Humanitarian Intervention: The Utopia of Just War? The NATO intervention in Kosovo and the restraints of Humanitarian Intervention

Arkadiusz Domagala
Wroclaw University (Poland), Institute of Political Sciences,
Section of International Relations
arkadiusz_domagala@yahoo.co.uk

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University of Sussex,
Falmer, Brighton BN1 9RG
Tel: 01273 678578
Fax: 01273 678571
E-mail: sei@sussex.ac.uk

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Abstract

Humanitarian intervention is one of the most controversial concepts in world politics. It opposes directly the sacred rule of sovereignty. After the end of the cold war, however, it has been perceived as a possible instrument of international community aiming at changing the world for the better. With time, the euphoria of the very early 1990's has begun to yield pessimism. This pessimism is rooted in an international system whose constraints are very difficult to overcome.

Humanitarian intervention is a kind of just war. The very rich tradition of just war gives us principles and ideas of what intervention should be like. Yet, the NATO intervention in Kosovo (1999), for many a paradigmatic instance of humanitarian intervention, has not met the criteria of just war. Kosovo as a test depicted the defects of humanitarian intervention that have been growing since the end of the cold war. Consequently, it provokes the question, what the reasons for limitations of humanitarian intervention are. The answer is that the system of states has its own logic, which is not necessarily humanitarian. Its basic premise is that states, especially great powers, are still centred on their power and welfare. As a result, the use of force in pursuit of human rights seems to stand in opposition to the national interests of key actors in international relations. The powers promoting human rights have realised that humanitarian intervention is usually only a needless cost.

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Introduction

The issue of intervention lies in the centre of each debate on international order. The main question is, of course, if intervention can be justified and if so, under what circumstances and authority. The answer is not simple. The nature of the system of states which has a strong attachment to the rules of sovereignty and non-intervention explains the reluctance of international society with regard to interventions. Nevertheless, the rule of non-intervention has been increasingly violated since its emergence so that it may even be possible to claim that sovereignty is a kind of organised hypocrisy; it is a myth, albeit a very useful one[1].

International systems allow for the possibility of intervention. What changes is the scope of situations where intervention can take place. This scope is determined not by international law alone, although this does seem to be desirable. After the Second World War, international law, in particular the United Nations Charter and later conventions restricted the possibility of intervention. Generally, the use of force, especially offensive force, has lain within the competence of the Security Council. During the Cold War international law concerning the use of force and non-intervention was neglected. In conditions of superpower rivalry, spheres of influence and balance of power prevailed over the norms of non-intervention. As the ancient historian, Thucydides remarked: *If you are able to impose your will with force, you do not need the law*[2]. Thus the decisive condition has been the distribution of power as an attribute to the system[3].

The end of the Cold War provoked fresh hopes and aspirations for the new international order. The Empire of Evil had collapsed and it seemed that international society would be able to create a new order on its ruins. The strong co-operation of the Security Councils' permanent members and the victorious "Desert Storm" provided the basis for that. One of the key elements of the post cold war order was the concept and belief that humanitarianism was married to interventionism, something that would eventually become a reality for the international society. A few years after the successful operation in defence of

[1] S. Krasner, *Sovereignty: Organized Hypocrisy*, Princeton 1999, p. 24.
[2] Thucydides, *The Peloponesian War, Book 1*, Warsaw 1988, p. 47.

Kuwait (1991) as well as the Iraqi Kurds and the Shiites (1991) the ‘hangover’ period arrived and at this point it was clear that the idea of international humanitarian order was an illusion. Within the international society there were neither the measures nor the will to promote and defend the new world order or even carry out humanitarian interventions[4]. It was deemed impossible for there ever to be a perfectly righteous war in the world of states. To be more precise, because the world seemed to consist of egotistic and rivalling states, it was very difficult to calculate a politically feasible doctrine of humanitarian intervention.

Military intervention as a response to violent humanitarian crises has been attempted, successfully or not, many times in the last dozen years as it never has been before. These actions were usually undertaken without defining exactly what the military and coercive role should be - the intervention in Somalia and the NATO intervention in Kosovo are apt examples.

This study attempts to follow, or rather to give one of the possible explanations, why humanitarian intervention could not become a well-established practice of states. To prove this argument, this paper aims to contrast a model of humanitarian intervention with the practice of international relations. A model of humanitarian intervention, based on the just war tradition and criteria, is a form of Max Weber's ideal type. Thus, its role consists not only in simply pointing to some differences between the ideal type and the reality but also in depicting where such differences lie and what is the political actor’s motivation for action, or indeed for refraining from such action. It is worth adding that the ideal type itself has not much to do with moral perfection although when taking into account the just war tradition, it is impossible to escape it.

Military intervention, even when motivated by humanitarian concerns, is a political act. Consequently, the just war criteria cannot be implemented without reference to facts and without involving a political-military assessment. When are diplomatic measures exhausted? At which moment does the resort to intervention seem to be the last chance? When does a humanitarian emergency constitute ‘just cause’ or enough of 'a threat to international peace and security', to wage war? In what circumstances is intervention feasible? These are questions of a political and strategic rather than an ethical nature. It prompts us to believe that

[3] K. Waltz, *Theory of International Politics*, New York 1978, pp 97 - 99.

the flaws of humanitarian intervention are the after-effect of world politics itself and of an inherent incompatibility with universal moral values.

The nature of the international system, as it is argued in this study, is basic and is the principal reason for discrepancies between a model of humanitarian intervention based on the just war criteria, and the practice of interventions. The conduct of states differs from the expectations of the international community due to constraints which are intrinsic features of the system and which the international community cannot overcome. Evolution within international society with regard to the protection of human rights has not gone hand in hand with an evolution within the international system. The way it works is rather constant and, as is crucial for a debate on humanitarian intervention, it is unable to adapt an omnipresent mechanism of response to human rights violations.

The argument put forward in this paper is that the nature and structure of international system determines humanitarian intervention as the practice of states. Humanitarian intervention is a pattern of interactions that emerged in the aftermath of great post-Cold War optimism[5]. But the truth is that optimism alone cannot sustain social institutions and behaviours. A figure and fate of humanitarian intervention depends foremost on major powers and game they play - if their interests are taken into account and are respected, humanitarian intervention has a chance to be rooted in world politics. If not, it is deformed and fails. Thus, it is the balance of costs and profits, not moral superiority that determines the shape of humanitarian intervention. This is the reason for the ever increasing distortion of humanitarian intervention.

This consists of three main parts. The first of these looks at just war criteria, which serves as one of the elements of the ideal type of humanitarian intervention. The next section offers an application of the model in practice, that is to say it contrasts the criteria with the NATO intervention in Kosovo. This latter case asserts that a set of certain conditions is able to mitigate the power of the structure of the international system. The final part of the paper provides some conclusions on the shortcomings of humanitarian intervention and international society's reluctance to take on new responsibilities.

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[4] J. Mayall, *The New Interventionism 1991 - 1994. United Nations experience in Cambodia, former Yugoslavia and Somalia,* Cambridge 1996*,* pp 6 - 9.

[5] On the role and meaning social behaviours and institutions within the international system: R. Gilpin, *War and Change in World Politics*, Cambridge 1981, pp 9 - 10, 27 - 38, 85 - 96.

1. Humanitarian intervention and the just war tradition

1.1. What is the humanitarian intervention?

In international relations, the concept of humanitarian intervention has a quite well established meaning. The combination of the two terms, 'humanitarian' and 'intervention', creates an oxymoron, suggesting an invincible and complete opposition. One can dispose of this if one understands the ordering role of force in international relations. Force, in particular military 'pure' force, is an inherent part of international anarchy, which can be defined as lack of world government. Paradoxically, the threat or use of force could lead to a restriction in the escalation of violence and can even encourage agreement between conflicted parties[6].

As regards the term 'intervention', most scholars adhere to the classical definition, which emphasises the element of 'dictatorial interference' by a state in the affairs of another one state[7]. The question this raises is one that asks what the range and scale of intervention is. Undoubtedly, it involves political and/or economic forms of pressure and coercive measures expressed by military engagement. Nevertheless, the application of the use of force by states remains basics to the analysis of the subject of humanitarian intervention. As such, for the purpose of this paper, the concept of 'dictatorial interference' is confined to those operations encompassing the use of armed force[8].

With regards to the term 'humanitarian' in the analysed context, this is usually related to violations of fundamental human rights that 'shock the conscience of mankind'. For example, the abuse of 'basic' human rights, such as the right to life are violations often described as 'gross', 'persistent', 'massive', 'barbaric', and 'large-scale' enough to constitute 'genocide' and which also 'violate the standards of the civilised world'. Consequently, the notion of 'humanitarian' is assigned to an action undertaken with a view to remedy an unbearable situation, and is carried out with respect for honoured rules (e.g. impartiality, proportionality, necessity etc).

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[6] R. Art, 'The Fungibility of Force', in: R. Art. and K. Waltz (eds.), *The Use of Force. Military Power and International Politics*, pp 3 - 5.

[7] See e.g. *International Law. A Treatise*, by L. Oppenheim, vol. 1, ed. by H. Lauterpacht, London 1955, p. 305.

[8] Some scholars distinguish the humanitarian intervention from the humanitarian intercession. The former involves use of armed force, the latter other forms of pressure. See e.g. W. Verwey, 'Humanitarian Intervention in the 1990s and Beyond: An International Law Perspective', in: J. N. Pieterse (ed.), *World Orders in the Making. Humanitarian Intervention and Beyond*, London 1998, p. 184.

The conclusion is that humanitarian intervention defined as an enforcement action for humanitarian purposes is not sufficient. An operationalisation should include the elements mentioned above. A very good definition that could be adopted for the purpose of this study is the one proposed by J. L. Holzgrefe:

> Humanitarian intervention is the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied[9].

A suggestion that could be made is that organisations such as The United Nations, NATO or OAS, could also be entities of humanitarian intervention. However, they consist of states and therefore, we can assume the Holzgrefe's definition contains them. It is worth, at this point, stressing the conditions of non-permission of the target state. This is crucial when one discusses international interventions, although these conditions are mitigated by the case of so-called failed states or states in anarchy, where there is either no government or government does not exercise an effective authority under its own territory.

It is widely accepted that humanitarian intervention should be ordered by specific principles. These principles have derived from the large numbers of sets of criteria for intervention that can be found in literature dated back to the Middle Ages. One of the reasons why these criteria have been determined is so as to constrain the possibility of abusing intervention for humanitarian purposes. The criteria can be regarded as part of a definition because they particularise the contents of definition (*definiendum*). This issue will be examined in one of the next chapters.

[9] J.L. Holzgrefe, 'The humanitarian intervention debate', in: J. L. Holzgrefe and R. Keohane (eds.), *Humanitarian Intervention*, Cambridge 2003. Another similar definition was proposed by Wil Verwey: 'Humanitarian intervention is the threat or use of force by a state or states abroad, for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights, in particular the right of life of persons, regardless of their nationality, such protection taking place neither upon authorisation by relevant organs of the United Nations nor with permission by the legitimate government of the target state'. Quoted in O. Ramsbotham and T. Woodhouse, *Humanitarian Intervention in Contemporary Conflict. A Reconceptualization*, Cambridge 1996, p. 3.

1.2. Humanitarian intervention as justifiable outrage at injustice

Just war tradition has arisen from the theories of many thinkers of past centuries, essentially the Middle Ages. The most known representative of the tradition is St. Augustine and St. Thomas Aquinas, although Cicero, Francis de Vittoria, Francis Suarez, Alberico Gentili and Hugo Grotius can also be included in the stream[10]. Nowadays the most prominent thinkers belonging to this tradition are James Turner Johnson, Paul Ramsey and of course Michael Walzer. Although just war tradition is not highly consistent, the list of criteria of *ius ad bellum* and *ius in bellum* is broadly acclaimed and has changed very little since the sixteenth and seventeenth centuries. One cannot help noticing that a great part of it has been incorporated into the body of international law.

It seems obvious that humanitarian intervention is a form of just war. In saying that just war does exist, and that the ultimate goal of it is peace and a greater measure of justice, one must then define what is *just* within international relations. However it is apparent that this is not a strictly given and widely accepted theory of international justice. Considerations of justice belong to the class of morality, to be distinguished from those of law and of dictates of prudence and interest. Demands for justice remain an important part of the rhetoric of international relations, even if there is a tacit consent for treating interstate relations as the game in which all that matters is the gaining of profits. One can identify three levels of justice. The first is interstate or international justice that concerns the rights and duties of states, for example the right of equal sovereignty or non-intervention. The next is the idea of individual or human justice that relates to the rights and duties of individual human beings. They are in fact the direct bearers of rights. Consequently states or other groups have rights as mediators, and their actions should be restricted when human rights are at stake - that is to say, states are not omnipotent agents, and sovereignty is attributed rather not to them but to individuals. The last level of justice is cosmopolitan or world justice which refers to the good of the world as a whole, in which the interests of individuals and states should be subordinated to an imagined *civitas maxima*, cosmopolitan community[11]. Humanitarian intervention as a just war works together with the second level of justice - that is individual and human justice. The use of force for humanitarian purposes, in the context of the definition, follows the human rights violations i.e. it does not happen because of the harm of states or of cosmopolitan society. Indeed, the latter exists only in philosophical and

[10] There were also medieval Polish just war thinkers: Stanislaw from Skalbmierz and Pawel Wlodkowic.
[11] H. Bull, *The Anarchical Society*, Houndmills 2002, pp 75 - 82.

ideological theory. If one considers that humanitarian intervention is regarded as a just war that is right and fair, it is important to note that it is only just when it meets the requirements of the just war tradition.

According to the just war tradition human beings are not inherently evil and not as self-interestedly motivated as realists, inspired by Machavelli and Hobbes, claim. Human motives are always mixed: they both affirm and destroy human solidarity. This is because individuals are broken and separated by sin. Therefore a war is more likely to be an expression of justifiable outrage at injustice, and, as one of the assumptions of just war tradition states that it is to serve justice In other words, war is not an end in itself, rather an instrument of higher values, e.g. peace, human dignity, justice.

Moreover, the just war tradition insists on the need for moral judgements in order to determine who in such a situation is more or less just- who is the victimiser and who is the victim[12]. Moral aspects lie at the heart of matter. Consequently, humanitarian intervention as an action undertaken for moral considerations fits perfectly within this analysis.

2. Just war criteria

Just war is best known as a cluster of injunctions: what is permissible, and what is not. The specifications provide the terms under which a war (or intervention in our case) may be waged; they also establish the norms applying to the conduct of war[13]. That is the role of just war criteria. A representative list of the criteria would include just cause, legitimate authority, last resort, right intention, just ends, probability of success, proportionality and discrimination. There is also a vaster network of rules concerning the decision to wage war conduct of war. Sometimes this is limited to four of the key norms: just cause, legitimate authority, proportionality and last resort[14].

[12] J. B. Elshtein, 'Just War and Humanitarian Intervention', *Ideas* Vol. 8, No. 2, 2001 , p. 7.
[13] *Ibid*., p. 4.
[14] A. J. Coates, *The ethics of war*, Manchester 1997, pp 123 - 293. See also R. Holmes, *On War and Morality*, Princeton 1989; W. V. O'Brien, *The Conduct of Just and Limited War*, New York 1981; N. Lewer, O. Ramsbotham, *Something Must Be Done. Towards an Ethical Framework for Humanitarian Intervention in International Social Conflict*, Bradford 1993, pp 83 - 95.

War should be fought only for a justifiable cause of substantial importance. For centuries such a cause has resulted from a crime of direct aggression by one state against another. The evolution of international relations, the increasing significance of human rights and a growing awareness of responsibility for the unbearable violation of them have been marked by the Nuremberg Trial, the Declaration of Human Rights in 1948, International Convenants of Civil and Political Rights in 1966 and other documents. These historical landmarks, together with the practice of states have allowed the protection of innocents to become a legitimate cause for intervention. This statement is clearly general and thus implies cautiousness with regard to intervention and its lawfulness.

Protecting the innocents, i.e. all those who are in no position to defend themselves from harm, constitutes a strong reason for intervention, especially if the threat of loss of life of a large stake of the population is high. If this occurs, it becomes a methodological problem in which the scope and intensity of human rights violations create a 'supreme humanitarian emergency' and, as a result, also creates the possibility for military involvement. Nevertheless, international society is rather conscious about where an intervention should take place, with little or no fear of misusing the right to such intervention.

Just war tradition objects to military intervention as a conclusion that follows only from claims about national interests. This, however, does not mean that intervention must be disinterested, although this would be desirable, despite it often being an impractical assumption. One cannot exclude intervention only because states may benefit from it; indeed it is rather utopian, as the great powers have interests in nearly every part of the world. Thus it is not an argument against humanitarian intervention, rather an argument for more effective international control – indeed, national interests could coexist with the just cause[15]. The whole point is that the decision intervention is undertaken for the sake of saving the lives of innocents, and as such implementation is under the attentive scrutiny of the international community.

The right intention, (which is one aspect of the just war criteria) claims that war or intervention must be endeavoured in order to achieve the goals listed in just cause, that is, in our case, to remedy the situation of immediate and extensive threats to fundamental human rights. Just war tradition insists that war objectives must be made clear so that it would be

[15] A. J. Coates, p. 162.

easier to estimate what counts as a success or a failure. In addition, the ultimate goals of intervention should be publicly declared and openly communicated, both to internal as well as foreign agencies and audiences. It is beyond all doubt that war, and humanitarian intervention in particular, implies transparency. Such emphasis on intention is essential in order to prevent interveners from using humanitarian intervention as a political instrument or for gaining private profits at the cost of primary goals. As Michael Walzer wrote: *Just war theory is a necessary guide to democratic decision-making*[16].

The legitimate authority is a crucial point of the debate. Since the Middle Ages states have been competent entities; medieval international society was extremely decentralised and consisted of many cities, duchies, bishops, republics, corporations, and always with its own army. Only centralised authority was able to moderate chaos and anarchy resulting from uncontrolled use of force. Nowadays, this problem reflects tensions between the system of self-help of individual states and importance of the collective authority of the region or, better still, global institutions. It seems, in the era of the United Nations, that the Security Council, which is responsible for international peace, is the best body to decide whether force is to be used and it is also the source of legitimate use of force. The second possible solution, within the UN machine, is to endorse a humanitarian operation by another credible and legitimising body, for example the General Assembly. The question is whether it destroys the self-help system thoroughly or whether the self-help system is necessary for the efficiency of the UN system.

The last resort criterion clearly applies to humanitarian intervention. The use of armed force must be one of the last steps aimed at remedying the situation, and early non-coercive measures with the consent of the conflicted parties are desired. If such means fail and the circumstances affecting a population worsens, for example, the people's basic rights are further eroded and there is a threat of imminent widespread loss of human life, the military involvement should only then be considered. To put this in a more contemporary fashion: before resorting to intervention all the available peaceful means must be exhausted. This rule cannot be read too literally as keeping mediation and inducement at all costs - such conduct is unacceptable when it threatens populations with advancing human rights violations. One can be reminded here of the Romans maxim: *Si vis pacem, para bellum*.

[16] M. Walzer, *Just and Unjust Wars*, New York 2000, p. xvi.

The condition of proportionality has a twofold sense. The first one concerns the judgement of whether armed force should be used, that is, whether the resort to war is proportionate to the situation (in respect to harm towards innocents). Interveners have to weigh up the options for military action or inaction. The use of force is an ultimate measure and implies considerable prudence; use of armed force is likely to cause damages and loss of life, both to own soldiers, attacked parties and even civilian populations. Therefore one has to consider whether the damage caused by intervening forces and the harm suffered by inhabitants would prevail over the profits of the military operation. This leads to the condition of just ends, which states that the outcome of the intervention should be relative to the overall advantage of those in whose name it is carried out. The rule of just ends is related to the criterion of probability of success. Just war tradition adds an additional cautionary condition - that there must be a reasonable chance of success. Interveners should not barge in and make a bad situation even worse. This behaviour is rational; moreover, it favours tacit limits of international reality at the expense of moral triumphalism, which is extremely attractive for humanitarian intervention supporters. Thus, just war theory acknowledges that the idea of war/intervention as a moral testimony is dangerous in political practice. Obviously this reservation should not be read as an escape from inconvenient responsibilities or from taking steps that aim to remedy the humanitarian emergency. A reluctance to bear costs usually is usually not a sign of moral perfection, but rather of individual interests. If one talks about just war sacrifices, especially loss of life, should be assumed and included. Indeed, when considering problem of losses, St. Augustine declared that it is proper for Christians to intervene and, separate the victimiser and victim by defending the latter even at risk of death by the intervener or of attack from the victimiser[17].

Considering the problem of proportionality, one must mention the problem of limited scope of warfare. Humanitarian intervention should as be short-term and minimally disruptive of local structures as possible but not at the expense of consistency with the primary goal. The essence of humanitarian intervention, and of every limited war, both to ends and conduct, is a fight for strictly defined political goals. Henry Kissinger suggests that to win is not to destroy the opponents but to achieve goals[18]. The masterpiece is to make it without using physical force; that is to convince enemies that resistance is less attractive than the conditions that induced them. It is the challenge to coercive diplomacy and effective humanitarian response.

[17] Quoted in R. Holmes, pp 119 - 120.

Another sense of proportionality refers to the means applied through the intervention. Force should be used only to the extent that it is necessary to gain legitimate military goals, and the damage caused by armed forced cannot be excessive or unjustified. This is a way of restraining the scope and intensity of warfare in order to minimise its destructiveness. Proportionality in this respect should not be at odds with the condition of sufficiency, that is to say: that force used in the operation must be sufficient for the task defined. Proportionality and sufficiency, which reminds us of the term of military necessity, are not at variance with each other; rather they are part of the same puzzle. The just war, in this case, does not accept short cuts.

Discrimination is another criterion concerning the conduct of war. According to this rule force used in intervention should be against violators, and above all, the immunity of all non-combatants', that is women, children, aged, and infirm, must be respected. One can say, rightly in any case, that it is not easy to state whom, in most contemporary civil wars in the so-called Third World, is a combatant or not and more generally, who is the victimiser and who is the victim. The cruel experiences of the Rwandan genocide are that it depends on who is the executioner at the time. This results in numerous dilemmas.

As this essay has attempted to depict, just war criteria represents a kind of model whose application brings about many practical problems. Although international reality appears to be more complicated, the just war tradition is a useful guide in the midst of hell. It is a network of well-established rules which brings some justice and, even more importantly, gives us the chance to make the sphere of use of force not accidental but more predictable - something which has been a desired state in international relations for a very long time.

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[18] H. Kissinger, *Nuclear Weapons and Foreign Policy*, New York 1957, p. 140. In the 5th century B.C. Sun Tzu in his *The Art of War* wrote that the best war strategy is to conquer the enemy state with no battle.

3. The Kosovo case: putting criteria on

Let us now turn to one of the examples of using force for humanitarian reasons and check how this corresponds with the just war criteria. It will be exemplified by the NATO intervention in Kosovo in 1999[19].

Intervention in the southern province of Federal Republic of Yugoslavia (FRY) for many was a paradigmatic instance of humanitarian intervention. The President Bill Clinton along with Prime Minister Tony Blair stated explicitly that the intervention was a Just War. *Operation Allied Force* is the most recent latest action carried out for humanitarian purposes that meets the definition of humanitarian intervention, so we can thus assume that it has gathered the experience of former interventions in the 1990's. Furthermore, the operation took place in Europe with the European forces involved, albeit to a marginal extent. Although more than 5 years have passed since war, it is worth investigating from a just war point of view in order and that it may give us some general conclusions. In examining NATO intervention in Kosovo, the study focuses mainly on examples of force that distinctively violates the rules of just war: such a methodological attitude is consistent with the test of falsifications[20].

3.1. Just cause

Political leaders of the West claimed that they had a moral responsibility to stop the terrible atrocities taking place in the southern province of FRY. The memory of Bosnia was still strong; there was a common willingness not to let similar cruelty and political embarrassment happen again. Moreover, the United States and its supporters (deliberately or not) did not touch on the problem of Kosovo at the Dayton negotiations. The determination of NATO could have resulted from a desire to make up for that negligence.

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[19] On the NATO intervention in Kosovo (1999) look e. g. Amnesty International, *Kosovo: After Tragedy, Justice?* London 1999; T. Judah, *Kosovo: War and Revenge*, New Haven 2000; A. Roberts, 'NATO's 'Humanitarian War' over Kosovo', *Survival* Vol. 41 No. 3, 1999; UK House of Commons Foreign Committee; *Fourth Report: Kosovo*, London 2000; N. Wheeler, *Saving Strangers. Humanitarian Intervention in the International Society*, Oxford 1999; C. M. Chinkin, 'Kosovo: A 'Good' or 'Bad' War', *American Journal of International Law* Vol. 93 No. 4, 1999.

[20] Falsificationism is an approach to scientific theory, which in the process of proving the truthfulness of theory lays emphasis on the search of its falsehoods. The value of the theory depends on how far the rigorous test has been fulfilled. This methodological standpoint was formulated by Carl Popper for the first time in his *Logic of Scientific Discovery* (1934).

The argument of the interventionist forces was that action was supposed to halt the violation and to prevent outrages from spreading. World public opinion was firmly convinced that the Milosevic regime committed serious crimes against Albanians. The scope of atrocities has not been fully known: one could have presumed that up until 1999 about 230,000 people were displaced and during the bombings this sum increased to 1,450,000. At the time of the massacres in Racak and Rugovo the international press agencies reported on hundreds of killings. During and after the bombardments the given number of victims differed: at the outset UN sources reported on 44,000 casualties but in June it admitted that less than 10,000 men were killed. In the same month the International Criminal Tribunal for the former Yugoslavia said that 'only' 2108 bodies have been found. Thus it was revealed that the extent of cruelty was less than had been believed. It was also estimated that about 500 Kosovars, probably from a great part of the Kosovo Liberation Army KLA/UCK fighters or its supporters, had been killed in the year leading up to the bombings[21].

The truth is that another justification for action was that without intervention many more Albanians would have been killed or expulsed[22]. In April of 1999 the government of the United Kingdom maintained that a Serbian offensive was planned, so-called *Operation Horseshoe*, that aimed to drive out Kosovars from the province. Sceptics undermined such a conviction and claimed that there was no secret Milosevic plan, no *Horseshoe*, only something in the imagination – this was a lie that was to justify an unsuccessful (from a humanitarian point of view) tactic of intervention[23].

There is no doubt that we saw the signs of ethnic cleansing, both before and after 23 March 1999. Nevertheless the total picture of cruelty in the province seemed to be embellished and exaggerated by the media and by NATO itself.

3.2. Right intention

NATO members' leaders and NATO itself assured the world in countless statements and communiqués that the principal goal of their intervention was to remedy the intolerable situation in Kosovo[24]. The course of events seemed to confirm that. Naturally, this does not

[21] N. Wheeler, p. 269. See also J. Mertus, *Kosovo: How Myths and Truths Started a War*, Berkeley 1999.
[22] Statement of NATO Secretary General Javier Solana, March 27, 1999.
[23] *Media Monitors Network*, 3.04.2001; *Spectator* 25.10.1999.
[24] J. Hoagland, 'Blair on NATO: we must defend human rights', *Washington Post*, 19.04.1999; Statement from European Council to United Nations, March 25, 1999; Statement by NATO Secretary General Javier Solana, October 9, 1998 and March 23, 1999.

mean that NATO and other countries did not have ulterior motives or other aims. It was obvious that NATO's credibility was at stake. Besides, the Kosovo conflict jeopardised European security, so NATO action affirmed an indivisibility of European and American interests. Some add that intervention determined the future shape of Europe and its geopolitical borders[25].

The criterion of right intention was, in my opinion, fulfilled. However, it is common knowledge that good intentions are not always enough.

3.3. Legitimate authority

At the outset one must stress that the lawfulness of the intervention is not the point key issue, therefore the following remarks deal with intervention only to the extent in which it overlaps with the question of competent authority.

NATO undertook the intervention without explicit, that is legally possible, Security Council permission. There was nothing in the adopted the UNSC resolution that enabled the to use of force. The jurists have agreed that Resolutions 1160 and 1199, although incrementally claiming that the worsening humanitarian situation in Kosovo constituted a threat to peace and security in the region, did not allow any state to intervene in the province of FRY[26]. Undoubtedly, the government in Belgrade did nothing, or very little, to meet the Resolutions' demands but one must remember that it was very difficult because of the intransigent stance of KLA/UCK guerrillas.

The Netherlands, one of the NATO members, and a supporter of the USA on the continent, acknowledged during the Security Council meeting on 24 March that authorisation of armed force has been always desirable when it comes to the defence of human rights Nevertheless, none of the NATO members did make a motion to the Security Council to gather in order to discuss the problem of the use of force against FRY directly before 23 March. It was quite understandable if one takes into account the very likely, almost unavoidable, vetoes of great non-Western powers. It is obvious that in the case of Kosovo the United Nations machine was or would have been blocked particularly by Russia, who

[25] *The New York Times*, 08.04.1999.
[26] UNSC Res 1160 of March 31, 1998; UNSC Res of September 23, 1998. See also C. Portela, *Humanitarian Intervention, NATO and International Law*, Berlin 2000, pp 5 - 6. See also L. Henkin, 'Kosovo and the Law of Humanitarian Intervention', *American Journal of International Law* Vol. 93, No. 4, 1999, pp 824 – 828.

protected not human rights but rather its own sphere of influence. However, it would not be an exaggeration to claim that the United States deliberately tried to remove the United Nations from the conflict in Kosovo. Eventually this did not turn out to be possible - the UN machine had played a great part and had great responsibility in the ending of the violence and for peace-building in the province of FRY. UNSC Resolution 1244 put an end to the conflict, thus the international community along with Russia and China had indirectly legitimised intervention, and the United States had recognised the superior role of the Security Council[27]. After all, we can assume that the international community agreed that the NATO intervention in Kosovo was not a good model for humanitarian intervention, not only because of lack of competent authority, but also due to inadequate the measures applied.

Considering the problem of legitimate authority we go back inherently to the question of what to do in a situation of 'overwhelming necessity' when the Security Council, regardless of it's whatever reasons, is unable to react. One should move towards the institution of lesser importance within the United Nations. Absolutely there should be no case in which the potential intervener becomes a prosecutor whilst administering justice at the same time. Independent and credible institutions must be involved to depict the extent of human rights violations. Indeed, it would be desirable that they take a risk and affirm that the state of humanitarian disaster, with great losses of human life, is impending. Without a doubt such a statement could open doors allowing countries to resort to humanitarian intervention. Of course, there is little room for power competition in such considerations.

3.4. Last resort

The international community, with the United Nations and the Contact Group leading, has made systematic efforts over a period of 2 years to counteract the Belgrade policy in Kosovo. The clear lesson from war in Bosnia was that Milosevic negotiated only if he was under military pressure. As a result, the international community, especially the Western countries, continue to stress a link between political and military steps in the conflict over Kosovo.

Acts of violence carried out by the Serbian policy, security and paramilitary forces, and the KLA/UCK have been condemned many times. There was usually no effect of those condemnations or at best it was very short-lived. The diplomatic attempts and missions undertaken on behalf of the Contac Group, OSCE, and other countries such as Russia which

[27] UNSC Res 1244 of July 10, 1999.

was seeking to guard her influences in the Balkans, have not succeeded. The turning point seemed to be Resolution 1199 adopted on 23 September 1998 that provided, in the NATO opinion, a basis for the use of force. Under pressure from the Contact Group and NATO, as well as its activation order for air strikes, Slobodan Milosevic agreed to a cessation of hostilities in October. The agreement was to be supervised by an OSCE verification mission and NATO inspection flights over Kosovo. Unsuccessful implementation of the October Agreement accompanied by an escalation in violence, marked among other things the massacre of Racak, which led to last ditch negotiations at Rambouillet[28]. The talks at Rambouillet were sponsored by the Contact Group, which established an informal assembly of great powers in 1994 - USA, UK, France, Russia, Germany – each of whom were interested in solving the Balkan conflicts, and who sought a definite political solution for Kosovo. For the first time ever, the side of the KLA/UCK was included in the process of conciliation. This made the Serbian delegation angry as it could have legitimised the Kosovars demands for independence. After some tough talks[29] the parties provisionally agreed that Kosovo would enjoy a sizeable measure of autonomy, and that its future status would be determined in a referendum after three years of adopting the agreement. Although the greatest problem of negotiations was the degree of independence of the province from Belgrade, it seems that it was not the direct reason as to why the negotiations came to grief. According to Appendix B on the status of multinational military force, NATO personnel would have enjoyed 'free and unrestricted passage and unimpeded access throughout the FRY'[30]. It was too much to president Milosevic and all the Serbian delegation.

After the breakdown of the talks on 15 March the Belgrade government seemed to be reconciled with the approaching intervention and began a new operation in Kosovo. In such circumstances the use of force to protect the Kosovars was necessary.

Diplomatic efforts appeared to have been exhausted in the Kosovan case but there is still a shadow of doubt: the Alliance at Rambouillet tried to impose conditions that the FRY as a sovereign political community could not have ever accepted.

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[28] M. Weller, 'The Rambouillet Conference on Kosovo', *International Affairs*, Vol. 75, No. 2, 1999, pp 221 - 245.

[29] Actually there were no talks, only a mediation because Serbian and the Kosovo delegation did not contact each other directly.

[30] *Appendix B, Status of Multi-National Military Implementation Force of Interim Agreement for Peace and Self-Government in Kosovo*, http://www.monde-diplomatique.fr/dossiers/kosovo/rambouillet.html.

3.5. Proportionality and discrimination

Although the use of force seemed to be an adequate measure to remedy the situation after the breakdown of negotiations in Paris, it is questionable whether it met the norm of proportionate means and discrimination.

NATO applied the strategy of bombing assuming that this would be sufficient to realise its goals that is to stop the Belgrade government policy of repression in Kosovo. Reliance on air power in accomplishing particularly humanitarian objectives appeared to be an enormous mistake as it accelerated the ethnic cleansing. Furthermore, the way in which the force was used is highly disputed. For weeks infrastructure targets in the FRY, such as bridges, fuel depots and industries were targets, which led to an increasing number of Serb civilians being killed. The graphite bombs affected the lives of civilians very seriously. One can say, that targeting objectives were vital to the prosecution of the military but it is quite cynical to conduct a humanitarian war by non-humanitarian means[31].

The obvious effect of applied force with an aversion to a ground operation strategy can be defined as 'collateral damage'. The harm that comes to non-military targets as a consequence of the legitimate targeting of a military site along with the relation of mutual casualties is typical of just war thinking. Especially so since the rule of proportionality is, contrary to the strategic realists beliefs and military necessity, a core of limited war. The inherent element of conduct of war is that one cannot hit anything that may harm the enemy: discriminating against something that is basic to the opponent's war effort from what is essential to sustain civilian life is crucial in such a perspective[32]. Contrary to this prudence, NATO violated the norm of discrimination in a different way by devising a new criterion - combatant immunity - this means that the primary concern was to avoid losses of Alliance soldiers, even at the expense of non-combatants (Kosovars and Serbs) immunity.

The bombing was ineffective in ending violence. During the 11 weeks of bombardment several thousands of people died in the province, most of them civilians killed by Serbian forces, and more than 1,000,000 people were driven from their homes. That is clearly the consequence of a reluctance to introduce a ground campaign. Such a choice of strategy without much consideration of the likely consequences, namely, a deepening of the

[31] M. Elliott, 'Seeking Rules for Justified "Humanitarian War"', *IHT*, 22.06.1999.
[32] J. B. Elshtein, pp 8 - 9.

terror, is unacceptable from the just war perspective. Obviously one cannot forget that the responsibility for ethnic cleansing lay with the Milosevic regime: nevertheless, the Alliance had a duty to prepare and implement the best strategy in order to stop the Serbian government policy in Kosovo. NATO did not fulfil that and so is to blame.

The lesson of Kosovo is that there is no riskless warfare unless it is to be ineffective from the outset. Air power itself is unable to achieve goals on the ground, by forcing the enemy to surrender. The conclusion that stems from this has been applied in the US intervention in Iraq (2003).

Taking into account the just war tradition it is worth stating that if the decision to intervene is, as Clinton, Blair and the others claimed, morally compelling, and if there is an 'overwhelming necessity', adopting a strategy that assumes an asymmetrical valuing of life is definitely unjust. Then we come to a question which arises as to whether preserving national integrity, security and independence are sole reasons to sacrifice the life of soldiers. According to just war tradition protecting human rights is such a reason. 'Overwhelming necessity' implies a readiness to incur losses. Consequently, if states are unable to do so, they ought to leave the concept of humanitarian intervention.

3.6. Just ends and probability of success

The primary goal of operation was to stop the Milosevic policy of violence in the province. The relation of strength favoured NATO forces; actually, it dominated Serbia in every respect. Despite the war, the general environment was relatively friendly towards the NATO-led operation: after all, Serbia is a European country. Thus, the prospect of success was very high; in fact, there was no alternative solution. However, the strive towards achieving the Alliance's ends continued to be fruitless for weeks after the bombings started. Serbian forces continued the expulsions and the refugees' dilemma intensified unexpectedly. Thus the other aim of *Allied Force* emerged: that is to make the return of displaced persons possible, which would come to pass after the cease-fire. Nevertheless, the most prevailing opinion among Kosovars was that, although the price was far bloodier than anticipated, it was worth paying[33].

[33] *IHT*, 23.06.1999; *IHT* 25.06.1999; N. Wheeler, p. 274.

Unfortunately with the return of Albanians, the new wave of refugees appeared, this time consisting of Serbs and Gypsies. News commentators noticed that the victims eventually became the victimisers as 'the time of revenge begun'. NATO-led forces were powerless in many situations to protect the Serbs from secret murders or arson. The vision of a multiethnic, peaceful and democratic Kosovo whose citizens equally enjoyed universal human rights, had been shattered.

3.7. The assessment of test

Many questions arise. The most important in our case is whether *Allied Force* met the defining test of just war criteria. Bearing in mind what has been discussed so far, one can say that first of all, proportionality and discrimination, then legitimate authority and, to a lesser extent, just ends, did not pass the test. Moreover, further question marks can be put over just cause and last resort.

The decision to intervene did not follow on from the United Nations Security Council Resolution. The adopted Resolutions, namely 1160 and 1199, could not have legitimised Allied *Force*. Although even though the Secretary General of the UN, Kofi Annan, had a little understanding of the circumstances, the decision to act almost led to an unavoidable veto by Russia and China, and the dismissal of the Security Council. It seems that NATO chose the intervention option without much consideration of the humanitarian implications of applied strategic bombings. Such a use of force affected mainly civilians' environment and aimed to break the psychological will of defenders. It was clearly consistent with gen. Michael Short, Commander-in-Chief of Allied Air Forces Southern Europe, who believed that 'in order to paralyse the FRY structure of authority, the power stations, communication infrastructure and buildings of institutions like the television need to be destroyed as soon as possible'[34]. The failure to destroy Serbian armed forces along with the reluctance to deploy ground forces led the Alliance to violate the rules of proportionate use of force and non-combatant immunity.

The consequence of a strategy of bombardments was a sudden increase of expulsion, a kind of transmission of aggression: Serbs forces could not attack NATO power, so they attacked Albanians instead. Furthermore, the positive operation outcome and the fortunate return of refugees did not amount to an end of the humanitarian problems- following on from

[34] D. D. Chipman, 'The Balkan Wars: Diplomacy, Politics, and Coalition Warfare', *Strategic Review*, No. 1, 2000, pp 28 - 31.

the discrimination and violence towards the Kosovo Serbs, Gypsies and Turkish groups expanded. It is also questionable as to whether there was convincing evidence of an extreme humanitarian distress on a large-scale constituting just cause.

4. Just war and limitations of humanitarian intervention

The just war tradition is very useful as a starting point to reflect on some general features or, to be more precise, on the restraints of endeavouring humanitarian intervention. The criteria of just war touch on the problem of selectivity and cost of interventions. After Kosovo, many scholars have stated that it would be the last war of its kind. Realists and liberal interventionists agree with this, although for different reasons. It seems that a myth of clear war, which is for most statesmen, the only possible war for humanitarian purposes, has lain in ruins. Thus the reluctance to respond militarily to humanitarian needs has been rising. The Bush administration (headed by Condoleeza Rice) affirms that military measures could not decide by definition in humanitarian emergencies[35].

To present some substantiated conclusions, former interventions for humanitarian purposes will also be referred to. In some cases it is useful to mention the latest interventions (in the least not humanitarian ones), that is in Afghanistan (2001) and Iraq (2003). The aim of this section is to summarise interventionist policy since the end of the Cold War by revealing its constraints, and beginning with the assumptions of just war.

As the NATO intervention in Kosovo has shown, there are some defects of humanitarian action. The disproportionate use of force affects non-combatant immunity - which is a simple consequence of the asymmetrical evaluating of life (Alliance soldiers vs. civilians) and of a reluctance to bear casualties. The next flaw concerns the legality and the role of the United Nations, particularly the Security Council. There are two probable explanations. The first is that the United Nations machine is often incapable of resolving the essential problems of the world. This results from, as is unfolded in sections, contradictions between great powers, namely the permanent members of the Security Council. The second possible answer is more general and connected to the former. The reluctance of states to be subject to the United Nations. This confirms the dominant strategy of states, that is, self-help.

[35] C. Rice, 'Promoting the National Interest', *Foreign Affairs*, Vol. 79, No. 1, 2000, pp 52 - 54.

The increasing reluctance of states to bear costs alongside increasing contradictions among major states (something which is the direct consequence of the nature of the present international system) has changed the pattern of interaction and has lead to the deformation of humanitarian intervention.

4.1. The Kosovo case once again: within the empire of circumstances?

Just cause is a preliminary condition of just war. One can outline many situations, which meet this criterion despite the fact that intervention does not take place. Common sense prompts us to say that such reluctance is more deeply rooted when taking into account the probability of success criterion. The West has such strong powers that in almost every case, the prospect of a humanitarian outcome is high. This reluctance is also due to the experiences of international efforts in the 1990's that suggest that military supremacy and the use of force itself is not able to assure steady humanitarian results. More importantly, powers are highly unenthusiastic, even averse to using their potential capabilities for humanitarian reasons. Thus the question arises as to why the intervention in Kosovo did occur.

R. J. Vincent stated (and this still rings true), that human rights in international politics are a burden to politicians. They are at best, despite their universal nature, part of a network of goals of foreign policy, and governments to realise first of all their national interests not human rights themselves. Hence, the effective protection of human rights, in particular through such a controversial measure such as humanitarian intervention, depends on the 'empire of circumstances'[36]. Very favourable conditions for counteracting human rights abuses, even by means of enforcement options, took place after the end of the Cold War. Optimism as regards a new opening in international politics made the interventions in the Northern Iraq (1991) and in Somalia (1992) look good. In the Kosovo case some circumstances were conducive to intervention. There were:

- The former Yugoslavia was an area of special interest to the Western powers. The conflict took place near to the boundaries of NATO and the EU and directly affected their security or at leas their image. After the Cold War, Europe did not become a sphere of human rights protection; on the contrary, there was a genocide in Bosnia, which became a challenge for the euro-atlantic institutions.

[36] R. J. Vincent, *Human Rights and International Relations*, Cambridge 1986, pp 135 - 137.

- The memory of 3 years long conflict in Bosnia and Herzegovina (1992-1995) showed the incapacity, incompetence, and lack of will of the big powers. Secretary of State Madeline Albright said in March 1998 that *in 1991 the international community stood by and watched ethnic cleansing... We do not want that to happen again this time*[37]. The neglect of the Dayton negotiations probably played a role in this too.

- The United States was interested in resolving the crisis. The USA wanted to confirm that it had a long-term strategic interest in a stable Europe and that its presence on the continent was beneficial. Moreover, President Clinton many times invoked the language of national interest in order to justify a resort to war for humanitarian reasons in Kosovo. This was in concord with Clinton's foreign policy and the so-called Clinton doctrine.

- It was very lucid to distinguish amongst the warring parties in Kosovo who was a victimiser and who a victim. Support among Albanians in favour of interveners was very high.

- The logistical and delivery problems were minimised because of geographical nearness. The climate and level of infrastructure were comparatively favourable. The mountain terrain in Kosovo seemed to be the only barrier to waging war.

- There was a strong media attention on the humanitarian and political crisis in the southern province of FRY. This has been dubbed the so-called CNN effect, which puts a form of pressure on the decision-makers 'to do something'. Probably, in some 'hot' periods of conflict, the news media were mobilised by governments to support the policy of reaction. Such a 'manipulation' has emphasised and enhanced the role of the media and thus domestic support for the intervention.

Without the circumstances analysed above, the decision to take determined steps, to encompass the intervention and to remedy the situation would not have been possible. Those factors enriched the just cause. Such circumstances are not at odds with the just war tradition unless they ultimately push humanitarian concerns aside. Nevertheless, humanitarian distress is not able itself to encourage states to make efforts and mobilise capabilities for the sake of human suffering. This seems to be too risky; policy-makers are not willing - at least not in the United States - to sacrifice their soldiers' lives and millions of dollars if the goals are not strongly connected to a *raison d'etat*. The conclusion for humanitarian intervention supporters

[37] Quoted in Wheeler, p. 258.

is that the creation of conditions that make the possibility for intervention higher may mitigate the reluctance of powers to use their capabilities[38].

4.2. International system and great powers relations as a source of defects and selectivity of humanitarian intervention

Whatever the substantial issues of the day may be, they must be dealt with in the context of an existing political order that is the system of states. Although states are 'equally sovereign' as the United Charter says, they are units with dissimilar power and capabilities, placed on the geopolitical table and they aim to use their positions to gain what is possible and not to lose out. They also have their own interests which determine the state of co-operation or rivalry. Human rights have become part of the game, although their nature is to be universal not particular. The aim of every system is to create conditions enabling it to survive. Consequently, the system of states creates institutions whose goal is to maintain overall stability and eliminate threats to that stability.

Humanitarian intervention as a concept is a testimony of solidarism, an act of sacrificing ones capabilities on behalf of the international community and in the name of justice. But such premises have been doomed to failure when confronted with the nature of the system of states. Governments, caught between reasons to act and a fear of risks, tend to initiate half-hearted measures. This results in an inconsistent policy and insufficient political commitment - a sign of this is zero-casualty strategy, which leads to the application of non-humanitarian means[39]. Few leaders are willing to invest their political capital in risky, controversial interventions that have uncertain outcomes. For them the most important factors are internal: they usually do not imagine action that extends beyond the horizon of specific national interests or, at times, even opinion polls. The logic of national interest and statehood is quite clear - obligations states have are centred on their power and welfare, so states do not undertake actions that may affect them negatively. An action is moral and good only if it serves the state and if the result of it is substantial in terms of national interest.

The international system based on states and their sovereignty does not provide any general protection of human rights, even to those fundamental rights such as the right to life, and it brings only a very selective protection that is not determined by the merits of the case.

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[38] R. Falk, 'Post-Cold War Illusions and Daunting Realities', in: Roger Williamson (ed.), *Some Corners of a Foreign Field. Intervention and World Order,* London 1998, p. 145.

International society is quite inhospitable to ideas of human justice because the structure of international coexistence depends on the duties and rights, not necessarily moral, of states. Even if states take steps directed towards a realisation of human rights, they mould this action to their own purposes. These are then vagaries of international politics which cannot be accepted by the supporters of humanitarian intervention. Humanitarian concerns are clearly secondary on the international agenda as the intervention in Afghanistan and Iraq has shown. Indeed they are rather used as an additional source of legitimisation, not based on independent factors. Thus such action cannot be labelled as humanitarian intervention. The struggle with international terrorism or the stability of certain regions seem to be much more important and are more likely to provoke states into using armed force. These factors attract the attention of great powers because they are connected to state security, prestige and power.

Humanitarian intervention is often conceived of as an act of responsibility. The curse of this new model of activity is that the idea of it being a mission to improve mankind is not shared by a large part of the international community - especially Russia and China, two states which are key US opponents in power politics. With such rivalry and given the role of the humanitarian enforcer this makes the state a stronger force on the international scene. In that sense just war loses its meaning because it is useless in the context of writing the rules: humanitarian cause, humanitarian means, humanitarian outcomes turn out to be in vain as they are not suitable for any bargaining with Russia and China. Due to various reasons Russia and China ignore human rights violations both within the territory of their own states as well as in other states. Humanitarian intervention does not enhance the power of the state however as it is widely unaccepted by powers such as these (Russia and China). Carrying out an intervention may then result only in extensive costs, especially when it comes to relations with other states[40]. The consequences of NATO's intervention in Kosovo with regards relations with great non-Western powers, were highly negative as anti-American elements in Chinese and Russian policies strengthened. The United States', or more generally the West's', unilateral interventions have discouraged Russia and China because they undermine the United States policy to establish an enduring partnership[41]. Thus, humanitarian intervention becomes for statesmen a political inconvenience because the Western countries need them as

[39] S. Hoffmann (ed.), *The Ethics and Politics of Humanitarian Intervention*, Notre Dame 1996, p. 7.
[40] M. Mandelbaum, 'A Perfect Failure: NATO's War against Yugoslavia', *Foreign Policy*, Vol. 78, No. 5, 1999, p. 2 and 7.
[41] C. Portela, pp 20 - 24.

co-operative partners in for example arms control, non-proliferation efforts, fighting against terrorism and international trade.

As time goes by the reluctance to undertake military humanitarian efforts seems to increase in proportion to a degree of lesser and lesser co-operation between powers over humanitarian concerns. Consequently, selectivity becomes greater and greater. It is quite clear that where there is some evidence of a consensus within the international society as a whole, most of who are in favour of an intervention that is held to be just. This consensus embraces all the great powers because this type of intervention may take place without causing tensions. If in the very beginning of the 1990's there was a relative consent among major powers with regards to humanitarian coercive actions, the situation has been changing for dozens of years, and the NATO intervention in Kosovo is a strong manifestation of this.

One of the factors, presumably the most significant, that influences humanitarian intervention as a kind of pattern of interaction is the increasing awareness that military humanitarianism is more political than it used to be. This has become a key question asked by major powers, not only from the Western world (mainly the USA and its supporters) but also from Russia and China who oppose the idea, mainly because these are the states that act and determine the shape of world politics, not international society. Mutual relations among great powers, not a will of international society, determine mainstreamed patterns of interactions in international politics.

The conclusion may arise that without a new international consensus on fundamental community values enhanced by a proper institutional background and plausibly based on the UN machine, states with vast capabilities will intervene in a way that goes against the just war tradition by acting only when they think they are right in doing so, and when their power and circumstances enable them to do it, regardless of whether that action is accepted by other nations or not.

It is often suggested that the existing international system, that is the system of states, is being replaced by a world order which is wider and more fundamental than international order. World order is wider because a world political system consists of many groups and relations between them, while international order talks of states only as units[42]. Therefore the

[42] H. Bull, p. 21.

states system is only part of a world order. There are norms within world order which go far beyond procedural rules concerning the behaviour of states. These norms are foremost civil freedoms, liberty, and subsistence, right to life, development and so on. They are much more important than rules of sovereignty and non-intervention because mankind and the great society is something broader than the society of states. In this theory, states are only a tool of mankind, not the ultimate moral and political units. If international order has its values then they can only be instrumental to the goal of order within human society as a whole. Hence the right to intervene, or to react, as others prefer, is morally prior to respecting sovereignty of states. Of course, until now world order has been a dream, an optimistic cosmopolitan vision. However, it is present in current thinking on world politics. Politicians, commentators, even UN officials, have said many times that sovereignty should not be used to violate human rights with impunity.

There are tensions and contradictions within the present international order. On the one hand we have a moral pattern of human rights, and on the other, the presence of states still motivated by non-universal incentives and avoiding responsibility (this is called a ‘passing the buck’ strategy). Riskless intervention by states, as in the Kosovo case, in pursuit of global values is an expression of this structural contradiction States are not able to overcome it since they are absolute political units. Simply states act as they used to do. So far, riskless intervention seems to be the best available strategy as regards humanitarian concerns. This can be accepted by states, especially great powers whose foreign policies include promoting human rights. If riskless humanitarian intervention seems to be impossible, states will not be able to undertake decisive action. Sierra Leone, Rwanda and Chechnya are good examples of this.

An alternative solution is to impose a kind of humanitarian order, such as a pattern or disposition of international activity that sustains the goals consistent with universal human values. If it can be assumed that the intervention in Kosovo was a test of the 'hyperpower' of the United States, it has not been successful. The USA has been unable to compel Milosevic to accept the Rambouillet agreement through bombings, and the combined Russia - EU - UN efforts turned out to be very helpful in ending the war. Thus NATO, i.e. USA, action was not perceived as legitimate by other states, although they were not able to resist the action in a more definite way.

Another conclusion, connected with the one mentioned above is one that concerns the structure of the system being under scrutiny. The key factor or reason for this is due to the attitude of the United States who acted as the sole remaining superpower and state with the greatest capabilities in terms of carrying out humanitarian intervention. The interaction can be explained through the structure of the system, that is the distribution of power[43]. The USA can be compared to a crane or an aircraft built in a vee formation: they give direction in world politics, and the greater gap between its capacity and those of other powers, the greater freedom of America in determining the behaviour of formation. The United States has started to resign from the role of humanitarian enforcer since the failure of ”Restore Hope”.

The USA have been neglecting the role of the United Nations in the name of national interests and imposed conditions have to be fulfilled so that the US could intervene[44] The USA stated that its active participation in military operations under UN command was conditional upon vital national interests the USA has. It should apply to any other intervention. The so-called Presidential Directive 25 that formulated these conditions is still valid. The PDD 25 was not revolutionary - it referred among others to Caspar Weinberger doctrine[45]. New circumstances post Somalia implied selectivity and changes in humanitarian intervention as a pattern of interactions. It meant an opportunist shift towards the reality of world politics that aimed for a maintenance of the current responsibility to preserve nationals rather than to protect outsiders. This shift intensified after the intervention in Kosovo as it satisfied neither the supporters of humanitarian intervention nor backers of traditional, realist, state-centred visions of foreign policy. Nevertheless, the reluctance to respond humanitarian catastrophes has grown since 'the perfect failure', as Michael Mandelbaum labelled the NATO intervention in Kosovo[46].

This has confirmed the realistic view that formulating all demanding foreign policy is self-defeating. According to that idea, the mindfulness of national interests, and not self-righteousness should be a basis of every external commitment of state resources. The United States accepted this logic after the year 2000. The foreign policy program of American Republicans has stressed the importance of enhancing military and economic capabilities of

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[43] K. Waltz, pp 72 - 73.
[44] H. Beach, 'Causes, Aims and Means of Intervention', in: R. Williamson (ed.), *Some Corners of a Foreign Field. Intervention and World Order*, London 1998, p. 198; R. Connaughton, *Miltary Intervention and Peacekeeping. The Reality*, Aldershot 2001, p. 137.
[45] S. Daggett, 'Government and the Military Establishment', in: P. Schraeder (ed.), *Intervention into the 1990s. U.S. Foreign Policy in the Third World*, London 1992, p. 194.

the state and relations with China and Russia particularly as they are states which have a strong potential to mould the international system[47].

4.3. The nature of humanitarian response: increasing costs of interventions

The humanitarian response is not the easiest one. Actually it appears to be more complicated than the international community imagined in the early 1990's. One of the reasons for the reluctance to undertake intervention in the African continent was due to a lack of sufficient capabilities and measures required in very difficult social, logistic and climatic local conditions, Sudan, Congo, Liberia or Sierra Leone are not Kosovo or even Iraq. In those countries sticking in a quagmire is much more possible than performing a relatively clean surgical cut. Besides, humanitarian concerns have been inherently related to political ones; and even more so because they are subject to them, so in order to resolve those concerns diplomatic and political measures are required. If we assume that the political scene is that of bargaining, of give-and-take, then humanitarian concerns do not fit within such politics. Indeed, human rights are a moral commitment. Therefore if states take it seriously they have to engage totally in order to realise them. When human rights become political goals of foreign policy, they are usually subordinated to other ends like national security or independence. This seems to be very dubious from an ethical point of view. If states aspire to go beyond their own morality, morality that relates to interstates duties and rights, in order to proceed towards universal values like human rights they must reconcile to the fact that traditional national interests can be undermined. This is one of most serious costs which states bear when undertaking pure humanitarian intervention.

There is an essential difference between interventionism that just war underwrites and so-called genuine interventionism[48]. Just war is more realistic than we assume- it accepts the limitations resulting from the rule of probability of success. That means there is little sense in undertaking intervention if it may cause greater harm to men, which are to be protected. Additionally, if the conclusions following the analyses on the international system are included, it is also unacceptable to intervene for the sake of distribution of power or if the intervention demands vast amounts of resources that would be disproportionate to achieved goals. That is the reason why future military interventions in Chechnya, Tibet, North Korea or

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[46] M. Mandelbaum, pp 2 -7.
[47] C. Rice, pp 46 - 47. See also G. Liska, *War and Order: Reflections on Vietnam and History*, Baltimore 1978, pp 54 - 57.

even Sudan are practically inconceivable. Genuine interventionists claim that appeals for justice simply oblige us to halt cruelties. International action ought to be taken everywhere if human rights abuses occur, whether they are born of ethnic or political divisions - thus the principle of intervention should be universal and uncompromising.

The just war tradition acquiesces in selectivity of humanitarian intervention because the just cause is conditional upon prospects of success and proportionality. It reinforces the adversaries of using military power for humanitarian purposes, as it is really troublesome and complicated to achieve a stable and long-term humanitarian outcome. The required interference, therefore, should be much more complex. The intervener must look at military steps as only part of the response. The question is, what will occur after the use of force? In the cases of humanitarian emergencies with persistent, say structural, human rights violations, the simple answer 'to withdraw' makes very little sense. It may have been sensible in the interventions of India in East Pakistan (1971), or Tanzania in Uganda (1979) but nowadays, 25 - 30 years later, the situation has changed - oppressive rulers as the source of cruelty have been replaced with malfunctioning states, or in the extreme, a total lack of state. In addition, the expectations of the international community or world public opinion have risen. Thus, humanitarian intervention is not restricted to short-term protection; it includes reconstruction and positive peace development as well[49]. International interventions since the end of the Cold War have involved many expenses, but nevertheless the outcomes have not been unambiguous.

Obviously intervention for humanitarian purposes, for remedying 'the supreme humanitarian emergency' is a kind of duty, a kind of responsibility that often requires the intervener to bear costs or even casualties. The vagaries of world politics or egoist interests of states should not mitigate the importance of just cause. Unfortunately it does, as international politics are always more important than international norms. The truth is that if you are no longer prepared to take any risk for humanitarian needs then by definition you cannot fight moral wars effectively and if you are not ready to sacrifice your resources, for example financial and logistics, your weapons and the lives of your soldiers if necessary, you cannot be a good Samaritan.

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[48] See M. Glennon, 'The New Interventionism. The Search for a Just International Law', *Foreign Affairs*, Vol. 78, No. 3, 1999, pp 2 - 7; J. B. Elshtein, pp 13 - 14.

In conclusion, one can say that the limitations of military coercion are twofold: increasing costs of humanitarian intervention and insufficiency of military action to resolve a crisis. The costs of intervention for each country encompass money, casualties and political impact inside a state[50]. However, as was pointed out in the former section the question of costs should be widened to those stemming from the structure of international system.

After all, the reluctance to intervene is a problem of expenses that the state (even those states who feel some responsibility for world order) does not want to bear. It does not make any sense until other states are at best 'easy-riders', and they look at the humanitarian efforts of one state with contention because it loses its strength and capability. That is of course a problem of lack of consensus on basic values, but also political calculation is equally important, especially in the case of China and Russia who have their own human rights abuses and, more importantly, a great aspiration for a multipolar world.

4.4. Exclusive rights to use of force: states, and the United Nations

The states with rapid reaction forces, that is great powers like the United States, France, the United Kingdom or Russia, are not interested in creating a supranational level of forces, which seems be the most adequate tool to respond to humanitarian disasters. This is so far impossible in the light of the institutional weakness of the only sensible body, the United Nations. This feebleness is not a function of financial shortcomings or strategic abilities, it is rather a reflection of deeper fears and an uncertainty of great powers as to what kind of international order they are supposed to support. The United Nations in fact is not an independent actor on the international scene. Its capacity depends clearly on the major states of the system and the UN itself is politically and particularly militarily impotent[51].

One cannot help noticing that it is only the great powers who are not willing to hand over even a minimal degree of control of exclusive armed forces. They guard very jealously their monopoly over the use of force - it is the core of the system despite the fact that the UN Charter forbids the use of force as a general rule. The system of states is one of self-help and it is a system in which those who have the most to lose push aside supranational bodies. Therefore, the problem of legitimate authority remains because the main actors of the system

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[49] O. Ramsbotham, T. Woodhouse, p. 158.
[50] T. Weiss, *Military-Civilian Interactions. Intervening in Humanitarian Crisis*, Lanham 1999, pp 32 - 33.
[51] R. Connaughton, p. 265; M. Doyle, 'Discovering the Limits and Potential of Peacekeeping', in: O. Otunnu, M. Doyle, *Peacemaking and Peacekeeping for the New Century*, Lanham 1998, p. 8; J. Mayall, pp 21 - 23.

do not treat the UN machine as a fully independent entity representing the interests of the whole international society, but rather as a puppet, accepting or voting resolutions as a lever of state interests. A strong and equipped UN machine would be a potential threat to the interests of big powers, or to be more precise, to their having a free hand[52]. If the United Nations is paralysed, the prospect of carrying out a unilateral intervention is much greater. One state may then practice blackmail effectively - 'we use force and save thousands of lives or the rest of the international community takes the responsibility for a humanitarian catastrophe'.

That is the reason why the United States and other powers aim to keep the UN in military incapacity. That statement is not an accusation, rather, it is formed from a characteristic of the system, sometimes mitigated by the 'empire of circumstance' such as at the end of the Cold War that was to be the origin of a never fulfilled New World Order. The story of humanitarian intervention, and other aspiring interventions preceding from the just war tradition shows that subordination of the use of force by great powers to the rule of law is a dream. The most convincing rule appears to be national interest, not in Clinton's broadened version including human rights violations as a threat to the interests of the United States and the whole international society as well but also a narrow one, concentrating on security, mainly military, issues. One can say, paraphrasing Francis Fukuyama, that it is partly a return to the beginning of history.

5. Main conclusions

We can risk a conclusion that the problem with humanitarian intervention, with undertaking it and its conduct, is not only due to allegedly restrictive requirements derived from the just war tradition. On the contrary, the advantage of a just war tradition consists in its flexibility because each situation is so contextual that analyses rather than formulas are required. The flaws of practice of humanitarian intervention are rather for international order.

The defects of military humanitarianism equal the existence of a policy vacuum for humanitarian emergencies. They are the faults of governments who are prisoners in pursuit of particular national interests. In a world of mutual dependence and globalisation, the system of

[52] On the rapid reaction forces within the United Nations see B. Urquhart, F. Heisbourg, 'Prospect for a Rapid Response Capabilities: A Dialogue', in: O. Otunnu, M. Doyle, *Peacemaking and Peacekeeping for the New*

self-help does not seem to be reasonable enough to react to humanitarian catastrophes. States treat humanitarian efforts as a relative, useless cost, particularly in relation to other relevant states. In that sense, humanitarian intervention as a kind of international social behaviour is anti-systemic. In its pure form it undermines the system of states, is at odds with the goals of system and is useless for states in determining the structure of the international system.

On the other hand, riskless interventions, like that in Kosovo, do not seem to be a good model for future humanitarian actions. Therefore, there is a need for 'joint-help' to make it prosperous for mankind to be divided into states. This is the role of the United Nations as an institution reflecting the common good of the international community rather than one based on a combination of the interests of its members.

A society is based on common values. The practice of the late 1990's and the beginning of the 21st century tell us that humanitarian values are still neglected. They are subject to tough laws just as goals of foreign policy are. Ultimately, when international society is put to the test in moments of massive violations of human rights, society seems to be too often declarative.

The other sad conclusion is that military involvement without taking into account the context of the international system and its power interests, is not possible. It could lead to undesirable tensions between powers, something that is not welcome. World politics seem to be too serious a game to sacrifice ones capabilities in order to defend innocents especially as one of the lessons learned from the intervention in Kosovo was that the United States' relations with Russia and China are more precious than the Clinton administration had thought. Single states, because of costs, material and political, and casualties, are not able to support humanitarian needs, and the international community is equally not ready to deal with them because there is a reluctance of states to lose their monopoly over the use of force, which is perceived as constituting the international system.

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