroyer of everything good'[273] and 'creates more evil than it destroys'.[274] Yet strictly speaking he was no pacifist.[275] He was critical of 'a long peace' in some cases[276] and regarded the historical emergence of civil society the result of violent means and war, which unified people under a general will.[277] On the whole his concept of a justified war was a purely defensive one: to defend one's country and repulse aggression, including 'anticipatory attack'.[278] But as regards military intervention he was more than clear: intervention even for ethical reasons introduces a right to war, with disastrous effect in the attempt to ban war and nullifies the possibility of a peace.[279]

Despite the prohibition of Preliminary Article 5, several scholars, including students of Kant, have tried to prove that he did not reject intervention or humanitarian intervention.

[269] For copious attempts to reconcile this irreconcilable position, see S. Axinn, 'Kant, Authority, and the French Revolution', *Journal of the History of Ideas*, 32:3 (1971), 179-92; L.W. Beck, 'Kant and the Right of Revolution', *Journal of the History of Ideas*, 32:3 (1971), 411-22; H.S. Reiss, 'Kant and the Right of Rebellion', *Journal of the History of Ideas*, 17:2 (1956), 179-92.

[270] T. Mertens, 'War and International Order in Kant's Legal Thought', *Ratio Juris*, 8:3 (1995), 31 fn.14; H. van der Linden, 'Kant: The Duty to Promote International Peace and Political Intervention', *Proceedings of the Eighth International Kant Congress*, Memphis 1995, vol.II (Milwaukee: Marquette University Press, 1995), 73; Franceschet, 'Kant, International Law, and the Problem of Humanitarian Intervention', 8; Williams, 'Back from the USSR', 31, 37-8.

[271] Laberge, 'Humanitarian Intervention', 18.

[272] Williams, 'Back from the USSR', 31, 36.

[273] All quoted in B. Orend, 'Kant's Ethics of War and Peace', *Journal of Military Ethics*, 3:2 (2004), 163.

[274] Quoted in Hurrell, 'Kant and the Kantian Paradigm in International Relations', 201.

[275] For Kant's complex and at times contradictory position on war, see B. Orend, 'Kant's Just War Theory', *Journal of the History of Philosophy*, 37:2 (1999), 323-53; Orend, 'Kant's Ethics of War and Peace', 161-97; A. Pagden, *The Enlightenment and Why it Still Matters* (New York Random House, 2013), 348-9. For Kant as basically a pacifist, see Mertens, 'War and International Order in Kant's Legal Thought', 296-314.

[276] Axinn, 'Kant, Authority, and the French Revolution', 425.

[277] Mertens, 'War and International Order in Kant's Legal Thought', 304; R. Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), 217-18.

[278] Orend, 'Kant's Ethics of War and Peace', 167-9.

[279] Mertens, 'War and International Order in Kant's Legal Thought', 311; T. Mertens, 'Kant's Cosmopolitan Values and Supreme Emergencies', *Journal of Social Philosophy*, 38:2 (2007), 227; Hurrell, 'Kant and the Kantian Paradigm in International Relations', 200-2; H. Williams, *Kant and the End of War: A Critique of Just War Theory* (Basingstoke: Palgrave Macmillan, 2012), 32, 130, 135.

There are three main positions on the matter: (a) that Kant upholds a rigid principle of non-intervention;[280] (b) guarded assertion that had Kant been faced or contemplated massive atrocities he would have been more open to intervention *qua* humanitarian intervention;[281] and (c) claims that he was deep down supportive of humanitarian intervention.

One line of reasoning is to link Preliminary Article 5 with Kant's First Definitive Article which reads as follows: 'The Civil Constitution of Every State shall be Republican'. Republican states are peaceful internationally and base their internal policy on justice, rule of law and respect for individual autonomy.[282] From this ambit it has been argued that, assuming that the definite articles is 'more basic' (in fact this is not the case as Kantian scholars point out), non-intervention 'does not apply to forms of intervention that might promote or defend the development or survival of republican forms of government'.[283] John Vincent was of the view that 'Kant appeared to imply an exception to the rule of nonintervention if by intervention a republic could be established or a despotic regime crushed'[284] and that only in an international society comprised of republican states 'could a rule of nonintervention apply absolutely'.[285]

Along similar lines international lawyer Fernando Tesón maintains that Kant's 'nonintervention principle is dependent upon compliance with the First Definitive Article. Internal legitimacy is what gives states the shield of sovereignty against foreign intervention'.[286] He argues that legitimacy is based on respect for human rights, representation and on a republican constitution, only then is a state sovereignty equipped with its 'shielding power'; put differently, '[s]overeignty is to be respected only when it is justly exercised'.[287] Consequently 'nonintervention holds *only* among liberal states, and therefore the nonintervention principle should be seen as a definite precept that governs the liberal alliance,

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[280] Mertens, 'War and International Order in Kant's Legal Thought', 311 fn.14; Mertens, 'Kant's Cosmopolitan Values and Supreme Emergencies', 225-7; G. Reichberg, 'Just War or Perpetual Peace?', *Journal of Military Ethics*, 1:1 (2002), 30 and 30 fn.25; Hurrell, 'Kant and the Kantian Paradigm in International Relations', 200-2; Orend, 'Kant's Ethics of War and Peace', 169.
[281] G. Cavallar, 'Commentary on Susan Meld Shell's 'Kant on Just War and "Unjust Enemies": Reflections on a "Pleonasm"', *Kantian Review*, 11 (2006), 117-24; Van der Linden, 'Kant', 73-4.
[282] F.R. Tesón, 'The Kantian Theory of International Law', *Columbia Law Review*, 92:1 (1992), 54, 60-2, 67, 69-70.
[283] C.R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), 82. This point had been made in the 1940s by K. Loewenstein and C.J. Friedrich. See *ibid.*, 82 fn.35.
[284] R.J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974), 57.
[285] *Ibid.*, 58.
[286] Tesón, 'The Kantian Theory of International Law', 92.
[287] *Ibid.*, 92.

not as a step that must be taken before the alliance is formed'.[288] The Kantian scholar, Harry Van der Linden, refers to Kant's concept of states as 'moral persons with autonomy' founded on 'the social contract' and 'united will'. On this basis he surmises that 'that political intervention is only wrong with respect to republican states, or approximations thereof, and may be justified with regard to unjust states if it accords with the will of their people struggling for democracy'.[289]

Other Kantian scholars venture into more controversial grounds. Thomas Hill for instance maintains that according to Kant's logic people in anarchy or 'a state of nature' can be forcefully made to join the legal order '*so long as it is reasonably certain that intervention is necessary and will be effective without further implications and effects that are morally unacceptable*'[emphasis in the original][290] and concludes that in Kant's ethics 'there is no absolute prohibition of humanitarian intervention in all cases'.[291] Antonio Franceschet admits that Kant has very little to say on intervention and nothing explicit on humanitarian intervention,[292] but claims that one can extrapolate from his work, if it is seen from its 'ethico-political reasoning within his broad roadmap for international reform' and 'legal evolution'.[293]

It is hard to pass judgment whether these authors interpret what Kant was all about or whether they present a different Kantian perspective and not Kant as such. Regarding the claim that force can be used against those in the state of nature and impose on them a legal order, the very opposite seems to be the case, as pointed out by Georg Cavallar, who notes that for Kant 'states should not be forced to give up their "savage (lawless) freedom",[294] they should do it on their own accord, 'freely and voluntarily'.[295] As for Preliminary Article 5 being applicable only to republican states, in fact only the Definitive articles refer exclusively to republican states; the preliminary articles refer to all states, republican or otherwise;[296] and Kant 'nowhere makes any explicit claim regarding the priority of republicanism over nonintervention'.[297] More generally, Kant was keen to avoid distinguishing between 'good'

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[288] *Ibid.*, 93.
[289] Van der Linden, 'Kant', 73-4.
[290] T. Hill, 'Kant and Humanitarian Intervention', *Philosophical Perspectives*, 23 (2009), 229.
[291] *Ibid.*, 236.
[292] Franceschet, 'Kant, International Law, and the Problem of Humanitarian Intervention', 4.
[293] *Ibid.*, 8.
[294] Cavallar, 'Commentary on Susan Meld Shell's 'Kant on Just War and "Unjust Enemies"', 118.
[295] *Ibid.*, 118.
[296] See on this basic point Laberge, 'Humanitarian Intervention', 18.
[297] Beitz, *Political Theory and International Relations*, 82 fn.35.

and 'bad' political entities and inadvertently creating a warlike condition; and he also wanted to deter states becoming paternalistic guardians of the well-being of other states.[298]

On the whole one is on safer grounds if one sticks to the letter of Kant, to Preliminary Article 5 with only a small dose of the First Definitive Article. At least four points are worth making in this regard.

First of all, Kant was guarded on intervention, not wanting to open a Pandora box for intervention, given his views on war and peace, autonomy and morality.

Secondly he wrote *Perpetual Peace* in the wake of the French Revolution and apparently one of his main preoccupations was not to give grounds for foreign interventions against the French Revolution[299] (as advocated, say, by Edmund Burke).

Thirdly, Kant as a consistent cosmopolitan was not an advocate of conquest and colonialism, to bring in the less fortunate non-Europeans in the European fold (à la Vitoria).[300]

Fourthly, even careful scholars of Kant, critical of the extrapolations of others, are prepared to offer a small opening for intervention in extreme humanitarian instances. Pierre Laberge for instance has argued that '[s]ince genocide is an idea that can scarcely have occurred to him, to hold that he would prohibit intervention even in such extreme circumstances is surely to be guilty of an anachronism'.[301] Cavallar is prepared to entertain that 'Kant might have favoured intervention to stop dramatic violations of human rights (for example genocide)'.[302] Williams in his book on Kant and war concludes that only 'the breakdown of order' tantamount to civil war, with no sovereign power in control permits intervention and provided it has been requested by one of the warring sides, notably 'the party that would bring the disputed territory into the peaceful federation'.[303]

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[298] Williams, *Kant and the End of War*, 118.
[299] Laberge, 'Humanitarian Intervention', 18.
[300] A. Pagden, A., 'Stoicism, Cosmopolitanism, and the Legacy of European Imperialism', *Constellations*, 7:1 (2000), 18.
[301] Laberge, 'Humanitarian Intervention', 18.
[302] Cavallar, 'Commentary on Susan Meld Shell's 'Kant on Just War and "Unjust Enemies"', 121.
[303] Williams, *Kant and the End of War*, 131, 133.

Hegel on non-intervention and war

For Hegel states like persons are autonomous in the moral sense and 'realize their nature in the choice and pursuit of ends'.[304] The state is 'ethical', 'the actuality of the ethical idea';[305] completely free, self-conscious and rational.[306] According to a famous passage: 'The nation as state is mind in its substantive rationality and immediate actuality and is thus the absolute power on earth. It follows that every state is sovereign and autonomous against its neighbors'.[307]

Tesón has called this reification of the state, the 'Hegelian myth': that the state is 'a moral being, capable of making moral choices' and as in the case of persons, whose moral choices deserve respect from others, 'state choices deserve respect from foreigners', hence '[f]oreign intervention is a violation of that autonomy, even when it is undertaken for benign purposes'.[308] Moreover, according to Tesón and others before him, such as Karl Popper, Hegel glorified war and even aggressive war in the name of 'vitality'.[309] He regarded war as one of the means 'by which the ethical character of the state is preserved'.[310] According to Steven Smith, Hegel arrives at this conclusion on the basis of the following syllogism: 'The state is an ethical unity. 2) States frequently engage in war to preserve their unity. 3) Therefore war is a "moment" in the ethical life of the state'.[311]

Hegel's initial thesis is that war 'is not to be regarded as an absolute evil and a purely external accident'[312] and peace desirable under all circumstances.[313] War is outside the domain of ethics and not 'a matter of right meeting wrong, but rather a clash between two subjectively perceived rights'.[314] As he put it: 'Each party claims to have right on its side; and both parties are right. It is just the rights themselves which have come into contradiction with

[304] Beitz, *Political Theory and International Relations*, 76.

[305] S. Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), 178.

[306] *Ibid.*, 179.

[307] Quoted in S. Avineri, 'The Problem of War in Hegel's Thought', *Journal of the History of Ideas*, 22:4 (1961), 468.

[308] F. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (New York: Transnational Publishers, 1997 [1988]), 55.

[309] Tesón, *Humanitarian Intervention*, 59; K.R. Popper, *The Open Society and its Enemies. Volume II, The High Tide of Prophesy: Hegel, Marx, and the Aftermath* (London: Routledge & Kegan Paul, 1945), 259.

[310] S.B. Smith, 'Hegel's Views on War, the State, and International Relations', *American Political Science Review*, 77:3 (1983), 627.

[311] *Ibid.*, 627.

[312] Quoted in Avineri, *Hegel's Theory of the Modern State*, 197.

[313] Brown, *International Relations Theory*, 66.

[314] F. Parkinson, *The Philosophy of International Relations: A Study in the History of Thought* (Beverly Hill: Sage, 1977), 78.

one another'.[315] Hegel, anticipating the thinking of present-day conflict research, claims that disputes arise not as a result of 'real grievances as on subjective perception of an alleged threat posed'.[316]

These are valid points and hardly a glorification of war or militarism. But other Hegelian utterances are more extreme, such as the following: 'War is the moral health of peoples in their struggle against petrification … Just as the breeze saves the sea from foulness, which is the result of continued complacency, so does war for people'.[317] In *Philosophy of Law* he states that 'War has the deep meaning that by it the ethical health of a nation is preserved … War protects the people from the corruption which an overlasting peace would bring upon it.'[318] He also refers to the heroic and sacrifice aspects of war, to courage, honor and internal cooperation and regards perpetual peace à la Kant as an illusion.[319]

Hegel's glorification of war and presumed militarism have been challenged from the 1960s onwards, starting with John Plamenatz and Schlomo Avineri, who present him as more nuanced and not a stark advocate of aggressive war.[320] As is often the case with scholarly controversies, a fairer depiction is somewhere in the middle or by coming up with another vantage point that makes the polar opposites less convincing.[321] Apparently several of Hegel's extreme statements were motivated by the German predicament of his time, fragmentation and lack of unity.[322] And it is worth noting that wars were then quite different, with fewer casualties than the battles and wars that were to follow after Hegel death.[323]

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[315] Quoted in *ibid.*, 78.

[316] *Ibid.*, 79.

[317] Quoted Avineri, 'The Problem of War in Hegel's Thought', 464.

[318] Quoted in Popper, *The Open Society and Its Enemies,* 69.

[319] Smith, 'Hegel's Views on War, the State, and International Relations', 629-31; Popper, *The Open Society and Its Enemies*, 65, 69-70.

[320] For the reappraisal of Hegel's views on war see: H.G. ten Bruggencate, 'Hegel's Views on War', *Philosophical Quarterly*, 1 (1950), 58-60; Avineri, 'The Problem of War in Hegel's Thought', 463-474; Avineri, *Hegel's Theory of the Modern State*, 194-207; C.I. Smith, 'Hegel and War', *Journal of the History of Ideas*, 26:2 (1965), 282-85. For a more general positive appraisal of Hegel, see H. Marcuse, *Reason and Revolution: Hegel and the Rise of Social Theory* (Boston: Beacon Press, 1960) [1941]; Z.A. Pelczynski (ed.), *The State and Civil Society: Studies in Hegel's Political Philosophy* (Cambridge: Cambridge University Press, 1984).

[321] See Smith, 'Hegel's Views on War, the State, and International Relations', 624-32.

[322] *Ibid.*, 628-9.

[323] For this insight we thank the Greek Hegel scholar, Georges Faraklas.

Cobden on peace, free trade and non-intervention

The Radical and Liberal British politician Richard Cobden was not a political philosopher but is regarded an important liberal thinker in his own right and one of the earliest exponents of the liberal internationalism in international relations. He is also seen today as a precursor of the theories of functionalism and interdependence.[324]

Cobden, the 'international man',[325] as he was called during his lifetime, was as absolute as Hegel against intervention, though not for the reasons put by Hegel and he was more consistent: he did not bring intervention in through the back door by presenting the positive functions of war.

For Cobden, the active pacifist and a 'crusader of free trade',[326] freedom of commerce was essential for peace, a view shared by his close associate, John Bright. He was convinced that 'unfettered commerce would create such a powerful incentive for peace that men would prevent their governments from using war as the chosen instrument for serving their interests'.[327] However his emphasis on free trade was not for free trade as such, but as one of the main vehicle for peace; he was not an advocate of peace for the sake of free trade.[328] If free trade conflicted with peace, as in the case of trade in armaments or loans for armament he was against it ('No free trade in cutting throats' as he put it).[329] As a committed exponent of progress brought about by industrialization and trade, he was strongly opposed to militarism, arms expenditures, colonial expansion and imperialism.[330]

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[324] Parkinson, *The Philosophy of International Relations*, 95, 97, 145; W. Olson and A.J.R. Groom, *International Relations Then and Now* (London and New York: Routledge, 1991), 30; M.J. Smith, 'Liberalism and International Reform', in Nardin and Mapel (eds), *Traditions of International Ethics*, 205-6; S. Burchill, 'Liberal Internationalism', in S. Burchill and A. Linklater (eds), *Theories of International Relations* (Basingstoke: Macmillan, 1995), 36,39; T. Dunne, 'Liberalism', in J. Baylis and S. Smith (eds), *The Globalization of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 2001, 2nd edition), 166-7.

[325] J.A. Hobson, *Richard Cobden: The International Man* (London: T.F. Unwin, 1919); K. Robbins, 'Richard Cobden: The International Man', in A. Howe and S. Morgan (eds), *Rethinking Nineteenth-Century Liberalism: Richard Cobden Bicentenary Essays* (Aldershot: Ashgate, 2006), 177-88.

[326] Smith, 'Liberalism and International Reform', 205.

[327] Olson and Groom, *International Relations Then and Now*, 30.

[328] Hinsley, *Power and the Pursuit of Peace*, 96.

[329] *Ibid.*, 97.

[330] C. Holbraad, *The Concert of Europe: A Study in German and British International Theory 1815-1914* (London: Longman, 1970), 155; Smith, 'Liberalism and International Reform', 205-6; C. Brown, 'Human Rights', in J. Baylis and S. Smith (eds), *The Globalization of World Politics: An Introduction to International Relations* (Oxford: Oxford University Press, 2001, 2nd edition), 605.

It is within this context that Cobden was 'a consistent anti-interventionist',[331] an advocate of 'an absolute policy of nonintervention'.[332] As he had put it: 'I am against any interference by the government of any country in the affairs of another nation, even if it is confined to moral suasion'.[333] Intervention in the internal affairs of other states was 'an unnecessary evil'.[334] For him the norm of non-intervention was 'a necessary, if not sufficient condition for international peace',[335] and could be tied more concretely with interest than a vague vision of future peace. He scathingly criticized great power intervention even for noble goals. Such interventions for order and justice or in order to bring about freedom to a people were contrary to the interests of both the intervening party and the party benefitting from intervention.[336] The regeneration of a people could only come about by the 'force and virtue of native elements, and without assistance of any kind'.[337] Anticipating J. S. Mill (see below) he maintained that a 'people which wants a saviour' and 'which does not possess an earnest and pledge of freedom in its own heart, is not yet ready to be free'.[338]

According to Vincent's reading of Cobden, 'intervention was doubly inappropriate as a means of promoting liberalism abroad; outside assistance could not promote a necessarily mature growth, and if such assistance were requested by a people, that very request was evidence of its immaturity and inability to benefit from intervention'.[339] Cobden could only accept counter-intervention as a means of upholding the principle of non-intervention and the only sanctions he could accept were 'the power of opinion and moral force'.[340] His condemnation of intervention had as its primary target British foreign policy under the sway of Palmerston, whose interventionism, according to Cobden, were against the interests of the British people.[341] The fact that the 'international man' was also a pacifist activist[342] made his absolute principle of non-intervention more convincing.[343] Moreover Cobden was consistent

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[331] Brown, 'Human Rights', 605.
[332] Vincent, *Nonintervention and International Order*, 46.
[333] Quoted in *ibid.*, 46.
[334] Holbraad, *The Concert of Europe*, 156.
[335] Vincent, *Nonintervention and International Order*, 47.
[336] Holbraad, *The Concert of Europe*, 156.
[337] Quoted in Vincent, *Nonintervention and International Order*, 53.
[338] Quoted in *ibid.*, 53.
[339] *Ibid.*, 53.
[340] *Ibid.*, 53.
[341] Parkinson, *The Philosophy of International Relations*, 97; Brown, *International Relations Theory*, 605.
[342] M. Ceadel, 'Cobden and Peace', in Howe and Morgan (eds), *Rethinking Nineteenth-Century Liberalism*, 189-207.
[343] Holbraad, *The Concert of Europe*, 155-6; A. Howe, 'Introduction', in Howe and Morgan (eds), *Rethinking Nineteenth-Century Liberalism*, 2-5, 14-16.

in his anti-interventionism and anti-imperialism, contrary to other British liberals who were 'more selective',[344] as in the case of James Mill and John Stuart Mill.[345]

Mazzini on nationality and non-intervention/intervention

Giuseppe Mazzini like Cobden was a not political philosopher but a politician and activist. He is known today as the 'Beating Heart of Italy', the foremost inspirer of Italian unification. But in his lifetime he was one of the most respected intellectuals and political theorists of democracy and of the principle of nationality (national self-determination) and was highly influential.

Mazzini's views on nationalism were moderate and liberal, and though famous as a prophet of nationalism, 'humanity' is his keyword rather than 'nationality'.[346] For Mazzini the starting point is the individual, the individual fulfils himself in the nation and the nation fulfils itself in humanity, while the idea of cosmopolitanism left out the nation, the essential middle link between the individual and humanity.[347] As in the case of Herder, he regarded all European nations equal, each with its own mission in the world. He was basically a democratic patriot and not a nationalist, and sincerely believed that independent democratic nations (states corresponding to a nation) would be peaceful in their relations. For Mazzini national statehood is an indispensable step towards a future international brotherhood of peoples and only within a national state can a true republic function properly. Thus Mazzini can be seen as an advocate of 'democratic peace' in par with Kant (that democracies are peaceful at the inter-state level) and as in the case of Cobden, one of the pioneers of liberal internationalism.[348]

As in the case of Cobden and J. S. Mill, Mazzini was a champion of domestic political struggles for democratic rule and national liberation without any foreign intervention. He was prima facie an advocate of strict adherence to the norm of non-intervention, but certain factors made him temper his views and part ways with Cobden's

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[344] Brown, 'Human Rights', 605.

[345] J. Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2005), 124-62.

[346] M. Wight, 'Mazzini', in W. Wight, *Four Seminal Thinkers in International Theory: Machiavelli, Grotius, Kant and Mazzini*, edited by G. Wight and B. Porter (Oxford: Oxford University Press, 2005), 102.

[347] *Ibid.*, 100-3; S. Recchia and N. Urbinati, 'Introduction', in S. Recchia and N. Urbinati (eds), *A Cosmopolitanism of Nations. Giuseppe Mazzini's Writing on Democracy, Nation Building and International Relations* (Princeton: Princeton University Press, 2009), 2.

[348] *Ibid.*, 21.

absolute rule of non-intervention, bringing him much closer to Mill (see below) with whom they were acquaintances and respected each other's views.

Mazzini's views on intervention appear mainly in a succinct essay entitled 'On Nonintervention' written in 1851 mostly for a British audience (Mazzini lived in London for more than 30 years).[349] He argued that adherence to non-intervention had to apply if two preconditions were met.

Firstly it was applicable only if it was adhered to by all states. But this was hardly the case, as despotic states intervened to help other despotic states threatened by revolutions or national liberation movements and in general to protect the 1815 settlement and monarchy, contradicting the original purpose of intervention which was avoiding war and conquest.[350] As he put it, this was '[i]ntervention on the wrong side; Intervention by all who chose, and are strong enough, to put down free movements of peoples against corrupt governments. It means cooperation of despots against peoples …'.[351]

Secondly non-intervention could apply only if all states were distinct nations, that is if the principle of nationality had been duly implemented, in which case 'the government must deal directly and alone with its people' with no foreign interference,[352] which again was not the case since most states did not represent one nation and as for the multi-national empires they trampled on other nations and did not permit their freedom and independence.

These two factors did not lead Mazzini to advocate military intervention in support of struggles for freedom or democratic rule. Surprisingly for the 'apostle' of insurrection, republicanism, and the principle of nationality, he was guarded allowing only for two exceptions to the norm of non-intervention: (a) to offset a previous intervention in support of despots, that is counter-intervention; and (b) to intervene to stop massacres, that is humanitarian intervention (though he did not use the term). As regard the first exception he puts it thus:[353]

> should the government of a neighboring despotic state, either invited by the vanquished party or fearing the contagion of liberal ideas in its own territory, militarily invade the convulsed state and so interrupt or repeal the revolution, then the principle of Nonintervention is at an end …

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[349] G. Mazzini, 'On Nonintervention (1851)', in Recchia and N. Urbinati (eds), *A Cosmopolitanism of Nations*, 213-18.
[350] Vincent, *Nonintervention and International Order*, 59-60.
[351] Mazzini, 'On Nonintervention (1851)', 214, 217.
[352] *Ibid.*, 214-15.
[353] *Ibid.*, 216.

But even in this case Mazzini was cautious, advocating mainly 'moral support' and a credible threat of counter-intervention by a powerful liberal nation in the hope that it will be sufficient to deter a despot from intervening.[354]

> As regards intervening to stop massacres:[355]
> if … there should be … a massacre of Christians within the dominions of the Turks—then other nations are not absolved from all concern … nations should exert an influence on the general affairs of the world, proportionate … to their intrinsic moral qualities and their capacity for acting nobly.

Here Mazzini was again reserved and not as forthright as Mill (see below). On intervention, including humanitarian intervention, he followed a middle path among Italians in the course of the long nineteenth century, between strict non-intervention and collective intervention as obligatory in humanitarian plights. He also followed another well-known tendency of the Italian school of international law, intervention to a free an oppressed nation but went further by also advocating humanitarian intervention.

J. S. Mill on non-intervention and intervention

Introduction

John Stuart Mill is classified today as a communitarian, especially given his stance on nationalism and his initial position in support of non-intervention,[356] but his communitarianism is arguable. If one takes into consideration other aspects of Mill's approach to international relations, such as his emphasis on 'the general prosperity of mankind', the 'benefit of all' rather than 'national self-interest', his views on free trade or international law as the protector of the weak,[357] as well as he is views regarding over-riding the norm of non-intervention (see below), he appears more of a cosmopolitan or simply defies classification.[358]

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[354] Recchia and N. Urbinati, 'Introduction', 27. See also G. Mazzini, 'The European Question: Foreign Intervention and National Self-Determination', in Recchia and N. Urbinati (eds), *A Cosmopolitanism of Nations*, 195.

[355] Mazzini, 'On Nonintervention (1851)', 216-17.

[356] Brown, *International Relations* Theory, 71, 73-5; Hoffman, 'Normative International Theory, 33.

[357] See K.E. Miller, 'John Stuart Mill's Theory of International Relations', *Journal of the History of Ideas*, 22:4 (1961), 499-501, 504.

[358] The Mill scholar, Georgios Varouxakis, regards Mill somewhere in between the two traditions, as an advocate of 'cosmopolitan patriotism' as he calls it. See G. Varouxakis, 'Cosmopolitan Patriotism in J. S. Mill's Political Thought and Action', in N. Urbinati and A.

Mill's main work on intervention or rather his sole work dedicated to this question is his essay, 'A Few Words on Non-Intervention', published in December 1859 in *Fraser's Magazine*,[359] in which he makes a very strong case for non-intervention but an equally convincing case for intervention in several circumstances. This has led to confusion as to where he really stands and he has been criticized as 'ambivalent'[360] and 'not at his most convincing'[361] regarding the principle (non-intervention) he presumably, judging from the title, set out to defend.

References to non-intervention and intervention were also made by Mill in an earlier essay, 'The French Revolution of 1848 and Its Assailants' (1849), better known as 'Vindication of the French Revolution of February 1848',[362] and in a forgotten article, 'The Spanish Question', published in 1837, which he had written together with a former army officer.[363]

The main rule of thumb to grasp Mill's overall position on non-intervention/ intervention is whether a movement striving for freedom is seeking independence from 'a foreign yoke' or is seeking to overthrow a 'native tyrant' and establish liberal democratic rule, even though the two distinct cases are not always as clear as day in his writing. In the first instance he advocates external intervention (starkly, hesitantly or on the condition of prior intervention in support of the incumbent government), while in the second he advocates strict non-intervention,[364] for he regards any external intervention as counter-productive and detrimental to the cause of freedom (in the sense of securing a Constitution and democratic rule).

Zakaras (eds), *J. S. Mill's Political Thought: A Bicentennial Reassessment* (Cambridge: Cambridge University Press), 277-97.

[359] 'A Few Words on Non-Intervention', *Fraser's Magazine*, LX (December 1859), reprinted in Mill, *Dissertations and Discussions*, vol.III, 153-78 [henceforth 'A Few Words'].

[360] A. Ellis, 'Utilitarianism and International Ethics', in Nardin and Mapel (eds), *Traditions of International Ethics*, 166.

[361] M. Levin, *J. S. Mill on Civilization and Barbarism* (London: Routledge, 2004), 49.

[362] J. S. Mill, 'The French Revolution of 1848 and Its Assailants', *The Westminster and Foreign Quarterly Review*, vol.LI (April 1849), 28. Reprinted as 'Vindication of the French Revolution of February 1848, in Reply to Lord Brougham and others', in J.S. Mill, *Dissertations and Discussions* (London: Longmans, Green, Reader, and Dyer, 1867), vol.II, 335-410. [henceforth 'Vindication'].

[363] 'The Spanish Question', *London and Westminster Review*, vol.V (July 1837), 165-94 [henceforth 'The Spanish Question']. I thank Georgios Varouxakis for this information. Mill wrote the theoretical parts of this article, which are easily discernible for they dovetail with his statements on non-intervention and intervention in the other two essays.

[364] M. Walzer, 'Mill's "A Few Words on Non-Intervention": A Commentary', in Urbinati and Zakaras (eds), *J. S. Mill's Political Thought*, 352.

Let us start with non-intervention.

Non-intervention

Mill was opposed to intervention in support of liberty, for in his view a people will be better served if they 'are left to work out their own salvation'.[365] No less than six arguments can be identified in buttressing non-intervention.[366]

The first argument is uncertainty as to the outcome: 'there can seldom be anything approaching to assurance that intervention, even if successful, would be for the good of the people themselves'.[367] The second argument is the readiness to wage a struggle despite the grave dangers involved. As he puts it: 'The only test possessing any real value , of a people's having become fit for popular institutions, is that they … are willing to brave labour and danger for their liberation'.[368]

This is related to two other arguments: authenticity and permanence.[369] As he asserts 'if they have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own, will have nothing real, nothing permanent'.[370] In 'The Spanish Question' he puts it thus: 'The attempt to establish freedom by foreign bayonets is a solecism in terms. A government which requires the support of foreign armies cannot be a free government'.[371]

This leads us to a fifth argument, the danger of reversal to tyranny again linked to one's own fighting. He argues that '[i]f a people … does not value it [freedom] sufficiently to fight for it, and maintain it against any force which can be mustered … it is only a question in how few years or months that people will be enslaved'.[372]

A related sixth point is that the virtues and feelings needed 'for maintaining freedom' spring up only 'during an arduous struggle to become free by their own efforts'.[373] In this context he makes a telling point: 'Men become attached to that which they have long fought

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[365] Beitz, *Political Theory and International Relations*, 84-6; M. Walzer, 'The Rights of Political Communities', in C. R. Beitz et al, *International Ethics* (Princeton: Princeton University Press, 1985), 178-9; Ellis, 'Utilitarianism and International Ethics', 166-7.
[366] Michael Doyle, in a perceptive article on Mill and Walzer, has come up with five points and we have taken on board three of them. See M.W. Doyle, 'A Few Words on Mill, Walzer, and Nonintervention', *Ethics and International Affairs*, 23 (2009), 352-5.
[367] 'A Few Words', 173.
[368] *Ibid.*, 173.
[369] See Doyle, 'A Few Words on Mill, Walzer, and Nonintervention', 352-3.
[370] 'A Few Words', 174.
[371] 'The Spanish Question', 179.
[372] 'A Few Words', 174.
[373] *Ibid.*, 175.

for and made sacrifices for; they learn to appreciate that on which their thoughts have been much engaged…'.[374] This considerable insight on the part of the utilitarian philosopher (which Cobden, as we have seen, had also touched upon) tallies with the findings of today's cognitive psychology. As social psychologist Leon Festinger had put it: 'Rats and people come to love the things for which they have suffered'.[375] According to Morton Deutsch presumably they do so 'in order to reduce the dissonance induced by the suffering, and their method of dissonance- reduction is to enhance the attractiveness of the choice which led to their suffering: only if what one chose was really worthwhile would all of the associated suffering be tolerable'.[376]

The emphasis of Mill on a people's ability to use force successfully for liberation has been criticized as a Social Darwinian (actually crude Spencerian[377]) 'survival of the fittest'[378] although Mill was no Social Darwinist. Walzer claims that this accusation though not wide off the mark is unfair to Mill 'for it was precisely Mill's point that force could not prevail, unless it was reinforced from the outside over a people ready "to brave labor and danger'.[379] Anthony Ellis attributes Mill's stance on his belief 'that a people will be hard to oppress for long, once they have set their minds on freedom'.[380]

Now let us present the other side of the coin, intervention.

Intervention

Commentators have identified various exceptions to the norm of non-intervention. The number of exceptions ranging from only two, in the case of Michael Walzer, to as many as seven, in the case of Michael Doyle. From Mill's at times unclear presentation, we have identified six instances, as reasons where the non-intervention principle can be overcome in favour of its opposite, intervention: (1) in relations to 'barbarians', (2) for defensive purposes, (3) in order to offset a previous counter-revolution by an external party against a people

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[374] *Ibid.*, 175.

[375] Quoted in M. Deutsch, *The Resolution of Conflict* (New Haven: Yale University Press, 1973), 357.

[376] *Ibid.*, 357.

[377] 'Survival of the fittest' was introduced by Spencer and adopted by Darwin in the sense of capability to adapt and survive, but the concept was misunderstood by crude Social Darwinists, to the dismay of Spencer. See J.A. Rogers, 'Darwinism and Social Darwinism', *Journal of the History of Ideas*, 33:2 (1972), 265-8, 276-80.

[378] J.N. Moore, 'International Law and the United States' Role in Vietnam: A Reply', in R. Falk (ed.), *The Vietnam War and International Law* (Princeton: Princeton University Press, 1968), 431.

[379] Walzer, 'The Rights of Political Communities', 179.

[380] Ellis, 'Utilitarianism and International Ethics', 167.

fighting against foreign rule, (4) in a struggle against a foreign yoke, (5) in protracted civil wars and (6) subsumed under civil war, stopping 'severities repugnant to humanity'.

Mill subscribed to the nineteenth-century distinction between 'civilized' and 'barbarous' peoples and claimed that '[d]espotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement'.[381] According to Mill 'barbarians will not reciprocate. They cannot be depended on for observing any rules'[382] and 'it is likely to be for their benefit that they should be conquered and held in subjection by foreigners'.[383]

Mill like the great majority of his European contemporaries was an apologist of conquest and colonialism. He is an example of 'imperial liberalism'[384] or 'liberal imperialism'[385] and 'an undisputed spokesperson for British imperialism',[386] perhaps presenting 'the most well-known liberal justification of empire'.[387] However terms such as 'benign colonialism'[388] or 'tolerant imperialism'[389] are probably more appropriate for Mill. The reigning spirit of the time which included even liberals, such as his friends Tocqueville and Mazzini, was that civilized humanity had a moral duty to civilize the 'barbarians' and 'savages'. But Mill's civilizational mission was no sham. He often criticized the harsh colonial measures in India (or nearer at home, in Ireland) and was unsupportive of narrow British self-interests in India and elsewhere. In British India he advocated the participation of Indians at the highest levels of administration.[390] Mill was no racist or crypto-racist as were many of his contemporaries. For him cultural differences were not innate or genetic but a

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[381] Quoted in M. Tunick, 'Tolerant Imperialism: John Stuart Mill's Defense of British Rule in India', *The Review of Politics*, 68:4 (2006), 595.

[382] 'A Few Words', 167.

[383] *Ibid.*, 167.

[384] Pitts, *A Turn to Empire*, 126-52; Pitts, 'Boundaries of Victorian International Law', 76-8.

[385] S. Holmes, 'Making Sense of Liberal Imperialism', in N. Urbinati and A. Zakaras (eds), *J. S. Mill's Political Thought: A Bicentennial Reassessment* (Cambridge: Cambridge University Press, 2007), 319-346.

[386] Tunick, 'Tolerant Imperialism', 586.

[387] K. Mantena, 'The crisis of liberal imperialism', in Duncan Bell (ed.), *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought* (Cambridge: Cambridge University Press, 2007), 118. See also E.P. Sullivan, 'Liberalism and Imperialism: J.S. Mill's Defense of the British Empire', *Journal of the History of Ideas*, 44 (1983), 599, 605-17; U. Mehta, *Liberalism and Empire: A Study in Nineteeenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999), 47-77; K. Mantena, 'Mill and the Imperial Predicament', in Urbinati and Zakaras (ed.), J. S. Mill's *Political Thought*, 298-317; B. Jahn, 'Barbarian Thoughts: Imperialism in the Philosophy of John Stuart Mill', *Review of International Studies*, 31 (2005), 599-618.

[388] Doyle, 'A Few Words on Mill, Walzer, and Nonintervention', 356, 363-5.

[389] Tunick, 'Tolerant Imperialism', 586.

[390] Sullivan, 'Liberalism and Imperialism', 611; Levin, *J. S. Mill on Civilization and Barbarism*, 41.

result of upbringing and circumstances which could be remedied by education.[391] As he put it, 'of all vulgar modes of escaping from the consideration of the effect of social and moral influences … the most vulgar is that of attributing the diversities of conduct and character to inherent natural differences'.[392] Indeed Mill was criticized by the racists for not adhering to their views and for his part he was critical of his friend Thomas Carlyle, who claimed that 'Negroes' are born slaves while the 'white race' is 'wiser'.[393]

A second apparent exception to non-intervention is less clear. He states that '[a] civilized government cannot help having barbarous neighbours: when it has, it cannot always content itself with a defensive position, one of mere resistance to aggression'.[394] This opaque passage may be associated with 'legitimate self-defense' as an exception to non-intervention.[395]

A clear-cut third exception is previous counter-revolution against a struggle for freedom from foreign rule. As he puts it:[396]

> Intervention to enforce non-intervention is always rightful, always moral, if not always prudent … It might not have been right for England (even apart from the question of prudence) to have taken part with Hungary in its noble struggle against Austria; although the Austrian Government in Hungary was in some sense a foreign yoke. But when … the Russian despot interposed, and … delivered back the Hungarians, bound hand and foot, to their exasperated oppressors, it would have been an honourable and virtuous act on the part of England to have declared that this should not be, and that if Russia gave assistance to the wrong side, England would aid the right.

With this we arrive at another exception (the fourth), assistance to a national liberation movement. In the words of Mill: 'A people the most attached to freedom … may be unable to contend successfully for them against the military strength of another nation much more powerful. To assist a people thus kept down is not to disturb the balance of forces … but to redress that balance when it is already unfairly and violently disturbed'.[397] But, as we have

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[391] Sullivan, 'Liberalism and Imperialism ', 610; G. Varouxakis, 'John Stuart Mill on Race', *Utilitas*, 10:1 (1998), 18-32.
[392] Quoted in *ibid.*, 23.
[393] *Ibid.*, 22-3, 27.
[394] 'A Few Words', 167-8.
[395] Doyle, 'A Few Words on Mill, Walzer, and Nonintervention', 355.
[396] 'A Few Words', 176-7.
[397] *Ibid.*, 176.

seen, he hesitated when faced with the Hungarian uprising, probably out of prudence or other unnamed reasons.[398]

Here one is faced with a dilemma. If 'A Few Words' is to be regarded as his last and definite word on this question, then one is left with his hesitation and would agree with Michael Walzer's early reading of Mill: that the two go together, assistance to the secessionist movement cum counter-intervention;[399] or that assistance is only warranted or more warranted when counter-revolution by an external party has taken place?[400] Another option is to place intervention under protracted civil wars (the next exception). One need not prioritize 'A Few Words' as Mill's final word but take it together with 'Vindication'.[401] In 'Vindication' he calls for intervening in support of those fighting to prevent them 'from being crushed and trampled' by foreign conquerors.[402]

In 1865 (six year after the publication of *A Few Words*), when he was campaigning for elections and was asked about his views, he gave the clear impression that his supported intervention even without counter-intervention.[403] Mill's overall thrust regarding nationality and national self-determination[404] also implies intervening in support of independence movements. According to a famous passage in *Considerations on Representative Government* (1861): 'where the sentiment of nationality exists in any force, there is a *prima facie* case for uniting all the members of the nationality under the same government, and a government to themselves apart',[405] to which he adds that 'Free institutions are next to impossible in a country made up of different nationalities'.[406] For Mill (like Mazzini) multi-ethnic states are bound to be despotic. This was the very opposite of the position taken by Lord Acton, who believed that national states lead to absolutism and discrimination against minorities in their midst.[407]

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[398] See for this hesitation on the part of Mill: Walzer, *Just and Unjust Wars*, 93; Laberge, 'Humanitarian Intervention', 23; Varouxakis, 'John Stuart Mill on Intervention and Non-Intervention', 70-1.

[399] Walzer, *Just and Unjust Wars*, 90.

[400] G. Varouxakis, *Liberty Abroad: J. S. Mill and International Relations* (Oxford: Oxford University Press, 2013). 90.

[401] For the reference to passages from 'Vindication' regarding liberation movements, see Holbraad, *The Concert of Europe*, 164; and Varouxakis, 'John Stuart Mill on Intervention and Non-Intervention', 70-3.

[402] 'Vindication', 29.

[403] Varouxakis, *Liberty Abroad*, 97.

[404] See S. Grader, 'John Stuart Mill's Theory of Nationality: A Liberal Dilemma in the Field of International Relations', *Millennium: Journal of International Studies*, 14:2 (1985), 207-16; Georgios Varouxakis, *Mill on Nationality* (London: Routledge, 2002).

[405] Quoted in Grader, 'John Stuart Mill's Theory of Nationality', 210.

[406] Quoted in Brown, *International Relations Theory*, 73.

[407] Grader, 'John Stuart Mill's Theory of Nationality, 211.

It is also worth referring to what was understood at the time by the readers and commentators of 'A Few Words'. With hardly any exception all understood Mill to mean that intervention is exceptional and that one assists a liberation moment if another state has intervened to suppress its efforts. Mill at the time seemed content with this interpretation of his views and did not choose to repudiate it.[408]

The fifth exception, protracted civil war, includes within it a sixth factor as an exception, our subject matter: humanitarian intervention. According to Mill: [409]

> A case requiring consideration is that of a protracted civil war, in which the contending parties are so equally balanced that there is no probability of a speedy issue; or if there is, the victorious side cannot hope to keep down the vanquished but by *severities repugnant to humanity, and injurious to the permanent welfare of the country*. In this exceptional case it seems now to be an admitted doctrine, that the neighbouring nations, or one powerful neighbour with the acquiescence of the rest, are warranted in demanding that the contest shall cease, and a reconciliation take place on equitable terms of compromise [emphasis added].

Humanitarian reasons even though subsumed under civil war can be seen as one of the reasons for intervening. Seven out of the 15 authors that we have found addressing the question of exceptional intervention in Mill, include humanitarian intervention among his exceptions.[410] As for the non-intervention/intervention nexus, it would seem that in his two earlier works he was more in support of intervening. But by 1858, as an older and more prudent man, he had his doubts, thus his views come out as they do, perplexing and tentative. But perhaps it is better this way and shows the agonizing dilemma involved until this very day: a very convincing case against intervening can be made as well as an equally convincing case for intervening in humanitarian plights or internal wars.

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[408] See Varouxakis, *Liberty Abroad*, 92-4.
[409] 'A Few Words', 172.
[410] They include Miller, Holbraad, Vincent, Varouxakis, Prager, Doyle and Jahn. See: Miller, 'John Stuart Mill's Theory of International Relations', 505, 507, 510; Holbraad, *The Concert of Europe*, 164-6; Vincent, *Nonintervention and International Order*, 55-6; Varouxakis, 'John Stuart Mill on Intervention and Non-Intervention', 59-60, 68-75; Prager, 'Intervention and Empire', 629-30; Doyle, 'A Few Words on Mill, Walzer, and Nonintervention', 355-64; B. Jahn, 'Humanitarian Intervention – What's in a Name', *International Politics*, 49:1 (2012), 51-2.

Lecture 6.

Case studies of humanitarian intervention in the nineteenth century

The concept of humanitarian intervention (1830-today)

Today the concept of humanitarian intervention is defined as interference by a state, a coalition of states or international organization with the use of military force against a state in order to stop an internal war or an onslaught against unarmed citizens and other atrocities that shock the moral consciousness of humankind.

Some authors following the 'just war doctrine' of the Middle Ages and the Renaissance (see Lecture 2), regard the 'right motive' as essential for an intervention to qualify as humanitarian, namely that intervention is exclusively or mainly motivated by humanitarian and altruistic concerns, and not for political, strategic or economic gains and prestige. Pragmatists discard this purist view as unrealistic for it is highly unlikely and near to impossible for states to intervene (with all the costs involved) only to 'save strangers' or save strangers from slaughtering each other. They argue that instrumental motives can also be included or may even be preponderant, but what really counts at the end of the day are not motives as such and their genuineness but results: the allaying of the suffering and putting an end to the killings and atrocities. The test according to this approach is stopping the killing and a warm welcome following the intervention and gratitude by the people concerned that are saved from their tormentors.[411] This approach may sound compelling but it is doubtful whether a military intervention can qualify as humanitarian if its results are humanitarian but the motives or the official justification is are not or are a mere façade.

Some authors have made a distinction between 'motives' and 'intentions', pointing out that motives could be mixed or that instrumental motives could be preponderant but that, at the same time, intentions or the main intention could be to save lives.[412]

In my study of the history of humanitarian intervention I have followed a mixed approach as regards motivation as far as the nineteenth century is concerned. An intervention qualifies as humanitarian if part of the motivation is humanitarian; the humanitarian aspect is

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[411] See N. Wheeler, *Saving Strangers. Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).
[412] See in particular recent articles by Fernando Tesón. See e.g. F. R. Tesón, 'Humanitarian Intervention: Loose Ends', *Journal of Military Ethics*, 10:3 (2011), 200-6.

one of the official justifications put forward by the intervening party or parties; and the intervention in question succeeds in stopping the bloodshed and suffering.

Four other issues that have surfaced in the discussion on the meaning of the term humanitarian intervention are the following: (1) the question of lack of acquiescence by the incumbent government (the state where intervention takes place), (2) saving 'strangers' and not saving one's own citizens abroad from maltreatment, and (3) lack of authorization by the Security Council today or by the Concert of Europe in the nineteenth century.

As regard '1', the dominant view is that there should be a lack of consent by the state concerned, which is the very opposite of the classical concept of UN peacekeeping and humanitarian assistance or intervention along the ICRC (International Committee of the Red Cross) model, which regards official state consent as a *sine qua non* for humanitarian involvement. Others would also include reluctant acceptance by the state in question, acquiescence as a result of arm-twisting by the international community (the UN today, the Concert of Europe yesterday), as seen in 1999 in the case of East Timor, where Indonesia reluctantly conceded to the arrival of Australian-led forces as peacekeepers under a UN mandate and in the nineteenth century the reluctant acceptance by the Ottoman Empire of a French expeditionary force under a Concert of Europe (great power) mandate in the ethnic violence in Lebanon and Syria (1860-1861). But what about the Bosnian experience model, where there was an official request from the central government of Bosnia-Herzegovina (the call for aid came in 1992)? This case would normally not qualify as humanitarian, given the official request for military support (military intervention in support of the official government). However most authors have included it among humanitarian interventions, perhaps because the results and the motives were overwhelmingly humanitarian and moreover the Bosnian government was not a normal government of a state for it represented only one of the ethnic groups of the country at the time.

As regards '2' saving one's own citizens abroad they were seen as acceptable interventions in the nineteenth century onwards (though with certain qualifications, such as strict proportionality as regards violent means) but not as humanitarian intervention per se. In humanitarian interventions it is foreigners that are saved not 'our' citizens residing abroad. A case in point was the eight-state international military intervention in the Boxer uprising in China in 1900 to save British, French, German, Americans and other Westerners from the attacks by the Boxers backed by reactionary Chinese officials.

Regarding '3' (non-authorization) which some authors regard as necessary so as to call an intervention 'humanitarian', we regard this far-fetched and we see no reason why the UN Security Council (or the General Assembly under the 1950 'United for Peace' resolution)

could not authorize a humanitarian intervention, as seen in the case of Somalia, too late in the case of Rwanda and in the nick of time in the case of East Timor and Libya.

As regards *armed* (military) humanitarian interventions in nineteenth century state practice it includes, according to our definition, four criteria (all four necessary and sufficient): (1) governmental onslaught against unarmed people that shock the moral consciousness of humankind and/or atrocities by both sides in a violent internal conflict; (2) humanitarian concern (to stop the 'effusion of blood') as one of the reasons and justifications for intervening; (3) military intervention, ranging from peace-keeping (as we now call it) to hostilities or a full-scale war; and (4) intervention opposed by the incumbent government or reluctantly condoned.

On the basis of these five criteria, three cases in the nineteenth century were identified and will be presented in brief: The Greeks (1821-1932), Lebanon-Syria (1860-1861) and the Bulgarians (1876-1878).[413] A fourth more controversial case that will not be presented here is the US intervention in Cuba in 1898.[414]

The case of Crete which appears in some lists (see *Table I*), in 1866-68 and again in 1896-98, will not be included. 1866-68 witnessed exaggerated reports of massacres on the part of the Ottomans in Crete, while in fact they were restrained, so as not to permit foreign intervention on humanitarian grounds. What occurred was a revolt by the Christian Cretans aimed at union with Greece, with aid from Greece, a union diplomatically supported only by Russia. The great powers' intervention was limited to the sending of warships which gathered fleeing Christian and transported them to Greece. As for 1896-98, the six European powers were urged by the Porte not to permit Greek aid to the Cretan uprising and the powers actually intervened as peace-keepers on behalf of the Ottomans.[415]

Humanitarian reasons have also been referred to by some commentators (see *Table I*) with regard to the outbreak of the First Balkan War. In fact the official justifications at the time were bogus. The aim of the coordinated attacks by Greece, Bulgaria, Serbia and Montenegro was to annex as much as Macedonia as they could muster, a process which had

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[413] For the bibliography of the case studies that will be examined in the next three sub-chapters, see A. Heraclides and A. Dialla, *Humanitarian Intervention in the Long Nineteenth Century: Setting the Precedent* (Manchester: Manchester University Press, forthcoming 2015), part 2.
[414] For the case of US and Cuba, see Heraclides and Dialla, *Humanitarian Intervention in the Long Nineteenth Century*.

[415] D. Rodogno, *Against Massacre: Humanitarian Intervention in the Ottoman Empire, 1815-1914. The Emergence of a European Concept and International Practice* (Princeton and Oxford: Princeton University Press, 2012), 118-40, 212-28.

began since the 1890s with guerrilla warfare by Greek and Bulgarian volunteers. Moreover in the course of the 1912 war Greece, Bulgaria and Serbia acted in a manner that has hardly humanitarian, committing a series of atrocities against the Muslim inhabitants.[416]

Table I: Lists of instances of humanitarian intervention, 1820-1914

Rougier 1910[417]

Interventions or threats of intervention:

1. Greek war of independence (1827-30)
2. Syria (1860-61)
3. Crete (1866, 1897)
4. Russian intervention after Bulgarian atrocities (1878)
5. Armenians in Ottoman Empire (1896)
6. US intervention in Cuba (1898)
7. Macedonia in Ottoman Empire (1905)

Representations:

1. Britain, France on ill-treatment of political prisoners in Two Sicilies (1856)
2. Britain, Austria, France on cruel treatment of Jews in Rumania (1902)
3. US on Kitchineff anti-Semitic episodes (1902)
4. Rumania against Greece and Ottoman Empire on fate of Koutzo-Valaques (1905)
5. France, Britain and others on torture in Morocco (1909)

Stowell 1921[418]

Use of force:

1. Greek war of independence, 1827-30
2. Lebanon/Syria, 1860-61
3. Russian intervention after Bulgarian atrocities, 1878
4. US intervention in Cuba, 1898

Representations:

5. France on the treatment of Jews in Switzerland (1851-52)
6. Britain, France on ill-treatment of political prisoners in Naples (1857).
7. Britain, France, Austria-Hungary on ill-treatment of Poles in Russia (1863)
8. US, Britain, France on treatment of Jews in Rumania (1867-72, 1902)
9. US, Britain, France on treatment of Jews in Russia (1880-82, 1903, 1911)
10. US, Britain on slavery and oppression in Belgian Congo (1905-8)
11. US, Britain on treatment of aboriginals in Peru (1907-13)
12. France, Britain and other European states regarding torture in Morocco (1909)
13. US regarding Armenian horrors in Ottoman Empire (1915)

Mandelstam 1925[419]

1. Greek War of Independence (1827-29)
2. France, Britain in Kingdom of Two Sicilies (1857)
3. Lebanon (1860-61)
4. Russia, Austria, Britain, France in Crete (1867)
5. Russia in Bulgarian insurrection (1876-78)
6. Armenians in Ottoman Empire (1895)

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[416] D. Dakin, *The Greek Struggle in Macedonia, 1897-1913* (Thessaloniki: Institute of Balkan Studies, 1966); Carnegie Endowment for International Peace (1914), *Report of the International Commission to Inquire into the Causes and Conduct of the Balkan War*.

[417] Rougier, 'La théorie de l'intervention d'humanité', 469-70.

[418] Stowell, *Intervention in International Law*, 63-316

[419] Mandelstam, 'La protection des minorités', 374-9.

7. US in Cuba (1898)
8. Russia, Britain, France, Italy in Crete (1899)
9. Macedonia (1903)
10. Jews in Rumania (1902)
11. Jews in Russia's Kichineff (1902)

Ganji 1962[420]

1. Greek war of independence
2. 1866-1868: Crete (demands of Austria, France, Italy, Prussia and Russia for persecuted Christians of Crete)
3. Bulgarian massacres
4. 1903-8: Insurrection and misrule in Ottoman Macedonia (Austria, France, Italy, Britain, Russia)
5. 1912: Greece, Serbia, Montenegro and Bulgaria against misrule in Ottoman Macedonia

Fonteyne 1973-74[421]

1. Intervention in Greece (1827-30)
2. Intervention in Syria (1860-61)
3. Intervention in the island of Crete (1866-68)
4. Intervention in Bosnia, Herzegovina, and Bulgaria (1876-78)
5. Intervention in Macedonia (1903-8)
6. Intervention in Macedonia by Greece, Serbia, Bulgaria and Montenegro (1912-13)

Behuniak 1978[422]

1. Greek intervention
2. Syrian interventions
3. Intervention in Bosnia, Herzegovina and Bulgaria
4. Macedonian intervention (1893 by Austria-Hungary and Russia)
5. Macedonian intervention (1912, Greece, Bulgaria and Serbia war against the Porte)
6. U.S. intervention in Cuba

Bazyler 1987[423]

1. Christian Greeks, 1827-30
2. Christians in Syria, 1860-61
3. Crete, 1866
4. Bosnia, Herzegovina and Bulgaria, 1877-78
5. Christians in Macedonia
6. Cuba, 1878

Malanczuk 1993[424]

1. Greeks (1827-30)
2. Lebanon (1860-61)
3. Bosnia (1875)
4. Macedonia (1887)
5. Cuba (1898)

Finnemore 1996[425]

1. Greek war of independence
2. Massacres in Lebanon

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[420] M. Ganji, *International Protection of Human Rights* (Geneva: Librairie E. Droz,1962), 26-37.

[421] Fonteyne, 'The Customary International Law Doctrine of Humanitarian Intervention', 207-13.

[422] Behuniak, 'The Law of Unilateral Humanitarian Intervention by Armed Force', 160-3.

[423] Bazyler, 'Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia', 582-83.

[424] Malancjuk, *Humanitarian Intervention and the Legitimacy of the Use of Force*, 8.

[425] M. Finnemore, 'Constructing Norms of Humanitarian Intervention', in P.J. Katzenstein (ed.), *The Culture of National Security* (New York: Columbia University Press, 1996), 161-8.

3. Bulgarian massacres (Russia)
4. Armenian massacres (diplomatic pressure by Britain and France) (1894-96)

Abiew 1999[426]

1. France, Britain and Russia in Greece (1827-1830)
2. France and other powers in Lebanon/Syria (1860-61)
3. European power with regard to Crete (1864)
4. Russian intervention in Bosnia, Herzegovina and Bulgaria (1877)
5. U.S. intervention in Cuba (1898)
6. Austria-Hungary and Russia demands to Sultan regarding Christian Macedonian population (1903)
7. Greece, Bulgaria and Serbia armed intervention in Macedonia (1912)

Grewe 2000[427]

1. Greek-Turkish conflict (1827)
2. Britain and France in Kingdom of Two Sicilies (1856)
3. Five powers in Syria (1860)
4. Polish uprising (1863)
5. Crete (1866)
6. Bosnia (1875)
7. Bulgaria (1877)
8. Bosnia (1887)
9. The Jews in Rumania (1867, 1872, 1902)
10. Jews in Russia
11. Congo (1906, 1909)
12. In the Amazon against Peru (1912-13)

Knudsen 2009[428]

Threat or use of force:

1. Greek war of independence (1827-30)
2. Lebanon (1860-61)
3. Crete (1866-1868)
4. Balkans (1875-78)
5. Cuba (1898)
6. Macedonia (1903-8)

Others (mainly protests):

1. British and French blockade of Naples (1857)
2. U.S. regarding Jews of Russia (1880-82, 1903, 1911)
3. U.S. regarding Jews of and Rumania (1867-72, 1902)
4. European powers regarding torture in Morocco (1909)
5. U.S and British protests regarding slavery and oppression in Belgian Congo (1905-8)
6. U.S and British protests against atrocious treatment of aboriginals in Peru (1907-13)

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[426] Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, 48-55.
[427] Grewe, *The Epochs of International Law*, 491-3.
[428] T.B. Knudsen, 'The History of Humanitarian Intervention: The Rule or the Exception?', 50th ISA Annual Convention, New York (15-18 February 2009), 14-30.

Intervention in the Greek War of Independence (1821-1830)

The intervention of Britain, Russia and France in the Greek War of Independence is generally regarded as the first ever armed humanitarian intervention (see *Table I*).

The Greek uprising started in February-March 1821. In 1824, with the Greeks in control of the territory south of Thessaly, the Ottoman Sultan, Mahmud II, summoned the governor of Egypt, Mehmed Ali, to quell the revolt. In 1825 Mehmed Ali sent a force under his son Ibrahim, whose ferocious onslaught led to the defeat of the Greeks in 1825-1827, leaving only some pockets of resistance intact. In all probability this would have been the end of the Greek independence bid.

What made the difference in this case was that the Greek uprising had become a *cause célèbre*, giving rise to an impressive wave of what came to be known as *Philhellenism.* The European and American public were appalled by the initial over-reaction of Mahmud: in 1821, the slaughtering of thousands of Orthodox Christians by the Ottoman mob, the hanging of the venerable Patriarch Gregorios V (held responsible for the rebellion of his flock although he was obviously innocent) and the selective killing of prominent Greeks in Constantinople; and in 1822, the massacre of thousands of Greeks in the affluent island of Chios.

Solidarity and identification run deep for the insurgents were also seen as descendants of the illustrious Greeks of antiquity at a time when Europe was under the spell of classicism. For the Russians religious affinity was also a major motive. Moreover many Greeks were very much present in Russia, in commerce as well in the army and administration, a case in point being the co-foreign minister of Russia, Ioannis Capodistrias, and acted as a pressure group for Russian military intervention to save the Greeks.

Over a thousand volunteers (*Philhellenes*) came to assist the Greeks in their struggle, including a great celebrity, Lord Byron, who met his death on Greek soil in April 1824 during the Ottoman siege of Messolonghi (the poet's death had the effect of reinvigorating European interest in the Greek struggle, which had started to wane). There was strong public pressure from elite circles in Britain (Byron, Shelley, Bentham, Ricardo), Russia (Pushkin), France (Chateaubriand, Hugo and Delacroix with his two huge paintings of suffering Greeks), the Italian states, Switzerland, Sweden, and elsewhere in Europe and in the United States (former presidents Jefferson and Adams) to come to the support of the beleaguered Greeks.

The newly-hatched Congress System of the five great powers was poised to protect sovereigns against insurrections. Fortunately for the Greeks, the strong preference of Austrian

chancellor Metternich for resolute great power action against revolutionaries was unacceptable to Britain. Thus at the Congress at Verona (the 4th meeting of the Congress system held in October 1822) Britain left the meeting and went as far as withdrawing from the Congress system. A few years later the Congress system collapsed, when France also distanced itself from interventionism against uprisings, and it was replaced by the less intrusive Concert of Europe. But by then Greece had achieved its independence.

In the first five years of the Greek struggle both Britain, under Castlereagh as foreign secretary, and Russia under Tsar Alexander I, were adverse to any form of interference, in the interests of the balance of power and legality, not unlike the arch-enemy of revolutions, Metternich. But the plight of the Greeks, especially in 1825-27 at the hands of Ibrahim's forces proved catalytic, including reports (unfounded as it turned out) that Ibrahim was under instructions from the Sublime Porte to depopulate Peloponnese and re-people it with *fellaheen* from Egypt. Thus as one authority on the Eastern Question has put it, the Greeks 'were to be rescued, though in an unplanned and even reluctant way, by the great powers'.

In 1826 the new tsar, Nicholas I, called for joint great power involvement, threatening unilateral action. Previously Canning had recognised the Greeks as belligerents (in March 1823) mainly in the interests of British navigation and commerce, so as to hold the Greeks accountable for piracy. As the Greek war persisted, Britain could not afford to stand by and witness Russia reinforcing its position in the Balkans and appearing as the saviour of the Greeks. Wellington was sent to St. Petersburg in earnest and an Anglo-Russian protocol (4 April 1826) was signed authorising Britain to mediate in the conflict with the aim to create a Greek vassal-state of the Ottoman Empire. A year later France (Charles X) also came on board and the Treaty of London was signed (6 July 1827), which was similar to the protocol, but was equipped with a secret clause that did not preclude the use of force if the two parties to the conflict (or one of them) did not comply. The Greeks, now under the astute Capodistrias (as president), accepted the armistice while Mahmud made the fatal mistake of rejecting it.

On 20 October 1927 the joint naval squadrons of Britain, France and Russia destroyed the entire Ottoman-Egyptian fleet at the famous naval battle of Navarino in southern Peloponnese. This was followed by the landing of a French contingent in Peloponnese that ensured the evacuation of Ibrahim's forces and a Russian attack against the Ottoman Empire (April 1828), with the Russian army entering Edirne by the next year (though strictly speaking Russia's aggression was not triggered by the Greek plight). The reluctant Sultan was made to accept autonomy for Greece (Edirne Treaty, 14 September

1829). A few months later (3 February 1830) Britain, France and Russia recognised Greece as an independent state, though smaller than originally envisaged under the autonomy-vassal state scheme.

Now as to the official motives for intervention they were defined in the 1927 Treaty of London, as 'sentiments of humanity', namely to end 'the sanguinary struggle' and stop 'the effusion of blood'; 'the tranquillity of Europe'; and commercial and other interests. Undoubtedly geostrategic concerns and balance of power consideration were also crucial in tipping the balance for intervention.

Clearly had it not been for the humanitarian plight and the identification with the fighting Greeks among the educated publics, none of the three great powers would have contemplated intervening, as seen by their initial reluctance to meddle in the conflict since no vital national interests were at stake.

The Greek case, apart from being regarded as the first case of humanitarian intervention, providing the springboard for the emergence of the new concept, has a bearing on the evolution of international norms and rules of conduct in instances of humanitarian plights in a number of ways:

First is the exceptional overruling of the major principles f sovereignty and non-intervention in instances of 'effusion of blood' that shake the moral consciousness of humankind.

Second is the multilateral character of the intervention, in this case an 'alliance of the willing', of three of the five powers.

Third in this first case one sees most of the repertoire of international involvement on humanitarian grounds: consultation of the powers, peremptory demands to the guilty state (to halt barbarities and distinguish between guilty and innocent), formal great power agreements, calls for a cease-fire, mediation attempts, peace conference, an important battle, a peace-keeping force and at the end an all-out war by one of the powers condoned by the rest.

Fourth is the reticence or hostility of the powers on instrumental *Realpolitik* grounds, and when the need for intervention gains ground, a mixture of humanitarian and instrumental motives.

Fifth it is a clear manifestation of the civilized-barbarians binary that was to dominate the scene until 1914, the 'civilized Christians' as opposed to the Muslim 'barbarian other', prone to slaughters and atrocities. The massacres of Muslims were swept under the carpet as if the Muslim victims of the Christians were less human.

Last but not least is the role played by civil society across Europe and in the United States in spurring intervention on humanitarian and other ethical grounds, in this case of members of the elite, politicians, thinkers, writers, poets and artists (including celebrities) which was unprecedented and a sign of things to come.

Intervention in the Lebanon/Syria massacres (1860-1861)

Ethnic strife between the Maronites and the Druzes was a recurring phenomenon in Syria's Mount Lebanon under Ottoman rule. In May 1860 as the Maronites were poised to attack the Druzes and started doing so, the Druzes retaliated ferociously by burning villages, sacking churches and monasteries and massacring as many as 15, 000 Christians (not even the Greek Orthodox were spared who were in good terms with the Druzes), in what was the bloodiest clash in the history of sectarian violence in Lebanon. The Ottoman authorities were ineffective in protecting the Maronites and apparently unwilling to fight fellow-Muslims to protect Christians. The atrocities continued, culminating in a massacre in Damascus (9-11 July 1860) of about 5,000 Christians. Public opinion in Europe was appalled and France (Napoleon III and the French foreign minister, de Thouvenel) called for great power intervention. Austria and Russia agreed, but Britain (Palmerston and foreign minister Russell) had cold feet for it was fearful of the French motives.

But not much later, a great power meeting was convened in Paris (26 July 1860), with the participation of the Ottoman Empire (the Ottoman ambassador's instructions were to stall and try to divide the five powers, but to give in if the five were united). The six powers signed a Protocol (3 August 1860) agreeing to send troops of 12,000 men for six months, 6,000 of which were to be French. The other four great powers send commissioners but and token warships but no ground forces.

Prior to the signing of the Paris Protocol, Sultan Abdulmecid send his foreign minister, Fuad Pasha (in mid-July 1960), a reformist and Western-leaning modernizer, with troops and emergency powers to deal with the situation and give few pretexts for great power meddling in the Empire's affairs. Indeed Fuad was able to re-established order prior to the landing of the French troops that arrived on the scene in mid-August. Fuad punished hundreds

of culprits by death, including senior Ottoman officials. Before the ending of the intervention, a new system of autonomy for Mount Lebanon was set up by the five great powers and the Ottoman state (Beyoglu Protocol, 9 June 1861), which was known in the region as Governorate (*Mustasarrifiyya*). All the religious groups participated, but the Maronites had greater clout, followed by the Druzes. The Governorate was headed by a Christian governor from outside Mount Lebanon, who could not be altered without the consent of the five great powers. In effect Mount Lebanon though part of the Ottoman Empire was placed under the collective tutelage of the great powers.

The verdict regarding this instance of intervention is very positive, to such an extent that even Ian Brownlie (a legal authority well-known for his hostility to humanitarian intervention) has asserted that: 'No genuine case of humanitarian intervention has occurred [in the 19th century] with the possible exception of the occupation of Syria in 1860 and 1861'.[429] But others argue that the fact that the Ottomans were not adverse to the operation and Fuad had the situation under control before the arrival of the French force makes the whole operation suspect.

As to motives, humanitarian considerations were important, notably for the French, and, as stated in the Paris Protocol, the action did not involve strategic or other political ambitious on the part of the intervening states. But instrumental motives were hardly non-existent in the French case, namely to enhance France's international stature in the region at the expense of British influence and indicate its special interest for Syria from a colonial standpoint.

Be this as it may, there was 'relative disinterestedness' by the five parties and their humanitarian concern seems 'genuine'.[430] As for France, as Gary J. Bass points out, it based its whole comportment on treaty obligations (the Paris Protocol); it worked alongside Fuad's mission; 'forswore any imperial or commercial gains from its mission'; participated unreservedly in the work of the international commission set up in Lebanon, 'allowed the Concert to dictate the parameters of the expedition; and accepted European restrictions on the size and duration of the French occupation'.[431] And the outcome in Lebanon/Syria was almost idyllic. Apart from a brief strife in the mid-1860s, the 1861 Lebanese settlement proved

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[429] I. Brownlie, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963), 340; see also S. Kloepfer, 'The Syrian Crisis, 1860-61: A Case Study in Classic Humanitarian Intervention', *Canadian Yearbook of International Law*, 23 (1985), 246-58.

[430] S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 33.

[431] Bass, *Freedom's Battle*, 231.

resilient, with the region enjoying peace until the First World War, in what came to be known as 'the long peace' in Mount Lebanon.

In the Lebanon-Syria case one sees several elements that appeared in the Greek case (Christian humanitarian plight, mixture of motives, multilateral character, agreements, self-denying clause, peace-keeping force, calls to end hostilities, role of public opinion). The new features with a bearing on the evolution of humanitarian intervention are the following: (1) co-optation of the state on whose territory the outrages had taken place, (2) an overseeing committee comprised of commissioners of all the great powers, and (3) the setting up of a new political-administrative arrangement which placed a region of a state under the collective tutelage of the great powers limiting control over its sovereign territory.

Intervention in the Bulgarian atrocities (1876-1878)

The involvement prompted by the Bulgarian atrocities was part of a wider great power reaction to uprisings in Herzegovina and Bosnia (July-August 1875) and the autonomous regions of Serbia and Montenegro (June 1876).

In the wake of the uprisings in Herzegovina and Bosnia, Germany, Russia and Austria-Hungary signed a Memorandum in Berlin (13 May 1876) that called for reforms in the two regions, food for the refugees and the reconstructing of houses and churches. Italy and France supported the Memorandum, but Britain under Prime Minister Disreali, kept its distance. British detachment emboldened the Porte not to acquiesce.

The Serbian revolt produced a wave of support in Russian society led by the 'Slavophiles', the champions of pan-Slavism (the union of all the Slavs under Russian aegis). In fact a Slavophile, the Russian ambassador in Istanbul, Ignatiev, had on his own urged the Serbs to revolt. Hundreds of military left the Russian army to come as volunteers to support the Serbs and the Serbian forces ended up being headed by a former Russian major general, much to the dismay of Tsar Alexander II. But the Serbian revolt failed and thus the Russian Slavophiles turned their attention to the Bulgarians.

The Bulgarians had revolted before the Serbs in a haphazard manner (in April 1876), killing a number of unarmed Muslims, among them about a hundred Ottoman officials. The Porte reacted by sending *bashibazouk* (irregular) troops, who left a trail of mayhem, in what came to be known as the 'Bulgarian atrocities'. The overall number slain were 12,000 to 20,000, with 60 villages in ashes.

The British government's initial aloofness was due to the fact that news of the atrocities had not reached the British Isles and was downplayed by the pro-Ottoman British ambassador in Constantinople. But when the British press reported them (in August 1876) they created a stir, with public opinion calling for intervention. Disraeli, a staunch supporter of the balance of power and of the integrity of the Ottoman Empire, tried to convince Parliament and Queen Victoria (who was also disturbed by the reports) that the events were exaggerated by the irresponsible press and that both sides had committed horrors. In Britain the wide-spread sentiment covered a far wider spectrum of opinion than in the Greek case. The former premier, the liberal Gladstone, abandoned retirement and joined the fray, with fiery speeches in Parliament and all over the country, and with his blistering pamphlet *The Bulgarian Horrors and the Question of the East*, which sold more than 200,000 copies within a month. Thus Disraeli's support of the Ottoman Empire became increasingly untenable.

In Russia Alexander II was under strong pressure from the Slavophiles, headed in the administration by Ignatiev, to assist the beleaguered Bulgarians. The Tsar and his foreign minister Gorchakov, who strongly disliked the Slavophiles, tried to defuse the crisis diplomatically, through joint great power involvement. In July 1876 Gorchakov reached an agreement with Andrassy, the Austro-Hungarian foreign minister, for neither side to meddle in the Balkan conflicts.

In November 1876 Britain called for a great power conference in Constantinople to deal with the Balkan crisis. At the conference an initial agreement was reached between the British delegation, headed by Lord Salisbury (soon to become foreign secretary) and the Russian delegation, headed by the Russian ambassador to the Porte, count Ignatiev, that Serbia and Montenegro was to gain some territories, while Bulgaria was to become autonomous, but upon Salisbury's insistence, divided into two parts.

The conference broke down (20 January 1877) due to developments in the Ottoman state. A Constitution was promulgated, elections were held (January-March 1877) and the first Ottoman parliament emerged, where all major communities were represented, making the measures suggested by the powers seemingly irrelevant. But when the conference ended its work inconclusively, the new sultan, Abdulhamid II, sacked grand vizier Midhat, the architect of liberalization process (5 February 1877), though the Ottoman parliament was allowed to function for some ten months.

In Russia the outburst in support of the Bulgarians was such that a war with the Ottomans seemed a safer bet than doing nothing and facing uproar at home, as the Slavophiles, including the great novelist (and Slavophile) Dostoevsky, called, in grandiose

terms, for immediate action on pan-Slavic grounds, indeed to march onto the Straits and capture Constantinople.

Thus Russia started paving the way for intervention by first reaching an agreement with Austria-Hungary that in the event of a Russo-Ottoman war, Vienna would observe benevolent neutrality and would avail itself of Bosnia-Herzegovina. Ignatiev was sent to the capitals of the other great powers in a last ditch attempt at a united front. His efforts led to the singing of a five power protocol in London (31 March 1877) (a watered-down version of what the Russians had in mind) that called on the Ottomans to introduce reforms. Abdulhamid rejected the protocol and Russia reacted by declaring war (24 April 1877), invoking its role as protector of the Christian populations of the Ottoman Empire. Russia justified its attack on the Porte's intransigence and inability to guarantee the safety of its Christian subjects, stressing that it had no intention of dismembering the Ottoman Empire or capturing its capital.

After a devastating war for both opponents, the Russians were able to subdue their valiant adversary (January 1878). On 3 March 1878, Ignatiev made the Porte sign the Treaty of San Stefano that envisaged a large autonomous (though not independent) Bulgaria, with a considerable Aegean coastline. But the other great powers could have none of it, notably Britain and Austria-Hungary, and Russia chose to be accommodating. In the Berlin Conference (June-July 1878) that was chaired by Chancellor Bismarck, it was agreed that Rumania, Serbia and Montenegro were to become independent states, with some additions to their territories. The Bulgarian region was divided into two parts (as understood in the Istanbul conference): a vassal state of Bulgaria with Sofia as its capital; and an autonomous Eastern Rumelia. Russia's occupation of the two regions was to end within nine months of the exchange of ratifications of the Berlin Treaty.

As we have seen, the final use of armed force was unilateral, but otherwise involvement in the internal affairs of the Ottoman Empire had been collective (Berlin Memorandum, Constantinople Conference, London Protocol, Treaty of Berlin). As in the Greek and Lebanese cases, the great powers, including Russia, would not have intervened had it not been for the humanitarian plight (for the Russians the plight of fellow-Slavs). The initial reaction of Britain and Russia was that intervention was against their interests. Public opinion played a decisive role in Britain and Russia, as never before in any humanitarian plight, due to the new power of the press and public opinion, in the first case restraining Disraeli from supporting the Porte and in the latter urging the reluctant Imperial Government to confront the Ottomans in the battlefield.

As for the main player, Imperial Russia, contrary to the views of Russophobes in Europe at the time, it was not in the throes of pan-Slavism, keen to be given the opportunity to take over as much territory as possible in the Balkans. On the other hand the intervention and the ephemeral San Stefano treaty is the highest point of pan-Slavic influence on Russian foreign policy, but an exceptional one at that. The highest echelons of power in Russia did not view developments through Slavophile lenses. They perceived the insurgent Slavic peoples of the Balkans as atheists, as "the worst rebels", and were fearful that the uprisings would send shock waves within Russia itself.

In the Bulgarian case one sees a similar pattern with the previous two cases (saving Christians, great power consultations, conferences in Constantinople and London, agreements and so on). The main new features in dealing with humanitarian plight, are the following: final whole-sale military intervention (war), unilateral this time, but with benevolent neutrality by the other great powers, save Britain; the far greater role of the press and public opinion, especially in Britain in Russia, in the former case putting a lid on the British government's pro-Ottoman behaviour and in the latter spurring intervention; and a final high level peace conference, the Congress of Berlin which drastically altered the situation in the Balkans (new borders, new independent state and new tributary states) and also addressed the well-being of religious minorities in the Ottoman Empire.

On the down-side four problems arose in this case: (a) deviation from previous agreements by one great power (Russia in San Stefano), (b) a real danger of war between two great powers, (c) bitter internal split of one great power, Britain, over the question and (d) the aggressive stance of many influential Russians based on pan-nationalist grounds, namely pan-Slavism triggered by the humanitarian plight.

Lecture 7.

Humanitarian intervention today

From the seventeenth century until today one can distinguish five phases regarding intervening or not intervening on humanitarian grounds:

1. 1600-1800: interference short of military intervention by European states for reasons of religious persecution.

2. 1800-1914: the heyday of humanitarian intervention though mainly (with the exception of the U.S. and Cuba in 1898) as a prerogative of the great powers against the Ottoman Empire.

3. Inter-war, 1918-1939: doctrinal debate with great preponderance of the advocates of humanitarian intervention.

4. Cold War, 1945-1989: humanitarian intervention rejected by states and at the UN level.

5. Post-Cold War: several instances of intervention most of them authorized by the UN, the humanitarian intervention debate and the new concept of 'Responsibility to Protect'.

Humanitarian Intervention during the Cold War

During the Cold War humanitarian intervention was beyond the pale, although a minority of international lawyers was supportive of armed intervention on humanitarian grounds.[432] Some states, notably the U.S., in the cases of the Dominican Republic (1965) and Grenada (1983), Belgium with Congo-Leopoldville (1960-1961), Belgium and the U.S. in Congo-Leopoldville (1964) or France in the Central African Republic (1979), had justified their actions on humanitarian grounds. But the near-consensus is that only three military interventions qualify as humanitarian given their result, putting an end to widespread loss of life: India's intervention in East Pakistan (1971) (a carnage of hundreds of thousands of civilians dead with almost nine millions refugees into India) which led to the creation of Bangladesh; Vietnam's overthrow of the heinous Khmer Rouge regime of Pol Pot in Cambodia (1979) (with up to two million civilian deaths mainly from disease and malnutrition in forced labour camps); and the overthrow of Amin's odious regime in Uganda (with 300,000 citizens

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[432] They included major older generation figures such as Lauterpacht, Guggenheim, de Visscher, Reisman, McDougal and Jessup, as well as Lillich, D'Amato, Moore, Chilstrom, Levitin, Umozurike, Sornarajah and Tesón.

murdered by Amin's thugs) by Tanzania (1979). Interestingly, all three intervening states did not justify their action on humanitarian grounds (with the partial exception of India[433]) but on grounds of self-defense and all three intervened mainly for instrumental reasons, especially Vietnam. The first two interventions faced heavy wind internationally, notably in the UN (especially the Vietnam invasion) even though they had saved lives.[434]

Thus strange as it may seem, during the Cold War the self-defined humanitarian interventions are not accepted as humanitarian, while the three which justified their intervention on other grounds are regarded humanitarian, in view of the outcome, saving human beings.

I would add a fourth case among Cold War humanitarian interventions, Biafra (Nigeria's Eastern Region, May 1966-January 1970), where no military intervention took place but the tangible aid given (arms, economic aid, sanctuary, training, etc.) was motivated by humanitarian concerns and the belief that the Biafrans (mainly the Ibos) had a sound case for self-determination, as seen in the case of the involvements of Tanzania, Ivory Coast, Gabon and Zambia, and partly France. Biafra had become a humanitarian *cause célèbre* and as a result an impressive airborne operation was undertaken by four NGO operations, INALWA (International Airlift West Africa), operated by the ICRC and forty national Red Cross societies, Joint Church Aid (JCA) comprised of six relief agencies and two independent operations.[435]

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[433] Akehurst has claimed that the Indian mention of humanitarian reasons at the Security Council was deleted from the official records. See M. Akehurst, 'Humanitarian Intervention', in H. Bull (ed.), *Intervention in World Politics* (Oxford: Clarendon Press, 1984), 96. In fact the Indian ambassador's utterance was not deleted from the records. See N. J. Wheeler, *Saving Strangers. Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 64 fn.43.

[434] M. Leifer, 'Vietnam's Intervention in Kampuchea: The Rights of States versus the Rights of People', in I. Forbes and M. Hoffman (eds), *Political Theory, International Relations, and the Ethics of Intervention* (Basingstoke: Macmillan, 1993), 145-56; F. Hassan, '*Realpolitik* in International Law: After Tanzanian-Ugandan Conflict, "Humanitarian Intervention" Reexamined', *Willamette Law Review*, 17 (1981), 897; Wheeler, *Saving Strangers*, 65-71, 80--106; Akehurst, 'Humanitarian Intervention', 95-99; S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 71-4, 77-80.

[435] L.S. Wiseberg, 'Humanitarian Intervention: Lessons from the Nigerian Civil War', *Human Rights Journal*, 7:1 (1974), 61-98; T. Hentsch, *Face au blocus: La Croix-Rouge internationale dans le Nigérie en guerre* (Geneva: Institut universitaire des hautes études internationales, 1973); A. Heraclides, *The Self-Determination of Minorities in International Politics* (London: Frank Cass, 1991), 95-105.

Humanitarian interventions during the Post-Cold War period

With the advent of the Post-Cold War era, there were eight cases of humanitarian intervention in the 1990s, and two in the 2010s: Kurds of northern Iraq (1991), Somalia (1992), ECOWAS's intervention in Liberia (1990-1996), Bosnia (1992-1995), possibly the U.S.-led intervention in Haiti (1994), Rwanda (belatedly in 1994), NATO's intervention in Kosovo and Serbia (1999), East Timor (1999), Libya (2011) and the Central African Republic (2013-2014).

In Rwanda the effective intervention by French troops under a UN mandate came very late, following a three-month period of genocidal killings by extremist Hutus of up to 800,000 Tutsis and hundreds of moderate Hutus.[436] The peacemaking intervention of ECOWAS (a regional organisation comprising of sixteen Western African states) in Liberia headed by Nigeria[437] and NATO's Kosovo/Serbia operation took place without UN authorization. The Libya operation, headed by France, Britain and the U.S. was authorized by the UN under the new concept of 'Responsibility to Protect' (see below).

I will present the cases of the Kurds of Iraq, Somalia, Rwanda and Kosovo/Serbia, which are highly instructive for the evolution of the idea of humanitarian intervention following the end of the Cold War and the great difficulties encountered in the process.[438]

<u>Assistance to the Kurds of Iraq</u>

The Kurdish-Iraqi clash has a long history, starting from the first separatist war of 1961-1975 (with a four year lull between 1970 and 1974), which ended with the defeat of the Kurds under Mullah Mustafa Barzani, mainly due to the stopping of the arms send until then by Iran under the Shah (following an Iraqi-Iranian agreement). The Kurds resumed their struggle in the late 1970s, and in 1988 as many as 100,000 Kurds were killed by Iraqi soldiers. In March 1988 the city of Halabja was bombed with chemical weapons, killing several thousand Kurds.[439]

Following the Gulf War ('Operation Desert Storm') and the defeat of Iraq by a U.S. led coalition authorized by the UN Security Council, the Shiites and Kurds faced the wrath of

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[436] B.D. Jones, "Intervention without Borders": Humanitarian Intervention in Rwanda, 1990-94', *Millennium: Journal of International Studies*, 24:2 (1995), 225, 230-1.

[437] See H. Howe, 'Lessons of Liberia: ECOMOG and regional Peacekeeping', *International Security*, 21:3 (1997), 145-76.

[438] For the case of Liberia see *ibid.*, 145-76. For Bosnia the bibliography is immense. For Haiti see W.M. Reisman, 'Haiti and the Validity of International Action', *American Journal of International Law*, 89:1 (1995), 82-5.

[439] Heraclides, *The Self-Determination of Minorities of International Politics*, 129-46; D. McDowall, *A Modern History of the Kurds* (London: I.B. Tauris, 1997), 287-391.

Saddam Hussein's loyal forces. Reportedly a thousand Kurds died per day from starvation or Iraqi bullets. The Bush Administration, Britain, France and other EU countries were under pressure from their publics to do something to save the Kurds. British prime minister John Major and French president Francois Mitterrand voiced their concern. France in fact spoke in terms of a *devoir d'ingérence* or *droit d'ingérence*[440] which, however, was not acceptable to the other Western states that were not prepared to go thus far.

The pressure to do something worthwhile led to the adoption of UN Security Council resolution 688, which condemned the repression of the Iraqi civilian population and called upon Iraq to put an end to it and allow immediate access by international humanitarian organizations. It was on these grounds that the U.S., France, Britain and the Netherlands send some 22,000 military to create safe havens for the Kurds so as to be able to return to their homes from the mountains were they had gone for safety. The obvious threat of use of force stretched resolution 688 to the limit and clearly went beyond it. But no other mandate could be secured though the intervening states faced no open criticism from the Soviet Union or China. The operation called 'Operation Provide Comfort' succeeded in its task (safe havens, return of refugees, humanitarian aid available and saving lives). The U.S. in particular was keen to depart as soon as possible and the 22,000 military were replaced by a UN force of mere guards, only 500 them, with only their firearms (Saddam Hussein could accept nothing more). But there was a clear threat to boot: 'Operation Poised Hammer': a credible threat of attack from Turkey, which had set up a rapid reaction force across the border, U.S carriers in the eastern Mediterranean as well as a no-fly zone in the north secured by overflying U.S., British and French aircraft.[441]

Intervention in Somalia

Somalia's descent into chaos into a Hobbesian 'war of all against all', even worse than the Lebanese civil war of the 1980s, came about following the ousting of president Siad Barre in January 1991 (Barre, a dictator, had ruled the country since the late 1960s and had caused serious problems to Somalia's neighbours on irredentist grounds, towards Ethiopia's Ogaden and Kenya, including an extended war with Ethiopia). The northern part of Somalia that had previously been a British colony (Somaliland) seceded in May 1991, while the southern part (a former Italian colony) became the terrain of various warring warlords mainly based on clan

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[440] The *devoir* or *droit d'ingérence* has a long tradition in France which goes back to the teachings of the highly influential international lawyer Georges Scelle in the mid-war, who was vehemently opposed to the concept of sovereignty and regarded human beings and not states as the subjects of international law. In recent years the concept has been associated with Bernard Kouchner.

[441] Wheeler, *Saving Strangers*, 139-58.

associations. Somalia though one of the very few national states in Africa (with a homogeneous Somali population and ethnic brethren in three neighbouring states, hence the irredentism) is sharply divided on clan and sub-clan lines (the European equivalent are the Albanian clans, divided into Ghegs and Tosks with several sub-clans or the Scottish clans of bygone days).

In the military clash among the warlords and clans in 1991-1992, about 30,000 died fighting, while some 350,000 died of famine due to the devastation to the country's economy and agriculture as a result of the civil war. It had been estimated that a thousand Somalis died daily. The Security Council in January 1992 declared the situation a threat to peace and security (resolution 733) and initiated an arms embargo and the intensification of humanitarian assistance. Eleven months later, resolution 775 (3 December 1992) authorized the sending of a peacekeeping force of 3500 military. In was then that the Bush Administration, which had previously stood aloof, joined the fray and was prepared to send 30,000 troops to Somalia. This led to Security Council resolution 794 by which a U.S.-led force of 31 states known as UNITAF (Unified Task Force) together with UNOSOM-II (UN Operation Somalia) were send to Somalia ('Operation Restore Hope'). The resolution in question was of historic importance for it was the first time in the history of the UN that the Security Council authorized an intervention explicitly on humanitarian grounds under Chapter VII of the UN Charter without the consent of the state concerned (Somalia of course was no more a state with a government).[442]

France and Britain were among the most fervent supporters of the Somali operation, while China, India and several other states were fearful of a precedent and called the operation 'exceptional' and 'unique' (and this wording was inserted in resolution 794 to placate them). The switch of President Bush in the last lame-duck months of his presidency were in part due to public opinion and to his willingness to do something worthwhile and of a humanitarian character before leaving office. But U.S. support changed abruptly when under the Clinton Administration, 22 U.S. soldiers were killed in two skirmishes (in the latter case 18 Army Rangers), which led President Clinton to the decision to withdrawn the 8,000 U.S. contingent.[443] The overall assessment of this operation is mixed, some believe that it saved lives,[444] even though the operation faced major problems and made many mistakes on the

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[442] *Ibid.*, 172-8, 181-2; J. Western, 'Sources of Humanitarian Intervention: Beliefs, Information, and Advocacy in the US Decisions on Somalia and Bosnia', *International Security*, 26:4 (2002).
[443] Wheeler, *Saving Strangers*, 197-8.
[444] A. Roberts, 'Humanitarian War: Military Intervention and Human Rights', *International Affairs*, 69:3 (1993), 441.

ground, others regard it a flop. On the whole it was probably more of a failure if not a disaster, making humanitarian interventions in the future in such situations unlikely.[445]

The belated intervention in Rwanda

The spectre of Somalia was to loom large over impending genocide in Rwanda. The small but effective Belgium-led UN peacekeeping force, UNAMIR-I (UN Assistance Mission for Rwanda), under Security Council resolution 872 (1993) was in the country to assist in the implementation of the Arusha Peace agreement reached between the Hutu majority that ruled the country and the Tutsi minority. UNAMIR-I was to monitor the cease-fire but had not authorization to disarm the Hutu militias. The Belgian general who headed the UN mission called for reinforcements and for a mandate to enforce peace, warning the world body that a terrible onslaught was in the making. However given the Somalia experience, the U.S. and Britain in particular were averse to any strengthening of the mandate and in fact supported the withdrawal of the peacekeeping force (Security Council resolution 909). By the time the next peacekeeping force was send (UNAMIR-II) which was French-led, the carnage, amounting to a veritable genocide of at least 800 000 Tutsis took place (April-July 1994). It was organized and orchestrated by the Hutu extremists that had convinced their ethnic brethren that the Tutsi were 'beastly', 'untrustworthy' and 'culturally inferior' and had to be exterminated because they threatened the dominance of the Hutus (moderate Hutus were also killed).[446]

The Rwanda experience has gone down in the annals of world society as one of the worst pages of the UN and of the Security Council. As to the view peddled by the U.S. and Britain that nothing could have been done to avert the genocide (given the Somalia experience) it holds little water. As for France's involvement to 'save lives' ('Operation Turquoise') which came very late, it is generally believed that it was motivated by instrumental reasons, namely to assert French influence in this Francophone part of Africa and make sure not to antagonize the Hutus, the allies of France in the region.[447]

Intervention in Kosovo and Serbia

The Kosovo conflict between Albanians and Serbs has a long history, starting in 1912, with the First Balkan War, when the Serbian forces overrun the Ottoman province of Kosovo, burning, pillaging and killing hundreds of Albanians, the majority population in the region. Kosovo was incorporated into Serbia and later into Yugoslavia, with many Albanians leaving

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[445] Wheeler, *Saving Strangers*, 178-207.
[446] C. Clapham, 'Rwanda: The Perils of Peacemaking', *Journal of Peace Research*, 35:2 (1998); Jones, 'Intervention without Borders'; L. Melvern, 'Genocide behind the Thin Blue Line', *Security Dialogue*, 28:3 (1997).
[447] See previous note.

the country as a result of Serbian domination which lasted until the mid-1960s. From the mid-1960s onwards Yugoslavia's President Tito took several measures so as to allow the Albanians to run the region, a process which culminated with the 1974 Yugoslav Constitution. Kosovo was made an autonomous region that in status amounted almost to a federated state of Yugoslavia like Slovenia and Croatia. The Albanians thrived from 1974 until the mid-1980s but they also put pressure on the Serbians of Kosovo to leave the country and sell their property. The gradual exodus of Serbs led to the Albanians reaching 90 per cent of the population of Kosovo.

When Milosevic gained power in Serbia, he played the Serbian nationalist card. Kosovo's autonomy was abolished in 1989 and the Albanians were kicked-out of the public administration and educational system, including the University of Prishtina. The Kossovar Albanians ended up creating a parallel state of their own, declaring independence but avoiding the use of violence, under their leader, the intellectual Ibrahim Rugova (an advocate of Gandhian non-violence). The non-violent strategy of Rugova brought nothing to the beleaguered Albanian community and the international community did not put pressure on Milosevic to abandon his repression not even in the course of the 1995 Dayton Agreement.[448]

Thus from 1997 onwards Rugova's authority was challenged by a guerrilla force, the UCK (Kosovo Liberation Army), which sought independence with the use of armed violence. The predictable outcome was a clash between Serbians forces and the UCK, with the Serbians reacting with a policy of violence aimed at ethnic cleansing. It was then that that the international community became involved. However with Rwanda in mind and especially the Bosnian imbroglio (above all the Srebrenica massacre of July 1995), with humanitarian intervention coming late, NATO chose to intervene in the case of the plight of the Kosovars early on, when it was clear that a strategy of ethnic cleansing was on course by Milosevic but those killed were still in the hundreds and not in the thousands. The lack of UN authorization, the lack of extended massacres, the choice of means (high altitude aerial bombardment), which led to hundreds of civilian deaths, thousands of refugees, considerable destruction of infrastructure and environmental pollution as a result of the bombs and the fact that the

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[448] For a concise presentation of the state of play in Kosovo until the UCK took over, see A. Heraclides, 'The Kosovo Conflict and its Resolution: In Pursuit of Ariadne's Thread', *Security Dialogue*, 28:3 (1997), 317-31. For a more detailed presentation see the chapters in T. Veremis and E. Kofos (eds), *Kosovo: Avoiding Another Balkan War* (Athens: ELIAMEP, 1998).

bombardment in fact allowed Milosevic to accelerate the project of ethnic cleansing, has led to an intense debate ever since.[449]

According to the authoritative Independent International Commission on Kosovo, set up to investigate the case, the intervention was 'illegal but legitimate'[450] and Milosevic had started his ethnic cleansing course prior to the intervention of NATO.

In the wake of Kosovo many then feared the opening of a Pandora box but this did not come about partly due to the Kosovo precedent. In the second part of 1999, Australia's peacekeeping operation in East Timor took place with UN sanction, with no mismatch between the military means and humanitarian ends and it turned out to be peaceful.[451] With the onset of the new millennium - and with '9/11' and its repercussions as far as U.S. priorities were concerned ('war on terror') – the idea of humanitarian intervention seemed to have almost 'evaporated',[452] even though there was at least two candidates in the 2000s, Sierra Leone and Sudan's Darfur, and Syria today. The next humanitarian interventions took place more than a decade later, the NATO-led operation in Libya (February-October 2011) and the French peace-keeping operation in the Central African Republic (December 2013), both authorized by the UN Security Council.[453]

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[449] For the 1999 debate on Kosovo in international law see: R.A. Falk, 'Kosovo, World Order, and the Future of International Law', *American Journal of International Law*, 93:4 (1999), 847-57; B. Simma, 'NATO, the UN and the Use of Force: Legal Aspects', *European Journal of International Law*, 10 (1999), 1-22; A. Cassese, '*Ex injuria jus oritur*: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?, *European Journal of International Law*, 10 (1999), 23-30; L. Henkin, 'Kosovo and the Law of "Humanitarian Intervention"', *American Journal of International Law*, 93:4 (1999), 824-8; J.I. Charney, 'Anticipatory Humanitarian Intervention in Kosovo', *American Journal of International Law*, 93:4 (1999), 834-41; C.M. Chinkin, 'Kosovo: A "Good" or "Bad" War?', *American Journal of International Law*, 93:4 (1999), 841-7; M. Reisman, 'Kosovo's Antinomies', *American Journal of International Law*, 93:4 (1999), 860-2; T.M. Franck, 'Lessons of Kosovo', *American Journal of International Law*, 93:4 (1999), 857-60; R. Wedgewood, 'NATO's Campaign in Yugoslavia, ', *American Journal of International Law*, 93:4 (1999), 828-34. See also the comprehensive volume by A. Schnabel and R. Thakur (eds) *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship* (Tokyo: United Nations University Press, 2000); and Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000).
[450] Independent International Commission on Kosovo, *Kosovo Report*, 2 and *passim*.
[451] N. J. Wheeler and T. Dunne, 'East Timor and the New Humanitarian Interventionism', *International Affairs*, 77:4 (2001), 805-37.
[452] T.G. Weiss, 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era', *Security Dialogue*, 25:2 (2004), 135.
[453] J. Pattison, 'The Ethics of Humanitarian Intervention in Libya', *Ethics and International Affairs*, 25:3 (2011), 271-7.

The humanitarian intervention controversy

Humanitarian intervention as external military intervention aimed at saving innocent people from massive violations of human rights (primarily the right to life) has entered the world scene especially from 1990 onwards (previous interest that was less wide-spread had taken place mainly in the wake of the East Pakistan/Bangladesh conflict of 1971). In the last two and a half decades it has earned a central place in scholarly research and in the preoccupations of decision-makers and international organizations and has captured the imagination of the wider public as few subjects in the post-Cold War world.[454] Ironically it is in the limelight not due to its general acceptance but because of its controversial character, which has led to acrimonious debates.

At the two ends of the scale there is on the one hand rejection, with the notion seen as nonsensical, an 'oxymoron',[455] the hallmark of deceit; and on the other its acceptance as one of the clearest manifestations of altruism, the epitome of human solidarity and compassion (the good Samaritan), the willingness to face great risk and considerable loss to save the lives of 'strangers' with no gains.

Interestingly rejection of, and sheer incredulity with, 'humanitarian intervention' is shared across the ideological spectrum from realists scholarship in international relations to Marxism and other forms of leftist critique, as well pacifism. From the realist line of reasoning, which has its origins in Thucydides, Machiavelli, Hobbes and Spinoza, so called 'humanitarian' or other ethical concerns have no place in international politics and are damaging to rational foreign policy. More scathing is another critique that has come from Carl Schmitt, who had argued that 'war in the name of humanity, is not war for the sake of humanity, but a war wherein a particular state seeks to usurp a universal concept against its military opponent', identifying itself with humanity and denying it to the enemy.[456] He adds (as if he were a Marxist), that it has been used as 'an ideological instrument of imperialist expansion, and in its ethical-humanitarian form it is a specific vehicle of economic imperialism … whoever invokes humanity wants to cheat'.[457]

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[454] B. Jahn, 'Humanitarian Intervention – What's in a Name?', *International Politics*, 49:1 (2012), 36.

[455] A. Roberts, 'Humanitarian War: Military Intervention and Human Rights', *International Affairs*, 69:3 (1993), 429.

[456] C. Schmitt, *The Concept of the Political* (translation, Introduction, and Notes by George Schwab) (New Brunswick: Rutgers University Press, 1976) [original German version 1932], 54. Schmitt's view came to our attention from R. Devetak, 'Between Kant and Pufendorf: Humanitarian Intervention, Statist Anti-cosmopolitanism and Critical International Theory', *Review of International Studies*, 33:S1 (2007), 157.

[457] Schmitt, *The Concept of the Political*, 54.

Traditional Realism: 'HI' rejected as an oxymoron. 'Humanitarian' and ethical concerns irrelevant and damaging to rational foreign policy decision-making .	Just war doctrine: HI acceptable as a last resort if all international non-violent attempts have failed to stop major humanitarian crimes by states or non-state actors.
Leftist critique: 'HI' the epitome of great power hypocrisy and a cover for intrusion, economic gains (neo-imperialism) and imperialism.	Liberalism: HI necessary to save lives, even early on in a conflict to prevent a major humanitarian disaster.
Pacifism: HI unacceptable as is the case with all forms of armed violence by state authorities. Armed violence of whatever kind by state authorities leads to far more bad than good.	Altruism: HI the epitome of human solidarity and compassion (good Samaritan), the willingness to face great risk and considerable losses to save human lives with no gains.

The question of intervention for humanitarian reasons poses agonizing dilemmas. There is the tension between the sanctity of life (saving human beings), and the veneration of sovereignty and independence; the tension between doing something salutary in a humanitarian crisis if the UN Security Council is paralyzed and abuse in the name of humanitarianism by intervening states. Most liberals opt for saving lives[458] and for intervening, exceptionally, even without UN authorization, provided the intervention has gained wide international legitimacy and the plight is so appalling that the interest in global humanity overrides narrowly defined national interests.[459] Realists, as we have said, discard ethics in foreign affairs (see Lecture 1) and regard only threats to vital interests worthy of intervention and intervention for humanitarian or other ethical reasons a delusion or bogus. Most leftist thinkers, such as Noam Chomsky,[460] Edward Said, Tariq Ali[461] or Jacques Derrida, denounced the 1999 intervention in Kosovo and the whole idea of 'humanitarian intervention', as have other critical thinkers in a more scholarly manner, such as Anne Orford[462] and Costas Douzinas.[463] For them intervention is by definition abusive and hypocritical, the *diktat* of the powerful, a form of blatant neo-imperialism and neo-colonialism. But a minority of leftists thinkers which put a premium on self-determination

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[458] M.J. Smith, 'Humanitarian Intervention: An Overview of the Ethical Issues', *Ethics and International Affairs*, 12:1 (1998), 73.

[459] M. Walzer, 'The Politics of Rescue', *Social Research*, 62:1 (1995), 59.

[460] N. Chomsky, *A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West* (New York: Verso, 2001).

[461] T. Ali (ed.) *Masters of the Universe? NATO's Balkan Crusade* (New York: Verso, 2000).

[462] A. Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003).

[463] C. Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Abingdon: Routledge-Cavendish, 2007).

and saving the weak from the strong within states are favourable to such interventions in very exceptional cases, such as Juergen Habermas,[464] Michael Walzer[465] and the more controversial Bernard Kouchner with his *droit d'ingérence*.[466]

Most international lawyers are opposed to such interventions, emphasizing state sovereignty and independence. The difference, which is far from insignificant, is that during the Cold War those against were in the majority adverse to the whole notion, while in the post-Cold War era most are at variance insofar as it does not obtain UN authorization. Students of international relations are more nuanced, especially non-realists,[467] with those in the field of international ethics, who tend to be less burdened by sovereignty, supporting unilateral humanitarian intervention (cosmopolitans and communitarians alike) from Michael Walzer in the late 1970s onwards.[468] They together with international lawyers supportive of humanitarian intervention even without a UN mandate, disagree mainly as to the level of onslaught, ranging from systematic violations of fundamental human rights to a situation akin to genocide,[469] and at what point to intervene: early on or late in a conflict when all attempts at stopping the humanitarian plight peacefully have failed?

In search of the appropriate international reaction

Following the Kosovo experience, UN Secretary-General Kofi Annan pondered: 'On the one hand is it legitimate for a regional organisation to use force without a UN mandate? On the other is it permissible to let gross and systematic violations of human rights, with grave

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[464] J. Habermas, 'Bestiality and Humanity: A War on the Border between Legality and Morality', *Constellations*, 6:3 (1999), 263-72.

[465] Walzer, 'The Politics of Rescue', 53-66; M. Walzer, 'The Argument about Humanitarian Intervention', *Dissent* (winter 2002), 29-37.

[466] S. Hoffmann, 'The Politics and Ethics of Military Intervention', *Survival*, 37:4 (1995-1996), 34-6; Smith, 'Humanitarian Intervention', 70-5; T. Allen and S. Syan, 'A Right to Interfere? Bernard Kouchner and the New Humanitarianism', *Journal of Development*, 12 (2000), 825, 828-36, 840; C. Brown, 'Humanitarian Intervention and International Political Theory', in A. Moseley and R. Norman (eds), *Human Rights and Military Intervention* (Aldershot: Ashgate, 2002), 153-5, 160-1, 164-6; G.J. Bass, *Freedom's Battle: The Origins of Humanitarian Intervention* (New York: Vintage Books, 2009), 11-24.

[467] See e.g. Hoffmann, 'The Politics and Ethics of Military Intervention', 29, 37-41; Smith, 'Humanitarian Intervention', 63-79; N.J. Wheeler, 'Legitimating Humanitarian Intervention: Principles and Procedures', *Melbourne Journal of International Law*, 2:2 (2001), 550-67.

[468] M. Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 101-8.

[469] For a low threshold see W.M. Reisman, 'Sovereignty and Human Rights in Contemporary International Law', *American Journal of International Law*, 84:4 (1990), 866-76; A. D'Amato, 'The Invasion of Panama Was a Lawful Response to Tyranny', *American Journal of International Law*, 84:2 (1990), 516-24. For setting it high to what he calls the 'spike test' see T. Farer, 'Cosmopolitan Humanitarian Intervention: A Five-Part Test', *International Affairs*, 19:2 (2005), 215-19.

humanitarian consequences, continue unchecked?'[470] Addressing the 1999 General Assembly he said: 'If in those dark days and hours leading to the genocide [in Rwanda] a coalition of States had been prepared to act in the defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?'[471] He challenged the member-states to come up with a new vision of sovereignty.[472] But the first reaction at inter-state level was not encouraging. In the next year, 133 states in the G-77 South Summit condemned 'the so-called right of humanitarian intervention' claimed by powerful states and rejected the legitimacy of 'unilateral humanitarian intervention' without UN sanction.[473]

The Annan challenge was taken up by the Canadian-sponsored 12-person 'International Commission on Intervention and State Sovereignty' (ICISS) which responded by subsuming humanitarian intervention under the novel concept of 'Responsibility to Protect' (R2P or RtoP).[474] The R2P concept had its roots in Francis Deng's 'sovereignty as responsibility' conceived within the African context in the previous decade.[475]

The aim of the R2P approach was to 'shift the terms of the debate';[476] it amounts to a 'rhetorical trick' of flipping the coin and shifting the emphasis from the controversial right to intervene for humanitarian reasons to the 'less confrontational idea of a responsibility to protect',[477] but the substance remains the same. The ICISS proposal was picked up by the 'High-Level Panel of Threats, Challenges and Change', set up by Annan, in its text entitled *A More Secure World* (2004), which stated that the principle of non-intervention 'cannot be used to protect genocidal acts or other atrocities'.[478]

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[470] K. Annan, 'Two Concepts of Sovereignty', *The Economist* (18 September 1999), 49.

[471] Press Release SG/SM/7136, GA/9596 (20 September 1999), 2

[472] R. Thakur, 'Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS', *Security Dialogue*, 33:3 (2002), 325.

[473] R. Goodman, 'Humanitarian intervention and the Pretexts for War', *American Journal of International Law*, 100:1 (2006), 108 fn.7, 112.

[474] G. Evans and M. Sahnoun, 'The Responsibility to Protect', *Foreign Affairs*, 1:6 (2002), 99-100; T. G. Weiss, 'R2P after 9/11 and the World Summit', *Wisconsin International Law Journal*, 24:3 (2006), 741-60.

[475] F.M. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: The Brookings Institution, 1996).

[476] International Commission on Intervention and State Sovereignty (ICISS), *Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), 16-18; Thakur, 'Outlook', 327-8.

[477] C. Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', *American Journal of International Law*, 101:1 (2007), 102.

[478] High-Level Panel of Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (United Nations, 2004), 65, para.200.

In 2005 at UN level, the *Outcome Document* of the UN World Summit (15 September 2005) made it a primary responsibility of states to protect their population against '*genocide, war crimes, crimes against humanity and ethnic cleansing* (emphasis added)' and failing this 'timely and decisive response' on the part of the international community at UN level. The ICISS and the High-Level Panel had suggested that the permanent members of the UN Security Council refrain from using the veto in such cases as long as their vital interests are not at stake. This was unacceptable to the United States, Russia and China. Moreover the Non-Aligned states they did not favour the notion of R2P.[479] But some authors have argued that given the international law of human rights (including the Anti-Genocide Convention) and R2P there is now 'a universal duty to intervene in instances of gross abuse of sovereign power by the offending state' and hence vetoing is not at the discretion of the permanent members in such instances.[480] The first test case of R2P was the intervention in Libya.[481]

Key issues in the recent debate on humanitarian intervention

We will conclude by identifying the main issues at stake in the ongoing debate on humanitarian intervention as far its advocates are concerned. Putting aside the proverbial question whether 'violent means can ever serve humanitarian ends'[482] today's debate includes at least twelve questions.

To begin with there is the question of the cardinal principles of sovereignty, independence and non-intervention which in this case are abused, as was also pointed out in the nineteenth century by the opponents of the idea of humanitarian intervention. Two main factors have been advanced to bypass and downplay sovereignty: first is the changing character and limited resonance of sovereignty in today's interdependent globalized post-Westphalian world and the fact that sovereignty is after all a social construction;[483] second is respect for human rights and above all of the right to life, which does not permit states to hide and be protected by sovereignty when they are manifestly criminal failed states.

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[479] A.J. Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit', *Ethics and International Affairs*, 20:2 (2006), 146-7, 151-2, 167.
[480] See e.g. P. Macklem, 'Humanitarian Intervention and the Distribution of Sovereignty in International Law', *Ethics and International Affairs*, 22:4 (2008), 388; R.A. Falk, 'Humanitarian Intervention: Elite and Critical Perspectives', *Global Dialogue*, 7 (2005), 40.
[481] J. Welsh, 'Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP', *Ethics and International Affairs*, 25:3 (2011), 255-62.
[482] Wheeler, 'Legitimating Humanitarian Intervention', 556.
[483] G.M. Lyons and M. Mastanduno (eds), *Beyond Westphalia*; T.J. Biersteker and C. Weber (eds), *State Sovereignty as Social Construct* (Cambridge: Cambridge University Pre4ss, 1996).

Moreover on the basis of the R2P logic, the responsibility to protect rests primarily with state authorities and only if a state is manifestly unable or willing to fulfill this duty becomes the responsibility of other states to act in its place thereby bypassing sovereignty.[484] As regards the shielding power of sovereignty the following argument is worth mentioning: state legitimacy is based above all on respect for human rights and democratic rule, only then is a state equipped with the 'shielding power' of sovereignty; put differently, sovereignty (like authority) is to be respected only when it is earned and justly exercised.[485]

Second is the legality-legitimacy spectrum to reckon with. Is legality through UN authorization indispensable? Is non-authorized intervention by definition illegal or is it perhaps legal given an alternative reading of the UN Charter which puts emphasis on the protection of human rights and above all the right to life which in this case (mass murder by state authorities) is flagrantly violated?[486] Can a case be condoned if it appears legitimate even though it is technically illegal, as the Independent International Commission on Kosovo concluded in its report on the intervention in Serbia and Kosovo?[487] Another tack is the contention that in such cases one is faced with an irresolvable moral or legal problem[488] which may or may not be resolved in general but only on an ad hoc basis (but even then in some cases it may be hair-splitting to decide).

A third question is where to place the threshold for intervening with or without UN authorization: to place the threshold on systematic human rights violations (such as systematic discrimination akin to apartheid or 'internal colonialism'), on something more grave, such as massive crimes (ethnic cleansing, war crimes, crimes against humanity) or only at the level of mass extermination and genocide.[489] The dominant tendency is to intervene in

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[484] Thakur, 'Outlook', 328.

[485] See F. R. Tesón, 'The Kantian Theory of International Law', *Columbia Law Review*, 92:1 (1992), 92.

[486] For such an alternative reading see W.D. Verwey, 'Humanitarian Intervention under International Law', *Netherlands International Law Review*, 32 (1985), 357-418, especially 406-18; C.F. Amerasinghe, 'The Conundrum of Recourse to Force – To Protect Persons', *International Organizations Law Review*, 3 (2006), 7-53, especially 37-9, 47-53.

[487] *Kosovo Report*, 2.

[488] I. Hurd, 'Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World', *Ethics and International Affairs*, 25:3 (2011), 293-313.

[489] For a low threshold see W.M. Reisman, 'Sovereignty and Human Rights in Contemporary International Law', *American Journal of International Law*, 84:4 (1990), 866-76; A. D'Amato, 'The Invasion of Panama Was a Lawful Response to Tyranny', *American Journal of International Law*, 84:2 (1990), 516-24. For setting it high see M. Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 106-7; Hoffmann, 'The Politics and Ethics of Military Intervention', 37-8; T. Farer, 'Cosmopolitan Humanitarian Intervention: A Five-Part Test', *International Affairs*, 19:2 (2005), 215-19.

cases of massive violations of human rights and primarily the right to life that is large-scale loss of live, ethnic cleansing on a considerable scale and of course genocide.[490]

A fourth question is in which cases to intervene (with or without UN authorization): to intervene in a protracted internal war (Liberia, Syria), in a situation of a Hobbesian 'war of all against all' (Somalia), a separatist war (Kosovo) or only to put an end to one-sided onslaught (Rwanda) or to intervene in all four cases? Apparently the tendency in the literature is to intervene in all these cases if the death-toll of non-combatants is very high and provided the operation has fair chances of being successful in saving people in foreign countries.

The next three questions are interrelated. A fifth problem is abuse: wrong intentions and ulterior motives, and how they can be checked. UN authorization, collective intervention and intergovernmental supervision may do the trick but what if they are not forthcoming? And even if they are they may still be seen as suspect, for the permanent members of the Security Council (as in the case of the Concert of Europe in the nineteenth century) can hardly be counted upon – or live up – to being the moral consciousness of the world. In particular it is very difficult to prove beyond reasonable doubt that the intervening state or inter-governmental organization (notably NATO) is not triggered by reasons of prestige or to assert itself as a powerful actor internationally or in the region in question.

Related to this is a sixth issue, the well-known fact that the intervening states are by definition more powerful which smacks of the powerful bullying the weak under a smokescreen of righteousness[491] and appears as a covert neo-imperialism or neo-colonialism. In this regard the traumatic memories of great power interventions and gun-boat diplomacy in the days of imperialism and colonialism need to be taken into considerations though they are little understood by Western states, hence the great emotional attachment to sovereignty and non-intervention by developing states and their lack of support for humanitarian intervention.[492] But it is a fact of life that intervention against a powerful state, say Russia or China is not contemplated when humanitarian disaster takes place in its territory.[493]

A related seventh factor is the presence of tangible interests as motives and how they can be reconciled with humanitarian motives and intentions, especially since 'saving

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[490] *Ibid.*, 215-17; M.J. Bazyler, 'Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia', *Stanford Journal of International Law*, 23 (1987), 598-601; D. Fisher, 'The Ethics of Intervention', *Survival*, 36 (1994), 51-9; M. Fixdal and D. Smith, 'Humanitarian Intervention and Just War', *Mershon International Studies Review*, 42:2 (1998), 296-9; Thakur, 'Outlook', 332.
[491] Hassan, '*Realpolitik* in International Law', 910.
[492] See Thakur, 'Outlook', 329.
[493] *Ibid.*, 333.

strangers' on its own is unlikely to provoke intervention.[494] Purists argue that only pure non-tangible motives should apply to render an intervention on humanitarian grounds justified, 'altruism writ large'.[495] A more pragmatic view is that there is always a mix of motives for it is almost impossible to go to war and have 'our' soldiers killed in order to 'save strangers' or in order not to allow strangers to slaughter each other. Thus several authors yesterday and today are prepared to regard a case humanitarian if there is a combination of motives and humanitarian motives are no sham. It has even been argued that interest free humanitarian is false and dangerous and that '[t]he concern with interests can help to give humanitarian war the kind of political anchorage that it may require in order to remain limited. As long as the interests in question are neither illegitimate nor preponderant, their presence need not subvert the justice of the war'.[496]

An eighth issue is timing and last resort. Should intervention take place with the exhaustion of all peaceful means (last resort) or should there be early anticipatory intervention and preventive deployment once egregious crimes have been spotted, such as ethnic cleansing so as to forestall a humanitarian disaster (the Kosovo model)? Early intervention may have the advantage of avoiding a more costly, greater and more risky use of military force at a later date but it has its drawbacks. Above all, as seen in the case of Kosovo, it would more difficult to justify internationally as a legitimate intervention and as a last resort. Thus most commentators opt for a clear last resort that is if all attempts at peaceful resolution or more limited coercive means (blockades, no-fly regions, no arms supplies or supplies of fuel) have been tried and have demonstrably failed to stem the humanitarian tragedy[497]

A ninth question is the need for a reasonable estimate of success of humanitarian goals, avoiding 'noble intentions and bloody results'[498] that is very limited death of civilians and destruction of infrastructure (sparse 'collateral damage').[499]

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[494] R.B. Lillich, 'Forcible Self-Help by States to Protect Human Rights', *Iowa Law Review*, 53 (1967-1968), 53; N.J. Wheeler, 'Legitimating Humanitarian Intervention: Principles and Procedures', *Melbourne Journal of International Law*, 2:2 (2001), 238-9.

[495] R.B. Miller, 'Humanitarian Intervention, Altruism, and the Limits of Casuistry', *Journal of Religious Ethics*, 28:3 (2000), 4, 16.

[496] A. Coates, 'Humanitarian Intervention: A Conflict of Traditions', in T. Nardin and M.S. Williams (eds), *Humanitarian Intervention* (New York: New York University Press, 2006), 77.

[497] Hoffmann, 'The Politics and Ethics of Military Intervention', 44; Fixdal and Smith, 'Humanitarian Intervention and Just War', 301-2; Thakur, 'Outlook', 333.

[498] M. Ignatieff, 'The Seductiveness of Moral Disgust', *Social Research*, 62:1 (1995), 78.

[499] G. Levy, 'The Case for Humanitarian Intervention', *Orbis*, 37:4 (1993), 624; A. Roberts, 'The Crisis in U.S. Peacekeeping', *Survival*, 36 (1994), 109.

There is also the related tenth factor: bringing about less damage by intervening and halting the bloodshed and suffering than by not intervening and how can this be assured. It can well be argued that success is never assured and the likelihood of things getting out of hand and making things worse is always likely, as seen in the case of Somalia (with a UN mandate, in fact the first regarding intervening for humanitarian reasons) and Kosovo (without a mandate).[500]

There are also two other secondary but far from insignificant questions: quick exit strategy or longer stay for fear that the bloodbath and anarchy will resume;[501] and how many casualties of 'our soldiers' are acceptable.[502]

Most of the issues discussed today had been broached in the pre-1939 debate on humanitarian intervention. The recent tendency not seen previously, from 1830 to 1939 among advocates of humanitarian intervention, is to borrow from the 'just war' doctrine of the Middle Ages and Renaissance, from its criteria for a just war replenished to fit modern conditions.

The following just war criteria are all regarded as essential for a humanitarian intervention to be contemplated: (a) right authority, in the sense of 'legitimate authority' and not simply legal (factual) authority, which also alludes to 'failed states' as illegitimate and not worthy of sovereignty;[503] (b) just cause (massive suffering); (c) right intention (humanitarian motives genuine and not a ruse); (d) last resort; (e) proportional means (good over harm); and (f) reasonable prospect of success leading to a 'just peace'.[504]

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[500] Fixdal and Smith, 'Humanitarian Intervention and Just War', 305; Farer, 'Cosmopolitan Humanitarian Intervention', 219; Parekh, 'Rethinking Humanitarian Intervention', 67.

[501] Walzer, 'The Politics of Rescue', 56-7, 61; Hoffmann, 'The Politics and Ethics of Military Intervention', 41, 43.

[502] Walzer, 'The Politics of Rescue', 58-9; D.C. Hendrickson, 'In Defense of Realism: A Commentary on *Just and Unjust War*', *Ethics and International Relations*, 1 (1997), 46.

[503] Fixdal and Smith, 'Humanitarian Intervention and Just War', 291-2; Coates, 'Humanitarian Intervention, 62-3.

[504] R.B. Miller, *Interpretations of Conflict: Ethics, Pacifism, and the Just War Tradition* (Chicago: The University of Chicago Press, 1991), 13-14; J.B. Hehir, 'Expanding Military Intervention: Promise or Peril?', *Social Research*, 62:1 (1995), 46-8; Fixdal and Smith, 'Humanitarian Intervention and Just War', 283-312; Wheeler, 'Legitimating Humanitarian Intervention', 550-67; Thakur, 'Outlook', 332-3; G. Reichberg and H. Syse, 'Humanitarian Intervention: A Case of Offensive Force?', *Security Dialogue*, 33:3 (2002), 309-22; J. Boyle, 'Traditional Just War Theory and Humanitarian Intervention', in Nardin and Williams (eds), 31-7.