

Humanitarian interventions: does the end justify the means?

The case of Libya

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“Humanitarian interventions: does the end justify the means? The case of Libya.”
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This bachelor thesis has researched whether the end of protecting human rights justifies the means of humanitarian intervention in the case of Libya 2011, according to the most prominent authors on humanitarian interventions. By distinguishing these authors in 1) the unfavourable disposed school, and 2) the critically favourable disposed school, a new categorization of schools of thought was made. On the basis of these schools of thought, this thesis has analysed whether the end of protecting human rights justifies the means of humanitarian intervention in the case of Libya. According to the unfavourable disposed school, this intervention could not be justified. The critically favourable disposed school does justify this intervention, although it has critical remarks on the execution of this intervention.

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1. Introduction

On March 19, 2011, military forces from France, Canada, Italy, the United Kingdom (UK) and the United States of America (US) struck the air defences and soldiers of President Muammar Gaddafi's regime in Libya. This case is an example of a humanitarian intervention that was authorized by the United Nations (UN) Security Council.¹ The concept of humanitarian intervention is, besides the question on legitimacy, inextricably bound with the concepts of human rights, sovereignty and war. Why do states intervene? Are the reasons purely humanitarian, or are there also political origins? And, can humanitarian interventions be seen as a form of opportunistic colonialism? Duco Hellema and Hilde Reiding summarize two paradoxes of humanitarian interventions: (1) idealism versus power politics, and (2) sovereignty versus non-intervention.² Mohammed Ayoob has pointed towards the strong potential of humanitarian intervention to become a tool for the interference by the strong states in the affairs of the weak states, since the power is unequally distributed among the sovereign states.³ Thus, there is a potential to abuse humanitarian interventions for political reasons. However, can the decision not to intervene morally be justified, as “strong” states have the means to combat a crisis? Can the suffering of citizens and the violation of human rights be neglected, only because those suffering citizens belong to another sovereign state?⁴ This question has contributed to the creation of the Responsibility to Protect (R2P), as will be explained further in this introduction.

When the decision to intervene is made and a state has intervened in another state, a new problem arises: the (unforeseen) consequences of the intervention. Taking into account the (long-term) consequences of a humanitarian intervention, it has happened that a humanitarian intervention did not have the intended results. This was the case with the intervention in Iraq, in March 2003. After the British-American intervention, Iraq was confronted with insurgency and sectarian conflict that resulted in hundreds of thousands of violent deaths.⁵ In 2012, Iraq has been named “something close to a failed state”.⁶ Furthermore, the effects of the intervention in Iraq are still tangible, even for states outside the Middle East. Terroristic attacks by IS and the refugee-crisis are only two examples. The question whether humanitarian interventions are a necessary evil for protecting human rights, or a euphemism for interference with state formation and democratization, rises. Does the end of protecting human rights justify the means of humanitarian intervention? These, somewhat poetic, questions are too broad to answer at length in the context of this paper. Therefore, the aim of this paper is combining the debate that has ensued among academics about these questions with a case study. This paper will focus on the humanitarian intervention in Libya 2011 by applying two different perspectives of the debate, unfavourable disposed and critically favourable disposed, to this case. The choice for this case study was made based on the fact that this case was a humanitarian intervention legitimized by the UN, which has not been researched very often.

Considering these arguments leads to the following main question: “Does the end of protecting human rights justify the means of humanitarian intervention in the case of Libya 2011, according to (1) the unfavourable disposed school and (2) the critically favourable

¹ Williams. “The Road to Humanitarian War in Libya.”: 248.

² Hellema and Reiding. *Humanitaire interventie en soevereiniteit: De geschiedenis van een tegenstelling*: 10-12.

³ Ayoob. “Humanitarian Intervention and State Sovereignty.”: 92.

⁴ Hellema and Reiding. *Humanitaire interventie en soevereiniteit: De geschiedenis van een tegenstelling*: 125.

⁵ Hellema and Reiding. *Humanitaire interventie en soevereiniteit: De geschiedenis van een tegenstelling*: 128; Bonds. “U.S. sociology and the Iraq War.”: 1.

⁶ Parker. “The Iraq We Left Behind: Welcome to the World's Next Failed State.”: 94.

disposed school?” This question is divided in three sub-questions that will both unravel and answer the main question:

- “To what extent does the unfavourable disposed school justify the use of humanitarian interventions in order to protect human rights?”
- “To what extent does the critically favourable disposed school justify the use of humanitarian interventions in order to protect human rights?”
- “To what extent do the unfavourable disposed school and the critically favourable disposed school justify the humanitarian intervention in Libya in 2011?”

These questions will be answered by researching and interpreting secondary sources. Firstly, this paper will analyse and compare secondary sources in order to review the debate on humanitarian interventions. Such an approach naturally provides a broad range of both resemblances and perspectives. As the paper attempts to give an introductory overview, it will not consider all fields of literature equally. It is after all not possible to consider everything that is written on humanitarian interventions in the context of this paper. However, the work of the most prominent authors in the debate on the use of humanitarian interventions will be analysed. By doing so, two schools of thought will be distinguished. The primary sources are mainly juridical documents such as the UN’ documents concerning the intervention in Libya 2011 and the R2P. These sources serve the purpose of illustrating the legal background of humanitarian interventions: both the general background and the background of the intervention in Libya. The research method that will be applied in this paper encompasses research on the basis of a specific case study: the humanitarian intervention in Libya 2011. The legal documents concerning the intervention in Libya are of great importance, as these documents will show both the course of action by the intervening states and the international community, and whether this was according to the law. The primary sources will be analysed from the perspective of the two schools of thought. On the basis of these two schools, this paper will evaluate whether the intervention in Libya can be justified. In the following paragraphs the theoretical framework of this paper will be discussed.

The legal basis that sets out the humanitarian rules of warfare consists of both the UN Charter and resolutions of the Security Council.⁷ This will be further explained in chapter three. The Geneva Conventions need to be mentioned as well.⁸ These Conventions and their Additional Protocols are at the core of international humanitarian law, “the body of international law that regulates the conduct of armed conflict and seeks to limit its effect”.⁹ Further, the R2P is the by the UN widely accepted doctrine concerning humanitarian intervention. Non-authorized interventions form an exception: the UN does not accept these interventions.¹⁰

While researching humanitarian interventions, a clear definition of this concept is necessary. The International Commission on Intervention and State Sovereignty (ICISS) define “the right of humanitarian intervention” as “the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the

⁷ United Nations. *Charter of the United Nations*; United Nations Security Council. Resolution 1970; United Nations Security Council. Resolution 1973.

⁸ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949; Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949; Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

⁹ International Committee of the Red Cross. “The Geneva Conventions of 1949 and their Additional Protocols.”

¹⁰ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*.

purpose of protecting people at risk in that other state”¹¹ The most striking characteristic of this definition is the military aspect of the action, as this implies that the humanitarian intervention is thus violent. This is somehow a paradox: violence seems to be necessary to protect people at risk. The second striking feature of this definition is that “the people at risk” should be protected, without specifying when people are at risk. Human rights are not mentioned in this definition either. The definition of the ICISS will be used in this paper. It is important to emphasize that this definition does not define whether the Security Council approves the humanitarian intervention or not.

In describing humanitarian interventions, one cannot escape from defining the concept of sovereignty. This paper will utilize the following definition: “the legal identity of a state in international law”¹² Chapter three will further discuss the concept of sovereignty.

Besides the “legal framework”, various schools of thought on the use of humanitarian interventions will be consulted in this paper. The most prominent academics in the debate on humanitarian interventions will be introduced and will be classified in two schools: the unfavourable disposed school and the critically favourable disposed school. In the second chapter, the unfavourable disposed school will be elucidated. Thereupon, the first sub-question will be answered. Naturally, there is a broader debate on humanitarian interventions on the level of the two main schools within the field of International Relations: realism and liberalism. Chapter two will give an overview of the differences between these main schools. Chapter three will elucidate the critically favourable disposed school, and will answer the second sub-question. By combining the fields of philosophy, law, ethics and international relations, this chapter will cover the on-going discussions on sovereignty. In chapter four the background of both humanitarian interventions in general and the specific intervention in Libya 2011 will be discussed, after which the third sub-question can be answered. These answers on the three sub-questions will lead to the answer of the main question of this paper. Finally, the conclusions will be discussed and suggestions for further research will be offered.

The modest contribution of this research-paper to the academic debate comprehends the division between the authors in two schools. Although the various authors in the academic debate have, even when they are in the same school, differences in their point of view, this paper will try to search for resemblances without neglecting important contrasts. This way, it is possible to separate the authors in only two schools, instead of three, four or even five different schools of thought. Moreover, my contribution lies in my support for the critically favourable disposed school. The relevance of researching this matter is on the one hand that the question whether to intervene or not is still current and alive, the contemporary conflicts in Yemen and Myanmar can serve as examples.¹³ Further, the discussion on deploying the “means” of humanitarian intervention is not only on-going on geopolitical level, but also on national, local and even personal level. A few years ago, when the war in Syria was more vehement than it is today, social unrest on the question whether- and when Western state

¹¹ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*: 7.

¹² International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*: 12.

¹³ Jong. “Lilianne Ploumen: ‘Als een staat tekort schiet, heeft de internationale gemeenschap een verantwoordelijkheid om bij te springen.’”; *The Economist*. “Peacekeepers in name only: The UN in conflict zones.”; *The Economist*. “The West should help Saudi Arabia limit its war in Yemen.”; *Vos*. “Twee miljard voor hulp in Jemen, maar waar blijft de vrede?.”

would or should invade Syria, reigned in The Netherlands.¹⁴ By making clear when a state can legitimately invade, and by taking into account the most prominent theories on this matter, this paper will also contribute to the social need for clarification.

2. Schools of thought distinguished, the unfavourable school

This chapter will discuss the first school of thought, which is unfavourable disposed towards humanitarian interventions. In order to both label the various authors as either liberalist or realist and to place the different schools in perspective, the debate between realism and liberalism will be firstly discussed.

The two main schools within the field of International Relations, realism and liberalism, have specific points of view concerning humanitarian interventions. According to Michael Smith, realists are traditionally hostile to any intervention that is justified for allegedly ethical reasons. However, regarding humanitarian interventions, realists believe that states only act when it is in their interest to do so. Therefore, when states engage in a humanitarian intervention they are really pursuing some other agenda. The second characteristic of the realist point of view is the argument that interventions work and are supported politically only when they are closely connected to real interests. As emphasized by Smith, this characteristic is slightly incompatible with the first one. His solution is that states apparently sometimes really do act in spite of the fact that their so-called national interests are not engaged to the degree that realists think they ought to be. Further, realists make an ethical argument, which states that states are necessarily self-interested creatures that are unable to act in other than self-interested ways. Expecting from states to do so is to engage in self-delusion, error and hypocrisy, according to Smith. Thereby, humanitarian interventions dull the national purpose. “Only when we recognize the inevitably self-interested character of all our policies can we think clearly about our interest.” The last realist characteristic is that of structuring a more orderly international system and paying attention to the requirements of leadership by a great power. When a great power allows certain events that threaten human rights to take place, can one take this great power seriously?¹⁵ As mentioned earlier in this paper, social unrest on the question whether- and when Western states would or should invade Syria, reigned.¹⁶ Such “calls for help” may strengthen the argument that when a state does not intervene, it will not be taken seriously any longer.

Nicolas Wheeler has distinguished four realist objections to legitimating the practice of humanitarian interventions: (1) humanitarian claims always cloak the pursuit of national self-interest, legalizing a right of humanitarian intervention would lead to states abusing it; (2) states will not intervene if this risks soldiers’ lives or incurs significant economic costs, unless vital interests are at stake; (3) states always apply principles of humanitarian intervention selectively; and (4) states have no business risking their soldiers’ lives or those of their non-military personnel to save strangers.¹⁷ Smith already emphasized the first and third objections. These four objections together with the “appearance of powerful states”-argument that Smith introduced define the realist position regarding humanitarian interventions. All of the

¹⁴ Brouwers. “Aleppo: ook op non-interventie staat een prijs.”; Ditmars. “Wordt humanitaire interventie vaak ingegeven door eigenbelang?.”; Kerres. “Trump balt vuist, maar zijn actie in Syrië verandert nog weinig.”; NOS. “Wel of niet ingrijpen in Syrië?”

¹⁵ Smith. “Humanitarian Intervention: An Overview of the Ethical Issues.”: 70-72.

¹⁶ Brouwers. “Aleppo: ook op non-interventie staat een prijs.”; Ditmars. “Wordt humanitaire interventie vaak ingegeven door eigenbelang?.”; Kerres. “Trump balt vuist, maar zijn actie in Syrië verandert nog weinig.”; NOS. “Wel of niet ingrijpen in Syrië?”

¹⁷ Wheeler. *Saving Strangers*: 27-33.

characteristics of this position can supposedly be reduced to the core belief that states only handle according to their own interests. From this realist point of view, humanitarian interventions are therefore never truly humanitarian but rather a means to a self-interested end.

The core values of liberalism are self-determination, community and shared history. However, the universalist conception of human rights considers sovereignty a subsidiary and conditional value. There appears to be an existing tension between sovereignty, self-determination and humanitarian intervention. This tension seems to reveal itself in the dichotomy between liberal interventionists and liberal non-interventionists. As Smith has emphasized, a deep fault line of liberal theory runs along the question of how a community defines itself. What means can a community use, what legitimate goals can it pursue in order to establish its conception of freedom and autonomy, and to what extent are outsiders legitimately a party to their conflicts when these conflicts in question become ugly?¹⁸ By asking these questions, liberals seem to try to define what sovereignty means for a community: to what extent does sovereignty reach? Smith points towards the non-interventionist end of the liberal spectrum, where two sorts of claims can be found: one ethical and one prudential. The ethical claim underlines community and shared history: outsiders should respect these values. They should thus not intervene. Thereby, there is the belief that unless freedom is earned by a community, it will not survive and endure. Related to the ethical claim, is the claim about the legitimating function of domestic political processes – according to Smith “apparently almost any domestic political process”. These claims are arguments for non-intervention and lead to the prudential claim about order. A prudential concern for order is that the international community cannot license intervention everywhere to everyone who wants to intervene. Not every violation can justify intervention. Non-interventionist liberals claim that citizens should be left alone to work out their own governance. The notion of sovereignty is leading in the ideas of noninterventionists.

The interventionist end of the liberal spectrum points on the one hand towards intervention in other forms than sending troops. However, Michael Walzer points towards military violence as well. It is thus not clear what sort of intervention the liberal interventionist prefer. According to Smith, Walzer interprets humanitarian interventions as some sort of international analogue to domestic law enforcement. Governments that engage in acts that allow the international community to intervene for humanitarian purposes are in effect criminal governments. In Walzer’s view, humanitarian interventions come closer than any other kind of intervention to what is, in domestic society, commonly regarded as police work. In addition, he believes that in order to stop an outlaw, humanitarian interventions should have the form of a longer-lasting rescue operation.¹⁹ Summarizing, liberal non-interventionists argue that intervention should not take place as (1) outsiders should respect the community and shared history of ‘a people’; (2) in order to create enduring freedom and lasting political policies, a community should earn this freedom and political power by themselves; and (3) once a country has intervened, other suffering communities might expect that their country will be intervened as well. This sets an undesirable norm. Liberal interventionists on the other hand are of opinion that states may intervene. When they are doing this, they are enforcing the law. The humanitarian interventions should have the form of rescue operations rather than a “quick in and quick out” intervention.

¹⁸ Smith. “Humanitarian Intervention: An Overview of the Ethical Issues.”: 72.

¹⁹ Smith. “Humanitarian Intervention: An Overview of the Ethical Issues.”: 72-75.

Now that the differences and similarities between realists and liberalists have been made clear, the first school of thought can be introduced. The representatives of this unfavourable disposed school are Samuel Moyn and Mohammed Ayoob. Moyn criticizes the use of humanitarian interventions, and sees them as expressions of enlightened humanitarianism.²⁰ Humanitarianism “states that people’s duty is to promote human welfare and calls for ‘humanity’ in our interaction with others’.”²¹ Moyn emphasizes that human rights are seen as a utopian political means, he pleads however that one cannot solve every problem with this “panacea”. Viewing human rights as panacea results in very high expectations of this means, humanitarian interventions are thus seen as an accusation against these high expectations. This explains why Moyn sees humanitarian interventions as expressions of enlightened humanitarianism. The way Moyn describes humanitarian interventions seems to implicate that he assumes that strong states see themselves as superior in comparison with weak states. Further, with the use of humanitarian interventions, states do not oversee the consequences such an action may have.²² Moyn is therefore clearly unfavourable disposed towards humanitarian interventions, as (1) he considers these interventions as expressions of enlightened humanitarianism; and (2) these interventions may cause unforeseen consequences. Based on the first point that he makes, Moyns theory can be labelled as realistic.

Ayoob emphasizes that sovereignty can be circumscribed as humanitarian purposes are more valuable than state sovereignty to the international community. Consequently, when human rights are violated, the sovereignty of a state is less important than stopping the violation. He acknowledges that decisions to intervene will be made largely on the basis of strategic and economic considerations of the state itself. These considerations may have little to do with humanitarian concerns, even if they are justified with reference to such ideals.²³ This way Ayoob somewhat agrees with the point that Wheeler, of the critically favourable school, makes clear as well: states can have a duality in their motives for humanitarian interventions. The question whether to intervene is not always answered by purely humanitarian motivations. Ayoob believes that a state may only disregard the legal claims of sovereignty when a large majority of states has a demonstrated consensus that a violation of the sovereignty norm is demanded. It must also be demonstrated that such a violation is not being committed for hidden motives by intervening states.²⁴ As mentioned, there is a potential for abuse in the use of humanitarian interventions. Ayoob writes on the danger that interventions will reflect the will of the international community as well. His solution for these problems is that the decision-making on humanitarian intervention should be legitimate and transparent. Furthermore, the creation of a “Humanitarian Council” should replace the existing mechanism of the Security Council authorisation.²⁵ Ayoob is unfavourable disposed towards humanitarian interventions as he thinks of these interventions as instruments to pursue the political agenda of intervening states. Ayoob’s theory belongs to the liberalistic side: his “duality in states’ motives for humanitarian interventions”-argument underlines this classification.

The answer on the first sub-question, “to what extent does the unfavourable disposed school justify the use of humanitarian interventions in order to protect human rights?” can be

²⁰ Moyn. *Human Rights and the Uses of History*: 35-36.

²¹ Moke, Schewe and Zwitter. *Humanitarian Action Facing the New Challenges*: 11.

²² Moyn. *Human Rights and the Uses of History*: 35-51.

²³ Ayoob. “Humanitarian Intervention and State Sovereignty.”

²⁴ Ayoob. “Humanitarian Intervention and State Sovereignty.”: 93-94.

²⁵ Ayoob. “Humanitarian Intervention and State Sovereignty.”

formulated as follows. As this school views humanitarian interventions as (a) a tool (that can be abused in order-) to enforce domestic political motives; and (b) an instrument that can cause unforeseen consequences, the unfavourable disposed school does not justify humanitarian interventions in order to protect human rights.

3. Schools of thought distinguished, the critically favourable school

This chapter will discuss the second school of thought, which is critically favourable disposed towards humanitarian interventions. In order to review the tension between sovereignty and intervention, various ideas on the concept of sovereignty will be reviewed as well. As aforementioned in chapter two, the representatives of the unfavourable disposed school are Ayoob and Moyn. One of the representatives of the critically favourable disposed school, Wheeler, has reacted on the article of Ayoob.

Wheeler agrees with Ayoob on the importance of ensuring that humanitarian intervention expresses the collective will of the society of states, instead of the will of the most influential states.²⁶ He considers it a challenge to engage in a genuine dialogue over the substantive rules that should determine a legitimate humanitarian intervention. The key issue of this challenge concerns persuading Member States (especially the permanent members) of the Security Council, that there should be restrictions on the exercise of the veto.²⁷ This way, humanitarian intervention does not only express the will of the most influential states. Wheeler disagrees with Ayoob concerning his policy prescription.²⁸ The way in which Wheeler criticizes Ayoob can be seen as the tendency of the second school towards humanitarian interventions that will be discussed in this chapter: favourable, but critical. This has resulted in the classification of this school of thought as the critically favourable disposed school. Besides Wheeler, Gary Bass and Michael Walzer belong to the critically favourable disposed school. This school of thought proposes that if you choose your humanitarian causes wisely and really mean to help, there will not be anything to be sorry about. Wheeler thinks that states are required not only to do something to end atrocities or starvation, but to prevent them from recurring too. States should act as they have the capabilities to deploy the means that can prevent or stop genocide or mass murder.²⁹ Bass shares this opinion with Wheeler. This seems to be a liberal interventionist' point of view, as both Wheeler and Bass are of the opinion that states are required to act. By doing so, states seem to be enforcing the law.

Bass believes that states should act against the violation of human rights out of humanitarianism. He also looks at the way “freedom at home can help promote freedom abroad” This seems rather paternalistic. It is evidently difficult to separate humanitarian purposes from paternalistic purposes that have a humanitarian dimension as well. This paternalism has, after all, a superiority-aspect and thus some sort of political purpose. Bass pays attention to the risks of humanitarian interventions too: “they can be foils for imperialist conquest and occupation, draw big states into rivalry, or spark devastating wider wars between great powers”³⁰ Bass seems to be a cautious liberal interventionist: his view does have some characteristics of this school. For example, he is open to alternatives for interventions since he pointed towards the “freedom at home”-principle.

²⁶ Wheeler. “Decision-making Rules and Procedures for Humanitarian Intervention.”

²⁷ Wheeler. “Humanitarian intervention after Kosovo: emergent norm, moral duty or the coming anarchy?.”: 127

²⁸ Wheeler. “Decision-making Rules and Procedures for Humanitarian Intervention.”

²⁹ Wheeler. *Saving Strangers*: 310.

³⁰ Bass. *Freedom's Battle*: 8.

Walzer points towards the duality in motives for humanitarian interventions. The following sentence is exemplary for his vision: “states don’t send their soldiers into other states, it seems, only in order to save lives”³¹ Walzer’s opinion on humanitarian interventions can be summarized as follows: humanitarian interventions are justified when it is a response to acts that “shock the moral conscience of mankind”. Although the rule of law should be respected, the violations of the formal rules of sovereignty will not be condemned, because they uphold the values of individual life and communal liberty of which sovereignty is merely an expression. Further, Walzer emphasizes that states that execute humanitarian interventions cannot rightly claim any political prerogatives for themselves. Certainly not in the case of secessions and national liberation struggles. Whenever the intervening state claims any political prerogatives for itself, Walzer suspects that political power was its purpose from the start.³² This would therefore, following the categorization from Hellema and Reiding, imply that the motive for the intervention is power politics rather than idealism.³³

Furthermore, Walzer emphasizes that the decision whether or not to intervene is made only on the costs of the soldiers of the intervening state and on the political standing at home. However: political leaders should act effectively abroad when the situation demands it, and must be able to judge the urgency of the demand in the appropriate moral and political terms. Walzer does not mean to abandon the principle of non-intervention. Although the norm is self-determination, this does not apply to, among others, victims of tyranny and ethnic hatred. They urgently need help from the outside. “Whenever the filthy work can be stopped, it should be stopped. And if not by us, the supposedly decent people of this world, then by whom?”³⁴ Walzer’s point of view seems to be realistic, as it implies that states do not act out of humanitarian reasons, but rather in their own interests. It also has characteristics of liberal interventionism, as Walzer thinks that intervening is a way to enforce the law.

The answer on the second sub-question, “to what extent does the critically favourable disposed school justify the use of humanitarian interventions in order to protect human rights?” can be formulated as follows. The critically favourable disposed school does justify humanitarian interventions in order to protect human rights to the extent that (a) these interventions are a response to acts that “shock the moral conscience of mankind”; (b) these interventions are not used as a political means to claim political prerogatives. The authors of this school do not at all costs support that the end justifies the means: they favour proportional actions as well.

Asking the question on who should stop the filthy work is answering it, so it seems. However, can the principle of state sovereignty prevent an intervention from happening? The concept of sovereignty has evolved over time, or, at least the ideas on sovereignty have evolved. National (state) sovereignty has been the organisational point of departure in world politics since the Peace of Westphalia (signed in 1648). The principle of state sovereignty means that a government has the full and exclusive authority to pursue the rule on her (own) territory.³⁵ As this principle is established in the UN Charter, the members of the UN are obliged to “refrain in their international relations from the threat or use of force against the territorial

³¹ Walzer. *Just and Unjust Wars*: 101.

³² Walzer. *Just and Unjust Wars*: 101-108.

³³ Hellema and Reiding. *Humanitaire interventie en soevereiniteit: De geschiedenis van een tegenstelling*: 10-12.

³⁴ Walzer. “The Politics of Rescue.”: 53-66.

³⁵ Homan. “Libië: Responsibility to Protect en de NAVO.”: 24.

integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.³⁶

According to John Rawls, sovereignty belongs not to a government as the political organisation of its peoples (or: the state). Rather, the sovereignty belongs to the peoples (or: the citizens).³⁷ He is of opinion that the term ‘peoples’ emphasizes the singular features of peoples as distinct from states, and highlights their moral character and the decent nature of their regimes. Rawls finds it significant that peoples’ rights and duties in regard to their sovereignty derive from the Law of Peoples itself, to which they would agree along with other peoples in suitable circumstances. Since the nature of their regimes is decent, the reasons for their conduct accord with the corresponding principles. Solely their prudent or rational pursuit interests do not move peoples, while they do move states to handle in a certain way.³⁸ In other words, Rawls implies that states do not act according to the way in which the people itself would act. Thus, the principle of democratic representation is not working. However, it is not possible to lead a state without democratic, or political, representation. From a pragmatic point of view it would not be possible to govern a state without representation.

Rawls’ opinion on the violation of human rights in outlaw states is that, when an outlaw state violates these rights, this state is to be condemned and may in grave cases be subjected to forceful sanctions and even to intervention.³⁹ Although he is of the opinion that sovereignty should belong to peoples of a state, he does allow intervention. Human rights are thus more important than the principle of sovereignty: this is inextricably bound with the R2P doctrine. The next chapter will discuss this doctrine further.

4. From theory to practice

4.1 The background of humanitarian interventions

As the academic debate concerning humanitarian interventions has now been reconstructed and interpreted, the following paragraphs will sketch the general background of humanitarian interventions. Naturally, the background of humanitarian interventions can be framed from various perspectives. The angle that will be used in this paper is the legal one.

As mentioned in the introduction: both the UN Charter and resolutions of the Security Council constitute the legal basis that sets out the humanitarian rules of warfare.⁴⁰ The Security Council can authorise the use of force under Chapter VII of the UN Charter.⁴¹ Since these rules proved to be not conclusive in the case of the non-UN authorized NATO’s intervention in Kosovo (2009), the need to form a doctrine for humanitarian interventions came to light.⁴² This is not a legal instrument such as the UN Charter, but rather a widely accepted doctrine. In short, the ICISS (established with the support of the Canadian government) started to identify the problem of humanitarian interventions from a whole different perspective: that of the victims of the – potentially to be invaded – state. This way,

³⁶ United Nations. *Charter of the United Nations*: 3. Chapter 1 ‘Purposes and Principles’, art 2.4 covers this obligation.

³⁷ Rawls. *The Law of Peoples*: 25-26.

³⁸ Rawls. *The Law of Peoples*: 25-27.

³⁹ Rawls. *The Law of Peoples*: 80-81.

⁴⁰ United Nations. *Charter of the United Nations*; United Nations Security Council. Resolution 1970; United Nations Security Council. Resolution 1973.

⁴¹ United Nations. *Charter of the United Nations*: art 42. Chapter VII includes article 42 which states that should the Security Council consider measures not involving the use of armed force to be inadequate, ‘it may take such action ... as may be necessary to maintain or restore international peace and security’.

⁴² International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*.

the needs of the state requiring help rather than the criteria whether one state may or may not intervene occupy the principal part in the debate. Further, the situation in the state in need will be assessed as part of a broader length of time, and both the developments prior to the conflict and the perspectives following the intervention will be taken in consideration. The responsibility to protect was the leading point of departure in these discussions, and became the name of the doctrine developed by the ICISS. An important contribution, which the ICISS emphasizes, is their classification of a humanitarian intervention in three phases: (1) “the responsibility to prevent”: prevention of the conflict, (2) “the responsibility to react”: the phase of the catastrophe itself, and (3) “the responsibility to rebuild”: the phase after the emergency situation. And, although the general impression of a humanitarian intervention may be an intervention in the second phase, states can intervene in all three phases.⁴³ As mentioned, the international community should on the legal basis of the R2P decide whether to intervene or not to intervene. The doctrine of the R2P reflects the ethical values of the UN. In describing the three-phase-classification of the ICISS, the value of paternalism or even colonialism may be an interpretation one can receive. However, the R2P emphasizes with urge that “prevention is the single most important dimension of the doctrine: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it”⁴⁴ This doctrine is thus not an open invitation to intervene. Further, the four precautionary principles of (1) right intention, (2) last resort, (3) proportional means, and (4) reasonable prospects, stress that states do not purely have the responsibility to protect, they have in fact the responsibility to weigh the decision to intervene with the greatest care and precaution.⁴⁵ States must take responsibility for their actions; this applies to both intervening states and to-be-intervened states.

Apart from the pure legal angle, humanitarian intervention also belongs to the realm of moral choice, which nations, like individuals must sometimes make.⁴⁶ In other words: the law is not always the best way to weigh whether a state should- or should not intervene. Naturally, there are rules and protocols such as the R2P. However, there are always exceptions to the rule. Can a protocol be binding in decisions that comprehend life and death, the future of a state, and even the future of a whole geopolitical region? Rules can be misunderstood, or misinterpreted. For example, Smith pointed to the ambiguity of humanitarian interventions. Are these interventions a “quick in and quick out” rescue operation where the basic norms of sovereignty will be left intact, or, are they an attempt to address the underlying causes of the conflict and to create the conditions for democracy?⁴⁷ The rules do not favour one interpretation above the other. This can however be dangerous: protocols, doctrines and rules are after all, just words. Words can be twisted and wretched, and can be amenable to a plethora of interpretations. Perhaps the “legal perspective” is not enough to evaluate whether a humanitarian intervention can and may take place. Attention will be devoted to this ethical component of humanitarian interventions in the following paragraphs concerning the intervention in Libya 2011.

⁴³ Hellema en Reiding. *Humanitaire interventie en soevereiniteit. De geschiedenis van een tegenstelling*: 159-173; International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*.

⁴⁴ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*: 11.

⁴⁵ International Commission on Intervention and State Sovereignty. *The Responsibility to Protect*: 12.

⁴⁶ Franck and Rodley. “After Bangladesh,”: 305; Walzer. *Just and Unjust Wars*: 106.

⁴⁷ Smith. “Humanitarian Intervention: An Overview of the Ethical Issues.”: 66.

4.2 The background of the intervention in Libya 2011

The uprisings in Libya in 2011 should be seen in the broader context of the Arab spring.⁴⁸ The self-immolation of Mohammed Buazizi on December 17, 2010 in the Tunisian city of Sidi Bouzid marked the – figural – end of Arab winter prior to the Arab spring. Buazizi set himself on fire in protest against humiliation by the police and the feared loss of his livelihood. Demonstrations erupted and spread to neighbouring cities. When the Tunisian President Ben Ali was overthrown, popular political action in Egypt was galvanized. This led to the fall of Egyptian President Mubarak. Events in Tunisia and Egypt shocked the rest of the region. A few days after Mubarak’s fall, demonstrations against Libyan President Gaddafi broke out in Benghazi and quickly spread across the whole of the east and to some parts of the west, although they remained small-scale in the capital of Tripoli.⁴⁹ The figural Arab spring seemed to be flourishing. The UN Security Council responded with resolutions on the events in Libya. Resolution 1970 authorized non-military sanctions such as freezing financial assets of Libyan leaders and creating an arms embargo.⁵⁰ Thereupon, Resolution 1973 authorized sanctions such as creating a no fly zone.⁵¹ After the acceptance of Resolution 1973, French fighter planes bombed tanks and other weapons systems in Libya. This event marks the start of the military intervention.⁵²

The first- and the second sub-question have showed to what extent the two schools of thought justify a humanitarian intervention in order to protect human rights. The unfavourable disposed school does not justify humanitarian interventions. The critically favourable disposed school however, does justify humanitarian interventions in order to protect human rights to the extent that (a) these interventions are a response to acts that “shocked the moral conscience of mankind”; (b) these interventions are not used to claim political prerogatives. However, it is important to emphasize that this school also favours proportional actions. The authors of this school do not at all costs support that the end justifies the means. On the basis of criteria a and b can be defined whether the intervention in Libya is justified according to the second school of thought. Primary sources will show whether (1) the acts in Libya shocked the moral conscience of mankind; (2) the intervention was a response to acts that shock the moral conscience of mankind; (3) this intervention was used as a political means to claim political prerogatives.

Firstly, the ethical component: did the acts in Libya shock the moral conscience of mankind? As it is hard to define when an act does shock the moral conscience, this criterion seems to be subjective. In order to solve this problem, this paper has defined such an act as “a strong violation of human rights”. The UN clearly emphasized her grave concern at the situation in Libya. Resolution 1970 speaks of “the gross and systematic violation of human rights”, and “the widespread and systematic attacks ... against the civilian population may amount to crimes against humanity”.⁵³ Further, in the Report of the International Commission of Inquiry on Libya, the Commission drew the conclusion that “international crimes, specifically crimes

⁴⁸ Dalacoura has pointed to the premature comparisons of the ‘Arab spring’ to the end of communism in Eastern Europe in 1989, in “The 2011 uprisings in the Arab Middle East: political change and geopolitical implications.”: 63. As there has been no serial collapse of authoritarian regimes leading to a democratic future, the talk was in 2012 of ‘uprising’, ‘revolt’ or ‘crisis’, rather than ‘revolution’. However, ‘Arab spring’ as the name for the events is widely known, this paper will make use of that appellation.

⁴⁹ Dalacoura. “The 2011 uprisings in the Arab Middle East: political change and geopolitical implications.”: 63-65.

⁵⁰ United Nations Security Council. Resolution 1970.

⁵¹ United Nations Security Council. Resolution 1973.

⁵² Homan. “Libië: Responsibility to Protect en de NAVO.”: 26.

⁵³ United Nations Security Council. Resolution 1970.

against humanity and war crimes, were committed by Gaddafi forces in Libya”.⁵⁴ On the basis of these primary sources, there can be concluded that there has indeed occurred a strong violation of human rights. With this confirmation the first criterion is met.

The question whether this intervention was a response to acts that shock the moral conscience of mankind, can be combined with the question whether this intervention was used as a political means to claim political prerogatives. According to Kees Homan, there are five critical remarks on the intervention in Libya: (1) “mission creep” (to what extent would the protection of the Libyan population been possible without removing President Gaddafi? Would this have been the purpose in the first place?); (2) selectivity in employing the R2P (why had an intervention in Syria or Yemen not taken place?); (3) no-fly zone (this concept to protect the population encountered criticism); (4) oil (critics such as Turkey claimed that the intervention was about oil); (5) neo-colonial (various critics considered the intervention as neo-colonial interference). Homan has refuted some of these remarks: the intervention was not about oil, as (among other things) a NAVO-intervention would have probably multiplied the oil-prices; the intervention was not a neo-colonial interference since (among other things) 35 prominent Arab intellectuals and more than 200 Arab organisations pleaded for the rapid creation of a by the UN mandated no-fly zone above Libya.⁵⁵ On the basis of this information there can be concluded that there are always various motivations for a humanitarian intervention: these motivations might not all be non-political, transparent and univocal. However, according to Homan, there are no good reasons to doubt that the humanitarian motives were dominant in the case of the intervention in Libya. The intervention was indeed a response to acts that shock the moral conscience of mankind. The second criterion is met.

There is nevertheless a dichotomy in the morality of war: *jus ad bellum* (whether the war is just), and *jus in bello* (whether the war is being fought justly).⁵⁶ Following the criteria of the critically favourable disposed school, the decision to intervene in Libya can be justified. However, was it carried out justly? Both schools give rise to research this matter: the unfavourable disposed school points towards the unforeseen consequences of humanitarian interventions, and the critically favourable disposed school points towards the execution of interventions by referring to the principle of proportionality. The R2P points towards proportionality as well. Therefore, the following paragraphs will review the execution of the intervention in Libya.

Initially the UN pressured Gaddafi through diplomatic efforts and the imposition of economic sanctions. However, Gaddafi’s forceful response generated escalated measures on behalf of the international community, including the implementation of a no-fly zone and air strikes to protect civilians. As the fighting in Libya intensified, sanctioned broadened: freezing of the regime’s assets, an arms embargo, travel restrictions on Gaddafi and his advisers and the suspension of Libya’s membership of the UN Human Rights Council. Further, the Prosecutor of the International Criminal Court (ICC) launched an investigation. As France moved to recognize the Libyan National Council (the rebel body claiming to provide an alternative to Gaddafi’s government), Gaddafi intensified his efforts to crush the rebellion. The fighting continued, Resolution 1970 and -1973 were adopted, and in May the ICC issued three warrants of arrest for Gaddafi, his son Said Al Islam, and the head of Libyan intelligence, for

⁵⁴ Human Rights Council. Report of the International Commission of Inquiry on Libya. This report was submitted on June 15, 2011, three months after the humanitarian intervention had begun.

⁵⁵ Homan, “Libië: Responsibility to Protect en de NAVO.”: 27-29.

⁵⁶ Walzer, *Just and Unjust Wars*. Walzer pointed out that these concepts are independent: a just war can be fought unjustly, and an unjust war can be fought justly.

crimes against humanity committed in response to the insurgencies. In August, rebel forces occupied most of their lost territory, capturing Tripoli: the capital of Libya. On September 16, 2011, the UN recognized the National Transitional Council as the legal representative of Libya, formally replacing the Gaddafi government. Gaddafi himself remained at large until October 20, when he was captured and killed in an attempt to escape from Sirte. On October 23, 2011, the National Transitional Council declared the liberation of Libya and the official end of the war.⁵⁷

There are two events in the execution of this humanitarian intervention that can be perceived as unjust, or politically sensitive (following criterion b): the removal of Gaddafi, and, subsequently, not replacing him with another ruler. However, regarding the severe violations of human rights in Libya, the decision to intervene can be justified: even when that implies removing Gaddafi. The second event, not replacing Gaddafi, appears to be a well-considered choice, since interventions should be executed with the greatest care. Thereby, the replacing of Hussein's government during the US intervention in Iraq 2003 has had severe consequences.⁵⁸ Nevertheless, removing Gaddafi and not replacing him is possibly worse, following the philosophy of the critically favourable school. The criticism exists of two aspects. Firstly, according to liberal interventionists (part of the critically favourable school), humanitarian interventions should have the form of rescue operations rather than a “quick in and quick out” intervention. The responsibility to rebuild, a principle of the R2P, summarizes the second aspect. States have the responsibility to rebuild the intervened state.

From the moment a state intervenes, it has a responsibility to respect both the values of individual life and the communal liberty of the intervened state. Since removing a ruler without replacing him/her with a new ruler could aggravate the situation in the intervened state, this action can be perceived as disrespectful towards the intervened state. As with Libya, the National Transition Council was recognized as the legal representative. However, it would have been better to organize national elections in Libya. This way, the citizens could choose their representatives, and a democratically chosen government could have been installed. An additional advantage of this approach is that Libyan citizens would govern, instead of foreigners (this was the case in Iraq 2003). A critical remark to this proposed approach is that elections organized by other powers than local powers could be considered as a form of (neo-) colonialism or a political means to claim political prerogatives. From both a pragmatic- and “responsibility to rebuild” point of view, on the other hand, it is better to help to organize elections than to leave while the intervened country is still a sandy chaos without political representation. The intervention in Libya was, insofar the research of this paper could reach, not a political means that was used to claim political prerogatives. The third criterion is thus not met.

The answer on the third sub-question, “to what extent do the unfavourable disposed school and the critically favourable disposed school justify the humanitarian intervention in Libya in 2011?” can be formulated as follows. Since the unfavourable disposed school does not justify humanitarian interventions at all, this school does not justify the humanitarian intervention in Libya 2011 either. The critically favourable disposed school does justify humanitarian interventions in order to protect human rights to the extent that (a) these interventions are a

⁵⁷ Vik. *Moral Responsibility, Statecraft, and Humanitarian Intervention: The US Response to Rwanda, Darfur, and Libya*: 112-117.

⁵⁸ As mentioned in the introduction of this paper: the effects of the intervention in Iraq are still tangible, even for states outside the Middle East. Furthermore, in 2012 Iraq has been named “something close to a failed state” in: Parker. “The Iraq We Left Behind: Welcome to the World’s Next Failed State”: 94.

response to acts that “shock the moral conscience of mankind”; (b) these interventions are not used to claim political prerogatives. Since these two criteria have been met in the case of Libya 2011, the critically favourable disposed school justifies this humanitarian intervention. This answer is accompanied by the critical remark that removing Gadaffi without replacing him with another ruler is not the optimum way of executing the humanitarian intervention.

5. Conclusion

Humanitarian interventions are on the one hand perceived as a tool (that can be abused in order-) to enforce domestic political motives and which can cause unforeseen consequences. Thereby, using this instrument comes with a risk since these interventions can be foils for imperialist conquest and occupation, draw big states into rivalry, or spark devastating wider wars between great powers. On the other hand, humanitarian interventions are perceived as a required means in order to both prevent and end acts that shock the moral conscience of mankind.

The aim of this paper was to answer the main question “does the end of protecting human rights justify the means of humanitarian intervention in the case of Libya 2011, according to (1) the unfavourable disposed school and (2) the critically favourable disposed school?” by answering the three sub-questions of this main question. Analysing and comparing primary sources such as UN documents, as well as secondary sources such as academic articles and books, together with the case study on the humanitarian intervention in Libya 2011 provided an extensive answer on this question.

Since the unfavourable disposed school does not justify humanitarian interventions at all, this school does not justify the humanitarian intervention in Libya 2011 either. The critically favourable disposed school does justify humanitarian interventions in order to protect human rights to the extent that (a) these interventions are a response to acts that “shock the moral conscience of mankind”; (b) these interventions are not used as a political means to claim political prerogatives. Since these two criteria have been met in the case of Libya 2011, the critically favourable disposed school justifies this humanitarian intervention. This justification is accompanied by the criticism that removing Gadaffi without replacing him with another ruler is not the optimum way of executing a humanitarian intervention, according to this school. In other words: while the intervention in Libya was justified according to the critically favourable school, the execution of this intervention is not. It is important to emphasize that although the second school supports the means of humanitarian interventions, it is not at any costs supporting this statement. The school favours proportional actions as well.

As this paper consists of only 8000 words, the research is naturally limited. It was for example impossible to discuss all the authors who have written about humanitarian interventions. However, this paper has compared the leading authors who have written about humanitarian interventions in order to both reconstruct the academic debate and distinguish the authors in two schools. These leading authors have published in the period of 1978-2008. Naturally, the authors who have published in the 1970s-1990s have written in the context of another *esprit du siècle* and perhaps even another paradigm, than the authors who have published in the 2000s-2010s. Further, the authors of the 20th century could not include the interventions of the 21th century (e.g. Iraq 2004) and their (unforeseen) consequences in their theories. This paper has considered these authors equally, which can be seen as a limitation of this research. The literature on which this paper has appealed has its limitations as well: the authors could not consider all existing literature and all previous interventions to form their theories either. Another limitation can be found in the publications of Wheeler: he uses the

word “always” in several of his statements. This seems to be not very academic, since words such as always, never, nobody, everybody, don’t give any room for exceptions. Using these words is a setback to “Hume’s problem”, as phrased by Karl Popper: the justification of induction.⁵⁹

Does the end of protecting human rights justify the means of a humanitarian intervention in the case of Libya? According to the first school, it does not. Although the second school of thought does not justify the means of humanitarian intervention at any costs (it also favours proportional actions): this school believes that the end does justify the means in the case of Libya. *Inter arma silent leges* but not in the case of Libya. The decision to intervene was legally correct. However, there are no laws existing on how to execute an intervention, besides the use of “military action” in the definition of the ICISS. Laws on warfare already exist, as does international humanitarian law. There is however a lack of laws on specific aspects of humanitarian interventions (e.g. when can the intervening state remove a local ruler?). Suggestions for further research therefore comprehend to explore whether it is possible to make laws that state how specific aspects of a humanitarian intervention should be executed (e.g. can the local ruler be removed without replacing him with another one?). In the case of Libya, the end justified the means, but the intervention could have been executed in a better way. This insight could contribute to new developments in the theories on humanitarian interventions.

⁵⁹ Leezenberg and De Vries. *Wetenschapsfilosofie voor geesteswetenschappen*: 92-93.

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