Cosmopolitan Guidelines for Humanitarian Intervention[*]

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Abstract

This paper discusses how a truly military humanitarian intervention can take place in a post-cold war world order dominated by western liberal democracies. The humanitarian interventions carried out in the 1990s were occasions missed to develop proper cosmopolitan moral responsibility and institutions.

Four proposals are put forward: a) development of guidelines on when military intervention in sovereign states is needed; b) empowerment of a non-governmental institution such as the World Court with the task of deciding when a humanitarian crisis requires external military intervention; c) appointment of a mixed military-civilian committee to establish whether intervention is feasible and how it should be carried out; d) creation of a permanent Rescue Army with soldiers and civilians from a large number of countries to be deployed in real time, whenever needed.

Although these proposals are highly utopian, it will be helpful to shift the intellectual agenda from conditions that allow unilateral interventions to the design of appropriate multilateral institutions. If states are altruistic enough to engage themselves in humanitarian intervention, why should not they also contribute to institutions dedicated to the task?

The past and the present of humanitarian intervention

An increasing demand has arisen in the last decade for humanitarian interventions.[1] In some cases, such as in Somalia, Bosnia and Kosovo, these interventions have actually taken place. In many others, such as Rwanda and East Timor, they have been much invoked, but they have not been implemented. The fact that the actual or only invoked military interventions are labelled 'humanitarian' serves the purpose of making it clear that they may, sometimes, be carried out with altruistic motivations. It is often said that there is a 'right', and even a 'duty', to intervene when huge violations of human rights are taking place. This raises important and as yet unresolved implications for the political theory of international relations.

The arguments that have traditionally been used to justify humanitarian intervention are certainly fascinating. The idea that other secular powers could use their military force to rescue inhabitants of other communities and to punish those responsible for atrocities has always had a powerful intellectual attraction. This was an issue at the core of the *ius gentium* approach, and virtually every treaty from the sixteenth to the eighteenth century devoted attention to it.

Reading the literature, however, two things emerge. The first is that today we fail to agree with many of the motivations put forward. 'Just' reasons for military interventions included other people's religious beliefs, idolatry, incest, sodomy, and ill treatment of relatives.[2] The second is that a historical reading of the context in which scholars have provided justification for the use of organised violence shows that they were, in the majority of cases, in conformity with the interests of the rulers they served. Kant labelled three main exponents of the *ius gentium* tradition - Grotius, Vattel and, rather ungenerously, Pufendorf - as 'sorry comforters'.[3] This severe remark seems much more appropriate in the wake of the historical investigations of Richard Tuck and others, which have shown how much legal theorists of the sixteenth, seventeenth and eighteenth centuries provided legal justification for the organised violence carried out by their employers.

This does not mean that an intellectual tradition as important as military intervention for humanitarian purposes should not be retrieved and developed. We should, however, be aware that, over the last decade, the distance between long-term ethical principles and short-term decisions has become much narrower than in the past. And when theory leads to action the day after, and vice versa, scholars should be aware of the danger of overlapping too quickly 'what is' and 'what should be'.

Today, philosophical debates on ethics and international relations and on duties beyond borders are used to justify far too many military interventions, including those inspired by the iron logic of political realism.[4] Michael Walzer is certainly right when he stresses that, 'there are more occasions for intervention than there are actual interventions,'[5] but this does not necessarily mean that the

interventions that have actually been made were carried out in the places where they were most needed or that they achieved their aims. Better institutional design might, hopefully, increase, if not the number, at least the effectiveness of the interventions undertaken.

The historical context of contemporary military humanitarian interventions should, therefore, be made explicit. Today we are dealing with interventions carried out or supported by liberal western states in countries of the South of the world or, at any rate, in countries with much weaker political, economic and military capabilities. The issue is not a military intervention by Mexico to stop the death penalty in Texas or by Cuba to guarantee fair elections in Florida. What we are clearly dealing with is military interventions by the liberal western states in developing countries. This also reflects the fact that the major violations of human rights are now occurring in the South, no longer in those countries that we label western liberal democracies. The South-South interventions carried out in the past, such as those of India in East Pakistan, of Vietnam in Cambodia and of Tanzania in Uganda, are less likely to occur again, unless, that is, liberal western countries are prepared to endorse them. Humanitarian interventions are now the 'acts of power'[6] of western democracies in illiberal countries in an age in which the former have an indisputable military, economic, political and cultural hegemony over the latter. Inside the countries of the West, the weight yielded by the United States is disproportionate.

While the current debate focuses mainly on the legal and political legitimacy of military interventions faced with the ongoing emergency, this paper presents an alternative cosmopolitan institutional framework within which these interventions might take place. The metaphor most commonly used in the literature is, 'Should we rescue the neighbours if their house is burning?' This, however, evokes an unintentional disaster. A better metaphor would be, 'Should we intervene if our neighbour's husband beats up his wife?'. This debate, however, has overshadowed another equally relevant issue, namely how to deal systematically with the problem of fires (or abusive husbands) without having to rely on the goodwill of neighbours. To use the metaphor again, this paper is an attempt to provide suggestions on how to build an effective fire brigade (or wife rescue service).

Defining Humanitarian Intervention

The modern concept of 'humanitarian intervention' dates back, at least, to the Spanish legal thinking of the early seventeenth century. Shortly after, Alberico Gentili and Hugo Grotius provided a framework that was consistent for the European state system.[7] Since then, it has never disappeared from international law and state practice, though it did boldly re-emerge at the end of the cold war.

But the characteristics of contemporary humanitarian intervention are still undefined. Politicians, soldiers and legal and political thinkers have used the term with very different aims.[8] For this reason, I provide a broad and shared definition of military intervention for humanitarian purposes:

A military intervention in an area for the purpose of saving peoples from democide[9] or other major violations of human rights occurring and carried out by foreign institutions without the consent of a legitimate government. [10]

This definition of humanitarian intervention does not include the aid provided in cases of natural disasters, which is generally offered *with the consent* of the home government and has no military component. Such aid may be better described as humanitarian relief operations. The lack of consent of a 'legitimate' government may also be due to the fact that either there is no government at all or that the existing government is considered totally or partially unlawful (as is the case in civil wars, revolutions and secessions). The idea that some people should be saved might equally apply to minorities suffering the persecution of a majority, or political violence that does not necessarily have ethnic connotations. The military intervention is limited to huge violations of human rights and is not extended to the enforcement of all human rights or to the imposition of democratic governance.

This definition also makes clear that the intervention is carried out, at least in principle, primarily or solely with the intention of helping the people who are suffering on account of certain conditions. This does not mean that the intervention needs to be entirely 'altruistic'. As Michael Walzer has rightly pointed out by,[11] the fact that an agent has some vested or unvested interests may be good news for peoples in danger of being massacred since it will be more prepared to take the risks of the intervention. I will later argue that 'selectivity' and 'discrimination' in humanitarian interventions reduce not only their moral authority, but also their effectiveness.[12]

Should humanitarian interventions be assessed for the intentions of the agent or for their effects on the people to be rescued? The former is ex-ante, the latter ex-post. An agent might have the best of intentions when intervening, but the situation could evolve in a way that he or she has not foreseen, and may result in damage for the population he or she wanted to save (this may have been the case of the NATO intervention in Kosovo). Likewise, an agent with entirely selfish motivations may provide relief to a people even if it was not in his or her own intentions or was entirely instrumental (this may have been the case of India in East Pakistan). [13]

The fact that an ex-ante assessment might considerably differ from an ex-post one shows what the limits of the theoretical inquiry into humanitarian intervention are. It is impossible for world public

opinion to know the real motivations of political authorities, even if they were be scrutinised by the most sophisticated of shrinks. Ex-post, the assessment is politically irrelevant. These are not pedantic comments: both in Somalia and in Kosovo many peoples were in favour of the UN and NATO interventions at the beginning, but grew to be entirely dissatisfied at the end.[14] If the situation stays as it is, public opinion – what William Ladd optimistically labelled 'the Queen of the world'[15] – cannot assess the, motivations ex-ante, and when it assesses the outcome, it will be ex-post - in other words too late!

This is an additional reason for building institutions with a specific mandate to carry out humanitarian interventions under some ex-ante guidelines and, just like any other public institution, accountable ex-post by public opinion. This is the direction taken by the International Commission on Intervention and State Sovereignty (ICISS) *The Responsibility to Protect*.[16]

Humanitarian intervention and sovereignty

Legal and political theorists have traditionally contrasted humanitarian intervention and state sovereignty by discussing under what circumstances the former should be allowed to interfere in the internal affairs of a single state. Political theorists have asked themselves to what extent the values of a community should be respected or some cosmopolitan values applied and enforced. Legal theorists have compared the contradictory claims of the sovereignty principle – as stated in the UN Charter – and the universality of human rights – as stated in the UN Universal Declaration.

In the last decade, however, a good part of this literature has presented the situation as if a large number of well-intentioned liberal states were willing to intervene to 'save strangers'[17] in dictatorial countries and refraining themselves because of the sovereignty principle. It is not necessary to be a realist to see this is a caricature of the political reality. In fact, states are very reluctant to intervene for humanitarian purposes and, when they do, other motivations are generally very relevant.

A cosmopolitan perspective certainly fails to defend the category of state sovereignty, but too often cosmopolitan morality has been used to allow military interventions under the humanitarian flag, paying too little attention to the fact that these operations were neither carried out according to cosmopolitan ethics (to which I return below) nor according to cosmopolitan institutions. The aim of this article is therefore to propose not only a moral but also an institutional cosmopolitanism.[18] I argue that a moral cosmopolitanism without a similar institutional cosmopolitanism risks being, at best, an empty shell and, at worst, a modern sorry comfort.

For a humanitarian military intervention according to cosmopolitan principles

The remaining part of this article contains a set of proposals designed to build institutions and practices for a military humanitarian interventions. I believe there are four different steps that need to be taken into account, each of which requires the creation of new competences and/or institutions. The four steps are the following:

a. In which cases is it necessary to intervene?
b. Who is authorized to decide when a humanitarian intervention is needed?
c. How is it necessary to intervene?
d. Who should intervene?

a. In which cases is it necessary to intervene?

It is important to bear in mind that, when dealing with humanitarian intervention, we are not talking about the 'adventure' of universal human rights that began with the dispute between Antigone and Creon and which, – 2,500 years on – has yet to reach a final conclusion. The issue at stake in humanitarian intervention is not so much the nature of the rights involved as *when* to enforce them. The question of whether the practice of infibulation and stoning adulterous wives should be tolerated because of cultural relativism or banned on account of the universality of certain human rights is open to debate. Yet no one would dream of urging a military intervention in foreign countries to ban these practices. It is quite plain and straightforward that military humanitarian intervention is necessary when and only when blatant collective violations of human rights are being perpetrated.

Nonetheless, the existence of a *de facto* consensus requires, and may help us achieve some degree of codification. Already at the very end of the cold war, the need was perceived to develop a new code of conduct, but after more than a decade international institutions have failed to do enough in this respect. The UN International Law Commission would appear to be the most appropriate institution to draft guidelines for humanitarian military intervention for UN General Assembly

approval. This would, at least, help delimit the notion of humanitarian intervention, though it would certainly be less than a major step, since it seems that there is an overall consensus on the cases that can justify a military intervention for humanitarian purposes.

Another advantage would be to provide a solider basis for UN law and action. The UN Charter does not contemplate the use of military force for humanitarian purposes, unless peace and security are threatened. International lawyers are debating whether humanitarian intervention can now be granted according to customary law or if it is necessary to revise the UN Charter. To codify the current practice in a set of guidelines might be a more functional method of updating the UN legal framework without all the controversies that a Charter amendment might generate.

b. Who is authorised to decide when a humanitarian intervention is needed?

The second issue at stake here is: who is going to decide about the need for a military humanitarian intervention in specific crises? Different persons and power institutions are likely to have opposite views on when to intervene. In the 1990s, we have seen the United Nations and its member states intervene in Somalia but not in Rwanda, in Iraq but not in East Timor. NATO has intervened in Kosovo but not in Turkey. The Security Council did not condemn two of the military interventions today considered the most effective: that is, India's in East Pakistan in 1971 and Vietnam's in Cambodia in 1978, only because the Soviet Union cast a veto.[19] What are the criteria? And, above all, who is going to decide?

Walzer has argued that 'we can only do what we can do'.[20] Michael Smith has stated that 'the fact that one cannot do everything everywhere does not mean that one should not try to do anything anywhere'.[21] But this applies to the capability and willingness to undertake a successful military intervention. It is quite clear that it might be difficult or impossible to plan a humanitarian intervention with a certain degree of success against a major power: not even the most furious critics considered a military intervention feasible in China after the Tienanmen Square massacre. But this should not imply that major violations of human rights in places where there is no hope for successful intervention should not be declared humanitarian emergencies. Politics can indicate when humanitarian interventions are feasible, but ethics should at least make it possible to denounce when organised violence leads to a humanitarian emergency.

A practice for deliberating that a crisis has become a humanitarian emergency would achieve a very important aim: namely, it would place all crises (and, therefore, all political authorities directly and indirectly responsible for them) in a position of equality vis-à-vis so-called international society.

Impartiality and non-selectivity might be impossible to achieve in terms of implementing military interventions, but they are, at least, possible targets when it comes to assessing the gravity of individual crises.

To date, decisions have been taken not on the basis of an assessment of the nature and intensity of human rights violations, but of the willingness of individual states to provide the financial and military resources for the interventions. Conflicts have been labelled 'genocide' when there was a political subject willing to carry out the military interventions and when they were considered feasible. This is dangerous for two reasons. On the one hand, many crises are not even defined as humanitarian catastrophes either because no subject is willing to intervene or because the intervention is unfeasible. This means that some critical situations are ignored – to the extent that not even independent media bother to cover them[22] – simply because there is nobody willing to address them. On the other hand, it risks granting the status of humanitarian intervention to any military action, provided there is a state or a military alliance willing to carry it out. This can easily lead to a situation in which all wars are termed 'humanitarian' - at least by one of the belligerents.

There are cases in which the Security Council has declared a state of emergency, yet no one has taken any steps to provide relief to the population. In the 1990s, the most significant case was the Rwanda crisis of 1994. From a Rwandan perspective, it was of very little consolation that, in Resolution 912 of April 21 1994, the Security Council, was 'appalled at the ensuing large-scale violence in Rwanda, which has resulted in the death of thousands of innocent civilians, including women and children' and decided to approve the deployment of a laughably small contingent of blue helmets.[23] At least it was clear that the problem was not a matter of principles (during this tragic genocide nobody declared they were non-interventionist in principle), but of political willingness.

It is, therefore, vital to disconnect the problem of *deliberating* the situation of humanitarian emergency from the *implementation* of the military intervention with humanitarian purposes.

Much of today's debate about military humanitarian intervention is devoted to discussion about whether it can be carried out unilaterally by individual states, or only multilaterally under the mandate of the UN or of some regional organisations.[24] I believe that, now that the cold war has ended, there should be no military intervention labelled 'humanitarian' and deliberated unilaterally by individual states or by military alliances of states such as NATO. The more these interventions are self-assessed by single states, the more they are likely to be self-interested and, consequently, the less they will be humanitarian.

Walzer has argued that self-interest applies to both unilateral and multilateral interventions, but that the latter institutions are much slower in their decision- making. I think that this is a wrong way of

looking at the matter. If a house in our neighbourhood is burning, we can realistically rely on those who are willing to help and invoke the principle 'who can, should'.[25] But it would be irresponsible if, after a series of fires, the community failed to consider setting up a dedicated institution - that is, a fire brigade - to deal with the problem,. A fire brigade is not necessarily less self-interested than any individual member of the neighbourhood, but it has the commitment to deal with fires and is accountable on the basis of its activity in the area. In the long run, furthermore, it is reasonable to expect that it to be able to manage fires more effectively than well-intentioned neighbours.

Over the last decade, the United Nations' Security Council granted authorisation for humanitarian intervention on more than one occasion. Legal theorists are still interpreting the UN Charter to assess whether a military humanitarian intervention can be fitted under Chapter VII, or if the Security Council practice has altered the Charter so much that it needs to be revised.[26] It is well known that, under Chapter VII, coercive powers against a state can be used only in self-defence or when there is a threat to international peace and security. Many democides do not belong to this case. Democides committed within the boundaries of a country, such as those of the desaparecidos in Argentina in 1977-83, or the killing fields in Cambodia in 1976-1979, did not represent a real threat to international peace.

Should the practice of devolving competencies on the authorisation for humanitarian interventions to the Security Council be endorsed so much as to prompt a revision of the Charter? Many have argued that the Security Council is an inappropriate body to deal with humanitarian interventions.[27]

In practical terms, I think that the authority of the Security Council ought to be preferred to unilateral decisions taken by states or state alliances (as happened during the Kosovo war). Even General Klaus Naumann, Chairman of the NATO Military Committee during the Kosovo intervention, has stressed that this intervention should be considered an exception to the general rule of Security Council authorisation.[28]

In a more long-term perspective, however, I also see three major problems in granting such competencies to the Security Council. First, the fact that any of the five permanent members can legally paralyse decisions by casting a veto indicates that a situation will be declared a humanitarian emergency in need of a military intervention only in cases of widespread consensus. The uneven representation of the various countries may generate discrimination, with some governments protected by their allies and others more exposed to international sanctions. Governments – including those of liberal democratic states - have been much more indulgent with the human rights violations committed by their allies.

Secondly, governments respectful of the rule of law are still a part of the UN member countries, and some of them periodically violate human rights. It will certainly be contradictory for a totalitarian

government to deliberate the need of a humanitarian intervention in another state while it is itself violating human rights domestically.[29]

The third, and more radical, reservation is about the inter-governmental nature of the Security Council: can an intergovernmental institution interfere in the internal affairs of another state? I regard it as contradictory. The justification for a humanitarian intervention is that, in some cases, peoples need to be protected from their own governments. Can other governments be objective judges? Wouldn't they be too indulgent or too self-interested with governments encharged to perpetuate democide or other massive violations of human rights? [30]

I think that non-governmental institutions should deliberate the need for a humanitarian intervention. Ideally, these institutions should be bodies representing the citizens of the world. A World Parliament would be the ideal institution to deliberate such a crucial issue.[31] But it is unlikely that such an institution will be created in the short term. A Council of Experts made up of authoritative members of NGOs such as Amnesty International, the International Peoples' Tribunal and others, could be a second best. The members of such a Council would be designated by governments on the grounds of their personal capacity and would act independently. But such a body might lack political authority and its cries might not be listened to as those of the people slaughtered.

A third alternative that might meet lower resistance would be to devolve these competencies to the World Court. If a judicial institution had the competence to decide when coercive force against sovereign states might be used, it would be possible to separate between the two steps of *deliberating* and *implementing* the intervention. This would also give more strength to the idea of operations of 'international policing', since the use of force would follow the authorisation of a judicial body.

The general principle I am trying to stress here is that decisions on humanitarian interventions should not be decided by individual states or even by intergovernmental organisations. I think that if these decisions are taken by independent institutions, it is more likely that they will be taken impartially and non-discriminatorily and, in turn, will gather greater consent and moral authority. It might be asked: How many divisions does the World Court have?[32] The answer is none, of course. But the competencies that I envisage here are not related to the implementation, but simply to the assessment of whether a crisis deserves to be labelled a humanitarian emergency requiring an external military intervention. And for such a task, 'cedant arma togae'.[33]

c. *How is it necessary to intervene?*

The issues concerning intervention cannot be separated from the methods used to intervene. Interventions in the 1990s raised a number of hopes, but only a few of them have been fulfilled. In 1991 the Italian Prime Minister Giulio Andreotti labelled the Gulf war 'an operation of international policing'. During the Kosovo war, some well-intended scholars even suggested that NATO was becoming the secular arm of Amnesty International.

These interventions may have been humanitarian in intention, but certainly not in practice. In none of these cases was the military intervention carried out as a police operation in the home country of a liberal democracy would have been. The majority of casualties were civilians. The effect of operations was often counter-productive. Speaking about Kosovo, General Naumann has admitted that, 'Promised on humanitarian needs, it was difficult to defend the NATO intervention logically and politically when it was initially causing damage but did not prevent the expulsion of Kosovars. That a huge outflow of refugees followed the initial bombing was embarrassing, to say the least'.[34]

The methods used in Somalia, Bosnia and Kosovo show that western governments valued the lives of their own soldiers and those of the 'humanity' that they declared they were willing to protect very differently. In Kosovo, we saw conflicts where all the casualties were on the other side - that of the humanity that was supposed to be protected. The only casualties recorded on the western side were caused by so-called friendly fire.

These interventions were akin to a medicine that was worse than the disease. Since history is not counter-factual, it is only possible to assess the damage inflicted by the medicine and not that which the disease would have provoked. How many people would have starved in Somalia, if the USA had not intervened? How many Albanians would have been killed in Kosovo without the NATO air strikes? And, vice versa, how many peoples would have been saved in Rwanda, if everybody, somebody or anybody, rather than nobody, had intervened? We cannot answer these questions, but this does not stop us assessing the price the populations of these countries paid because of the intervention.

These interventions have been only 'half-humanitarian'. On the one hand, they have been motivated by the principle that other states also had a responsibility to save foreigners. But, on the other hand, the methods used have not guaranteed individual rights as they would have guaranteed them in domestic policing interventions. Methods of policing, such as air strikes, that would be considered unacceptable within states, have become the main way of practising humanitarian interventions.

A genuine humanitarian intervention ought to apply the same methods accepted within the borders of its own state. It is very unlikely that an escalation of violence within a liberal state – such as those in the Basque region or Northern Ireland - would be addressed by resorting to air strikes,

while it is certain that different policing methods would be pinpointed and applied. New methods should, therefore, be tried in the case of humanitarian intervention, too. Any state or political community willing to undertake a genuine humanitarian intervention should be prepared to risk the lives of its own soldiers to save the lives of those in the community threatened. Policemen, firemen and doctors who are devoted to rescue the lives of their own citizens already do so.

It is clear that these principles tend not to be complied with in the current situation, where military forces are under the control of their national headquarters and are generally trained in war-making rather than in peacekeeping. It is certainly good news that the Dutch government resigned in April 2002, seven years after the events of Srebrenica, Bosnia, in July 1995. At the time, a Dutch military contingent operating under the UN peacekeeping flag in Srebrenica made no attempt to protect the civilian population, despite the fact that the UN Security Council declared the town a safe haven. The consequence was that about 7,500 Muslim Bosnians were killed by the paramilitary troops of General Mladic. While many governments have been overthrown following military defeats, this is probably the first time that a national government has resigned for failure in a peacekeeping operation.

The last decade shows that it is not enough to have an appropriate deliberation on when an intervention is needed. It is also necessary to develop appropriate guidelines on the methods that should be used in humanitarian interventions. It is surprising that, in an age of unprecedented technological advance, which allowed military technologies to increase their power exponentially, the methods used for humanitarian interventions continue to be far too similar to those used during the Second War World: air strikes.

The UN seems to be the most suitable institution to develop new methods of humanitarian intervention. Former Secretary-General Boutrous-Ghali began to develop such an attempt in his *Agenda for Peace*. Since then, the UN has left the task of deciding which military instruments should be used to governments willing to carry out humanitarian interventions. In turn, governments have relied mainly on the advice of their military staffs. In future a UN-appointed Commission of military and civilian members ought to prepare guidelines for the methods needed. The same Commission should also take responsibility for deciding which methods ought to be used in each humanitarian emergency. Such a Commission might decide ex-ante whether a military intervention - declared legal by the World Court - is technically feasible or not.[35]

The real problem is that a successful humanitarian intervention ought to have a much wider battery of instruments than air strikes. First of all, it is fundamental to look at individual, rather than collective, responsibility. Sometimes smart sanctions such as the confiscation of the financial assets of the leaders of foreign countries would be much more effective, and certainly much less

damaging, than air strikes. The role of the International Criminal Court will, hopefully, be to charge those responsible for crimes against humanity individually. When military intervention is needed, it is important for the armed forces to be prepared to use the methods of policing rather than those of war. This leads to the fourth proposal, an answer to the question, who is going to carry out the intervention?

d. Who is going to intervene?

I have argued above that the interventions should be deliberated by bodies devoid of coercive powers, and that they should be carried out in a way that is much riskier for those who intervene and less risky for the populations which are going to benefit from the intervention. This implies that it will be more difficult to find secular powers inclined to make their soldiers available for saving the lives of foreigners. The more the people to be rescued are – culturally and geographically – far away, the less a community will be interested in risking the lives of its soldiers. To introduce so many restrictions on the way in which humanitarian interventions should be deliberated and implemented might mean wiping them out altogether. This could lead to the paradox of a special international institution defining an increasing number of crises as 'humanitarian emergencies in need of a military intervention', but without finding states willing to deploy their resources and risking their soldiers for them. I am aware of this danger.

But if there is political willingness, the problem can be overcome. Humanitarian interventions are very likely to be needed and should effectively be carried out, though they require the appropriate institution building. Any intervention labelled humanitarian should not only be deliberated by UN institutions, but it should also be performed under the UN flag.

Here I wish to revive a proposal made by the French President François Mitterrand in 1992. He suggested that about 50 among the largest and wealthy nations could make available about 1,000 soldiers each for peacekeeping operations. These soldiers should have been made available to the UN Secretary-General on a standby basis. Such a proposal would have implied that the UN could have about 50,000 soldiers at its disposal to be used as blue helmets for peacekeeping. This proposal reflects very much the spirit of the early 1990s, and it was suggested for the peacekeeping operations familiar during the cold war period rather than for the peace-enforcement operations experienced since then.

But this proposal is a very good starting point for the making of a permanent military force devoted to humanitarian interventions. The fact that such a force would be multinational would prevent one

country only, namely the United States, from taking too many of the risks, responsibility and casualties on its own.

It is also possible to make a few additional suggestions. First, it might be helpful to separate the military forces devoted to humanitarian interventions and peacekeeping from the traditional military sector. Secondly, the nations that contribute these soldiers should be not only the largest but also the most respectful of human rights internally. Thirdly, it is very important to insist that these forces be trained specifically for peacekeeping and humanitarian relief. This would make them more similar to corpses for 'international policing' than for fighting.[36] Fourthly, there are good reasons to associate an equal or even higher number of officers devoted to civilian operations, such as medical doctors, social workers, teachers, engineers to the 'blue helmets'. These so-called 'white helmets' would help make it clear to the civil population that the intervention is not reserved to military operations only, but to welfare and assistance as well.[37] In a few years, such a permanent Rescue Army might easily become the most sophisticated component of a nation's armed forces, the one most likely to be actually deployed in operations.

These forces – both military and civilian – should be deployed in real time in the areas where they are needed. I assume that they should also be adequately protected by military means (including air power) to avoid the humiliating experiences suffered by blue helmets in the 1990s (as in the case of the Unprofor mission in the former-Yugoslavia). The more effective these forces are, the less it is likely that their deployment will be needed.

I do not assume that these forces should be the only ones to carry out humanitarian interventions. Today US military air power is a fundamental factor for the protection of ground troops. It is also very likely that interventions in some parts of the world may benefit from the logistic support of national armies. Even fire brigades receive support from other corpses and from the population. But it will be equally significant to have a force institutionally devoted to the issue of military intervention for humanitarian purposes.

Discussion

Table 1 lists the set of proposals for military humanitarian intervention that I have suggested in this paper. Some might believe that these proposals are unlikely to lead to a more effective military humanitarian intervention. I think, instead, that, in a unipolar world, it is wrong to underestimate the fact that it is very unlikely that egregious violations of human rights will occur, if there is a

Western-led international community that is so strongly opposed to them as to devote institutions to dealing with them.

Table 1
Procedures for a Military Intervention for Humanitarian Purposes
Some Institutional Cosmopolitan Proposals

Stage	Issue	Proposal
a	In which cases is it necessary to intervene?	Assign to the International Law Commission the task of drafting Guidelines on the crises that deserve to be labelled 'humanitarian emergencies' and that would require a military intervention without the consent of a legitimate government. The Guidelines should be approved by the UN General Assembly.
b	Who is authorised to decide when a humanitarian intervention is needed?	When a situation that seems to be a humanitarian emergency arises, the Security Council should ask the World Court if a military intervention is justified.
c	How is it necessary to intervene?	A joint Committee of military and civilian humanitarian organisations should develop Guidelines on acceptable methods to be used when humanitarian intervention is needed. The same Committee should assess whether the intervention is feasible.
d	Who is going to intervene?	Create a permanent Rescue Army composed of soldiers, police and civilians from a group of about 50 countries. Each of these countries should supply about 1,000 soldiers and 1,000 civilians. These corpses should be deployed in real time at the request of the UN Secretary-General.

Others might say that a reform of humanitarian intervention along these lines might be useful, but that it is highly unlikely that it will be implemented. I certainly agree that, as international affairs stand, this type of intervention would be, to say the least, unrealistic, something of a dream. But why is that?

The obvious obstacle comes from states, which are highly unwilling to subscribe to multilaterally agreed codes of conduct. In such a framework, states would agree to limit their freedom and even to take on the obligation to participate in a sort of humanitarian international Fire Brigade. But the same states that, sometimes, cannot resist the moral duty of acting to defend some cosmopolitan values are much less willing to create appropriate cosmopolitan institutions. Opposition comes also from states that have championed military interventions for humanitarian purposes, in particular from the United States. So what should we think about governments that, moved by altruistic motivations, are (sometimes) willing and proud to intervene in other countries, but, at the same time, lose interest in saving strangers, if they subscribe to shared codes of conducts? Isn't this a

contradiction? Shouldn't it generate a certain suspicion about the authenticity of their altruistic motivations?

As I have already said, I agree with Walzer that motivation cannot be the ultimate method to assess humanitarian intervention. However, procedures are not independent from outcome. A more coherent institutional framework is needed not only for moral and intellectual coherence, but also for a more effective impact. The first thing that governments and factions do when they are subject to a military intervention under the humanitarian banner is to show their peoples the contradictions that inspired it in the first place. In Iraq, Somalia, Bosnia and Kosovo, it was very easy for Saddam Hussein, Aidid, Karadiz and Milosevic to show that the UN and NATO were not impartial and that their interventions were selective and self-interested. The effect of this was to lower the authority of the intervention for the civil population and, ultimately, to make the overall intervention much less effective.

Yet it would be a mistake to react to the abuses of the 1990s with a return to the old concept of state sovereignty. To go back to the concept of sovereignty as it was interpreted during the cold war is not only impossible – there are no longer only two major players in world politics – it is also regressive.[38] The real problem is how to do that.

The 'dogma' of sovereignty, to use the expression employed by Hans Kelsen in 1920,[39] has been removed only for those states that are likely to be the subject of military intervention, but, paradoxically, it has been reinforced for those states that are going to carry it out. A cosmopolitan constitution cannot be achieved by giving more sovereignty to some states than to others, but only by agreeing to devolve competencies to common institutions. This seems another major contradiction of liberal states in the post-cold war period: under the banner of humanitarian intervention they attempt to remove sovereignty from others, but not from themselves.

I also think that, over the last decade, the academic debate has been too focused on the conditions that would allow intervention in emergencies, but not enough on designing new institutions that make humanitarian intervention more effective. If scholars believe that states can (sometimes) act as moral agents, why shouldn't they also ask states to be consistent, providing not only troops unilaterally, but also the appropriate institutions?

Conclusions

This article has suggested some drastic changes to the theory and practice of military humanitarian intervention. These proposals are part of an institutional cosmopolitanism and envisage matching the increasing demand for protection of human rights in every corner of the world with institutions

capable of enforcing them.[40] This approach is an alternative to the practice of interventions decided upon unilaterally by individual states or by military alliances such as NATO. When this happens, there is no guarantee that the intervention will be led by humanitarianism or that a humanitarian purpose will be achieved. I have argued that:

- After more than a decade from the end of the cold war, it is urgently necessary to develop fresh guidelines to determine when a crisis requires a military humanitarian intervention. The UN International Law Commission seems the best body to draft such guidelines.

- I have suggested dealing with the assessment of a crisis (ie, if sovereignty is breached so much that an external military intervention is warranted) and the actual implementation of the intervention separately. Concerning assessment, as the UN Charter makes clear, unilateral deliberation by individual governments is to be considered unlawful. As to the multilateral approach, there are problems even in granting these competencies to an intergovernmental institution such as the Security Council. Ideally, it ought to be a World Parliament, but since no such institution exists yet, it would be better to devolve this competence to a juridical body such as the World Court.

- Concerning the implementation, some guidelines for implementing humanitarian interventions are still to be written. They should provide assurances that interventions are carried out in line with the methods and spirit of police operations inside democratic countries rather than with those of traditional military interventions. These guidelines could be written by a joint Committee with members from the military and the humanitarian relief organisations, such as the Red Cross, Amnesty International, the UNHCR, and Mediciens sans Frontiers. The same committee should take the responsibility for assessing if and how humanitarian interventions may be feasible.

- Specialised corps of peacekeeping soldiers and police officers should carry out humanitarian interventions. It would be an advantage if these soldiers were supplied by a variety of countries, to be chosen from those with the most consolidated democratic traditions. Soldiers should work in strict association with civilians (the so-called white helmets) partly to let the civilian population see that the intervention is undertaken to protect and not to attack them. If a sufficiently large number of countries agreed, it would be possible to create a permanent military-civilian army (a sort of Rescue Army), to be deployed in real time at the request of the UN Secretary-General.

If states really are willing to act for altruistic and humanitarian purposes, there is no reason why they should not subscribe to the building of appropriate cosmopolitan institutions.

Let me conclude with a consideration about the altruism of states. It is certainly significant that, since the fall of the Berlin Wall, financial aid for social and economic purposes from the North to the South has been substantially reduced. Everybody in democratic western states is aware that a large number of people in the South are starving, that curable diseases are killing millions of people every year, and that natural disasters are destroying human communities. But in the very years in which democratic western countries are affirming their 'right' or even 'duty' to humanitarian military intervention, they are reducing resources for social and economic aid. What conclusion are we to draw from this fact?

Some strictly liberal thinkers may argue that the responsibility of liberal societies is to affirm civil and political rights beyond borders, since they are the pre-condition for the endogenous achievement of economic and social rights. But this argument does not apply to humanitarian catastrophes generated by natural disasters. And liberal Western countries have not become more generous in these circumstances.[41] Apparently, the altruism of liberal states turns on much more easily when a individual is killed by another person than when ten individuals die of starvation.

The real 'humanitarian' motivation of liberal states can therefore be tested in cases of natural disaster, when there is no need to oppose other political communities and still less to violate the 'baroque' category of sovereignty. Let us start by implementing the combined machinery of military force and civilian humanitarian organisations in natural disasters, in which it is possible to relieve the population without having to fight against other humans. Once the machinery has proved to be successful, and has started to gain world-wide respect, it will be possible to move to the next step: namely, military intervention for the protection of human rights.

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1 A range of different perspectives on humanitarian intervention can be found in J.L. Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention. Ethical, Legal, and Political Dilemmas* (Cambridge, Cambridge University Press, 2003).

[2] Some of these cases are discussed in Richard Tuck, *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant* (Oxford, Oxford University Press, 1999; Mona Fixdal and Dan Smith, 'Humanitarian Intervention and Just War', *Mershon International*

Studies Review, 42 (1998) 283-312; and Terry Nardin, 'The Moral Basis of Humanitarian Intervention', *Ethics and International Affairs*, 16 (2002) 57-70.

3 Although Pufendorf was far too deferent to Grotius, when he dared to express his own opinions on the legitimacy of warfare, he provided much stronger constraints on the recourse to war than his predecessor.

[4] Mary Kaldor, 'A Decade of Humanitarian Intervention: The Role of Global Civil Society', in Helmut Anheier, Marlies Glasius and Mary Kaldor (eds), *Global Civil Society 2001* (Oxford, Oxford University Press) presents a useful categorisation of the various motivations to undertake humanitarian interventions ('Sovereignists', 'Just war', 'Humanitarian peace' and 'Human rights enforcement') and explores which actions these views supported in the paradigmatic cases of Bosnia, Somalia, Kosovo and Sierra Leone.

[5] Michael Walzer, 'The Argument about Humanitarian Intervention', *Dissent*, Winter (2002), p. 30.

[6] I broadly share Chris Brown's disenchanted view; see 'Humanitarianism and Humanitarian Intervention', chapter 8 in his book *Sovereignty, Rights and Justice*, (Cambridge, Polity Press, 2002).

[7] Alberico Gentili, *De jure belli libri tres* (1598), (edition of 1612), reprinted and translated into English by the Carnegie Endowment for International Peace (Oxford, Clarendon Press, 1933), Book I, chapter XVI, 'On Defending the Subjects of Another State Against their Sovereign'; Hugo Grotius, *The Rights of War and Peace, in three books*, (1625), translated into English with 'all the large Notes of Mr. J. Barbeyrac', (London, 1737), Book II, chapter II, par. VIII 'Whether that War is just which is made for the Defence of another's subjects'.

[8] See the Forum on Humanitarian Intervention in the *International Journal of Human Rights*, 6, 1 (2002), with interventions by Mohammed Ayood, B.S. Chimni, Samuel M. Makinda and Nicholas J. Wheeler.

[9] The term 'democide' was introduced by Rudolph Rummel (1994), 'Power, Genocide and Mass Murder', *Journal of Peace Research*, 31, 1 (1990) pp. 1-10, to cover genocide and mass murder.

[10] This definition is slightly different from J.L Holzgrefe, 'The Humanitarian Intervention Debate', in Holzgrefe and Keohane, cit, p. 18.

[11] Walzer, 'The Argument about Humanitarian Intervention', p. 32.

[12] If a gallant neighbour intervenes earnestly to rescue beautiful wives only, he will have more difficulty to gather support in the neighbourhood.

13 Richard Falk, 'The Complexities of Humanitarian Intervention', chapter 4 in his *Law in an Emerging Global Village* (Ardsley, NY, Transnational Publishers, 1998), stresses the need to make intentions consistent with implementation.

14 See, for example, Michael Ignatieff, *Virtual War. Kosovo and Beyond* (London, Chatto Windus, 2000).

15 William Ladd, *An Essay on a Congress of Nations for the Adjustment of International Disputes without Resort to Arms*, (1840) (Oxford, Oxford University Press, 1916).

[16] International Commission on Intervention and State Sovereignty (ICISS) *The Responsibility to Protect*, www.iciss-ciise.gc.ca. For a synthesis, see Gareth Evans and Mohamed Sahnoun, 'The Responsibility to Protect', *Foreign Affairs*, 81, 6 (2002), 99-110.

[17] I use the expression of Nicholas Wheeler's thoughtful account, *Saving Strangers. Humanitarian Intervention in International Society*, (Oxford, Oxford University Press, 2000).

[18] I build upon the definitions introduced by Charles Beitz, *Political Theory and International Relations* (Princeton, Princeton University Press, 1979), Thomas Pogge, 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, 23 (1994), 195-224, and David Held, 'Law of Peoples, Law of States', *Legal Theory*, 8 (2002), 1-44.

19 On these two humanitarian interventions, see Wheeler, *Saving Strangers*, chapters 2 and 3.

[20] Walzer, 'The Argument about Humanitarian Intervention', p. 30.

[21] Michael J. Smith 'Humanitarian Intervention: An Overview of the Ethical Issues', *Ethics and International Affairs*, 12 (1998), p. 78.

[22] On the selectivity of media coverage, see Mariano Aguirre, 'The Media and Humanitarian Spectacle', in Humanitarian Studies Unit (ed.), *Reflections on Humanitarian Action. Principles, Ethics and Contradictions* (London, Pluto Press, 2001).

[23] United Nations, *The United Nations and Rwanda, 1993-1996* (New York, UN, 1996), p. 268.

[24] See Fernando R. Tesòn, *Humanitarian Intervention. An Inquiry into Law and Morality* (Irvington-on-Hudson, NY, Transnational Publishers, 1997, second edition). The first edition of this study was published at the end of the cold war, when humanitarian interventions could be unilateral only for lack of consensus among the super-powers. The second edition acknowledges the changing international regime and discusses the differences between unilateral and collective interventions: see, in particular, chapter 9: 'Collective Humanitarian Interventions'. A detailed judicial analysis is carried out in Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford, Oxford University Press, 2001).

[25] Walzer, 'The Argument about Humanitarian Intervention', p. 32.

[26] A comprehensive report on the Security Council's legal practice can be found in Simon Chesterman, *Just War or Just Peace?*

[27] See Mohammed Ayoob, 'Humanitarian Intervention and State Sovereignty', *International Journal of Human Rights*, 6, 1 (2002), pp. 94-5.

[28] Klaus Naumann, 'Nato, Kosovo, and Military Intervention', *Global Governance*, 8 (2002), pp. 13-17. Similar concerns are expressed in Evans and Sahnoun, p. 106.

[29] These two fears are also shared by Mohammed Ayoob, 'Humanitarian Intervention and International Society', *Global Governance*, 7, 3 (2001), pp. 225-230, and 'Humanitarian Intervention and State Sovereignty'.

[30] Mohammed Ayoob, 'Humanitarian Intervention and State Sovereignty', *International Journal of Human Rights*, has proposed the creation of a UN Humanitarian Council, on the model of the Economic and Social Council, with 50 elected members, to deal with the issue. This proposal is very much in line with the institution-building approach supported here. Such an institution, however, will continue to be intergovernmental no less than the Security Council. In the same issue, B.S. Chimni, Samuel M. Makinda and Nicholas J. Wheeler discuss this proposal.

[31] This dreamy idea, already suggested by William Penn, Claude-Henri Saint-Simon and many others, has never disappeared from international thought. For recent restatements see Daniele Archibugi, 'From the United Nations to Cosmopolitan Democracy', in Daniele Archibugi and David Held (eds), *Cosmopolitan Democracy* (Cambridge, Polity Press, 1995); David Held, *Democracy and the Global Order* (Cambridge, Polity Press, 1995); Richard Falk and Andrew Strauss, 'On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty', *Stanford Journal of International Law*, 36, 2, (2002) 191-219; Richard Falk and Andrew Strauss, 'The Deeper Challenges of Global Terrorism: A Democratizing Response', in Daniele Archibugi (ed.), *Debating Cosmopolitics* (London, Verso, 2003).

[32] Stalin supposedly once asked his military staff: 'How many divisions has the Pope?'

33 William Penn, *An Essay Towards the Present and Future Peace of Europe* (1693).

[34] Naumann, 'Nato, Kosovo, and Military Intervention'.

[35] A humanitarian catastrophe does not necessarily lead to a military intervention if this is not feasible. The lack of feasibility might be due to the fact that the government committing a democide is too strong to be overwhelmed by an external military intervention (too difficult), or because there is not the technical feasibility to reach the population needing help in time (too far away), or because the violations of human rights have already occurred and are unlikely to occur again (too late), or because there is a danger that the casualties among civilians and rescuers will be higher than rescued individuals (too risky).

36 For a review of the possibilities of military engagement for human rights protection, see Lorraine Elliott and Graeme Cheeseman, 'Cosmopolitan militaries in the 21st century', paper presented at the Cosmopolitan Militaries Workshop, Balliol College, Oxford, 10-12 July 2002.

[37] Mary Kaldor, *New and Old Wars* (Cambridge, Polity, 1999) has discussed at length how an integration of military peacekeepers and civil society could help to deprive local warlords of social grassroots.

[38] Scholars like David Chandler, *From Kosovo to Kabul. Human Rights and International Intervention* (London, Pluto Press, 2002), and Danilo Zolo, *Chi dice umanità. Guerra, diritto e ordine globale* (Turin, Einaudi, 2000) have rightly denounced the abuses made of the concept of humanitarian intervention, but they fail to provide any suitable alternative to terminate exceptional violations of human rights.

[39] See Hans Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* (Tübingem, Mohr, 1920).

[40] Immanuel Kant remarked that 'a violation of rights in one part of the world is felt everywhere', 'Towards Perpetual Peace. A Philosophical Project' (1795), in H. Reiss (ed.), *Kant's Political Writings*, (Cambridge, Cambridge University Press, 1991), p. 107.

41 To apply again the same metaphor, what ought we to think about a neighbour who earnestly intervenes when he hears that the wife is being beaten by her husband, but does nothing if the house is burning? Should the neighbourhood (public opinion) trust such a neighbour?