

Human Rights and the Just War Tradition

*Striving towards a framework of justification for humanitarian
military interventions*

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Abstract

Genocides, civil wars and other humanitarian crises have led many to argue for humanitarian intervention as a responsibility of the international community to protect the interests of those whose states fail to do so; such arguments are often grounded in human rights. The aim of this thesis is to research the possibility of justifying a breach of sovereignty involving the use of military force on the basis of basic rights by embedding them into the just war framework. This framework consists of seven criteria that together formulate the conditions under which sovereignty can be justifiably overridden; the focus lies on the criteria of just cause, right intention and legitimate authority. It is considered whether human rights can realistically fulfill the just cause criterion; critics perceive human rights to provide a false sense of legitimacy for military operations, acting upon political or economic rather than humanitarian considerations. Therefore the role of intentions or motives for humanitarian interventions will be discussed. The hypothesis is that basic rights when embedded in the just war framework provide a feasible basis on which to justify military operations; to contemplate the realistic applicability of the theory the cases of humanitarian intervention in Somalia (1991-1995) and Rwanda (1994) will be discussed, resulting in the view that such a framework is feasible but points us towards the issue of a lack of credibly legitimate candidates to perform such interventions.

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War is an ugly thing, but not the ugliest of things. The decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth war is much worse. When a people are used as mere human instruments for firing cannons or thrusting bayonets, in the service and for the selfish purposes of a master, such war degrades a people. A war to protect other human beings against tyrannical injustice; a war to give victory to their own ideas of right and good, and which is their own war, carried on for an honest purpose by their free choice, — is often the means of their regeneration.

- John Stuart Mill¹

Introduction

Statistics on the fatalities of genocides and civil war confront us with the seriousness of the problems of contemporary politics. 83,000-100,000² deaths in Somalia from 1991 to 1995 due to famine and violence by political groups led by warlords in absence of a functional government; 500,000-800,000³ deaths in Rwanda in 1994 in just three months due to ethnic violence; and with the death toll of the Syrian civil war exceeding 200,000 at the end of 2014⁴ with no foreseeable resolution to the conflict as of yet, it becomes clear that stopping such large-scale atrocities is not a problem of the past but is one of the most pressing and challenging issues of modern times. The end of the Cold War-era lay bare unresolved power struggles which fueled ethnic, ideological and power related conflicts in the 90's and continue to this day. Many have come to argue for humanitarian interventions as a way of halting genocides, civil war or other humanitarian crises and urge us to reconsider the seeming inviolability of state sovereignty. Should we, as the international community, be permitted to interfere or are we fated to remain idle bystanders while we know of the atrocities occurring worldwide?

¹ "The Contest in America," Fraser's Magazine (Feb. 1862) <http://harpers.org/blog/2007/07/mill-on-wars-just-and-not/> Accessed on 22-06-2015

² These are careful estimates as suggested by Taylor Seybolt in his book "Humanitarian Military Intervention: Conditions for Success and Failure (2008)

³ *Ibid.*

⁴ Generally acknowledged figure as depicted in several media sources: <http://www.washingtonpost.com/blogs/worldviews/wp/2014/12/03/200000-dead-why-syrias-rising-death-toll-is-so-divisive/> Accessed on 22-06-2015

Proponents of humanitarian interventions often point towards human rights, as these universal moral principles transcend state boundaries and address the responsibilities of the international community (primarily through the UN), to safeguard the interests of the weak and vulnerable. The topic of this thesis will be to what extent such use of human rights can provide a satisfactory justification for military operations; as a way of using violence to prevent worse. The human rights approach is appealing for two reasons. Firstly, human rights are internationally recognized and are designed to mark the limits of state autonomy; secondly, because they are claimed to be part of a universal consensus on morality.

Considering whether human rights formulate a plausible justification for military operations cannot be done without understanding what it takes to override sovereignty (understood as state autonomy); therefore, I will turn to the *just war tradition*. The just war tradition holds several criteria which must be met to justifiably wage war (*jus ad bellum*): just cause, proportionate response, legitimate authority, right intention, reasonable prospect of success, formal declaration of war and last resort.⁵ (Pattison 2010:3; Walzer 2002:925; Augustine in Mattox 2006:10) These principles determine the *permissibility* of war: “[when these criteria are met] a state normally would thereby be considered to have acquired moral *licence* to engage in war, although not necessarily the moral *obligation* to do so.” (Mattox 2006:10)

However righteous humanitarian interventions may seem, many have come to criticize past interventions and, regrettably, often they are correct in doing so. Especially interventions involving the use of military force, like those in Somalia, Iraq and in Eastern Europe have shown that political and economic interests have far too often played a defining role in political decision making, while support for such operations was gathered on humanitarian grounds. (Seybolt 2008) Writers like Denike, Achterhuis and Chomsky are therefore highly skeptical of such military operations, *especially* when they are performed on the basis of human rights; politicians referring to such ideals seem to imbue military operations with a sense of inherent moral legitimacy “whether or not it is consistent with international law, and however much suffering is produced in their name.” (Denike 2008:96) Proponents of humanitarian intervention are perceived to be blind to the real, underlying, motivations to undertake such operations as they are used as a manner of maintaining the current dominance of the most powerful states in the post-colonial era. (Chomsky 2008:15) Achterhuis underscores the fact that the humanitarian intentions are rarely realized; interventions are always confined by the

⁵ Although there is no definite list of criteria, as they have been expressed in different combinations and slightly altered versions, these are the criteria most commonly proposed.

uncontrollable nature of diplomatic relations and one should always remember there is no such thing as apolitical, purely humanitarian intervention. (Achterhuis 1999) We should therefore be wary of the actual nature of these military operations and look through the fog of human rights discourse that can obscure political decision making processes

Cases such as Rwanda and contemporary Syria, however, indicate that considering humanitarian intervention remains crucial as military interventions could have prevented or reduced substantial amounts of human suffering and there is no reason to believe such cases will not recur in the future. Therefore, in the light of the criticisms, a plausible theory of justification for humanitarian interventions should argue for a moral permission to intervene without becoming blind to political reality. That being said, my hypothesis will be as follows:

Hypothesis: the just war tradition with the protection of basic human rights as a just cause is sufficiently sensitive to existing power-relations to provide a justification for the use of military force in cases of humanitarian intervention.

I will restrict this discussion by focusing solely on interventions involving the use of military force; since war is inherently destructive and violent, it would be contradictory to the aims of humanitarian intervention if more lives would be sacrificed than it aims to save.⁶ Humanitarian crises like genocides and civil wars require us to consider the feasibility of moral theory in order to be relevant. Firstly, a theory of justification should therefore only permit operations with a reasonable prospect of success. Secondly, and this will be our focus, it should permit intervention in cases of severe human suffering while not providing a ‘veil of legitimacy’ for political endeavors like securing access to oil, reaffirming political influence or economic interests. I will account for this sensitivity by applying the framework to two cases; one carrying a common intuition that intervention would have been required, while the other is deemed a humanitarian intervention disaster case: respectively, the humanitarian intervention in Rwanda in 1994 and the series of interventions in Somalia from 1991-1995.

Rwanda has often served as a paradigm case in discussions on humanitarian intervention; it is often said, and indeed confirmed by the study of Seybolt (2008), that in hindsight a large part of the casualties could have been prevented by an intervention. Instead, the international community was unwilling to act against the violence and according to some this contributed

⁶ Such considerations are covered by the just war criteria of *proportionate response* and *reasonable prospect of success*. Furthermore, other forms of intervention are a step lower on the ‘intervention ladder’ and are logically justified when the use of force is.

to the severity and duration of the conflict. While Rwanda is therefore an example of why we should not be too hesitant when considering intervention, the case of Somalia provides an opposing view. Although the intention was to reduce human suffering, these interventions became subject of fierce criticism as it became clear that the operations were about safeguarding the political and economic interests of the intervening states and the operations actually increased the death rate in the country. (Seybolt 2008:59) The cases of Rwanda and Somalia therefore provide real-life points of reference. I will review these cases to account for the claim that human rights theorists are naïve regarding the real world context to which they wish to apply their theory.

My aim is thus fourfold: (1) to find out how to understand human rights and (2) the broader just war framework, (3) to see if they can be unified in a cohesive framework and, following this, (4) whether there is an understanding of both which can offer a feasible way to justify humanitarian intervention. Primary focus will be on the *just cause, right intention and legitimate authority* criteria as these can be discussed *in abstracto*; while the remainder of the criteria (reasonable prospect of success, proportionate response, formal declaration of war and last resort) must be assessed *in concreto* as these require factual and case-specific knowledge. It must be clear, however, that while the focus lies on just cause, right intention and legitimate authority, the framework is to remain a coherent whole and I will thus refer to them throughout the thesis.⁷ Besides these primary aims, this discussion sheds light on some more general themes; it furthers the discussion on human rights and their role international politics; the debate on moral universalism; the duties of the international community, the UN and individual states in acting against human rights violations; and lastly, discussions on the limits of state sovereignty.

This thesis will be divided into two main sections. In Section I, I will describe the fundamental principles of the just war tradition: the main criteria of *just cause*, and what conception of human rights could most plausibly fulfill this criterion; *right intentions* and political motives, describing the difficulties in accounting for the political interests of states; and the question of *who* is permitted to intervene, by discussing the difficulties in finding a legitimate actor. This is followed by a description of the cases of Rwanda and Somalia, to place our discussion in a real-world frame. Section II will be devoted to the application of the concepts as described in Section I in order assess whether the framework provides a plausible

⁷ For an interesting approach on these issues see Seybolt's 2008 book *Humanitarian Military Interventions: the Conditions for Success and Failure*

account for permissibility of humanitarian interventions. A discussion on the feasibility of humanitarian interventions on the grounds of human rights will conclude this study, where I will argue that war might rarely offer a solution but we must leave open the possibility as we would otherwise be forced to accept any status quo.

Section I:

The Just War Tradition and Humanitarian Intervention

1.1 Just warfare

The just war tradition, deeply rooted in classical philosophical literature, finds its roots in Saint Augustine's work on the ethics of war. The tradition is generally split into two main categories, namely *jus in bello* and *jus ad bellum*.⁸ Walzer notes Augustine's work marks a transition in his time as he "replaced the radical refusal of Christian pacifists with the active ministry of the Christian soldier." (Walzer 2002) Augustine argued for the permissibility of warfare as Christians should be allowed to fight "in the name of the worldly city, for the sake of imperial peace." (Walzer 2002:925) The religious and moral norms of the time were transformed from more pacifist ideals to allowing soldiers to fight as long as this was done justly, without anger or lust, and most importantly as long as the ultimate objective was a long lasting peace. (Mattox 2006:10)

"Seen from the perspective of primitive Christianity, this account of just war was simply an excuse, a way of making war morally and religiously possible. And that was indeed the function of the theory. But its defenders would have said, and I am inclined to agree, that it made war possible in a world where war was, sometimes, necessary." (Walzer 2002:925)

A justification for war can easily be regarded as an *excuse* to engage in war to protect one's own interests. However, "Just War theory is not an apology for any particular war, and it is not a renunciation of war itself. It is designed to sustain a constant scrutiny and an immanent critique." (Walzer 2002:942) Of course war should always remain a last resort, however,

⁸ The first, *jus in bello*, concerns a type of 'code of conduct' warring parties have to adhere to; think of for instance the Geneva Convention or other documents regulating the right treatment of the sick, wounded and prisoners of war or those prohibiting the use of chemical weapons. The second, *jus ad bellum*, is concerned with the right to wage war. Since we are looking for a way to argue for a right to intervene, including the use of military force, it is the latter I will be focusing on.

according to just war theorists it can be righteous and we need to leave open the possibility for war when it serves a greater good. In my view this idea is still very relevant; international treaties, nation-state borders, and the global political system are designed to grant states the right to self-rule, limiting the possibilities for war. While such treaties are an effective way to reduce instances of war, one should consider whether no amount of human suffering would override the importance of state sovereignty; when legal and political obstacles prohibit interventions, we are bound by rules and indeed we need to consider whether one would be (morally) right in breaking them. In the following paragraph I will consider whether human rights can indeed be considered to fulfill the role of a just cause in justifying military interventions.

1.2 Human Rights as a Just Cause

1.2.1 Understanding Human Rights

The content of the just cause criterion is left open in the literature: “Augustine justifies the state in going to war when doing so constitutes the best available remedy for righting injustices.” (Mattox 2006:51) As said before, I will consider human rights as a just cause as they are often used to legitimize interventions. In order to contemplate this, let us first take a look at what *rights* are. Shue offers a well-put definition of rights in general terms, which reads as follows:

“A right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats.”
(Shue in Beitz & Goodin 2009:6)

To have a right does not simply mean one could say he has a right, or that a state claims its citizens have rights. Having a right involves much more than that; a person who has a right needs to be factually able to enjoy this right. Therefore, if one says ‘A has a right’ this is a statement about A being entitled to be treated in a certain way and others have a duty to do so: “These duties are not ones of charity or benevolence or philanthropy: if someone has a right they can claim it as a matter of justice.” (Caney 2005:64) As Caney puts forward, there are rights that are attributed to specific individuals, due to specific personal characteristics; what he calls *special* rights. Human rights, however, are best understood as *general* rights; rights held by *all human beings*. (Caney 2005:64)

Human rights are often grounded on abstract notions on human nature, especially in the Kantian tradition. Such a conception assumes that human rights are ‘natural’ rights springing from nothing but the fact that the right-holder is a human being. (Beitz 2009:71) Beitz holds such naturalistic conceptions of human rights to be of limited use in discussions on international politics, however, as the international human rights discourse needs to be concerned with the functions these rights are to fulfill instead of discussing which rights human beings have in a state of nature “independently of people’s social relations.” (Beitz 2009:71) The creation of human rights “was intended from the outset to afford *common grounds* [emphasis added] for political action to persons situated in cultures with differing moral traditions and political values.” (Beitz 2009:72)

I am inclined to agree with Beitz, as for our present purposes we are not concerned with solving the conundrum of what human rights are universal in a naturalist sense; that is to answer the question: which human rights do we have by virtue of being human? Rather, as the just war doctrine requires a just cause for intervention that is acceptable across cultures, the more relevant question is: which human rights could reasonably be considered acceptable to everyone? This conception of human rights compels us to focus on overlapping values; moral norms on which there is cross-cultural consensus. Conceiving human rights as such leans towards what Beitz calls ‘agreement theories’.⁹ This approach is less divisive in character, emphasizing consensus rather than disagreement on fundamental principles of morality, and is therefore more suitable for discussions on humanitarian intervention. I do not mean to say this discussion on the nature of human rights is irrelevant; rather, as will become clear in the following paragraphs, for our discussion on the permissibility of intervention we can do without consensus on the *justification* of human rights when there is agreement on their *content*.

We are then left with the question of how to define human rights so that they formulate a just cause for military interventions that is acceptable in general, regardless of cultural or religious specificities, while remaining compatible with the larger just war framework. Three aspects are relevant to consider here, being (1) which human rights could constitute a just cause, (2) the universality of these rights and (3) how we should view their corresponding duties. This will serve the purpose of formulating the conception of human rights that best suits the theoretical framework of the just war tradition and the context of humanitarian intervention.

⁹ Beitz discusses natural rights theories and agreement theories in his 2009 book “The Idea of Human Rights”. He discusses these two approaches and then opts for another one, based on Rawl’s ideas as expressed in “The Law of Peoples”.

Let us first consider which human rights could be the aim of intervention involving the use of military force: all of them (as provided by the Universal Declaration of Human Rights) or just a select few? Consider that we took all human rights as being a cause that would justify intervention; the violation of any human right (the discrimination of persons, people not being allowed to marry or enjoy education) would provide permission for other states to intervene. This would lead to an unsustainable situation as this would justify intervention too quickly and in too many cases, subsequently endangering political stability. We can therefore not hold the full list of human rights to be sufficient grounds for military intervention.

Which rights are of sufficient importance to not lead to untenable situations? Shue's notion of *basic rights* provide a plausible answer, as some human rights are more fundamental than others in the sense that other (less fundamental) rights cannot be enjoyed without them. Shue dubs such rights *basic rights*, which include *subsistence* and *protection* rights. (Beitz & Goodin 2009:4) Such rights entail that all human beings must be protected in life-threatening situations and should be granted certain minimal requirements for survival; since regardless of what other rights one may have (civil, political or other human rights) these cannot be enjoyed without being guaranteed these basic rights.

Basic rights are therefore more likely candidates to justify a (proportionate) intervention, since the use of military force involves the sacrifice of the lives of some and not all human rights could warrant such a trade-off. Furthermore, since these basic rights ensure the enjoyment of culturally specific rights claiming them to be universal is less controversial. One last specification must be made, however. Consider the following statement: humanitarian intervention is justified in cases of large-scale violations basic rights. This statement carries an implication I perceive to be problematic, as it infers intervention to be just in a state unable to uphold basic rights due to extreme poverty, natural disasters or famine. Since such humanitarian crises do not warrant military intervention, but rather the provision of humanitarian aid, the inference must be made that the violations of human rights must be *actively* performed, in the sense that an actor (governmental or other) purposely violates these rights or intentionally neglects to uphold them.

The second consideration is that of universality. Note that the just cause for intervention must be recognizable by persons from different cultural or religious backgrounds; interventions would bring about too much opposition if the universality of the principles upon which it acts can be brought into question. While human rights are often claimed to be universal there is an important distinction to be made: we can understand human rights to be universal in the sense

that they apply to all persons (universal in content) or that the same justification is accepted by everyone (universal in justification). (Caney 2005:27) Building on our present conception of human rights (grounded not in abstract naturalistic concepts but on cross-cultural consensus), we can claim human rights to be universally applicable without necessarily having to defend their universal justification or 'truth'. Or, as Caney puts it: "As such, moral universalism would be satisfied in a world in which people of different cultures observe the same (just) values even if they do so for different reasons and on the basis of different moral doctrines." (Caney 2005:29)

What is left to consider is whether active violations of basic rights are considered moral wrongs across cultures. Intuitively, we are inclined to believe that all cultures would condemn acts of murder, especially those in large numbers; in reality this is dubious. For instance, in many tribal traditions the killing of another person is only considered morally wrong when it concerns a member of the tribe (in which case it is only then considered murder).¹⁰ Furthermore, occurrences of genocides are accompanied by a discourse that 'dehumanizes' the enemy. (Juergensmeyer 2001:186) Like the Tutsi's were labelled 'cockroaches' in Rwanda and the Jewish population during WWII being denounced as 'rats' by the Nazi's. It seems hard to defend the statement that killing in itself is a universal wrong, as some communities might not accept the impermissibility of killing members of other ethnic, religious or political groups.

However, in the light of international politics such a position is untenable; stating intervention to be impermissible because the local culture does not recognize a genocide as a moral wrong is problematic for three reasons. Firstly, because it builds on an all too static conception of culture and ignores the fact that it "is a repertoire of deeply contested symbols, practices and meanings over and with which members of a society constantly struggle." (Donnelly 2007:296) Relatedly, the second point is that such an argument confuses politics with culture; as Donnelly states: "as a result such arguments regularly confuse what a people has been forced to tolerate with what it values." (Donnelly 2007:296) Let it suffice to say that political leaders dictate action during a conflict, not culture; the claim that it is impermissible to interfere in cases of genocide because the group *values* it in one way or another is therefore not persuasive. Thirdly, and most importantly, as Donnelly notes: "*Intolerant*, even genocidal, relativism is as defensible as *tolerant* relativism [*emphasis added*]. If my culture's values tell me that others are inferior, there is no standard by which to challenge this." (Donnelly 2007:295) A community involved in an ethnic conflict could not reasonably deny the basic

¹⁰ Contrast this with certain traditions in India, where the killing of any animal (human or non-human) is considered a moral wrong.

rights of their enemies as they themselves would be left without any defense against becoming victims of the same fate; this position would imply a rapid decline into moral nihilism where no community has a right on the basis of which they can claim not to be eradicated. This results in the view that large-scale, systematic and active basic human rights violations, are universal moral wrongs and formulate a just cause that can reasonably be assumed to enjoy universal recognition. These basic rights then outline the limits of state autonomy. Again, it does not matter on which (cultural, religious, or other) grounds these rights are justified, as I assume them to be universal at least in content.

The third and final aspect is what duties correspond with our present conception of human rights; do violations of basic rights *require* intervention or do they *permit* states to do so? The criteria of proportionate response, reasonable prospect of success and last resort must be fulfilled in order to maintain coherence; there are cases imaginable where there is a just cause, while chances of halting the crisis are very slim or intervention could make matters worse. Such an intervention would be unjustifiable, as it would put too large a strain on the resources of intervening states if every humanitarian crisis *required* intervention. Due to these constraints provided by the just war tradition, the most fitting conception of human rights is that it does not generate strict duties, but makes war permissible in times of extreme need.

To conclude this paragraph, I would argue that the following conception of human rights would be most suitable to justify interventions: (1) only active and large-scale violations of basic rights, and (2) these rights are part of an ‘overlapping consensus’ on morality, and (3) violations of basic rights generate the *permission* to intervene. The just cause criterion can thus be fulfilled by aiming to protect the basic rights to protection and subsistence of a population when their respective state fails to do so. Basic rights thus constitute a plausible just cause for intervention, however, can we indeed make the claim that this cause trumps state sovereignty?

1.2.2 A Just Cause to Trump Sovereignty

Nation-states have a very special political and cultural significance; we have become very much accustomed to the lines drawn on our globes and world maps and nationalism has become a constituent part of our identities. The rise of the nation-state has indeed led to the establishment of a very stable and durable political system: “a more equitable and universalistic form of politics than humanity has known before.” (Wimmer 2004:4). Sovereignty can be understood and legitimized in different ways but is generally understood as a form of state autonomy, or

freedom from external interference. Non-interference is of importance as it enables states to protect the interests (primarily to safety and welfare) of their members and to allow the community to live according to their own historical and cultural identity. (Bickerton et al. 2007:39, 189) Let us now consider whether there is a notion of sovereignty that would prevent other states from intervening (while adhering to just war principles).

Firstly, the reading of sovereignty as protecting the interests of a community regards sovereignty as a social contract; suggesting persons are willing to sacrifice part of their individual freedoms by subordinating themselves to a higher authority in exchange for protection against other individuals. (Russel 2011:580) According to such a Hobbesian understanding of sovereignty a state is thus legitimized because it acts in accordance with the interests of its population. Some authors therefore define sovereignty as a *responsibility*; regarding the legitimacy of a state's sovereignty to be dependent upon internal support from its population. (Bickerton et al. 2007:39; Pattison 2010:21) Indeed the formation of nation-states has led to a relatively stable system with states safeguarding the interests of their citizens. However, the stability nation-states have to offer comes at a price to some:

“Political modernity – democracy, constitutionalism and citizenship – had its price, as has every form of social organisation based on strong membership rights. Inclusion into the national community of equals went along with exclusion of those not considered to be true members of the family: those that became classified as foreigners, as ethnic or religious minorities, as guest-workers or stateless persons.”
(Wimmer 2004:4)

According to the popular anthropological understanding of nationalism and identity formation, the creation of a national identity is just as much a process of *inclusion* as *exclusion*; whenever groups are formed, some need to be left out for otherwise the identity of the group would be lost. (Eriksen 2010: 73-74; Anderson 1991; Wimmer 2004:199) This process indeed lays the foundation for violence against minorities, under certain circumstances growing to the epic proportions of a genocide. (Appadurai 2006:42)

Whose interests do we then understand sovereign states to protect; those of the predominant national community? And what about the interests of the excluded members? Arguing the normative force of sovereignty to spring from a state protecting the interests of persons is flawed because it wrongfully regards nation-states to overlap with ethnic, religious and cultural boundaries; it reduces states to ‘black boxes’ and would grant states permission to do as they please with those excluded from membership. Therefore, I do not find such a conception of

sovereignty to provide convincing arguments against intervention; sovereignty understood as a responsibility certainly seems overridable when a state does not protect the interests of all of its population.

The second foundation for sovereignty is provided by Walzer, grounding it in the rights of persons to “live as members of a historic community and to express their inherited culture through political forms worked out among themselves.” (Walzer 1980:211) Walzer understands these community rights to provide sovereignty its normative force. As Caney analyzes this communitarian claim, he breaks it down into two essential assertions: (1) every community has the right to communal self-government and to live as members of their own historic community, and (2), “those outside a state are unable to judge whether that state represents a form of communal self-government.” (Caney 2005:236) According to Walzer, external actors should assume that there is a certain ‘fit’ between a state and its population, that the state embodies the norms of the community and therefore that we must respect the sovereignty of any state. Even states we would consider to be ruled in an unjust way, Walzer warns, must not be considered to be governed by “a gang of rulers acting in its own interests”, but we *must* still consider them legitimate rulers and representatives of the community. (Walzer 1980:212)

This notion of sovereignty does not undermine the arguments that can be posed against the previously considered conception of sovereignty. Firstly, it should be clear that it is rarely the case for there to be a fit between a community and a state as most states are comprised of multiple religions, ethnicities and cultures. So which community should ‘fit’ the state anyway? Secondly, we often *can* determine whether state and population are incompatible as there are many organizations reporting on human rights violations based on scientific research. (Caney 2005:237) In any case, genocides and ethnic cleansings should be very clear indicators of a lack of a ‘fit’ between a state and at least a significant part of its population. Indeed, as we have determined, such events violate basic rights we can reasonably assume to enjoy cross-cultural recognition and can therefore credibly act as a constraint on the autonomy of states.

Indeed, this is in line with Rawl’s moral theory as he sees the role of human rights “as part of the effort to provide a suitable definition of, and limits on, a government’s internal sovereignty.” (Rawls 1999:27) Although the claim that all human rights contribute to these restrictions on sovereignty is presumptuous at this stage, I perceive basic rights as defined above to be the limiting factors of a state’s autonomy. The halting of genocides or other systematic basic rights abuses are then universally acceptable just causes for intervention that grant permissibility to trump the right to self-rule and thus breach sovereignty. However, as will come

forward in the case-studies, the presence of a just cause merely provides intervening states with a legitimate objective for military operations; the aura of legitimacy this grants 'humanitarian interveners' is prone to being misused to advance political goals. Perhaps this is why we should regard humanitarian interventions as problematic. In the following two paragraphs I will discuss the considerations as provided by the just war tradition that focus on the humanitarian intervener, to come to an understanding of the role of political interests or motives in contemplating humanitarian interventions.

1.3 Right intention and underlying motives

A logically induced characteristic of a humanitarian intervener is that it acts upon right (humanitarian) intentions; a humanitarian intervener can be said to have "the purpose of preventing, reducing, or halting the humanitarian crisis. Such an intervener acts with the aim of bringing about humanitarian consequences." (Pattison 2010:154) Hence, in the light of this study a right intention involves the aim of bringing about an outcome in which basic rights can be guaranteed or at least to prevent further violations of these rights. "The underlying reason for the intervener's having this humanitarian intention, however, does not also have to be humanitarian. It could be, for instance, a self-interested reason." (Pattison 2010:154)

In order to contemplate the moral relevance of intentions, we should therefore make a distinction between *intentions* and *motives*; where intentions are understood as the aim or goal one has in mind (the just cause). The reasons one has for taking this to be an aim are then understood as the underlying *motives*. For example, State A can intervene in State B because of the grievous suffering of State B's population. The intention of State A is to halt the humanitarian crisis brought about by State B's oppressive regime. The *motive* for State A to have this *intention* to stop the crisis in State B (and for instance not in State C) can be a self-centered reason; for instance for a political leader to win coming elections, or because it is more important for the concerning actor to maintain political ties with State B over State C.

The importance of the intention-motive distinction lies in the critique that is often voiced against humanitarian interventions, namely that intervening states are often perceived to use the legitimacy provided by the just cause to safeguard their own political interests regarding oil, sea trade routes, forcing regime changes, etc. Indeed, as will become evident in the case-studies, such interests or ulterior motives for interventions have often led to unjustifiable interventions. So how should we account for such political interests and do they indeed render interventions problematic?

Let us first see what can be assumed in abstract terms, as we can use the case-studies as a point of reference for a more concrete discussion in Section II. There are three ways to regard the moral relevance of intentions and motives, namely to (1) deem it impermissible for humanitarian interveners to act upon ulterior motives as such, or (2) to deny the moral relevance of motives altogether as it is about the interveners bringing about humanitarian consequences, or (3) to find a middle way; allowing for motives but only to a certain extent.

The first interpretation suffers from a major problem, as denying the permissibility for interveners to act upon self-interested motives will leave many states unwilling to act. We cannot demand states to intervene although they have no interest in doing so, as any military operation will put a large strain on the countries resources and economy; also, the population will not support every operation as the lives of the soldiers are on the line. Denying the permissibility of motives would leave many crises to continue unabated. In order for humanitarian intervention to be realistically viable we need to account for the interests of states, therefore permitting interveners, to some extent, to act out of self-interest.

The second interpretation, denying the moral relevance of motives, does not fare much better. Consider the following example: State A wants to intervene in State B with the intention to halt a genocide. State A has interests in securing a certain outcome, favoring the party that is willing to cooperate, and this is their reason for military involvement. The favored party is, however, one of the primary sources of violence. State A then finds itself with conflicting intentions and motives. Allowing State A to act upon these motives, which would lead them to protect the favored party while attacking others, is problematic as such actions might very well counteract the humanitarian intention by prolonging the conflict or destabilizing the region and the acts of violence directed towards the self-interested aims are therefore not deserving of the same level of justification the just cause provides.

Considering that we can neither deny the moral relevance of motives nor deny the permissibility of acting upon ulterior motives, we should aim to balance the two. The implications of this discussion will become more clear after the case-studies; keeping this discussion in mind, let it suffice to say for now that the factor of justification (basic rights as a just cause) provides the permission to use force and this legitimacy does not transfer to the violence used to achieve other goals (especially not when acting upon them counteracts the just cause).

1.4 Legitimate authority

Now that we have come to discuss the just cause and made some remarks on intentions and motives, the question of *who* is to intervene deserves our attention. “For the responsibility to protect to be realizable, it needs to be assigned to a specific agent.” (Pattison 2010:10) Several options are available here: the UN could lead the intervention, or authorize governments to do so; a coalition of governments can be formed, for instance by states from the same region; or perhaps UN authorization is morally irrelevant and individual states should be able to intervene. The question of which authorities are able to act in accordance with the just war principles is a hard one in today’s political arena as individual states are prone to act out of self-interest, even when authorized by the UN. However, Seybolt claims “The best verification of intentions is authorization by an intergovernmental organization. Authorization is a method for publicly identifying the purposes of an intervention and for establishing its limits.” (Seybolt 2008:265)

UN authorization can indeed aid in the legal and political legitimization of a government to intervene, as the aims of the intervention are publicly announced and can be recognized by the parties involved. Transparency is crucial here, as it should be clear what the aim of the intervention is; the criterion of ‘formal declaration of war’, found in the just war tradition, is thereby fulfilled. Although such political authorization is important for the feasibility of intervention, it does not come without problems. One would be right in questioning the *moral* relevance of UN-authorization as Pattison perceives the veto power of the permanent members to be morally problematic, “and this means that it is far from obvious that interveners authorized by the Security Council are legitimate.” Also, it has often failed to authorize intervention when it was desperately needed. (Pattison 2010:5) These statements are worth keeping in mind for the case of Rwanda.

Up until now I have described the framework of the just war tradition in what I find to be its most plausible form. The just cause of an intervention should be the safeguarding of the right not to be the victim of a large-scale, actively and systematically performed act of genocide or other acts that violate the basic human rights to subsistence or protection; I consider that one could reasonably claim such a right to be universal, at least in content whereas the justification for such a right may differ. The attainment of this objective must be the intention of a humanitarian intervener, although the underlying motives may diverge to a limited degree. We are also left with the question of which actors can be regarded to fulfill the legitimate authority criterion, and we should keep the question in mind whether UN-authorization is a necessary

prerequisite. Let us now turn to the case-studies to help us further answer these questions and analyze the cases of Rwanda and Somalia using the principles that were introduced thus far which provide promising perspectives on the morally relevant aspects of humanitarian intervention.

1.5 Case-studies

The just war tradition, as it is described above, is a framework based on ideal notions; especially the criteria of just cause and right intentions emphasize for what types of reasons wars *ought* to be fought. Such ideal theory, however, often finds itself in danger of neglecting political reality. Interventions in Afghanistan, Iraq, the Balkan and Somalia have been justified under the auspices of protecting human rights and the ending of suffering, however, as the extensive study of the Stockholm International Peace Research Institute (SIPRI) has shown, all of these interventions were ultimately driven by political motives; i.e. resources, power and economic interests. (Seybolt 2008)

To make the complexities involved in political decision making on humanitarian intervention more tangible, I will provide a succinct description of decisive considerations and the actors involved in the humanitarian intervention in Rwanda in 1994 and those in Somalia 1991-1995.¹¹ In the next paragraph I will turn to the case of Rwandan genocide, as it is a conflict that has been thoroughly analyzed and the inactivity of the international community received fierce critique; humanitarian intervention advocates often refer to this humanitarian crisis to illustrate the *necessity* for interventions. To provide contrast to the pro-interventionist arguments that spring from the case of Rwanda, I will then turn to the series of interventions in Somalia; although the humanitarian interventions in this case were initially instigated to halt the suffering of the Somali people due to famine and civil war, the interventions have been found to be utterly indefensible in hindsight. Primary focus will be on whether the combined framework of human rights and just war principles is sufficiently sensitive to the political context and power-relations by considering whether the framework is able to account for the

¹¹ For data on these interventions I will be largely dependent upon the research of SIPRI as reported in the book by Taylor Seybolt, which “weighs in on the use of force debate, arguing that protecting and assisting civilians who are caught up in violent conflicts—saving strangers—is a legitimate purpose for military intervention.” (Seybolt 2008) At the same time, this book provides a methodized analysis (based on qualitative and quantitative data) of the conditions of success and failure for humanitarian intervention; this more pragmatic side of the debate is mainly concerned with determining the ‘reasonable prospect of success’. Although such considerations will not be addressed exhaustively here, for our present purpose of gathering real-world knowledge on the issue of humanitarian intervention the report will be of significant importance.

difficulties put forward by the cases. Most importantly, this theory of justification should neither endorse highflying, fantastical, unrestrained idealism (as this would justify military force too quickly, making it susceptible to political opportunism by granting interventions an air of unquestionable legitimacy) nor should it allow for reluctance or hesitance when intervention is *necessary*.

1.5.1 Somalia *Civil War and Famine*

At the end of the 1980's the regime of Said Barre began to fall apart, because of growing opposition to his "repressive and megalomaniacal rule" combined with an economic crisis due to a dramatic decline in Somalia's export in hides, meat, cattle and banana's. (Gibbs 2000:44) The civil war that resulted started in 1988, digressing the country in a general state of lawlessness as militias based on clan allegiance once united to overthrow the Barre regime started to turn on each other; reducing the national army to "little more than Barre's personal militia – one among many." (Seybolt 2008:52) To make matters worse, a severe drought occurred leaving the Somali people unable to feed themselves. With the resulting chaos being allowed to continue unabated as there was "no state apparatus left to deal with the violence and economic breakdown, nor was [there] any rebel group strong enough to dominate the others and create a new government", according to Seybolt's estimation between 83.000 and 100.000 lives were lost during the crisis between 1991 and 1995. (Seybolt 2008:53)

Initially no government wanted to get involved in the conflict. It was only when UN Secretary-General Boutros Boutros-Ghali accused political leaders of racism, because they did show interest for the crisis in Bosnia and Herzegoviana but were blind to the suffering of the Somali people, that the UN authorized intervention. (Seybolt 2008:53) Humanitarian aid operations started to improve the infrastructure and provide famine relief and in December 1992 Operation Restore Hope was launched consisting of twenty-five countries, aiming to establish safe zones in which humanitarian aid could be provided. The operation was led by the U.S. and former U.S. Ambassador to Somalia Robert Oakley was selected to command the operation. Although it was a multinational operation "the American component constituted such an overwhelming proportion that it is difficult to see how the other nations offered anything but legitimation for the operation." (Gibbs 2000:51)

According to Gibbs, the U.S. thus had practically full control over the mission and was largely left unhindered by the UN. Such constraint was largely absent because Somalia was "supposed to be a country without strategic or economic significance. This view, although

widely held, is inaccurate.” (Gibbs 2000:51) Whether the politicians were truly ignorant about Somalia’s proximity to oil shipping routes through the Suez Canal extending through the Red Sea is hard to determine in hindsight, but is perhaps a rhetorical question. Moreover, Somalia was also “the site of significant oil exploration activities by Conoco.”¹² (Gibbs 2000:51) General Aidid, a Somali military commander of one of the largest militias and key player during the overthrow of the Barre regime, had close ties with Conoco and initially even favored intervention by the U.S. as he expected to benefit from his special position. At the same time, however, Aidid’s animosity towards the UN and its humanitarian aid operations was fierce; since Boutros-Ghali had been a supporter of the Barre regime during the time Boutros-Ghali worked as an Egyptian diplomat, he perceived the UN to be the enemy.¹³ Aidid therefore obstructed humanitarian aid provided by the UN and a dubious role as he simultaneously welcomed the U.S. troops and was hostile towards UN humanitarian aid operations. Oakley, however, continued to work with Aidid and favored him over his main rival Ali Mahdi. As Aidid opposed UN involvement, some officials complained that the U.S. was essentially supporting the Anti-UN camp instead of contributing to the humanitarian relief effort. These obscured political games became most evident when Conoco’s relations with Aidid eventually deteriorated:

“When Conoco opted to shift its support to Mahdi, the American forces did the same and Mahdi became the favored Somali political figure. The parallel between the interests of Conoco and the actions of American troops is clear and impressive. And, crucially, the interpretation that Conoco caused the U.S. to act as it did produces a better fit with historical facts than does the conventional view that emphasizes a combination of idealism and bureaucratic politics as motivating factors.” (Gibbs 2000:50)

To the regret of the humanitarian aid organizations it became evident that U.S. policy was dictated by political interests and not by the humanitarian aims that were the initial intention of the operation.¹⁴ The UN authorized another operation named UNOSOM II, with the primary

¹² Continental Oil Company: A large U.S. based oil company

¹³ Also, Aidid perceived Boutros-Ghali to favor his main rival Ali Mahdi whom was announced president of Somalia (although he was not able to maintain power) in a political meeting facilitated by Egypt. (Gibbs 2000:45)

¹⁴ Oakley was no longer perceived to be impartial. This became especially embarrassing for Oakley when Aidid began boasting about his U.S. connections. (Gibbs 2000:46)

goals being the establishment of functioning institutions, civil administration and political reconciliation, lasting from May 1993 until March 1995; differing in approach from the mere provision of aid. General Aidid “interpreted the new mandate as a direct threat to his ambitions and was prepared to oppose the UN mission at every turn.” (Seybolt 2008:58) The UN military forces were ill-prepared for such a confrontation and the operation was a dramatic failure. “UNOSOM II achieved no political solution and a decade after it withdrew Somalia remained a failed state with practically no functioning government institutions.” (Seybolt 2008:60) In fact, according to Seybolt’s figures, these military interventions even *increased* the mortality rate: “The number of Somali military and civilian deaths from combat rose to its highest point since the ceasefire of early 1992.” (Seybolt 2008:59) Not only did the operations fail to halt the conflict, the military forces of the intervening states were responsible for a significant percentage of the casualties during the final period of the crisis in 1993: “between 625 and 1500 Somalis were killed by UNOSOM II troops, more than half of them women and children.” (Seybolt 2008:59)

Understandably, the interventions in Somalia were fiercely criticized afterwards. The most common interpretation of the failure is that the operations started as a humanitarian relief mission, which escalated due to Aidid’s opposition. However, according to Gibbs’s analysis this view is mistaken for two reasons. First, it wrongly assumes U.S. hostility towards Aidid, while in fact the U.S. cooperated with Aidid from the start. While the “unsavory character”¹⁵ of Aidid was known, the landing of the military forces was planned, in advance, together with Aidid. Secondly, the U.S. “allowed itself to use the circumstances of a humanitarian intervention and all the legitimacy that this conferred, to advance the interests of a U.S. investor, Conoco.” (Gibbs 2000:50) Although this may not have been the original intention of the operations it did determine the actions of the U.S. forces during the operations. What is left to be said here is that the interventions in Somalia have come to be exemplary of the darker side of humanitarian intervention, proving human rights critics right (at least in this case) that we should be wary of the air of legitimacy human rights discourse creates. Somalia left states considerably more hesitant to contribute to humanitarian interventions as it became clear that such operations can become very costly, gruesome and uncontrollable, very quickly. Sadly, this was unfortunate timing as the next time the international community was called upon there was no time for hesitance.

¹⁵ Gibbs mentions Aidid using an orphanage established by a humanitarian relief agency as a human shield and bombing civilian targets in Mogadishu killing thousands of innocents (Gibbs 2000:50)

1.5.2 Rwanda

The Rwandan genocide

Hutu extremists and ordinary Hutu peasants attacked their Tutsi neighbours with such ferocity and dedication that within 100 days the killers had slaughtered between 500.000 and 800.000 people. It is difficult to conceive of the murder of 5000– 8000 people a day for three straight months in a county with a population of some 7.5 million. (Seybolt 2008:70)

The horrific events that occurred in Rwanda from April 1994 up until July that same year shocked the world; the inconceivably high mortality rate reignited the debate on humanitarian intervention and “reassessment of the meaning, limits and obligations of state sovereignty.” (Seybolt 2008:78) The inability of the UN to provide protection in such violent events became evident; while “foreign governments knew at the time that Rwanda was the scene of mass killing. Not a single government with the power to act had any interest in stopping it.” (Seybolt 2008:72) To the contrary, the initial reaction of the UN was to *reduce* the size of the United Nations Assistance Mission for Rwanda (UNAMIR) that was already in place. Many scholars have studied this crisis as the gruesome consequences of the collective inaction is by many held to show the necessity for humanitarian intervention.

The context leading to the Rwandan genocide was one of “decades-old processes of political legitimization and decision-making, deeply entrenched images of ethnicity and cultural practices, routine dynamics of social exclusion and impunity, and standard patterns of international ambiguity and hypocrisy.” (Uvin 2001:97) Tutsi’s were favored by the colonial powers, gaining advantages like improved access to education and overall welfare; the disadvantaged Hutu population, however, ultimately gained control after Rwanda’s independence. Under the rule of the Hutu president Juvénal Habyarimana a civil war started against the Rwandan Patriotic Front (RPF), a Tutsi rebel movement based in Uganda. The UN did attempt to enforce a power-sharing agreement between the government and the rebels, however, before the agreement was implemented Hutu extremists (siding with the government) organized themselves and started to prepare their attacks on the Tutsi population. The death of the president was the spark that lit the (very short) fuse; the plane carrying Habyarimana was shot down and as a reaction the plan of the Hutu extremists was set in motion, which was executed with “devastating speed and effect.” (Seybolt 2008:71) The main perpetrators of the

violence were the Interahamwe; a militia created by the government to slaughter Tutsi, forcing other Hutu's to join them by killing those unwilling to join the fight.

“Tens of thousands of Tutsi and Hutu who resisted lost their lives at roadblocks, in their homes and in numerous other small-scale situations. Hundreds of thousands lost their lives in more carefully organized and executed massacres [...] The gruesome process was coordinated from the capital through tightly controlled bureaucratic lines of authority and the pro-government radio station.” (Seybolt 2008:72)

Although there is much more to be said about this incredibly complex conflict, as this succinct description does not do justice to the suffering the people of Rwanda have endured, we should be able to proceed building on this glimpse of volatile nature of the conflict. According to Seybolt's study, three features of the Rwandan genocide stand out, namely: (1) the speed and (2) the brutality of the killings, and (3) “the refusal of other governments to try to grasp what was happening.” (Seybolt 2008:70) These features together aptly describe the crucial impact of the indecision of the international community; because of the extreme speed and brutality of the genocide, quick (or rather instantaneous) action by the international community was necessary if any significant difference was to be made.

Romeo Dallaire, Force Commander of the UNAMIR mission, appealed for reinforcements at the onset of the genocide: “Give me the means and I can do more”, is what he told UN headquarters in New York. (Power 2002:374) However, his call for help was to no avail. Primarily the U.S., having lost credibility as a legitimate intervener in Somalia, feared that involvement in the conflict would escalate into a large and costly operation.¹⁶ In the report of her study¹⁷, Power claims that the ‘label of genocide’ was deliberately avoided by officials and the severity of the conflict downplayed. This was done to avoid a moral imperative to act, as Power quotes a U.S. political advisor:

¹⁶ Worth noting here is that the U.S. did not have any political or economic interests in Rwanda and therefore had less compelling reasons to interfere in Rwanda compared to Somalia; there were no costs attached to avoiding the conflict altogether, while there were significant risks involved were they to decide for intervention. (Would the presence of large oil reserves in Rwanda have made a significant difference?)

¹⁷ In order to understand the U.S. response to the genocide, Samantha Power conducted over 300 interviews with officials at the White House, State Department, Pentagon and Central Intelligence Agency who “had a hand in shaping or influencing U.S. policy.” (Power 2002:11)

“The events in Rwanda clearly seem to meet the definition of genocide in Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. However, if the council acknowledges that, it may be forced to ‘take such action under the charter as they consider appropriate for the prevention and suppression of acts of genocide’ as provided for in Article VIII.” (Power 2002:371)

Seybolt’s 2008 study draws similar conclusions: “Mortality numbers and trends were poorly understood and subject to political manipulation” and the “UN military force was severely undercut by member states that did not want to face the costs and risks aggressive action would have required.” (Seybolt 2008:77) Collective action facilitated by the UN was therefore obstructed by the non-compliance of member states. However, “as public awareness of the genocide became impossible to ignore, the Security Council reversed its decision, authorized reinforcements for UNAMIR and approved a French-led intervention known as Operation Turquoise.” (Seybolt 2008:73)¹⁸ This operation was authorized in order to enforce a ceasefire agreement and safe zones to make the provision of aid possible. For reasons illustrated by the case of Somalia this strategy was designed to safeguard the impartiality of the intervention yet the political impact of this operation was devastating:

“Under the protection of the Foreign Legion, the leaders of the genocide escaped from the RPA and regrouped in Zaire. The Hutu extremists’ presence contributed directly to two civil wars in Zaire in 1996 and 1998-2003 that killed more than 3 million people (mostly by disease) and destabilized the entire Great Lakes region for years.” (Seybolt 2008:76)

Although the initial reluctance to intervene seemed to have been overcome the enforcement of ceasefire agreements as opposed to full military involvement was ineffective and even counterproductive to the achievement of the goals of the humanitarian intervention; the RPA rebel movement eventually stopped the genocide by *breaking* the ceasefire agreement. The rebels organized rescue raids to save large groups of civilians in hiding and, according to the figures of Taylor Seybolt, saved the lives of 65,000 to 70,000 people. (Seybolt 2008:73) Indeed,

¹⁸ This French military operation was larger and more effective, and they were able to establish a large safe zone in which they were able to provide protection for civilians at risk in Rwanda for a period of two months. (Seybolt 2008:75)

this illustration of the idea that the use of military force *can* be the most effective way to save lives touches upon the central thesis of humanitarian intervention.

Section II:

Just war theory and humanitarian intervention

Some insights seem to intuitively flow from the cases of intervention in Somalia and Rwanda. The following paragraphs will be dedicated to discussing the extent to which the just war framework is able to account for these considerations and the most prominent criticisms against humanitarian intervention as such; if the framework is able to adequately do so I recognize it to contribute to the formation of a feasible way of justifying humanitarian interventions. First general insights gained from the case-studies will be discussed in the light of human rights and humanitarian intentions, followed by a discussion of the feasibility of the framework especially focusing on the criterion of legitimate authority and the role of the UN in granting authorization for intervention. Finally, I will then come to discuss the strengths and shortcomings of this formulation of the just war framework.

2.1 Case Analysis

2.1.1 Inherent legitimacy and problematic motives

Regarding the cases, I would determine a theory of justification to be plausible when it (1) leaves no opportunity for humanitarian causes to be used to conceal forceful military operations acted upon for the sake of political aims; human rights should not be understood to provide inherent legitimacy to interventions (inferring from Somalia) and (2) neither should it render intervention impermissible when interveners act upon other incentives besides the obvious humanitarian ones, as this would render many states unmotivated to act (inferring from Rwanda). This redirects us to the discussion on intentions and motives.

UNSC resolution 794 provided authorization for Operation Restore Hope in Somalia and formulates the original intentions on the basis of which the operations were approved. These initial goals seem to fulfill two crucial requirements for the just war framework.¹⁹ Firstly, a clear *just cause* was to create a secure environment in which humanitarian aid can be provided, preventing more human rights violations. Secondly, another aim was to “to assist the people of

¹⁹ [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794\(1992\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/794(1992)) UN Security Council resolution 794; consulted on 02-06-2015

Somalia to create and maintain order and new institutions for their own governance.”²⁰ The resolution claims it should be recognized that the Somali people are ultimately sovereign and responsible for the reconstruction of their own country; the plan was to “draft a transitional charter, guided by the basic principles of the Universal Declaration of Human Rights and Somalia's traditional ethics.”²¹ The aim was thus to create a transitional government and an institutional context in which human rights could be protected.²² Although these aims were not achieved, the intentions were in accordance with the criterion of *right intention*, rendering the interventions permissible (at least at their onset) regarding the first two just war criteria.²³ However, the ulterior motives of the U.S. are what made the interventions indefensible as the operations are now perceived to have abused the opportunity and the legitimacy the crisis provided for economic gains. This made the interventions problematic in two ways: (1) U.S. policy was guided by these interests, favoring Aidid over other parties. The impartiality of the intervention was thereby undermined, contradicting the resolution's emphasis on the Somali communal right to self-rule; political interests were allowed to dictate the course the country would take (if Conoco would have remained supportive of Aidid he might still be in control). And (2) the establishment of safe zones for aid organizations was not the primary goal of the U.S. military; their support of Aidid essentially obstructed these goals.

It is exactly this ‘humanitarian cosmetic’, obscuring the underlying motives of interveners, that seems to be the major source of critique on humanitarian intervention. According to Denike, the human rights discourse provides moral legitimacy to interventions:

“The stories that are told that justify intervention - about the barbarism of other cultures and the need for the international community to “take responsibility” to intervene - are part and parcel of the creation of international political order that, through these stories, utilizes longstanding colonial distinctions between “humanity” and its “others” and entrenches the difference between them. This distinction between a civilized us and a barbaric enemy other, not only reenacts and reinforces racist colonial stereotypes through its pretense of benevolent protectionism, but [...] works to erase the violence of interventions and invasions

²⁰ <http://www.un.org/en/peacekeeping/missions/past/unosom2backgr2.html> consulted on 02-06-2015

²¹ *Ibid.*

²² the UNOSOM II mission even intended to establish an Office of Human Rights in Somalia

²³ Still, whether the criteria of reasonable prospect of success, proportionate response and last resort were also fulfilled remains questionable according to Seybolt's (2008) study

conducted in the name of "humanitarian" causes, and thus to silence human rights claims against interventionist states made by those who endure the physical, social, and economic devastation of war." (Denike 2008:102)

The nature of the problem Denike addresses here is that violence against ‘human rights violators’, then deemed ‘barbarian’, is inherently justified. Intervening states seem to neglect the human rights of those against which the intervention is directed while fighting in its name, and undermine the sovereignty of the ‘other’ while striving for even more political dominance. Indeed, were the just war framework to be used as such, it would undermine the central idea that war is only permissible when it has everlasting peace (or, undoubtedly not imperialism) as the ultimate objective. Achterhuis argues along similar lines, as the one of the central ideas in his work on interventionism is to warn us of the fallacy of thinking in terms of Us and Them. The discourse on good and evil in politics renders the use of military force acceptable and perhaps even noble while the idea that opposing sides in any given conflict are both partially right and partially wrong is a more realistic way to view conflicts. (Achterhuis 2008) That is to say, wars are understood through a framework of cultural symbols and idealistic conceptions of the good life; the use of force is legitimized in such a context when the enemy is perceived as the antithesis of these cultural, religious and societal values (human rights violators). Regarding one side as pure evil, demonizing the enemy because they are the anti-thesis of what ‘we’ stand for (human rights, order, justice) indeed grants an aura of inherent legitimacy and righteousness to those fighting against it; such processes occur in every conflict as “warfare is a participatory drama that exemplifies – and thus explains – the most profound aspects of life.” (Juergensmeyer 2001:159)

It is indeed exactly these objections that need to be met by the just war framework before we can deem humanitarian intervention justifiable. Although writers like Denike, Achterhuis and Juergensmeyer are certainly correct in pointing our attention towards the fact that human rights have provided a false sense of moral legitimacy far too often and the idealism of human rights is prone to transform in a sense of ‘Western arrogance’ (as often expressed in anthropological literature), dismissing the idea of humanitarian intervention altogether might be throwing out the baby with the bathwater. The central problem underlying these critiques is, what I perceive, one of egocentrism or the inexcusable wrongness of holding one’s ideas to be superior over those of the *other* (by claiming them to be universal) and thereby making one’s actions seem inherently just while actually acting upon one’s own (specific, non-universal) interests. The just war tradition should be able to account for these issues as we have determined

a just cause that should be acceptable by members of any given culture, and I will argue that at least halting basic rights violations are permissible when intentions and motives are appropriately balanced. By finding the right balance between permitting intervention and prohibiting acting upon self-interested motives, the critique of states using ‘the inherent legitimacy of a just cause’ for their own gain is undermined; the use of force is considered to be just by referring to the just cause yet this legitimacy should not transfer to other (self-interested) reasons to intervene. Consider the following example:

While walking past a narrow street you witness an armed robbery. Person A is standing over Person B holding a knife, demanding him to give his wallet. A passerby, Person C, decides to intervene; by decisive action (and perhaps some martial arts training) he takes control of the situation and disarms the attacker, breaking his hand in the process. For some reason Person C decides to give Person B one last punch, breaking his nose.

At first glance, the intention of Person C to halt the robbery seems to be just. The just cause of preventing harm done to Person B justifies the use of force. Even the breaking of the hand in the process of disarming him seems to be justified. However, the punch breaking his nose (although less severe than the injury of the hand) seems to be extra and unnecessary for the achievement of the goal. Intuitively, one starts to question the intentions of the intervener; did he do it for retribution? Did he want to show his dominance over Person B? Certainly, the situation did not call for the final punch and this makes the nature of the intention questionable.

Just like we start questioning the motives in this example, one is right in questioning the intentions of intervening states when military force is used while political interests are involved. This seemingly simple example carries a basic insight which I find to be crucial in describing the relation between intentions, motives and the justification of violence a just cause provides. In considering humanitarian intervention, one assumes violence to be permitted because it is *justified* by the just cause. It goes without saying that other (non-humanitarian) reasons to intervene (access to oil, economic interests, maintaining political influence) *do not* enjoy such justification. Similar to the unnecessary punch in the case of the robbery, the use of military force is only justified to the extent to which it contributes to the just cause; every other instance of violence is illegitimate. Looking back at the case of Somalia we can therefore infer that the actions motivated by the interests of the oil company Conoco, were not justifiable and indeed deserving of the critique posed against it. To a certain extent these considerations are already

accounted for by the *proportionate response* criterion as this does not allow for excessive use of force. This understanding of motives and intentions, however, adds another dimension to the permissibility of military force as it should not only be proportionate but directly aimed at, and definitely not interfering with, the just cause of the intervention.

To summarize, military force is only permissible to the extent to which it directed towards the ends of halting actively performed large-scale violations of basic rights. Underlying motives for the achievement of the intended just cause are permissible and do not necessarily problematize the humanitarian nature of the intervener, as long as these motives and the intended just cause do not conflict. The just war framework remains coherent when it permits states to decide whether, where and for what reasons they want to intervene (assuming the other criteria are met), while denying the justifiability of the just cause to transfer to the violence that is not directed towards its realization. I do not feel we should dismiss the possibility for humanitarian interventions because of the critiques of Denike and Achterhuis; when it is understood through the just war framework it only justifies military force to the extent that it contributes to the just cause.²⁴ Therefore, as long as the conduct of intervening states is more heavily restricted to only include actions contributing to the just cause, basic rights still provide promising grounds to justify humanitarian intervention. The framework would allow, for instance, the U.S. to intervene in Somalia *because* Conoco is situated there, only restricting its conduct as soon as it conflicts with the just cause of the operations. The feasibility of restricting the conduct of interveners will be elaborated upon further when I come to discuss the role of the UN. First, let us discuss the *content* of the right intention and just cause criterion more specifically, since taking basic rights as an aim could simply imply the halting of basic rights violations or to also include the creation of an institutional context in which these rights are guaranteed, requiring direct involvement on a political level.

2.1.2 Humanitarian symptom management and political involvement

When the reluctance of the international community to get involved in Rwanda was finally overcome the intervening parties opted to maintain impartiality by focusing on humanitarian relief efforts and establishing safe zones, due to lessons learned in Somalia. Indeed, the use of force is rarely the best option, however, as the success of the RPA in stopping the genocide shows, quick military action might have offered a more significant contribution to the just

²⁴ I suppose we would agree on the fact that many previous cases of interventions must therefore be deemed illegitimate, in line with the results of Seybolt's (2008) study

cause. Instead “governments once again chose to treat the humanitarian symptoms of a political crisis rather than address the deeper causes of the suffering.” (Seybolt 2008:77) The safe zones had an adverse effect: “Humanitarian workers in the field saw such relief efforts manipulated by genocidaires, who were able to use refugee camps as bases from which to launch attacks.” (Leebaw 2007:223) Something as seemingly innocuous as the provision of aid to refugees can have dire consequences when this is not combined with other measures. In order to fulfill the criterion of *reasonable prospect of success*, humanitarian intervention requires full commitment of the intervening authorities; without addressing the underlying problems behind the conflict, treating the symptoms of the crisis is a futile enterprise (and, however noble the cause, perhaps even counterproductive).²⁵

Therefore, military force should not only be used to establish safe zones and to provide room for humanitarian aid, but tackle the underlying problems of the conflict and to establish a context in which institutions can be rebuilt. Comparable goals were set for the UN missions in Somalia, as they strived to establish a transitional government and an institutional context in which human rights could be protected. Indeed, critics would view this as a dangerous idea as permitting political involvement would undermine state sovereignty and leave humanitarian causes even more susceptible to opportunism. However, as Seybolt notes: “it [humanitarian intervention] can establish a basis for peace-building by creating an environment in which people can think about more than mere survival.” (Seybolt 2008:6)

Such political involvement is compatible with the just war framework and human rights as it would permit intervention with the ultimate aim to enable the community to reestablish society in order to safeguard basic rights while remaining in accordance with their own cultural, religious and moral values. If we assume active and systematic basic rights violations to provide a universally acceptable just cause to override sovereignty, the aim should not be to take advantage of the overriding capacity of this just cause and thereby force a certain change in society; to the contrary, the framework only permits such actions that are necessary for the achievement of the just cause. Therefore, the aim that is compatible with the just war framework and human rights as a just cause is to establish a context in which the nation subjected to the intervention is able to rebuild according to its own values (while staying within the limits of permissible state autonomy); guaranteeing basic rights to subsistence and protection to the whole of its population, in a sense reinstating its sovereignty. Such ideas bear relevant

²⁵ This explains the hesitance of states to get involved, as any minor involvement may quickly slip into a costly enterprise to ensure not to be blamed of unjustifiable intervention afterwards.

similarities to John Rawls' Law of Peoples, as he discusses the *jus in bello* principles for just warfare as traditionally conceived in just war theory:

“The aim of a just war waged by a just well-ordered people is a just and lasting peace among peoples, and especially with the people’s present enemy.

[...]

Well-ordered peoples must respect, so far as possible, the human rights of the members of the other side, both civilians and soldiers, for two reasons. One is simply that the enemy, like all others, has these rights by the Law of Peoples. The other reason is to teach enemy soldiers and civilians the content of those rights by the example set in the treatment they receive. In this way the meaning and significance of human rights are best brought home to them.” (Rawls 1999:94)

The conduct of humanitarian interveners is thus to be restricted by the fact that they should treat the ‘enemy’, in such cases the perpetrators of violence, as an end in themselves by respecting their human rights and refraining from violating the sovereignty of their state for political gains or to alter the outcome according to their own values. Indeed the behavior of the intervening military forces and political decision making should reflect this in order for the intervention to be in accordance with just war principles. What it means to take basic rights as a just cause for intervention is therefore that it simultaneously grants permission to breach sovereignty as it overrides the communal right to self-rule, while requiring interveners to take the community subjected to the intervention and their right to self-rule as an end in itself.

2.2 Implications, feasibility, and the role of the UN

Both human rights discourse and the just war tradition provide a way to scrutinize the functioning of international politics; human rights describe the limits of state autonomy, at least in those cases of active and large-scale basic rights violations I claim there is a universally recognizable just cause to override sovereignty and the just war tradition provides a method of reflection on the circumstances under which acting upon the principles of human rights is permissible. In this paragraph the implications of this framework on deliberating humanitarian intervention and the role of human rights in international politics will be the discussed. In the light of this discussion it will become crucial to consider the question of legitimate authority, which has up until now remained in the background. As I consider this to be a final hurdle to

be taken regarding realistic applicability of the framework primary focus will be on the role of the UN as the primary institution for the enforcement of human rights.

Human rights have proven to fulfill the role of a just cause in the framework quite well when recognized as part of a cross-cultural consensus on morality. This claim is made on the assumption that no state could grant itself permission to eliminate part of its population without leaving itself with no grounds on which to argue for its own protection. Rather than accepting the implication that perhaps there is no cross-cultural consensus on morality at all, leaving us with no grounds on which to condemn genocides, human rights then serve the purpose of marking the limits of sovereignty. Instead of focusing on a common justification for human rights on the basis of abstract principles, which makes arguing for universal recognition of human rights rather troublesome, it is more fruitful to look for common grounds in morality. Understanding human rights as deriving from cross-cultural consensus transforms them from something divisive (reinforcing the opposition between the civilized ‘us’ and the barbaric ‘them’ as Denike would put it) into a set of principles that has the potential to unite people with different cultural backgrounds.

Basic rights can therefore fulfill the role of a just cause, as they can reasonably be claimed to enjoy universal recognition and therefore mark the boundaries of permissible actions of states: “by bringing these aspects of the domestic conduct of governments within the scope of legitimate international concern. Human rights are in this way revisionist appurtenances of a global political order composed of independent states.” (Beitz 2009:197) Arguably, the list of rights on which there is consensus can be extended, however, what I hope to have shown is that it is not unreasonable to state that humanitarian intervention is permissible at least in those instances of active and large scale violations of basic rights as long as the other just war criteria are met. Embedding human rights into the just war framework does not carry contradictory or unsatisfactory implications, rather it seems to augment human rights with a way to justify action in its name. This is not to say that the framework is unquestionably feasible as there is one last hurdle to take, being that of legitimate authority. Saving the best for last, as this criterion is essential to the feasibility of the framework, the question begging to be answered here is: if we understand large scale and active violations of basic rights to require intervention by the international community, whom do we consider to be permitted to do so?

It is a challenging but ultimately crucial task to decide which agents are to intervene; as became clear in Rwanda the inertia that is created through the slow turning of the wheels of international politics counteracts the evident need for quick decision-making in times of extreme need. No just war framework would be of much use if it would leave us unable to act

quickly when necessary. As Pattison rightly claims, for the “responsibility to protect to be realizable, it needs to be assigned to a specific agent.” (Pattison 2010:10) This does not entail, however, that we are now in a position to accuse any specific member of the international community of neglecting to act upon their responsibilities; we have no grounds on which to say intervention in Rwanda was an obligation, and indeed I share the concern that the framework is lacking in this respect, as it shows actors are permitted, not required, to intervene. It might be so that other interpretations of human rights do infer a strict duty to intervene, and this is indeed worth further investigation.

What we can infer from the framework, however, is that the Rwandan genocide should have provided ample reason to authorize humanitarian intervention; the indecisiveness of the international community and the deficient actions that did follow require us to contemplate the functioning of the UN in their role as the major international organization in the enforcement of human rights. Especially the veto power of the permanent members of the UN Security Council adds to the moral insignificance of UN authorization. (Pattison 2010:5)²⁶ Not only did the U.S. halt the UN resolution to authorize intervention in Rwanda, China halted such action in Cambodia in Khmer Rouge times, and together with Russia it still obstructs proposals to intervene in Syria.²⁷ The decision to intervene then becomes ultimately dependent upon the maintenance of the current global political order, not on the cries for help by the victims of humanitarian crises. Fundamental changes are likely to be necessary in order for intervention on the basis of human rights to become a feasible endeavor when future crises (inevitably) occur; such as removing the veto-powers of states in considering interventions, improving the UN’s capability of authorizing humanitarian interventions in an impartial way. For now, decision-making seems to be reduced to a choice between council unity and inaction (the core of the problem with the reaction to the Rwandan genocide).

With the current humanitarian crisis in Syria continuing unabated and ever growing in complexity, the issue of permissible intervention is as pressing as ever before. The suffering of the Syrian people, with current estimations on fatalities growing into the hundreds of thousands brought about by the Assad government and the many rivalling parties, certainly fulfills the just cause requirement. Indeed, the UN Human Rights Council has condemned the use of chemical

²⁶ E.g. humanitarian operations in Southeast Asia by UN forces could not be authorized by the UN as China used its veto to halt such operations, most notably in Cambodia where 2-2,5 million people died between 1975-1979

²⁷ <http://theconversation.com/taking-aim-at-un-veto-is-the-key-to-intervention-in-syria-18119> Consulted on 16-06-2015

weapons, the massacring of civilians, the denial of medical care by the Syrian government to “those from opposition-controlled and affiliated areas as a matter of policy” and the “the continuing gross, systematic and widespread violations of human rights.”²⁸ Clearly, there is a just cause that provides weighty arguments for humanitarian intervention; however, and this demonstrates the sensitivity of the just war framework in discussion the permission of acting upon human rights violations, the criteria of right intention and legitimate authority compel us to question the justifiability of intervention in Syria.

The Middle East is of great importance to many states, due to the geographical proximity to oil shipping routes and to maintain a certain balance of power regarding the Israel-Palestinian conflict. Regarding the criterion of right intention, one would seem right in being skeptical about the possibility for impartial intervention in Syria. As conferred earlier, the just war framework would allow states to act upon the motive to safeguard their political interests in the region as a primary reason to intervene. However, I perceive it to be highly likely that military involvement in Syria will be doomed to fail, as it will be met with fierce opposition from the many armed factions involved. Maintaining impartiality would, especially for states regarded by Syrians to be pro-Western, become near-to impossible as previous military operations in Afghanistan and Iraq, which were purportedly inspired by humanitarian ideals, have led to the disillusionment of many Arab peoples regarding ‘humanitarian’ interventions. Another intervention waving this humanitarian flag could be perceived as an extension of these military operations.

Furthermore, the just war framework requires intervening states to tackle the underlying problems of a crisis, and thus aim to achieve the political goals of establishing a context in which basic rights are guaranteed; intervening actors therefore need to be perceived as legitimate by the parties involved in the Syrian civil war. Otherwise, as was the case in Somalia, political reforms will not be recognized and thus render such aims futile. As Pattison notes: “Constant opposition amongst most of the population will make the achieving of a successful long-term humanitarian solution almost impossible (as can be seen in Iraq and Afghanistan).” (Pattison 2010:88) Considering this, military operations led by regional states enjoy a greater likelihood of success than UN-led operations, and decidedly preferable over U.S. involvement.

The possibility of engaging in justified humanitarian interventions is thus ultimately dependent upon the existence of a legitimate authority; the absence of credible candidates indeed restricts

²⁸ <http://www.ohchr.org/EN/NewsEvents/Pages/AssaultOnMedicalCare.aspx> Consulted on 16-06-2015

the applicability of the theory. However, this does render humanitarian intervention a pointless enterprise. As Nederveen-Pieterse states, the aim of the humanitarian intervention discourse is:

“Humanitarian intervention, above all, should be viewed and discussed in a wider setting and should be accountable to people on the ground. If we agree that the key issue is the form of states and of sovereignty, then the solution is to rethink state forms and develop new forms of sovereignty; if we agree that the key problem is political authoritarianism (rather than "ethnicity"), then the solution is democratization; if we agree that cultural parochialism is a key problem, then what is required is fostering and rewarding cultural openness and pluralism; if we concede that economic insecurity is part of the problem, and aggravated by international policies, then HI must be considered along with development policies.” (Nederveen Pieterse 1997:90)

Saint Augustine’s initial purpose for his theory of just warfare thus still holds its relevance; we should not stop considering the permissibility of war as the more dangerous attitude is one of complacency in which we accept the atrocities brought about by contemporary global politics. Of course, war remains the least preferable option when other measures are available and it should always be used as a last resort yet some things are worth fighting for, and I hope to have shown that instances of basic human rights violations require us to keep the option for intervention open; as indeed: war is an ugly thing, but not the ugliest of things.

Conclusion

Bridging the gap from idealism to realism rarely has more pressing implications than in discussions on humanitarian intervention. Advocates of interventions argue for the universal implementation of basic rights. Nevertheless, however noble their cause, we need to be skeptical about the realistic applicability of such ideals. The just war framework provides some footholds for a justification of intervention on the basis of human rights by embedding these ideal notions in a framework encompassing the real-world functionings of international politics; it is able to clarify the morally problematic aspects of the interventions in Somalia, Rwanda and Syria, accounts for the moral relevance of acting upon political interests, and most notably it describes the changes necessary to make humanitarian intervention justifiable; namely to create a global political context in which there are legitimate candidates for intervention that can reasonably be expected to bear the responsibility to protect. To confirm my hypothesis, I

therefore perceive the just war framework with basic rights as a just cause to be sufficiently sensitive to existing power-relations to provide a justification for humanitarian intervention.

Although it remains disputable whether such an understanding of human rights is realistically enforceable, we should not accept anything less as this would leave no way to condemn genocidal or other such despicable acts by states and leaves one dangerously complacent; to achieve this global reform of human rights institutions is necessary. The framework therefore provides a viable method for scrutinizing the limits of state autonomy, the functioning of international institutions in protecting the basic interests of man, the legitimacy of interveners and the permissibility of breaking the rules that allow for atrocities to continue unabated. However, in the absence of credibly legitimate candidates for humanitarian interventions and without well-functioning institutions with the means to keep interveners in check, I find humanitarian intervention on the basis of human rights unrealistic at present. Nevertheless, this does not render it a pointless endeavor, as deliberating humanitarian intervention directs us towards the positive changes necessary to make human rights realizable rather than ideal, more tangible than abstract, socially guaranteed instead of empty gestures.

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