

## FOREIGN ARMED INTERVENTION: BETWEEN JUSTIFIED AID AND ILLEGAL VIOLENCE ♦

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## 1. Grounds for Intervention

Intervention in the affairs of other states or nations is not a novel fact of social life. Events in foreign countries, particularly if they involve great suffering, can hardly remain simply an internal matter. Many intra-state concerns and interests, not just national security, are importantly affected by external developments, perhaps just as much or more than by internal ones. In recent times, however, a new idiom as a way of reflecting on these facts has become prevalent. The phrase in question is “humanitarian intervention.” Contrary to what one might readily suppose, however, the phrase does not stand for some rescue operation,<sup>1</sup> such as may be undertaken in the case of earthquakes, major floods, or catastrophic levels of poverty, despair, and famine. Instead, the term refers to a military operation in a foreign country with alleged humanitarian rationale. On this count, the phrase-component “intervention” takes semantic precedence in its contribution to the full meaning of the phrase over the word “humanitarian.” The specific role of the latter phrase-component is to indicate that a justified and acceptable form of military operation is in question, rather than one that is unjustified and unacceptable. This is in keeping with the fact that the word “intervention” takes the primary semantic role in the complete phrase, while the word “humanitarian” has the role of the attribute, modifying the main term.

Furthermore, this newly fashioned use of the term “humanitarian” purports to indicate that the intervention so designated takes as its purpose and source of justification the protection, defense, or restitution of those items specifically referred to by the term “human rights.” This is in contrast to interventions that might not be so designated. The term “humanitarian” is used in a way that characterizes the related justification for action as uniquely valid and universal. As a device to express a new ideology or primary political dogma, it appears to single out a set standard applicable to all valid form of political governance anywhere on the globe.

Previously, the language was different, while often the actions were much the same. Interventions were accompanied by their own vocabulary and by an articulation of justifying reasons describing their necessity. A justification has always been a component part of any military intervention. Recall Korea, Hungary, Vietnam, Czechoslovakia, and Afghanistan in the 1980s. All these earlier cases of intervention--prior to the era of “humanitarian intervention”--offered “defense” as their justification. They differed only with respect to what was defended. Consequently, the earlier practice made room for heterogeneity of values that could be legitimately “defended” in this way. By contrast, the current trend is toward an unvarying “justification” of intervention in terms of human rights. Protection of human rights is taken to represent the set of values that forms the basis for constituting rules of conduct, and those rules must be obeyed universally because those values are taken to be universal. As such, they are not only to be defended, but imposed as well.

The question of whether or not there are any truly universal values in the world is a very difficult one. Equally complex is the related question of how and on what grounds some items are taken as representing universal values. Though certainly important, these matters are well

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beyond the scope of the present study. We shall instead narrow our attention to the legal realm and framework of possible justification of intervention. Specifically, the issue that will concern us is whether it is possible to regulate the practice of humanitarian intervention so that it would be legal or illegal according to some previously specified conditions. To be precise, the attention will be on whether or not the emphasis on “human rights” can furnish the requisite universal-value foundation for such justification. Certainly, some values we are dealing with are universal by their very nature. These are *moral* values--for example, those embodied in the concept of (self-)defense. Others, presumably, are not universal, such as, among others, *political* values--for example, those embodied in the concept of the “right to self-determination.” In the human rights ideology, however, no room exists for distinctions of this sort, for it assumes that *all* values from some set (as yet not adequately defined) are universal and binding.

This presumption that “human rights” represent some set of universal values in fact indicates their specific ideological purpose: to create an atmosphere of self-evidence. In this context, self-evidence assumes the place of explication; that is, the process of offering (sufficiently) good reasons for humanitarian intervention (in some concrete case) proves redundant. The appeal to self-evidence--a form of reasonless (gratuitous) acceptance--is by no means a novel scheme of political justification. As with doctrines based on divine revelation or validated by a sacred book, self-evidence functions as a form of reductionism absorbing all reasons from a list supplied in advance. Additionally, it is assumed by the indoctrinated that this list is well defined and complete. This explains a sort of nervousness among “believers” when what is taken to be obvious is put in question or when reasons for it are demanded, for all the reasons have already been given in advance, and any reasoning may require only a simple deduction.

Prior procedures for justifying armed intervention exhibited the same structure, relying heavily on the mechanism of self-evidence. What is novel with appeals to “humanitarian” interventions is that the argument offered for codifying the right of intervention within international law exhibits hitherto nonexistent uniformity. The previous era’s justifying reasons for intervention, given in terms of a “defense” of some value--rather than its “protection” or “promotion”--always enjoyed a certain heterogeneity, in that the values that were defended did not require prior definition as universal values. Instead, the defense of a given value was a matter of law and was justified on a legal basis. This was not the case only when a party defended itself, but also in the instances assistance was offered to the parties requesting such help based on an already well-defined right to self-defense. These were almost always legal governments experiencing some form of attack (internal or external). Unable to secure protection on their own, they sought outside help (e.g., South Vietnam or Afghanistan). However, different reasons might have been operative as well--for example, the violation, or perceived violation, of some previously agreed-upon obligations that were deemed so binding that their violation could serve as a sufficient justifying reason for intervention. (An example of this sort might be Czechoslovakia’s attempt to abolish the “binding orthodox path of socialist development” in 1968.) In any case, up until very recently the cases of purportedly justified foreign armed interventions were not designed to defend (or one might better say, to promote and protect) some uniformly defined and invariable value.

A characteristic feature of our world, however, is its heterogeneity of accepted values. Hence, the universalistic position defined in terms of the presumption that some specific set of values is universally valid proves inadequate. If this stance, so appropriate in morality, were allowed in politics, a sort of uniformity in the world would be produced, threatening the plurality

of cultural and civilizational patterns that have served many people and their collectives as the basis for constructing the meaning of their existence. In any event, even to those who impose their civilizational matrix or their ideology onto others, this matrix or ideology represents the basis for constructing their own life projects and gives meaning to their lives. Sometimes the experience of identifying with a particular ideology is so intense that people are willing to spread their value matrix worldwide, often in the form of crusade-like fanaticism. Having respect for others, however, presupposes that they are free to articulate their own *Weltanschauung* in their own way, maybe even in quite a different way. So, assuming that respect for others is definitionally connected with the moral criterion, it seems that morality, being itself universal, requires not only the possibility of heterogeneity, but also its real presence in the world.

In order to provide protection for this heterogeneity in the world any community of states must adhere to the rule that all states are in principle equals. This is the source of the right states have to freely arrange for themselves their internal affairs in accordance with their own traditions and histories. The restriction, of course, applies that this freedom must be harmonized with the freedom other such political communities, allowing them to do the same. Insistence on a uniform model of social and political life threatens both this heterogeneity and the possibility of political freedom. In order to avoid this danger, a set of very strong restrictions must be placed on interference in the internal affairs of other states. These boundaries must in the least be such that with regard to the distinction between intervention and interference they principally preclude the former and then establish clear rules or restrictions on the latter. All of this, of course, is covered very well in various conventions of international organizations (the UN and others) and in existing international law.

This may seem deficient to those who reject any distinction between law and morality, who think a right which is not clearly morally justified is not legally grounded either. This position requires that in law, too, we must have a universally uniform decision-making process to determine what is right and what is not. In morality, as already mentioned, we have (or at least I am inclined to think we have) a universal criterion of evaluation, and its application in all situations should lead everyone to the same assessment. But in political matters, after all, things stand differently. Political questions deal with what human collectives articulate as their important and primary interests. These become community interests because of the value the group attaches to them. Consequently, they require special protection by means of rules that obligate all to respect them--on pain of sanctions--though those rules (even when legally articulated) are not or need not (and even cannot) be universal. Legal norms or laws lack universality. Their validity is bound instead by territory, just as their content is limited to the expression of a particular collective *want* albeit in some general way, i.e., collective legislative *will*. Laws give expression to what is *wanted* to be the case, rather than what *ought* to be so. Legal norms are to a much greater degree than moral norms an expression of human freedom and the related need that it not only be *restricted* (as in morality) but also *guaranteed* (by laws). These norms in fact express the constitutive or vital interests of some specific nation, a state, in essentially the same way political interests are articulated within some state, though they enjoy greater generality and aspiration to durability.

Those interests may be diverse and have varied degrees of generality. For example, the interest in achieving self-determination--which could become the grounds for foreign intervention--may constitute itself in many different ways. If the sincerity of a desire to secede were the determining criterion of legitimacy regarding a secessionist claim (just as such sincerity is a necessary condition of legitimacy of other democratically expressed forms of collective

will), we could never discern fully justified cases from those that are less so. It is perfectly clear, however, that not all such desires, and interests based on them, are equally justified. Nor is it the case from the perspective of third-party states--whether they are disinterested or have a specific interest in the matter--that every claim to self-determination is equally compelling regarding those states' capacity to offer support and assistance. However, unless the right to self-determination is included among the (presumed) universally valid and at the same time *legally* expressible human rights, there would be no obligation for, nor a right of, other states to assist secessionists in their quest to realize this right (no matter how "pure" and plausible their justification might sound).

## 2. The Right of Intervention: Is It Also a Duty?

The "right" of intervention isn't the same as its "justification." The former concerns its legal status while the latter is concerned with the question of whether or not there is a sufficiently good reason for intervening (i.e., if it is a good means for an adopted end). Hence, an intervention might be deemed "justified" even if this meant nothing more than that there were an interest (strategic, economic, or military) that could be satisfied by this means. In this sense every intervention is per assumption justified: it would be entirely unusual that an intervention occur for no reason at all.

However, "right" could be understood here in a much more interesting way for the sake of ethical and philosophical inquiry: as a right grounded exclusively on a moral justification. In that case the nature of the relationship between the moral and legal orders will require exploration. To what extent is a moral justification as such a good or adequate basis for constituting a proper right in the legal sense? And to what degree then does this justification corroborate or nullify other kinds of justification and existing laws? However, if moral justification enjoys this kind of power, then a question must be asked about the ways of providing guarantees for its content and for its enforcement.<sup>2</sup>

There are arguments that clearly rely on moral reasons to account for the difficulty or impossibility of achieving a legal articulation of a right to intervention, though the issue is the formulation of a legal precept and, therefore, belongs to the domain of ethical, not legal, analysis. Roughly speaking, there are good moral reasons that require law to be constituted in a way confirmed by a certain legislative will, that restrict the domain of its validity to a given territory, and that ensure that law is not reduced to morality. These reasons provide that whatever law amounts to, it ought to be "our law," i.e., it ought to give expression to a free democratic *will* of some people who are self-governing (and not subjugated under foreign rule without its consent). An "excess of morality," particularly if this "excess" finds its expression in law, leads to the road toward fundamentalism and totalitarianism because the "replacement" of law by morality is a process that may lead to the elimination of law. This clearly would be of negative moral value. The existence of law is among the demands of morality; its existence, among other things, is dependent on resisting the reduction of law to morality. The reduction of law to morality eliminates law and seriously undermines morality, demanding the enforcement of moral rules, and hence creates a context in which the criterion of moral evaluation is enforced, in contradiction to its normal application.

Now, the term "right" refers to a notion that appears essentially vague: one implication of "having a right" is that one need not exercise it, i.e., one may freely choose to forsake it. This, however, cannot be the case with a right asserted by the phrase "the right of intervention." This

right, if it is one, should not be one that could freely be forsaken, for it would not be a *prima facie* right, but a right based on a sort of exception: the prior *prima facie* prohibition of precisely the sort of action that is here claimed as a "right," i.e., the principled prohibition of intervention. Here we find an interesting dialectic: having a right to exemption from such an important prohibition implies a very strong justification to do just that. Intuitively, it seems plausible that such a right may exist only if it is at the same time also a duty.

For example, I have a right to enter into contracts, but this imposes no duty on me to do so. I am free to enter into contracts or not (or "sign on the dotted line or not,") as I please. But this right is not grounded in a (justified) exception, as would be the case with, for example, the right of intervention. This entire argument is based on the assumption that there is a difference between permission and prohibition: while no additional explication is needed in cases of permission, it is always needed in cases of prohibition. However, when a permission is parasitical on an antecedent prohibition, as in the case of the "right of intervention"--or for example the permission to kill in cases of capital punishment or self-defense (which are parasitical on an antecedent prohibition of killing)--then it is reasonable to suppose that such a permission<sup>3</sup> also amounts to a duty. It is not simply a right, in the sense that it is left for me to choose whether I would assert it or not in any given case. Therefore, if in some concrete case there should exist the right of intervention, then it ought to be the case that there is also a concurrent duty to intervene. Could this ever be the case, and if so under what conditions? These would be those *very rare* cases when not only a reason that may feasibly constitute a right to intervene exists, but also a concurrent duty to do so, and when this happens the right would in fact result from the coinciding duty. The right to intervene represents a duty to intervene precisely because there is an antecedent general *prima facie* duty of nonintervention. Consequently, this right cannot be a right in the usual sense affording one a (normative) choice to "exercise" it or not. This indicates that in a concrete case there might exist a compelling justifying reason for this action even though it is always *prima facie* unjustified.

### 3. Sovereignty

We live in a world made up of nation-states. While the issue of how states operate cannot be addressed here, we must focus on the aspect of their sovereignty. The world made of states cannot function without a regulative idea contained in the notion of sovereignty. This idea has two basic components. First, certification in the form of people's will is required for the validity of state law. This will<sup>4</sup> defines a collective that forms a state on a given territory delimited and configured by its borders. Second, the presupposition of the universal recognition of sovereignty among states makes international relations a practice that incorporates an element of following rules. A world order, consequently, is an altogether different sort of thing than the Hobbesian "state of nature" conceived as a perpetual war of each against everyone.

The regulative nature of the idea of sovereignty embodies a problem, however. On the one hand, there is the inclination toward seeing the rule contained in this idea as constitutive in nature. Otherwise, it would not be binding to a sufficient degree. On the other hand, an unlimited, absolute sovereignty is not possible. This mechanism of recognition presupposes a sort of inter-dependence, and only through the workings of this mechanism is a state perceived--and perceives itself--as a sovereign state, rather than merely an entity that aspires to that status. Mutual recognition makes possible the transition from a desire or demand for sovereignty to the status of a legitimate sovereign power. Sovereignty rests on the recognition from other members

of the international community, but prior to that on the loyalty of those who are subject to the laws of that state. Hence, a double acknowledgment is required, though in different ways: the state needs both assent from those subject to the law, and recognition from other states that those laws are legitimate rather than arbitrary expressions of will in an arbitrary distribution of power.

This mechanism of recognition presupposes mutuality or reciprocity, and only through its exercise can a state become perceived--and perceive itself--as a sovereign state. It is a distinguishing factor demarcating sovereign states from entities that are merely embodying a pretension to this status (a pretension that might come in the form of a wish, a demand, etc., rather than representing a sovereign and legitimate power). A pronouncement is not sufficient in these matters; various conditions must be met, among them recognition from other like entities. Otherwise, how could the municipal laws in another, *foreign*, country be treated as actual laws rather than an expression of fortuitous decisions within a given constellation of power distribution? Though they are not laws for me, they are laws for someone else, and per assumption this is so in the very same sense that the laws of my country are laws for me. Another condition is that the rules that may become laws must themselves satisfy a series of conditions in order to qualify. The final source of their validity, however, is political will, which constitutes a legal person from a collective. A tacit presupposition that not everything could be an accepted and tolerated rule functions as a natural law that boundaries must exist for the process of conceiving, articulating, and formulating rules, though it is never stated where these boundaries exactly lay.<sup>5</sup>

However, be that as it may, sovereignty necessarily incorporates the attitude of acceptance that others may be different. This is in fact a form of tolerance that allows others the option to be different whether we find this pleasing or not (more on this later). Sovereignty refers to the authority and capacity to enforce laws on a territory, which crucially includes protecting the established order as lawful. However, what is important for us in regarding the meaning of the term "sovereignty" is that it also stands for a specific attitude--it is precisely the previously mentioned attitude of tolerance that warrants others the freedom to be different, to be their own masters. Intervention represents exactly the opposite: in its meaning it includes the presumption of authorization to cancel out precisely the entitlement embodied in one's sovereignty--or in case of human rights ideology to ignore sovereignty entirely.<sup>6</sup>

It is hard to imagine, however, that international peace is possible without mutual recognition of states as such. If the achievement of peace has moral value, then this implies that one must accept the condition that conflict resolution must not take an arbitrary form. Use of force would be an example of such an arbitrary form of conflict resolution, as it would be subject to the fortunes of a military action, since victory is never guaranteed.<sup>7</sup>

The increasing interdependence among states in the world is often cited as a justification for restricting sovereignty.<sup>8</sup> But interdependence as such is not incompatible with sovereignty: sovereignty in fact is grounded in recognition by others. Viewed from the perspective of international affairs, sovereignty represents a rule placing limits on foreign interference. Its role on the domestic level is, however, much more important: sovereignty expresses the presupposition that there really exists a source of authorization for the state to enforce the laws. Sovereignty is what secures the validity of the laws enforced by the state. It makes redundant demands that laws must be continually revalidated. The pluralism of states is what precludes the adoption of a specific value system, decided on in advance, as a necessary condition of legitimacy for every political order or state. A value with the special status in this context is the presupposition that valid current laws are *our* laws and not some foreign ones.<sup>9</sup> A demand for

such an overriding value as a condition of legitimacy is in effect a demand to make the world, the whole world, uniform. According to such a view only regimes of a specific type--those representing the victorious (whether through elections or revolution) "democratic forces"--can have legitimacy.

But what regimes would these be? Are they those that have succeeded in being labeled "democratic" at the international level--even though this implies nothing about whether or not they are necessarily at all different from those that are not so labeled or indeed essentially like those that are uncontrovertibly such (i.e., democratic)? Such a requirement would not be novel. However, it does not greatly affect the basic problem: how can and should the power enforcing the laws be constituted? It appears that an important condition for that constitution is that the laws are in the first place perceived as *the laws* (even if as unjust ones) by those who are to be subjected to them, which implies that they are perceived as "our laws." How else could they be connected with any concept of justice? (If those laws were to be enforced by some extraterrestrial life--be they angels themselves--this would not be experienced, nor therefore embraced, as *one's own* law. Here lies an essential difference between law and religion: the law, whatever it may be, is specifically ours. Without this sort of loyalty there is no real possibility of the legal expression of any norm as "democratic"--foreign laws are constituted by foreigners, and we had no role in their constitution.<sup>10</sup>)

If it were any different, the following question would arise: who is to make decisions regarding which regimes are legitimate, and who is to be recognized as having the right to impose laws that would be recognized not only as "ours," internally speaking, but also as "alien," speaking from without? Is this to be decided domestically or from outside? If the latter, who would be in a position to make such a decision? Those who stand ready to use any means possible, including violence against people in other countries in order to decide on their behalf not only what their definition of "good" should be, but also what their "true interests" are? This approach implies global governance that requires a working world authority along with proper tools for implementing its goals, such as a world bureaucracy, world police, etc. No state, it seems, would have a right to be exempt from such an external treatment. Quite the contrary: all state-agents would have to be subjected to a continual validation process to ensure that they remain on the right path. Hence, a (world) police would play a significant role and would be endowed with immense authority. This would be in fact a political police with the authority to correct all who mistakenly refuse to listen to the official reasons why they must undertake certain actions deemed good. To be successful, this police must be equipped with the mechanisms, resources, and force of a true army. It would have to be powerful enough to enforce the peace according to the definition of "good" which concurs with these reasons. In its structure and constitution, it would look like an army while it would really be a police force, a "world police."

We must not allow this to confuse us, however. A "world police" globally authorized to enforce "political orthodoxy" would necessarily obliterate any difference between an army and the police. Its obligation to continuously search for "improprieties" would make this armed force intensively present in the social life of people. A militarized world would emerge along with a total negation of its civil character. Democracy, understood as power over oneself, however, is surely better depicted by virtue of this civil character than by becoming transfigured into a militarized-police supervision of how people think and act. This civil character, however, is fundamentally characterized by trust in others' thinking processes and actions. In the absence of clear evidence to the contrary, it is to be presumed that others' ways of thinking and acting are not wrong. This presumption of innocence, rather than of possible guilt, is what constitutes the

civil character of a democratic state, which would be obliterated if a world state were to exist.

Threats, blackmail, and humiliation do not provide a proper context for respecting this presumption of innocence, not only at the domestic but also at the international level. What would remain of tolerance in the case of the development of a world police monopoly of this sort is not hard to imagine. It would not be a matter of just a monopoly--the main purpose of such a political police would be to scrutinize, continuously and in detail, everyone's orthodoxy and political correctness. Within such an environment tolerance would surely become something insupportable (as has often been the case throughout history).

Furthermore, resorting to force always leads to the incertitude of the outcome. How could one be sure that the use of force would produce exactly the desired result as a lasting situation? As a result of internal limits, force can only produce external compliance. The external compliance, however, does not come with any sincere conviction in the validity of the set goals, nor in the reasons for those goals, thus making the legitimacy of such practices questionable. If the condition of sincerity is introduced as a feature that gives final meaning to the attitude of accepting some value, things only get worse, for a resort to force is no means of fostering (or generating) sincerity. In this regard, force is powerless. Resort to force as a pattern of behavior leads to greater latitude in its use. The decision to use force often means forsaking other means of influence that may be superior though perhaps slower. The abandonment of these other forms of mutual associations--the reduction of everything to force--produces a mentality of obedience and submissiveness as well as a system of expectations within which the fear of punishment has a constitutive role. This would become the dominant feeling in place of a more comfortable attitude that punishment may naturally follow if one does wrong, but that it is equally natural to expect that one would not do wrong.

If validity of laws depended on consent from or approval by a heterogeneous source (someone presumed more powerful), then no true state authority could emerge. If states had no other venue for constituting their legitimate (domestic) authority except through acquiescence from some world super-power, then there would no longer be any valid or reliable authorities, for it can be assumed that such "acquiescence" would be forthcoming only if there existed an active interest to do so on the part of the super-power. This further implies that all characterizations of such authorities, except the momentary aptitude *vis-à-vis* the super-power, are entirely irrelevant. The very same items clearly approved of (in a particular time or place) could as easily become disapproved of or even actively condemned depending on (the latest) decisions of those who have the power to present their own interests as sentiments expressing the only relevant criterion of justice. Such essentially private justice could hardly function as a suitable or valuable foundation for constructing international legislation.

It is opportune at this point to raise the question of punishment's role as a component of intervention. The literature on humanitarian intervention entirely ignores this consideration and perceives humanitarian intervention as essentially only a rescue operation. This is to be expected and is a sure sign that humanitarian interventions should be allowed to occur only under the tightest restrictions. However, the logic embodied in the justification of humanitarian interventions we have experienced so far indicates that insisting on this constraint would amount to abandoning the mission humanitarian intervention was set out to accomplish, and hence it would be unjustified and irrational. This same logic yields the postulate of a justified punishment when human rights had been violated or democratic institutions (despite serious encouragement) were not introduced. So, the logic goes, if humanitarian intervention is justified, then a corresponding punishment for causing conditions that made the intervention necessary must also



be justified.

But what must international law (and the world order) be like to make this possible? A state could only be punished if the following two conditions apply: (1) it actively fails to recognize the independence of other states, expressing this by engaging in an aggression, and (2) it is then successfully defeated.<sup>11</sup> Both of these conditions would be necessary (as was the case of for example, Germany at the Nuremberg trials). Punishment would then have to incorporate, among other things, the modification of that state's constitution, by explicitly introducing in the defeated aggressor's new constitution a clause recognizing the universal principle of non-aggression. Only in this fashion could a principle be shaped according to which force, even though a necessary component of law enforcement, could not as such become a rule itself.

There is a serious problem here, however. If there were no supreme coercive force--currently nonexistent in the international legal order--then, if we want to be consistent when humanitarian intervention is at stake, the following question arises. Is it permissible that a state meeting the conditions for punishment become the subject of attack by any country willing and able to engage in "corrective" activities aimed at "ameliorating" the state of affairs in that country? How could this amelioration be achieved? Can this action really be only corrective in nature? Would it not be, on the contrary, just a case wherein one country is rendering punishment on another? But how could such punishment escape the charge of amounting to private justice?

Whatever else could be said about a world state and the authorization of the universal enforcement of human rights, the consequence would be a general militarization of the world. Politics itself would become militarized: on this prescription force becomes an acceptable, highly regarded, and desirable (should we also say inexpensive?) means for accomplishing the final goal. The general militarization of global affairs would lead to the practice of an intervention becoming, rather than exceptional, quite an ordinary matter, a simple pedagogical tool, as it were, in the inventory of the New World Order. In the world as we know it, this would indicate that the practices of sending American troops around the globe would become a much more common occurrence, unsurprising to anyone.<sup>12</sup>

Though common, the practice thus constituted would amount to an entirely separate and irreducible factor, and, while of crucial importance at the declarative level, it would not have a constitutive role. Hence, a theoretically interesting question arises: could this crucially important factor, necessary to make the entire scheme functional, not achieve the status of a constitutive rule (though *de facto* it would already function as such a rule)? What, in other words, is the source of this need--at least on the declarative level--to negate its constitutive nature? Is it, perhaps, the fact that what in this case functions *de facto* as law cannot function also *de jure*? Or, to put it another way, if it cannot be law also in the *de jure* sense--which is the sense in which a law must be able to exist--is the practice in the final analysis unjustified? Perhaps it is the case that the law could also be expressed in the *de jure* sense, but that this is *not yet the case*, which amounts to a normative claim that it *ought to be so expressed*. But could it be? Since this law would in effect be a global law,<sup>13</sup> would this imply that all states would then have a duty of self-annulment in order to comply with this law? Or would this duty be reserved only for those states that had yet to live up to its demands? Which states would these be--the ones that are too weak to mount a successful defense? Or those that are not viable but unstable to a point that they trigger a reaction--for, on earth, there could only exist those states which are capable of enforcing their (own) laws?<sup>14</sup>

On the other hand, when considering who is a suitable party to intervene, there is not much force in the view that neighbors are unsuited to be mediators because of historically

accumulated biases.<sup>15</sup> Quite to the contrary, neighbors predictably are better suited to understand the problems at issue than those from half a world away who rely on schemes of justice patterned after their own ideas about what the world should look like. The latter cannot hope to grasp the subtle points of the conflict, those that are frequently crucial components, for conflicts most often arise as a result of small things. Unable to grasp the subtle points of a dispute, the interventionists from far away simply apply their own thinking without penetrating into the essence of the problem. Their patterns can only be applied mechanically, and they fail to incorporate the knowledge relevant to the conflict's resolution. But the patterns are extremely suitable for ideological use, and they can quite effectively mask all kinds of interests that may emerge. (To a great extent the realization and even conceptualization of those interests depends on their remaining hidden.)

#### 4. Weak States, Law Enforcement, and Defense

In light of our analysis so far, the following two scenarios might provide solid grounds for sound justification of military intervention. First, a state may be enforcing laws that are intolerable (this was the justification given *ex post facto* for the intervention of Tanzania in Uganda). Second, a state might be nearly or entirely powerless to enforce its own laws effectively across its entire territory, leaving pockets where laws systematically go unenforced or competing laws may exist within its borders, a potentially objectionable situation from the international-legal point of view. The latter might have been, at least in part, applicable to the case of the Kosovo intervention that came after a decade of lawlessness. This was manifest in the parallel functioning of two systems of power and, for all intents and purposes, two parallel states. What emerges as a problem in such cases is the proper understanding of the term "humanitarian" in those contexts. If we used the term "humanitarian intervention" to refer to the cases of perhaps justified instances of intervention of the second kind we would depart from the prototypical usage of the term associated with gross violations of human rights, as exemplified, for instance, by Walzer.<sup>16</sup>

This brings us full circle, however, to the idea that states come into existence only where there is enough will and power to enact some law. If this will and power are present, then this constitutes an established fact not unlike a victorious end to a war. The alternative to this is to view every expression of any autonomous legislative will as automatically constituting a criminal act from the point of a--still nonexistent--world state "constitution," i.e., as a harm to the authority of that center of power which is the strongest in the whole world. The strongest in what sense, we might ask: that it is recognized as such, seen as such, or that it is merely threatening to punish every disobedience? But even if there were such recognition, what could be objectionable about a group of people who decide to put together their own separate state somewhere at the edge of the world? Could they be expressing disrespect toward the source of universal laws? But who could have the pretension to be such a "source?" It appears that such a pretension implies the assumption of infallibility, which is epistemologically unacceptable.<sup>17</sup> If, however, we searched for the sources of the (potential) global law in the same places that currently ground all existing laws--some legislative will--the following question would still remain to be answered. Is the will of the stronger in itself, as such, a source of a legitimization for the set goals, or, on the contrary, is such legitimization itself in need of justification? Or, to rephrase it slightly: where are, if any, the limits to the will of the stronger in this legitimization process? Does legitimization need some *independent reasons* to be valid? Or is the will of the stronger already such a "prevailing reason?"<sup>18</sup>

This deliberation occurs against the background of an assumption that there is no danger of another world war. With this in the background, decisions to undertake smaller "actions" are immensely facilitated. Even the prevailing language indicates a peculiar shift away from "war" to "smaller actions" allegedly distinct from war. The very term "war" is all but eliminated from official discourse (certainly in the vocabulary concerning humanitarian intervention) and replaced by terms that indicate in advance which side is allegedly in the right. Terms like "aggression," "action," and "campaign" are increasingly ubiquitous. The former is presumably outlawed by regulations of international law, particularly by the Convention of the United Nations. The latter terms should indicate that warfare or military action is not occurring but, rather, a police action (regardless of the fact that an army is far more involved than the police). Even various (social) experiments are contemplated and referred to by terms like "peace-keeping," "peace-enforcing" (which should further strengthen the impression that supposedly a police "action" is at work), and even "peace-making"--which, as far as the meaning of the phrase could go, designates precisely war.

The sole remaining thing with a remote war-like character that must be eliminated is aggression, not as a word but as an offensive, and for that matter criminal, act. This is precisely why the side that finds itself under attack is labeled as the aggressor. However, the goal in this is not victory, but the ability to dictate specific sorts of behavior to those who are desired to be influenced. Since it is not war that is at stake, victory is unimportant. This provides enormous maneuvering room for retreat; it is possible at any moment (as can be seen from the case of Somalia and perhaps even of Vietnam if we look at it more carefully from the angle of subsequent developments and envisage retreat as a goal of the presumably "defeated" side). Victory, in fact, could not even exist--for defeat is impossible! It could not even be envisaged as a possible option. And by excluding victory and defeat--as "war-like" characteristics of the conflict--the notion of an "enemy" is also eliminated (even though it is still used, but only from inertia, in the jargon of the mass media), which then clears the path toward total universal benevolence. Since the goal is not victory but achievement of the best effect, there can be no limits to possible progress either. In fact, no limits exist to the use of any means that could lead to the goal. The goal justifies any means and actually demands the use of the most efficient ones. It is clear the most efficacious means would be the use of overwhelming force. Thus, force becomes indistinguishable from politics. There is no shying away from any means. (Any means? Does that include manipulation, lies, and propaganda, if they happen to be best means? There is nothing contradictory in these being, in fact, the best means.) Readiness to use force becomes something positive, a sign of attentiveness to making progress. In any case, this should also be covered by the principle of rationality, for this is simply a matter of someone who is unwavering in selecting a goal choosing the best means for reaching it. All of this gets further psychological support in the context of the above-mentioned fact that no serious military attack from any direction seems possible and is certainly not expected.

## 5. Supremacy

These considerations may perhaps also be understood in terms of a disposition to secure the *maximum* security that one can achieve *in advance*. Imperial politics always includes among its goals *security*, which for the sake of accomplishing high aspirations on a wide--even global--scale requires continuous monitoring, alertness, and (combat) readiness. This implies *domination*. One way to achieve dominance is certainly through (military) superiority, as a

strategic position incorporates the stance that in no situation can there be a question of who is stronger. In this way the set of chosen foundational values is very strongly protected by supplying a notion of “justice” that affords it a principled and mighty defense. Legitimacy is thus secured both internally (via the notion of consent) and externally (via the notion of injustice that serves to annul any factually legitimating process existing as a result of, perhaps only servile, prior acceptance of a *different* value system than the one protected by the presupposition of this supremacy). Injustice is not simply a matter of encroaching those constraints that the more powerful can *illegally* mete out to the weaker (in the sense that this would violate some “strong,” i.e., legitimate, interests of the latter), but there also exists the presupposition about the strongest one, the one who “most intensely cares about everything”--who will ensure that all legitimate interests are respected and illegitimate ones are punished. This is a description of the most extreme situation, of course, but it is the direction in which the logic of this “ensuring” leads. Thus, the *monopoly* on power becomes (in a fashion similar to how it secures the internal legitimization of law) in some sense a logical consequence of “imperialism,” not only that power obtains the supreme evaluative role (including the right to be offended by others’ acts that deviate from what “we” regard as “just”), but also that a transition to factually *secure* this position is effected. This presupposes *supremacy*, not only with respect to (earthly) evaluative processes, but also with respect to (pure) force. Liberalism and democracy, hence, no longer have their basis in autonomy. In their places comes *one* among many possible *interpretations of* content that could be subsumed under those concepts. This interpretation then advances in the form of a *political force* with its altogether specific political program its foundation. This political program becomes the final basis of all legitimization and, given its distinct nature, every deviation is defined as “injustice.” This circumstance manufactures conflict that can be “controlled” only through securing the supremacy over all other sides in this universal conflict. Supremacy appears necessary in order to realize the “unity of the idea of justice.” It must be adequate to produce dominance, and, if insufficient to prevent conflicts, must be able to ensure they cannot escape control, or (worse) that their outcomes become uncertain, leaving the possibility open for “the other side to prevail.”

Initially this is embodied in the strategic purpose of any military--that it be ready to successfully repel any attack. This purpose would be secured with certainty if one had an army that were superior to every other army. However, whenever war is possible, this kind of success cannot be guaranteed, so war would have to be abolished altogether. Overwhelming force would be required, with a single and absolute military superiority. It appears quite logical that choosing to intervene in such circumstances would become a great deal easier for two reasons. First, the reduced (and relativized) cost of intervention would make this decision easier. Second, because the whole decision-making process would be affected by this (low cost of intervention) an additional “reason” would be produced that would both facilitate the decision and generate a sense of “mission,” a call “to do something” that is not only possible but also easy. All this is embedded in the logic of globalization: that the entire world become subsumed under a single measure, with rules that make the world into a network of influences that will “solidify and secure world peace.” The presumption of general value commensurability that emerges from this unification process leads to the conclusion that everything that is simultaneously good, easy to achieve, and generates no conflict with other values if realized, therefore, ought to be realized. Absence of principled conflicts between values implies a maximalist pretension that the totality of the possible “good” really be actualized, *hic et nunc*. In this picture ruling the world becomes almost a “science,” while politicians resemble benevolent experts who make sacrifices for the

sake of those they rule, and again in two senses: because they decide for them (for they know what is good), and because they then execute those decisions, often over unreasonable reluctance from those on whose behalf they make sacrifices. The key difference remains, however, between the (globally unified) “avant-guard” and the complex (heterogeneous) remainder of the world (comprised of those who are to be “helped” and “defended”).

There are two important points here. First, those who break rules are perceived as presenting danger that merits no toleration, and respect for the rules governing the distribution of influence is *sine qua non* for membership in the "world community." This membership, of course, is primarily important because it saves one from being a possible target of attack. Second, when there is total superiority over all others, the term "defense" loses all meaning. This is a very peculiar situation, for if there were no defense everything it presupposes should also become absolutely redundant: the ends of defense such as the state and its borders as well as the means of defense, such as standing armies and weapons. This is the corollary of the prescription implicit in the process of globalization or one of its goals. If defense were no longer needed, everything would be transposed on the positive axis of human activity; everything would be done for the sake of positive values of well being, prosperity, and happiness. There would be nothing to be “defended.”

The question, however, is whether this brings more security or less (even though security is not included among the fundamental values of globalization, having been on a lower lever than prosperity, democracy, etc.) We may consider whether or not globalization could be accomplished without a decisive role for the US military. Taking seriously the logic of globalization and what was just stated above, two more questions might be raised. First, should the US intervene even in, for example, China? The question that is posed by Walzer<sup>19</sup> in this context must be generalized to this level of “generality.” Furthermore, if the answer is positive, the logic above dictates the second question. What is a greater danger for peace: coercive enforcement of democracy (with the aim of enhancing universal prosperity along the way)<sup>20</sup> or acceptance and living with the fact that others are different? The latter amounts to tolerating the unpleasant situation that others choose to shape their lives collectively, not only individually, in ways different from ours. Even assuming that the concept of justice is the same all around the globe--that there is no *principled* differentiation among collectives with respect to their basic goals (and that all disputes concern only the means for those ends) and that these collectives are not “moral strangers”<sup>21</sup>--it does not follow in the political sense that the world ought to be united. These collectives, as actual ongoing forms of life, certainly will experience direct conflict over the realization of the same goals (each wanting to take the fruits of this realization for themselves).<sup>22</sup> Moreover, the concrete articulations of these per assumption identical goals will obtain different forms with the passage of time, created of varying traditions.

In the end, there remains the question: is universal peace guaranteed once all countries become democracies? Or is more required, such as that all countries become affluent? Or is it something more than that? Perhaps even this would be insufficient, and what would be required is for the entire world to become just one state. But, as an author noted, crusades mean a lot of labor for soldiers,<sup>23</sup> and "full spectrum dominance" is certainly a sufficiently removed goal that much work remains to be done along the way to achieving it.

## 6. Promotion of Human Rights as a Reason for Internationalizing Internal Conflicts

Ascertaining violations of human rights is not a simple matter of empirical inquiry. In order for

these violations to be identified an interpretation is necessary, and it might often be the case that the applied interpretation depends on factors, invisible at first sight, which render it defective or inadequate. Should such an interpretation lead to radical inferences the resulting mistakes may be enormous. Often a selection is made among many pertinent factors ruling some of them more or less definitionally important for a given case, which could lead to a very biased, skewed, partial, or incorrect picture of the real state of affairs. Since the inferences in question deal with very important matters, making them could lead to extremely serious, long-term, negative consequences. Though tolerance may be among the proclaimed ideals, nurturing respect for the different ways life is organized remains a tedious, burdensome objective. Foreign and alien (e.g., “non-democratic”) ways of life can be susceptible to an “excess of interpretation,” as well as to a “deficiency” of interpretation, but always with significant, often far-reaching consequences.

To take an example, consider an attempt to fulfill a most sincere and powerful desire for self-determination. It is almost inevitable that actions associated with this sort of attempt will lead to conflicts that may be perceived from afar as violations of human rights in the sense that there are those whose perhaps genuine and strong desires may get stifled and suppressed. It may be that actions motivated by a drive for self-determination get punished, not necessarily with disproportionate severity, but perhaps seemingly so. Or it may appear that they are even suppressed by means that are neither enjoyable nor entirely morally defensible. However, it is quite possible that the same matter, when scrutinized in its immediate environment, or within one’s own state, could give rise to an entirely opposite perception that what is occurring is a simple matter of enforcing the laws of the land in the most usual manner. The perception may not be any different than the perception of the enforcement of tax laws, for example, that may include forced payments, which in many circumstances is very unpleasant for all involved and often is even morally suspect. Is this a projection of one’s own way of life onto others? That is not clear, but it need not be. But neither needs this be the application of a double standard--one evaluation for “us,” another for “them.” Instead, this may simply be a result of differing perceptions that fail to incorporate, purposefully or not, precisely those elements of similarity and regard only those that lead to the conclusion that something unpleasant and wrong is going on. If it so happens that the bearer of this perception is the one who is in the position to intervene, or one who feels called upon to do so--and who in the contemporary circumstance of the univocal media is in fact delegated to “do something”--then this will significantly affect the process of decision-making so that the application of a double standard will become, as it were, a corollary of the blunder contained in the initial perception itself. When this is compounded with the perhaps natural propagandist tendency toward exaggeration, and, perhaps also natural, but certainly immoral, desire for choosing a side in someone else’s fight, then a peculiar spiral of evil may emerge resulting in the (unsanctioned) enjoyment in the suffering of strangers. All the while this enjoyment is expressed in the lynch-mob-like scream that “something must be done,” that the “something” must be drastic in nature (as compared to what is presented as a problem), and that those who “must” do that something are “we ourselves.” The whole thing, however, may be that we are dealing with actions that incorporate conflicts and result in various rights violations perhaps involving all agents in the conflict.<sup>24</sup> That is, these may include violations of the rights of both those who break the law and those who try to enforce it, perhaps using violence, encountering all the while a disproportionate and unnatural resistance to the performance of their *work duties*.

All of this, when occurring elsewhere, can quite easily be experienced as a violation of someone’s human rights, while similar situations at home are treated as routine responses to

violations of the law. Consequently, it often appears that intervention, in situations when the targets are weak states with weak authorities,<sup>25</sup> is a “solution” to a problem that represents not only interference with internal affairs, but also a drastic negation of domestic legislation, i.e., the very same thing that the intervening sides in their own countries scrupulously respect. Hence, the very same items that are at home regarded as lawful handling of rebellion and/or criminal activity are seen in other countries as violations of human rights.

In this context, two relevant possibilities ought to be mentioned. First, it might be an element of the strategy of the rebelling side to send a message to the world that violations of human rights are occurring, and, regardless of the fact that this may really be the case, the *goal* of this strategy--perfectly rational from the stance of the rebels or potential rebels--may be something else. Instead of focusing on the source of the problem (which in some cases also may lead to conflict, but more often leads to an emerging need to address the problem and find a solution to the conflict), the strategic goal may be to generate wide sympathy and support for “the cause.” Second, a latent conflict may become inflamed (and the need arises to send out to the world compelling messages about human rights violations for the sake of this same goal of generating sympathy and support) because an opportunity for it is quickly snapped parasitizing on some other (usually larger) conflict. An example of this is that of the Iraqi Kurds, who were successful in conjoining their tendency toward self-determination and self-rule to the larger political situation of the Gulf “War.” What is particularly interesting here is how much attention has been given to the human rights violations of the Iraqi Kurds in the writings of authors who deal with human rights, which is dramatically disproportional to the lack of attention to, arguably, the considerably more serious human rights situation the Kurds have faced in Turkey, for example.<sup>26</sup>

## 7. Conclusion

The pro-interventionist stance, justified in terms of the promotion of human rights, in light of our analysis, therefore, has the following two defects: (1) it functions as a continuous generator of increasingly frequent conflicts; and (2) it creates the requirement that there be some supreme authority that would have at its disposal adequate capabilities to apply coercive force wherever needed. Adequate capabilities in this context, of course, imply having a massive military might, since in its absence the authority to use coercive force could not amount to much. The need for a supreme coercive force is based not only on the natural mistrust that always exists among people requiring extra security measures, but even more on the heterogeneity of the world bitterly resisting any unification in the department of ideals. Furthermore, a single authority is also required in order to provide for the possibility that interventions be interpreted as defensive actions. It is not possible to treat the combating of human rights violations as a sort of defense unless there exists a unique point of reference fully authorized to interpret situations without allowance for appeals. Otherwise who should instigate and complete the intervention becomes questionable. As things stand in the current international legal order, states are those entities responsible for making final decisions about whether to intervene or not. Given that sovereignty represents a regulative rule that is required for law to be constituted within a territory (though sovereignty itself is never “absolute”), and given that the existence of states in the world has its moral and political justification, it is unlikely that in the future humans will do away with states.

If, however, all municipal laws require, in order to be valid, an imprimatur of and authorization from an “international authority” (not necessarily in the sense that they are

legislated by this authority, but in the sense that the latter authority could--temporarily or permanently--revoke or cancel laws implemented by any given domestic authority), then, assuming the nonexistence of the world state, no law could be perceived as reliably binding. The purpose of law, however, is precisely to offer protection--including, among other things, by making it clear what is legal and what is not. The purpose of this is to offer guarantees for exactly those freedoms that a given society has selected for such protection. If validity of law depended on an *ad hoc* approval from someone presumed more powerful--if states inherently had no other source for constituting the legitimacy of internal rulers except through approval from a world super-power--then there would no longer be any solid or reliable state-power.<sup>27</sup>

Thus we return to the basic question: does tolerance mean leaving others alone to decide how they will regulate their lives as collectives as well as individuals, or does tolerance mean insisting on providing all options to all people on every corner of the globe? In other words, everything turns on the definition of the term "pluralism." What does it mean? Does it mean preserving a variety of social orders (societies that differ one from another) or constructing a united world that will contain just one "society" that "overcomes" social differences, in order to tolerate individual differences? It appears that it is the latter that the doctrine of human rights professes and demands.<sup>28</sup>

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<sup>1</sup> Cf. M. Walzer, "The Politics of Rescue," *Social Research* 62, 1 (Spring 1995); B. Williams, "Is International Rescue a Moral Issue," *Social Research* 62, 1 (Spring 1995).

<sup>2</sup> For this discrepancy, see J. Shand Watson, *Theory and Reality in the International Protection of Human Rights* (Ardley, NY: Transnational Publishers, 1999), especially chapter IX

<sup>3</sup> This permission is, *ex hypothesi*, not primary but parasitical on the antecedent principled prohibition of that sort of action

<sup>4</sup> Cf. I. Kant, *Metaphysik der Sitten*, pars, 46, 47; *Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991) 91, 92: "The legislative authority can belong only to the united will of the people"; "... superior [authority] over all ... from the viewpoint of laws of freedom can be none other than the united people itself."

<sup>5</sup> That the boundary must exist is perfectly clear, however, and can be further clarified by the fact that various rules could be envisaged which cannot be constituted--or tolerated--as laws. The notion that this boundary must exist is the source that generates universalism of the pretension in those norms contained in the doctrine of human rights according to which those rights are everywhere and always identical. However, that is not so; simply because there exists a boundary applicable to the possibility that certain rules could be constituted into laws, it does not follow that those rules are everywhere true. What does follow is that there are rules such that their eventual pretension to count as laws or to be declared as laws would be null and void. Thus a minimal universality is preserved--in the negative form, as a principle that determines this boundary beyond which we have rules that cannot be recognized and/or tolerated. But also preserved are diversity, variability, and differences that result from tolerance and from a rejection of the pretension that only "our laws" are really laws. Determining this boundary is of course a very difficult task, both theoretically and practically--this should not surprise us, as it presupposes defining a boundary beyond which tolerance is no longer justified. Theoretically speaking, there is a sense in which this demarcation can and cannot be made: a principle could be articulated according to which this determination is made, but a concrete decision is a matter of moral practice and presupposes a certain responsibility, which could hardly exist if the point of the boundary were to be determined "deductively" by logical necessity from some description of the given state of affairs. This seems to be a general characteristic of moral evaluation, and implies that making a decision in the moral context always incorporates the taking of some moral risk. But it also opens, rather than closes, the space for acting in ways that may turn out right or wrong, so that it could never be known in advance with absolute certainty which they are.

<sup>6</sup> The ignoring of sovereignty may not be necessary, in fact. It stems from the assumption that the final and precise list of "human rights," along with their definite description, can be given, in order to accomplish the outcome that



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this theory--once it starts functioning as an ideology--generates: the motivation that these rights, as basic, be "secured for all." What creates a problem here is not the term "rights," nor in a certain minimal sense the term "secure" (though the latter is an enormous problem because there is a requirement to articulate a viable conception of justice that could be cosmopolitan), but is rather the term "all." Does this term stand for "all" as equals (which is implied by the finality of the list and by the definiteness of the description of "human rights") or does it refer to "all" who are here, who really exist, and who are the way they are: free and fallible--which mutually imply each other.

<sup>7</sup> It is possible, however, that a strategy might be formulated that would to a large extent reduce the importance of this factor of arbitrariness. In a way this is the case with the current US military doctrine of "overwhelming force" that tends to completely exclude this factor. What stands in the way is the third factor from the triad that determines the human position in the world: temporality (the triad consists of freedom, finality, and temporality). Conditions might arise for the application of such a strategy. But, given that these factors represent only the basis for constructing any values at all, while those values gain their motivational force--in the form of interests--through much more complex sets of influencing factors, there could not be an advanced "securing the security" of human rights to "all," even according to this rough description. The intervention in Somalia quite clearly shows this. Though it was conceived by all accounts as humanitarian in nature, the motivation, however, could not endure to realization--for the part that deals with "securing" (in this case some humanitarian goals) is always just one among many mutually competing interests. The ideology of human rights is forced to presuppose the impossible: that in any set of interests, securing basic human rights is ultimately the strongest interest always and in all places.

<sup>8</sup> But also those who favor "abolishing" sovereignty don't ever say where it would "go." That is, they fail to offer reasons describing how the elimination of sovereignty from a nation and its transplantation elsewhere is anything other than usurpation. Nor do they tell us what sorts of features the elite absorbing it would have to have so that this action wouldn't be usurpation--how this would be something different than a simple transposition of sovereignty to more powerful side.

<sup>9</sup> Foreign laws may not only be perceived as better than the ones in the land of the perceiver, but according to all parameters really be better. That will in no way change things. The conquerors of the world as occupiers have always had to face this matter anew. When, for example, Napoleon's France (marching in the name of all-inclusive human progress) conquered Spain, five years of resistance ensued (until the French were driven out of Spain in 1813), which to many may have appeared irrational and backward; even in Spain itself a movement, 'Afrancesados', existed whose members saw themselves as a "progressive elite" saluting and supporting the perspective of modernization that the French were bringing along, maintaining that this was better for Spain than the backward state of affairs existing then. Still, the mass of the Spaniards "preferred, in effect, to be backward and Spanish rather than progressive and Frenchifying." See Geoffrey Best, *Humanity in Warfare* (London: Weidenfeld and Nicolson, 1980) 114-15.

<sup>10</sup> Hence, even the enforcement of the "divine justice" on earth is doomed to be illegal in the most relevant sense of the word and this ought to be the principal achievement of the secular emancipation in the progress of the mankind. No matter how, for example, The Holy Inquisition may have appeared both just and in its form "lawful," or "legal" but that form is false; this is why its judgments are illegal even when they are just.

<sup>11</sup> Cf. J. Babic, "War Crimes: Moral, Legal, or Simply Political?," *War Crimes and Collective Wrongdoing: A Reader*, ed. A. Jokic (Oxford: Blackwell, 2001).

<sup>12</sup> Speaking of means, Walzer avers: "In many cases nothing at all will be done unless we (US) are prepared to play one or the other of these parts--either the political lead or a combination of financial backer and supporting player. Old and well-earned suspicions of American power must give way now to a wary recognition of its necessity." (Walzer at this point adds a very curious constraint, that this optimism wouldn't be so warranted if "there were a Republican president"!.) See Walzer 64-65. Similarly Richard Haas apologetically states: "On balance, ... the question of US military intervention becomes more rather than less commonplace and more rather than less complicated"; R.N. Haas, *Intervention: The Use of American Military Force in the Post-Cold War World*, Washington, D.C: Brookings Institution Press, 1999) 2. A.J. Bachevich, critically observes: "...the American military establishment will assert itself proactively to 'shape' the international environment"; Andrew A. Bachevich, "Policing Utopia. The Military Imperatives of Globalization," *The National Interest* (Summer 1999): 8.

<sup>13</sup> The need for a supreme power of enforcement, so characteristic of the "constitutive" aspect of law (hence the dialectic between the "regulative" and "constitutive" legal norms can never achieve the level of full universality, as in morality) is not satisfied at the international level. This need comes from the impossibility of avoiding distrust, and this lack of trust makes the legal norms (laws) into something very different from planning (though the way I have defined them here, given that legal norms express some political decision, i.e., decisions of some legislative will, they could appear to be just that: projections, decisions about the ways to act, which actions will be obligatory,

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which forbidden, and which only permissible.)

<sup>14</sup> Cf. e.g. Richard Falk: "The main challenges are associated with the dynamics of 'the weak state' unable to sustain order within its territorial boundaries rather than with the traditional focus of international relations on the expansionist machinations of 'the strong state'"; R. Falk, "Humanitarian Wars': Realist Geopolitics, and Genocidal Practices: 'Saving the Kosovars,'" n.p. 1. Cf. also T. Langford, "Things Fall Apart: State Failure and the Politics of Intervention," *International Studies Review* 1 (1999).

<sup>15</sup> See, e.g. Walzer 55.

<sup>16</sup> Walzer.

<sup>17</sup> See note 11, above.

<sup>18</sup> Cf. B. Williams, "In the Beginning Was the Deed," *Deliberative Democracy and Human Rights*, ed. H.H. Koh and R.C. Slye (New Haven, CT, and London: Yale University Press, 1999).

<sup>19</sup> See note 13, above.

<sup>20</sup> Michael Smith: "we could solve many problems throughout the world just by the use of good will and the dispatching of peace keepers wherever they might be necessary ... to intervene on behalf of democratic legitimacy - to create democratically legitimate states everywhere"; Michael Smith, "Humanitarian Intervention: An Overview of the Ethical Issues," *Ethics and International Affairs* 12 (1998): 66.

<sup>21</sup> Cf. A. Buchanan, Chapter 10, this volume, xxx.

<sup>22</sup> For the idea that the agreement with respect to goals, i.e., interests, does not lead to harmony, but to conflict, see I. Kant, *Critique of Practical Reason*, trans. H.W. Cassirer (Milwaukee, WI: Marquette University Press, 1998) 30 (Ak. 28): "The desire for happiness is universal, and so is the *maxim* by virtue of which that desire is made by each man a determining ground of his will. Still ... the effect of one's wishing to bestow upon that maxim the universality of a law would be very opposite of harmony... The harmony this results in resembles that encountered in a certain satirical poem which describes the harmony subsisting between two marriage partners bent on each other's ruin in the following words, "Oh, what wondrous harmony, when'er he wants a thing, so does she..." Or else, one is reminded of the story we are told about the arrogant claim made by King Francis I against the Emperor Charles V, when he is said, "What my brother Charles wants [viz. Milan] I want too."

<sup>23</sup> Cf. Bachevich 12.

<sup>24</sup> Thus, through forceful secessions and wars that emerged on that basis in former Yugoslavia, Serbia found itself without its seaports, just as its citizens are no longer able to vacation at usual seaside resorts without the burdensome and humiliating process of getting visas. With the destruction of structures and of the relations developed and nurtured for almost a century, these are just two minor harms of many that occurred. Is harming others a violation of their rights? It need not be the case, but it might. The point is that whether or not harms done will also be rights violations--no matter how minor or insignificant they may appear--cannot be predetermined.

<sup>25</sup> See note 15, above.

<sup>26</sup> A drastic example of this can be seen in the previously mentioned article by Michael Smith, where enormous attention is given to the plight of Iraqi Kurds who are denied their right of self-determination, while Turkish Kurds *are not even mentioned* as if they do not exist at all! In examples like this one it is almost impossible to avoid the question of what exactly is the ultimate goal of the authors who exhibit this level of partisanship.

<sup>27</sup> It can be assumed that such permission will be forthcoming only if an adequate interest for it exists. This further implies that all other characteristics of this regime, besides its suitability expressed through its obedience, may be irrelevant: the same thing may receive approval or disapproval (or even condemnation), on the basis of a decision made by those who can present their interests in the form of sentiments that represent the criterion of justice: such essentially private justice can hardly provide a sound basis for international law.

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