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Exploring the boundaries of HUMANITARIAN INTERVENTION

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CONTENTS

<i>Introduction</i>	1
PART I The humanitarian intervention quandary	3
1.0 Abstract	3
1.1 Defining humanitarian intervention	3
1.2 Humanitarian intervention main theories	9
1.3 Just War theory	14
1.3.1 The ethics of war and peace	14
1.3.2 Jus ad bellum	16
1.3.3 Jus in bello	20
1.3.4 Jus post bellum	21
PART II Allen Buchanan: «the Illegal Legal Reform»	24
2.0 Abstract	24
2.1 Internal legitimacy	24
2.2 National interest and human rights	27
2.3 The illegal reform	30
2.3.1 The limits of the international law	31
2.3.2 The attraction of illegal acts	32
2.3.3 Guidelines to the «Illegal Legal Reform Justification»	33
2.3.4 The test case of NATO intervention in Kosovo	37
PART III A critics by Ned Dobos: strenght, scope and priority	40
3.0 Abstract	40
3.1 The strenght of the internal objection	40
3.2 Over stating the scope	42
3.3 Internal or external priority?	43
<i>Conclusion</i>	45

Introduction

The 6th of April of the year 1994, in Rwanda, the Hutu government decided to cancel from the world thousands and thousands of human beings. The simplicity of the ethnic massacre's reason was also the basis of its success.

«Every journalist, every lawyer, every professor, every teacher, every civil servant, every priest, every doctor, every clerk, every student, every civil rights activist were hunted down in a house-to-house operation. The first targets were members of the never-to-be-constituted broad-based transitional government.»¹

The Rwanda genocide has been one of the bloodiest carnage of all times. In Karama Gikongoro, a number of 43,000 Tutsi, were killed. In Butare the number of deaths reached 100,000. But this was not enough: 16,000 killings in Cyangugu, 4,000 in Kibeho, 2,500 in Kibungo, 5,500 in Cyahinda². The method used by the Hutu government to delete the Tutsi's population from Rwanda was very simple and effective: they simply looked for all the Identity Cards which bring the crime of being the "wrong" human being. When the procedure of the Identity Cards became too long to be concretely acted, they passed through the method of simply looking for Tutsi's banal features, to kill people:

«Some are still alive. You must go back there and finish them off... The graves are not yet quite full. Who is going to do the good work and help us fill them completely?»³

¹ Melvern, Linda. *A People Betrayed: The Role of the West in Rwanda's Genocide*, London, Zed Books, 2000, p.127. Quoted in Holzgrefe, 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Kehoane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, p.15.

² Des Forges, Alison L., *Leave None tell the Story: Genocide in Rwanda* (Human Rights Watch, New York, c. 1999), pp.303-594. Quoted in *ivi* p.16.

³Radio Télévision Libre Milles Collines (Hutu radio station). Quoted in G. Prunier, *The Rwanda Crisis: history of a genocide*, London, Hurst & Co., p.224.

Where the democratic, peaceful and reasonable international community was while one million⁴ of Tutsi's lives were brutally outraged, raped, burned, tortured, annihilated and finally killed? The 31st May of 1994, the UN Report of the Secretary-General on the situation in Rwanda said:

«We must all recognise that... we have failed in our response to the agony of Rwanda, and thus have acquiesced in the continued loss of human life. Our readiness and capacity for action has been demonstrated to be inadequate at best, and deplorable at worst, owing to the absence of the collective political will.»⁵

In the case of gross violations of basic human rights, bloody ethnic massacres, evil and atrocious human beings' killings, does the international community have the moral duty to intervene? Or does it have only the discretionary possibility to decide a humanitarian intervention to stop the massacre? Can a state, or a group of states decide to military intervene without the permission and the authorisation of the United Nation Security Council? Furthermore, what about the importance of a possible reform of the international legal system by an action of military armed force against a foreign state which is acting a widespread violation of human rights? Do just and reasonable wars exist, in that cases, or does only war exist as an unreasonable and brutal act?

These are some of the main questions that I will try to answer in this work, by analysing the theories of two of the major scholars of humanitarian intervention: J.L Holzgrefe and Allen Buchanan. Humanitarian intervention is clearly one of the most complex global issues and it actually concentrates in its nature a lot of difficulties and possible interpretations. For this reason it is particularly important to look for the essential boundaries which

See also *ibidem*.

⁴ Holzgrefe, 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Keohane, (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, p.17.

⁵ Report of the Secretary-General on the Situation in Rwanda [S/1994/640, 31 May 1994]. Available at <<http://www.un.org/Docs/secu94.htm>>. Quoted in *ibidem*.

could define the phenomenon, trying to define it in a proper and specific way, to eventually avoid the excessive arbitrariness of states and to better grasp whether and when it is allowed intervening with armed forces for the protection of human basic fundamental rights.

THE HUMANITARIAN INTERVENTION QUANDARY

1.0 Abstract

In this first part I will try to offer a wide description and analysis of the important issue of humanitarian intervention. In the first section I will define the phenomenon by taking into consideration J.L. Holzgrefe's definition, with the aim of grasping the boundaries of humanitarian intervention. In the second section my aim will be the one of remembering the main and most influential theories and ethics of humanitarian intervention, by following J.L. Holzgrefe's classification. In the third and last section, I will go deeper in what it is considered probably the most influential and relevant ethics of war and peace: the Just War theory.

1.1 Defining humanitarian intervention

The nature of humanitarian intervention has never been easy to define, for two main reasons. Firstly for its own proper characteristics, which can change a lot depending on the circumstances in which the humanitarian action is decided, and secondly because of the variety of reasons for which a choice of humanitarian intervention can be taken. The absence of a unique mood or reason of action creates a lot of problems in looking for a common definition of this vital global issue. The most common opinion on the subject is the one which sees humanitarian intervention as a stupid oxymoron⁶: how could we talk about the protection of human beings while we use the military force to do

⁶ Kehoane, Robert O., 'Introduction' in J.L. Holzgrefe and Robert O. Kehoane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, p.1.

it?

Surely, what we can try to do is looking for a lowest common denominator to better grasp the boundaries of humanitarian intervention. A lot of philosophers and political scientists had debated on the subject, and their work help us to clarify the concept of what it seems, for the common thought, just an unbridgeable oxymoron⁷.

J.L. Holzgrefe, one of the most influential scholars of humanitarian intervention, has found a very clear and complete definition, with the help of another very relevant philosopher, ethicist and professor, Allen Buchanan. According to their explanation, humanitarian intervention is:

«The threat or use of force across state borders by a state (or a group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.»⁸

By analysing this accurate and punctual definition, we should observe that it is composed by four essential elements:

1. The use of force;
2. The defence of human rights;
3. States as the only actors;
4. The absence of permission.

The first point tells us the method of action. For this important condition, the use of force cannot be separate from a humanitarian intervention. It is important to specify that the scholar does not comprehend economic or diplomatic force⁹, such as sanctions or the suspension of diplomatic relationships, as a part of the notion of force. In fact, the opinion of the majority of International Law's doctrine is that the nature of international force is only the military one. According to this interpretation, the violence linked to this kind of force creates war, and it must involve military operations. As the notion of «aggression»¹⁰ given by the United Nation

⁷ *Ibidem*.

⁸ Holzgrefe, J.L, 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Keohoane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, p.18.

⁹ *Ibidem*.

¹⁰ United Nation General Assembly Resolution 3314 (XXIX), 14 December 1974.

General Assembly, also the international force actions involve state borders' crossing, bombings or aggression against air planes and ships. A humanitarian intervention could use all of these methods to ensure the defence of fundamental human rights.

According to the scholar's definition, the second characteristic concerns the aim of humanitarian intervention. It is certain that an action of international force has to possess a very deep and really reasonable justification. Humanitarian intervention's aim is the protection, the defence and the preservation of the fundamental rights of human beings. But what is the nature of these important category of rights? When can a state, or a group of states, decide to intervene to prevent grave violations of these kinds of rights? These are two very important questions and their answer could determine whether or not a humanitarian intervention should be reasonable and necessary.

Human rights can be defined as «the rights we have simply because we are human¹¹» and they concern firstly the individuals, although without denying societies, families and states' interests. They are equal, inalienable and universal. This means that every human being is entitled to have the same rights of the other human beings, that these rights cannot disappear by persons' horrible behaviour or by barbarous treatments, and finally that they exist for all human beings all over the world. They also do not change their nature because of particular cultures, doctrines or religions. It is finally important to highlight the fact that national states are the real and almost exclusive protector of human rights. In Jack Donnelly's words:

«[...] if an irate neighbour blows up a house killing a dozen people, it is murder. If irate police officers do the same thing, it is a violation of human rights. If foreign soldiers do it during war, it may be a war crime.»¹²

¹¹ Donnelly, Jack, 'Human rights' in John S. Dryzek, Bonnie Donig and Anne Phillips (eds), 33 *The Oxford Handbook of Political Theory*, New York, Oxford University Press, 2006, pp 601-618.

¹² *Ibidem*.

So this is the nature of the rights which, according to Holzgrefe definition, should be defended. Furthermore, when he talks about preventing or ending gross violations of human rights, he uses a very important adjective that has to be remarked: «widespread»¹³. This means that an eventual denial of human rights should be consistent and extended over a wide area, but also accepted by many people. Finally the human rights' abuse should affect a lot of people in a certain territory. Only if the violation has this grandeur, it should be punished by the international community and the population protected by an action of humanitarian intervention.

Then, we come to the third point of Holzgrefe definition: the actors of humanitarian intervention. This point could seem obvious, but it is essential to highlight its importance. A military action, born to prevent or stop widespread gross violations of human rights, has to be carried on by a state, or a group of states, against another state. So it cannot be started by individuals. The reason is that states are the real subjects of the international society and also of the international law, which regards and is addressed mainly to them. On the one hand there is a consistent part of the contemporary doctrine that argues that individuals -physical and artificial persons- have a circumscribed international personality, for the fact that the states' obligation to protect their interests, such as human rights, could correspond to a real right of that individuals. But on the other hand there is another consistent part of the doctrine that argues that the real addressees of international norms are only states¹⁴. The debate remains present, but what it is sure is that an action of humanitarian intervention against a state could never be acted just by individuals, above all for the military and economic resources that it needs.

Finally, a humanitarian intervention does not need the permission of the state which brakes the rules. This last point is actually the most delicate one, because it poses a lot of questions and it is open

¹³ Holzgrefe, J.L, 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, p.19.

¹⁴ Conforti, Benedetto. *Diritto Internazionale* (VIII ed.), Napoli, editoriale scientifica, 2010, pp. 11-32.

to many interpretations. According to Holzgrefe's definition, humanitarian intervention can be displaced without the permission of the state which has broken the rules of humanitarian law, so it has as a direct consequence the deep freedom of decision of the entire international community. The state, or the group of states, which wants to intervene has to wait for the permission of the Security Council. This last is empowered under Chapter VII of the UN Charter to authorize the use of armed force to prevent or ending human rights abuses¹⁵. In theory, the base of an eventual intervention should be the necessary reaction to gross and widespread violations of human fundamental rights. The problem is that, during history, a lot of humanitarian interventions had not just a «humanitarian interest»; on the contrary they were based on states' economic or political interests. A state should have the international permission to intervene in the domestic jurisdiction of the transgressor state only when human rights are being seriously abused. Only «disinterested humanitarian intervention»¹⁶ should be displaced without the permission of the state which has violated human rights of its citizens. Holzgrefe¹⁷ specifies the importance of the Charter of the United Nations in governing the exercise of international armed force, particularly refereeing to Article 2(4):

«All states [...] refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any state, or in any other manner inconsistent with the purpose of the United Nations.»¹⁸

He also recalls the Article 2(7) of the Charter:

«Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction

¹⁵ Charter of the United Nations signed 26 June 1945, entered into force 24 October 1945, Chapter VII, Articles 39-51. Available at <<http://www.un.org/en/documents/charter/>>.

¹⁶ Kehoane, Robert O., 'Introduction' in J.L Holzgrefe and Robert O. Kehoane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, p.3. Cf. Farer, Tom J., 'Humanitarian intervention before and after 9/11: legality and legitimacy' in *ivi*, pp.61-68.

¹⁷ Holzgrefe, J.L., 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Kehoane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, pp. 37-43.

¹⁸ Charter of the United Nations signed 26 June 1945, entered into force 24 October 1945, Chapter I, Article 2(4). Available at <<http://www.un.org/en/documents/charter/>>.

of any state.»¹⁹

The delicate point of humanitarian intervention is, above all, the incursion in the domestic jurisdiction of the transgressor state, without its permission. The problem is to identify the boundaries of the domestic jurisdiction, especially when human rights are being seriously abused. Fernando Téson²⁰ argues that human fundamental rights represent a global interest so, when a state comes to violate one or more of these rights, the International Community has not only the right but also the moral obligation to intervene, also without permission.

The importance of the protection by the United Nations of human rights is formalised in the Article 1(3) and 55 of the Charter:

Art. 1(3) «The purposes of the United Nations are...to achieve international cooperation in [...] encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.»²¹

Art. 55 «The United Nations shall promote...universal respect for and observance of, human rights and fundamental freedoms for all.»²²

To summarise we can notice that on the one hand there are some characteristics that absolutely an action of humanitarian intervention has to possess. But on the other hand these apparently sure characteristics, that Holzgrefe has en globe very clearly in his definition, could actually pose a lot of further questions. David Rieff claims that:

«[...] Humanitarian intervention is at once an immensely powerful and a terribly imprecise idea. No formal legal definition of it exists [...] »²³

Rieff let us understand, with a few words, the main problem of humanitarian intervention: its undefined boundaries. As I noticed at

¹⁹ *Ivi*, Article 2(7).

²⁰ Téson, Fernando R., 'The liberal case for humanitarian intervention' in J.L Holzgrefe and Robert O. Keohoane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, pp 93-95.

²¹ Charter of the United Nations signed 26 Junes 1945, entered into force 24 October 1945, Chapter I, Article 1(3). Available at <<http://www.un.org/en/documents/charter/>>.

²² *Ivi*, Chapter IX, Articles 55.

²³ Rieff, D., 'Humanitarian intervention', *Crimes of war*, available at <<http://www.crimesofwar.org/a-z-guide/humanitarian-intervention>>.

the beginning of the chapter, it is very important to look for a common, «formal and legal definition»²⁴ according to D. Rieff's words, which could in a way puts some limits to the concept of humanitarian intervention. The reason of that is the excessive discretion that external powers could have in others states' domestic jurisdiction, if there was not a precise definition of humanitarian intervention that could tell them when they had the right to intervene.

1.2 Humanitarian intervention main theories

We have noticed the deep difficulties in finding a common definition of humanitarian intervention. Now it is time to look at the different ways of thinking of, agreeing or disagreeing with and considering this complex but fundamental issue. Another time, it is J. L Holzgrefe²⁵ who helps us with a very use full classification of the main theories and ethics, focusing on the main questions that humanitarian intervention raise to all of us: does the international community have the obligation to intervene after state's violence against its citizens or other individuals' human rights? Or does it have only the possibility to do it? Who has to make the choice? Does a moral duty to intervene exist, when gross abuses occur, like in the Rwanda genocide, or is it just about an arbitrary choice of a state or a group of states?

J.L Holzgrefe starts his analysis from a first ethical classification about what he calls «the proper source of moral concern»²⁶. This last concerns directly the origin of moral authority of international rules. According to the scholars divide, on the one hand we have *Naturalists* theories and on the other hand the *Consensualist* ones. The difference between these two approaches is that the first sees the moral authority of international norms as something that human beings could never alter, as something that they discover thanks to their reason or experience. In contrast, consensualists' point of view

²⁴ *Ibidem*.

²⁵ Holzgrefe, J.L, 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, pp.18-36.

²⁶ *Ibidem*.

is that international norms' moral authority depends on the consensus of human beings.

According to Holzgrefe's words, the second ethical divide is about «the appropriate objects of moral concerns»²⁷. The difference concerns the addressees of moral concerns. *Individualists* certainly focus on individual human beings while *Collectivists* claim that the moral authority is addressed to groups, in particular ethnic groups, states or nations.

The «appropriate weight of moral concern»²⁸ represents the third ethical divide, and it is about the importance that these two theories give to the objects of moral concern. For *Egalitarians* the content of moral authority has to be considered equally important. In contrast, *Inegalitarian* theory argues that the objects of moral concern are different, for this reason we have to decide which of them has to be treated with more attention and importance.

The last Holzgrefe's ethical divide is about «the proper breadth of moral concerns»²⁹. This divide is based on the quantity of the agents to which moral concern is addressed. For the *Universalist* theory the addressees are all the existing agents, without any distinction. On the other side we find *Particularists*, who argue that there is a relevant difference between individuals: only some of the existing agents are the proper object of the moral concern.

All these ethical distinctions have to be taken into consideration while we analyse the main theories of humanitarian intervention's justice: Utilitarianism, Natural Law, Legal Positivism, Social Contractarianism and finally Communitarism.

Utilitarianism focus on the quality of the consequences of human action. It is the naturalist doctrine which claims that an action could never be good or bad by itself, because the action has to be judged only by analysing its consequences on human well-being. This general principle is specified in two more precise shades of utilitarianism: *act-utilitarianism* and *rules-utilitarianism*. For the first the object of the moral evaluation is each human conduct,

²⁷ *Ibidem.*

²⁸ *Ibidem.*

²⁹ *Ibidem.*

without any discrimination. By contrast, for the second one it is important to specify human actions, because only a specific bunch of that is the real object of moral evaluations and this bunch concerns rules, norms and maxims. With this, rules-utilitarians means that a conduct has to be judged just and reasonable only if a set of norms that improve human well-being more than other set of rules follows. For their point of view people should always observe the same moral maxims and rules, because the absence of this tacit consensus would erode trust and human well-being. Looking at the phenomenon of humanitarian intervention, act-utilitarians would argue that its justice totally depends on its consequences: if a military humanitarian action, even if it produces a lot of deaths, makes the human well-being soaring, it has to be considered just and acceptable. By contrast, if a humanitarian intervention costs more lives than it actually saves it must be judged bad, unjust and use full. J.L Holzgrefe³⁰ makes a very explicative historic example that helps to clarify this two specific utilitarian theories' position. When, in 1999, a NATO's commando acted a bombing to Radio Television Serbia (RTS) headquarters, killing ten people (civilians and employees of the radio), act- utilitarians supported this action because it was carried on to disrupt Serbian communication networks. They easily claimed that the death of ten civilians was not disproportionate, like the International Criminal Tribunal for the former Yugoslavia actually said³¹. On the other hand, rules-utilitarians focus on the shared rule: an action of military force against a state, acted to protect human rights, must be accepted and considered just only if a rule allows it. This norm has to be followed by everyone and it must increase human well-being.

³⁰ Holzgrefe, J.L, 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, p.22.

³¹ "Insofar as the attack actually was aimed at disrupting the communications network, it was legally acceptable ... NATO's targeting of the RTS building for propaganda purposes was an incidental (albeit complementary) aim of its primary goal of disabling the Serbian military command and control system and to destroy the nerve system and apparatus that keeps Milošević in power." ICTY, 'Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia' in *The Attack on the RTS (Serbian Radio and TV Station) in Belgrade on 23/4/99*. Available at <<http://www.icty.org/sid/10052#IVA4b>>.

Natural Law theorists believe that our shared human nature produces some common moral obligations. These moral duties, universal and unalterable like human nature, have to be discovered by reason and experience, so each human being can do it. An action, born to protect massive and gross violations of human rights, even if carried on with the military force, is part of the universal moral duties. Every state of the international society could consider itself as a protector of other states, if a violation of human rights occurs. In Joseph Boyle's³² words:

«We are obliged to help whoever we can [...] and to be ready to form and promote decent relations with them [...]. This general duty to help others is the most basic ground within this common morality for interference in the internal affairs of one nation by outsiders, including other nations and international bodies.»

Anyway, it is important to specify that, for natural law theorists, the duty of humanitarian intervention is an imperfect obligation. This means that every state has the right to renounce to the protection of another state, because the victims of gross violations of human rights have not a real right of humanitarian protection. The decision is up to states. We could make a comparison with the duties of charity and beneficence, which have not a specific corresponding rights. This deep freedom of decision can produce terrifying consequences for the fact that massacres and genocides could born and continue without the intervention of any states.

The third theory of humanitarian intervention is *Legal Positivism* which can be identified as a normative doctrine. In fact, they believe that the obligation and the duty of norms comes from the fact that their application originates in accepted and shared procedures. The very direct consequence is the irrelevance of norms' content, because the only thing that counts is the lawfulness of norms. The major critics to this way of thinking comes from naturalists. They hurl abuse at legal positivism that it is impossible and unreasonable to accept, silently, norms just because they are

³² Boyle, Joseph, 'Natural Law and International Ethics' in T.Nardin and D.R. Mapel (eds), *Traditions of International Ethics*, Cambridge University Press, 1992, pp.112-135.

norms. The reason of that is the difficulties to enact laws with stupid content, like for example the ones passed by dictators or by a group of corrupted men³³. Some legal positivists agree with and support this point of view, by arguing that we all just have to respect only rules that come from a correct legislative procedures.

Social contractarianism derives the moral duty and the binding force of norms from the shared consent of that norms' subjects: human beings. That hypothetical mutual consent is at the base of human well-being, because it should be a common peace full acknowledgement which absolutely does not originate itself from force and fraud. Social contractarianism believes that we should accept, in theory, the moral obligation only of the norms which born from the consensus of rational, free and equal agents. A part from this basic unanimous concept, there are some areas of disagreement which have to be taken into consideration. One of that areas concerns the nature of shared consent's subjects: which are the specific parties of this general agreement? Some social contractarians claim that we have to refer to all human beings, others contend that the contracting parties are the citizens of a state, others identify them just with the state. The nature of the contracting parties is important, as Holzgrefe underlines³⁴, because it influences the choice of the rules. He makes an example to clarify the concept: if we agreed with the part of social contractarians that sees the citizens of a state as the contracting party, the maximisation of the national interest would be chosen and that would be normal. Related to the justice of humanitarian intervention, if the national interest was identified with the sum of material and security interests, an humanitarian action would be almost unjust. On the other hand, if the national interest was recognised in the sum of, not only material and security interests,

³³ "Why should I have any respect or duty of fidelity toward a statute with a wicked or stupid content just because it was passed into law by a bunch of men (possibly very wicked men like the Nazi legislators) according to the accepted recipes for making law?",Feinberg, Joel, 'Civil Disobedience in the Modern World' in *2 Humanities in Society*, 1979, pp.43-44.

³⁴ Holzgrefe, J.L, 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Kehoane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003,pp. 29-30.

but also «humanitarian interests»³⁵, a humanitarian action drawn to protect gross violations of human rights would be morally obligatory.

The last important theory about humanitarian intervention is the doctrine of *Communitarism*. For this doctrine, norms' obligation depends on how much that rules are appropriate and suitable to the particular culture of specific communities. This means that all binding norms represents a duty only if they «fit»³⁶, according to Holzgrefe's words³⁷, the specific thoughts, values, believes and practices of that community. So, what do Communitarism think about the justice of humanitarian intervention? At the base of their doctrine there is a deep confidence and a real believe on human solidarity. There is a union of purposes, interests, responsibilities and interests among human beings, an union that creates solidarity between them. For this reason everyone should be touched for an act of violence against a human right. The consequence is that every state, part of the international community, shall intervene when gross violations of human rights occur. The obligation of humanitarian intervention affects directly all the humanity, just for the fact that it is appropriate to all the political communities of the world.

To conclude, it is important to highlight the difficulties linked to the different opinions of humanitarian intervention, depending on the area of thinking which everyone choose to support and endorse. Like it happened for the general legal definition of humanitarian intervention, also for the justice of it we have to face a lot of different interpretations and theories. The reason of that is the fundamental necessity to have a wide range of ideas to analyse this complex global issue in a more precise, specific and concrete way.

1.3 Just War Theory

³⁵ Nye, Joseph S.Jr., 'Redefining the National Interest', 78 *Foreign Affairs*, 1999, pp. 22-35.

³⁶ Holzgrefe, J.L., 'The humanitarian intervention debate' in J.L Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003,p.30.

³⁷ Ivi, p.33.

1.3.1 *The ethics of war and peace*

Humanitarian intervention is, as we have seen highlighted in Holzgrefe's definition, an operation of armed force. It is a military action and it can be easily identified with a real war. But what are the real and essential characteristics of a war? Can we really talk about war when we talk about humanitarian intervention? Are they the same phenomenon? Can we think about humanitarian intervention as a *Just War*? It is now important to answer to all these questions and to remember one of the most influential theories of the ethics of war and peace: the Just War Theory.

First of all, it is necessary to specify the nature, the characteristics and the actors of a war. War is an armed conflict between different states (this concerns the majority of conflicts called "international wars") or political communities that want to become states (this regards, particularly, political pressure groups like terrorists). The conflict, to be considered a real war, has to be carried on with armed forces and it has also to result from the will of the actors. In addition, a war has to be widespread, so there must be a concrete mobilisation, and actual, not only latent. Furthermore, the idea of governance is strongly linked to the warfare: war is a brutal way to select who have the power to make decisions, in a certain territory. If a state choose to fight a war against another territorial entity, it selects a violent way to win the dominion, the authority and the direction on some aspects of the governance of the other state.

The issue of war raises a lot of difficult moral questions, even without possible answers. One of the most controversial doubts regards the possibility to consider an armed conflict just and acceptable. Might there be some particular situations when we can justify the massive use of violence against a territory? And, when the war is considered just by the majority of the international community, what are our rights (if we have ones) as civilians when another society decides to declare war to our own state? The possible answers to these important questions are given by the ethics of war and peace and in particular by the Just War Theory.

Realism, Pacifism and Just War Theory are the three main thoughts of the ethics of war and peace. For this work, it is fundamental to analyse the third one, looking for its impacts on the issue of armed humanitarian intervention. We should look firstly on the main differences between the three ethics. Realism claims that national interests in security and power are the only reasons of any state's action, in a world where only the strongest can survive. By contrast, Pacifism is always against any kind of armed reaction, because war is always wrong and there is always another way of finding a solution to the problem. Just War theorists strongly believe that there could be an acceptable moral justification to declare and fight a war, like it happened for the Second World War on the Allied side. We can easily notice that the war with a possible moral justification could surely be identified with an action of armed force for the protection of a state's violations of human rights, that is to say humanitarian intervention. So, to better understand the impacts of this important theory on the issue of humanitarian intervention, it is necessary to look deeper on Just War Theory's arguments.

Just War Theory³⁸ is probably the most important point of view on the ethics of war and peace. Firstly because its implications raise a lot of difficult questions with no clear and common answers, and secondly because a lot of its principles have been codified into the modern international laws of armed conflicts (such as The United Nations Charter). The thought of Just War has got a long and relevant tradition which born with Aristotle, Cicero and Augustine, and grows up with Hugo Grotius who is considered the real father of the doctrine. To better understand the principles and the rules which have been created by Just War Theory, it is important to analyse separately three aspects³⁹: the justice to declare a war (*jus ad bellum*); the justice of the parties' behaviours during and inside the conflict (*jus in bello*); and finally the justice of the end of war, concerning all the peace agreements and the

³⁸ Orend, Brian, "War", *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/fall2008/entries/war/>.

³⁹ *Ibidem*.

situation that has to be rebuilt after a phase of war (*jus post bellum*).

1.3.2 *Jus ad bellum*

According to the norms of *jus ad bellum*, every state or political community should satisfy six requirements⁴⁰ before deciding to resort to war. The first and the most important rule is the need of a real and indisputable just cause. It is actually very difficult to identify specific causes that the international community has commonly approved and that every state of the international society considers just and acceptable. What we could surely describe is some of the most common excuses, concretely used by states to justify their resort to war.

First of all, states often answer to an external attack to their own territory and community, as a form of self-defence and as a clear protection of their own direct interests. But very often, a state uses to react to external attacks perpetrated to another state, to defend this last interests. In this case, the state which reacts can be moved to war, for example, by a military alliance with the state which has been attacked: in this case it has got no choice. There is also another frequent just cause, particularly important for the aim of this work: the armed reaction to serious wrongdoings (e.g. grave violations of human rights) otherwise remained uncorrected, at the expense of individual citizens. In fact, two basic rights have to be taken into consideration: the ones which belong to states and the ones which belong to individual citizens. International law recognises different important rights to all the states which belong to the international society, such as the right to sovereignty and territorial integrity, but it recognises also a lot of important rights, such as human rights, to all the individual citizens and human beings. Of course it is important to specify that only legitimated governments have internationally recognised rights. So, for the Just Cause Theory, when one of these rights is the object of a grave violation by a state, another territorial entity could intervene.

How does this point of view can consequently influence

⁴⁰ *Ibidem*.

humanitarian intervention? According to the Just Cause rules of *jus ad bellum*, a state -or a group of states- has the international permission to intervene when domestic populations are in danger. When widespread massacres and grave violences are perpetrated constantly and generally against human beings, all the international community has its right to resort to armed force to stop the brutality and to protect the population from the heavy oppression of the rogue state. But, an important question has to be highlighted: does the international community have the moral obligation and the international permission to intervene when an aggression has not been concretely perpetrated yet? And if, in this situation, a state or a group of states take the decision to strike first, do they become aggressors or are they still the guardians? The international law answers to these questions with the permission to intervene only after the authorisation, in advance, by the United Nation Security Council. Any other anticipate resort to armed force is absolutely forbidden by the international law. In fact, only the United Nation Security Council, as Chapter VII of the Charter clearly formalises⁴¹, has the right and the power to recognise a threat to peace and any other act of aggression. This last is defined as the use of military force which consequently causes a violation of another persons' rights (violent crime), another state's rights (international aggression), or the rights of other people within the community (domestic aggression).

According to the Just Cause Theory, in the case of an humanitarian intervention, the United Nation Security Council should give its authorisation for the fact that the domestic populations could never defend themselves, on their own. Individual citizens could never be able to resist to widespread massacres, like it happened in Rwanda in 1994. For this reason, the international community should be strongly justified to intervene with an organised military force.

The second essential requirement of *jus ad bellum* is the need of

⁴¹ Charter of the United Nations signed 26 June 1945, entered into force 24 October 1945, Chapter VII, Article 39. Available at <<http://www.un.org/en/documents/charter/>>.

a right and sincere intention of the state which wants to move to war. Firstly, the intention to fight a war must be strongly and absolutely linked to the just cause. Furthermore, the declared motivation has to possess a morally acceptable justification. Any other reasons, like the irrational ones (e.g. ethnic reasons), are totally excluded. The problem with the right intention is about the difficulties of finding the real intention of the state. Sometimes states can declare their intentions in a moral and internationally acceptable way, while they actually possess another intolerable reason to fight that war. This point affects directly a decision of humanitarian intervention. The hidden background of a humanitarian action could be constituted by economic and egoistic interests of the state which is moving to war. A state could catch the excuse of fighting gross violations of human rights, to the real intent of fighting an enemy state or of gaining economic advantages from that humanitarian intervention. For this reason, in general, states' real intentions could be, even only for some marginal aspects, very different from the ones formally declared. This misunderstanding can happen without it being known by the rest of the international society.

Thirdly, the decision to declare and fight a war must be legally made by the appropriate authorities. Each country's constitution formalises the specific procedures. Of course, the decision must be shared publicly and it must be clearly announced to all the citizens of the state in question but also to the enemy or rogue state.

Furthermore, and this is the forth requirement of *jus ad bellum*, a state may resort to armed force only if any other plausible peace full relief has been exhausted. War is a serious and dangerous remedy, which has to be taken into consideration only if any other reasonable possibility has run out. War should be states' last resorts. The first and most common peace full rescue is the negotiations between nations, that is to say the diplomatic negotiation. With this form of relief, a state may concretely avoid a resort to armed force, which always causes a lot of heavy consequences on states' territories and communities. Article 41 of Chapter VII of the Charter of the United Nation says that also the Security Council,

before deciding for actions by air, sea or land forces, has to provide «provisional measures» (e.g. the interruption of the means of communications) which can avoid the resort to international armed force⁴².

The last two requirements concern the proportionality of the war and its plausibility of success. For the second, it is important to specify that it is not recognised and formalised by the international law, because it goes to the detriment of weaker states. In fact, according to Just Cause Theory, a state may resort to war only if its decision won't have too heavy and negative impacts on the situation. The war has also to be proportionate, properly related in size, degrees and costs. Before deciding to move to a war, a state may consider seriously its eventual results: universal goods expected to result from the military fight has to be proportional to the disadvantages caused by the war. It is finally important that the positive outcomes must be clearly «universal»⁴³, so they have to benefit the enemy, the innocent third parties and the state which has wage the war.

1.3.3 *Jus in bello*

It concerns all the rules about the conduct in the midst of the fight. Every military commander, officer and soldier must respect the set of rules formalised in *jus in bello*. They are the real and unique responsible actors for a possible principles' breach. The rules of the battle concern on the one hand the right conduct towards the enemy, and on the other hand the correct behaviour towards individual citizens.

First of all, states must obey to all the international norms and treaties that govern the use of weapons and armaments, of all types.

⁴² "In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned." Charter of the United Nations signed 26 June 1945, entered into force 24 October 1945, Chapter VII, Article 40. Available at <<http://www.un.org/en/documents/charter/>>.

⁴³ Orend, Brian, "War", *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2008/entries/war/>>.

States must respect the norms about the use of biological and chemical weapons, because they are regulated in a lot of international covenants. For the particular but important case of nuclear weapons, the international law does not clearly and formally prohibit their possess or use. But it is important to observe that nuclear power and armaments are seriously and strongly condemned by the majority of the international community.

Another important rule concerns the immunity of the Non-Combatant. Soldiers, in using their weapons and means of war, has to discriminate between those who are engaged in arms and those who are not. This is very important for a humanitarian intervention, because it affects the heaviness of the accidental and collateral negative consequences (sometimes acceptable) of the military action towards civil innocent populations who inhabit the rogue state. An example, often caused by armies, of collateral civilian casualties is the repeated and continued bombings of residential areas, which can cause unacceptable murder and destruction.

The principle of proportionality can also be found in the rules of *jus in bello*, as well as in *jus ad bellum*, in the sense that soldiers should use their military and armed force proportionally to the aim they are looking for. If an action of humanitarian intervention has to be displaced, soldiers should pay attention on the means they use to re-establish the order, above all because their goal is to protect a population from gross violations of human rights. In this case, international armies should not use weapons of mass destruction, because they are totally disproportionate to legitimate military ends. As in the justice of deciding to resort to war, here in the rules of *jus in bello* the criteria of proportionality plays a very important role.

Furthermore, prisoners of war should be treated in a benevolent way. When enemy combatants take the difficult decision of surrender and they suddenly become prisoners, they are no longer soldiers. For this reason they should be treated in a human and respectable way, not subjected to cruel and brutal treatments. They should stay in quarantine away from fighting zones until the war ends, as the Geneva Conventions formalises. Their basic rights

should be respected and not violated in savage ways.

According to Just War Theory, these are actually the most important norms of the conduct of war that states of the international society shall respect. But what happens if a state violate one of more rules of *jus in bello* towards another state? Sometimes, the state which has been touched by the violations of the war's conduct could decide to vindicate itself by violating other norms. Is this expected by the rules of *jus in bello*? The answer is negative because for Just Cause Theory the acts of reprisals do not work at all, they has to be considered non just and non acceptable. The best-practice to take a revenge towards a state which has violated rules of the conduct in war is to win well, correctly and properly.

1.3.4 *Jus post bellum*

The last aspect concerns the justice of the peace settlement after the conflict. With this set of rules we have come to the final step of the war, that is to say when soldiers lay down arms and the transition to peace can start. It is a very delicate and difficult phase, even if it could seem easily. The peace construction is one of the most complicate and influent action of the war's state. All its forms influence both directly and indirectly not only the future of the engaged and implicated states, but also the destiny of other third parties and the stability of all the international community. According to Just War Theory, we could resume five main principles⁴⁴ the norms of *jus post bellum*: proportionality and public divulgation; rights vindications; discrimination; compensation; rehabilitation.

Above all, the peace settlement should be publicly declared by the authorised authorities to all the citizens and to all the international community. This is also essential for clear and transparent international relations between nations, and it represents an undeniable condition. Furthermore, the peace understanding shall be proportionate, measured and reasonable. In

⁴⁴ Orend, Brian, "War", *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2008/entries/war/>>.

fact, as history tells us with the example of the Versailles agreements in 1918, using a peace settlement as an instrument of revenge can only cause worst consequences. Even after a humanitarian intervention, this meaning of proportionality which focus on a reasonable and non rancorous end of war, should be concretely respected.

Furthermore, the war has to demonstrate concretely its positive effects by ensuring those rights whose violation represented the just motivation to start the conflict. These rights are composed firstly by all human basic rights to liberty and life. In addition, a very important discrimination has to be made: civilians must not be submitted to unreasonable post-war treatments, because they have to be considered free from any type of punitive measures. An example of punitive measure could be economic sanctions, which could create deep difficulties to all the target civilian population. Also the state which has been attacked has the right to reconstruction of its territory, institutional and government settlement. The post-war environment has to guarantee the sufficient opportunities to change and re-build all the ancient organisation of the aggressor regime.

Analysed the main Just War Theory rules to decide the justice of starting an armed conflict, the appropriateness of the conduct inside the conflict, and the reasonableness of the peace settlement, now it can be seen the importance of finding principles and norms of conduct in an armed conflict. War is, by nature, an unreasonable and violent act. For this motivation it is fundamental to look for limitation's principles which could restrict the discretion and the eventual abuses by states. But what about humanitarian intervention? Would a codification of principles be possible even for this important global issue which allows the use of armed and military force? Under which conditions is humanitarian intervention ethically, legally or politically justified?

ALLEN BUCHANAN: «THE ILLEGAL LEGAL REFORM»

2.0 Abstract

My aim here is to analyse the thought of one of the main and most influential scholars of humanitarian intervention: Allen Buchanan. I will focus my analysis in a specific part of his main work “Human Rights, Legitimacy, & the Use of Force” (2010), which is almost aimed at setting up a brilliant connection between the Just War theory and the philosophy of international law. Starting from the concept of the internal legitimacy, which namely concerns the justification given by the intervening state to its own citizens, and passing through the analysis of the role of the national interest in foreign policy decisions, Allen Buchanan comes to his penetrating conclusion. Illegal acts should be allowed only if they constituted a great and considerable improvement of the international legal system. This is what he calls «the Illegal Legal Reform», and this is what I will analyse in this central and most significant part of my work.

2.1 Internal Legitimacy

One of the most problematic and difficult issue of the ethics of humanitarian intervention is the problem of its internal legitimacy. The issue occupies a relevant place in Allen Buchanan's analysis of the use of force and it is defined as the moral justifications of a decision of humanitarian intervention given by states' governments to their own citizens⁴⁵. The internal legitimacy is obviously different from the external one. In fact, the internal legitimacy does not concern the justification which has to be eventually given to the state object of the military intervention, but it concerns only the way followed by the state to explain the motivation of the military intervention to its own proper internal community of people.

For Allen Buchanan, internal legitimacy concerns firstly the morality, not the legality of humanitarian intervention⁴⁶. In particular, the scholar wants to highlight the importance of looking for an acceptable moral justification, by governments, which can allows their intervention on the humanitarian ground. This moral justification is different from the internal legality, for the fact that this last only focus on the respect of the legal system of the state which has decided to intervene. For instance, there are states like Germany or Japan which have written in their Constitutions prohibitions to the use of force abroad, including humanitarian interventions.

For the aim of finding a real and deep justification of intervention it is important to remember the nature and the role of governments in liberal political thought: what are states for? The discretionary association view defines the modern state as an:

« [...] association for the mutual advantage of its members and the government is simply an agent whose fiduciary duty is to serve the

⁴⁵ Buchanan, Allen. *Human Rights ,Legitimacy, & the Use of Force*, New York, Oxford University Press, 2010, pp. 201-218. See Allen Buchanan, "The Internal Legitimacy of Humanitarian Intervention", *The Journal of Political Philosophy* ,vol.7, num.1, (1999), Philosophy, University of Arizona, pp.71-87.

interests, or to realize the will of those citizens.»⁴⁷

By contrast, Buchanan sees the state as an «instrument of justice»⁴⁸, not as a «discretionary association for the mutual advantage of its members»⁴⁹. The scholar explains that if we saw the state as only a pure agent serving the particular interests of its population, humanitarian intervention or the acceptance of refugees would be considered non acceptable and unreasonable actions. For what Buchanan calls «state-as-the-instrument-of-justice»⁵⁰ view, all persons should have the possibility to access to institutions which protect basic human rights. This is because a very strong natural duty of justice exists and it assures the inclusion of all human beings in just arrangements, with the only limit of regarding the costs of this security.

This thought has as a direct consequence the one of providing an acceptable solution to the problem of internal legitimacy of humanitarian intervention. If it is accepted that all human beings have certain rights because of their nature, it has to be accepted also that they have the right to certain treatment and that one ought not only to not violate these rights but also to create some arrangements that will protect them. In other words, the consequence of the respect of rights is the need of doing something concretely to ensure the protection. For this reason Buchanan argues that this natural duty of justice tell us how we should use our institutions and what our governments may do to protect individuals' rights.

So, it is important that who effectively controls the political institutions of a state realises the moral obligation of making some real and concrete efforts to ensure that all individuals' rights are protected. For this reason, it is not acceptable to intend the state as a mere association for the mutual advantage of its members. But it

⁴⁷ *Ibidem.*

⁴⁸ *Ivi*, p.211.

⁴⁹ *Ivi*, p.204

⁵⁰ *Ibidem.*

is important to specify that the natural duty of justice is an imperfect and not enforceable duty, because the international legal system is not legitimated to enforce a duty to some states to ensure the justice for all persons.⁵¹

In conclusion, Buchanan solution is the international cooperation with the aim of creating international legal institutions that could assign certain duties to states, by distributing in a fair and reasonable way the costs of the protection of people's rights. If this important condition were respected, the enforcement of humanitarian intervention could be morally justified.⁵²

2.2 National interest and human rights

The major part of diplomats, state leaders and international relations theorists supports the thesis of the dominance of the national interest in foreign policy decisions. It is actually very uncommon to deny the importance of the role of the national interest in this area of policy and, also for this reason, Buchanan analyses deeply the main variants of what he calls «Obligatory Exclusivity Thesis»⁵³. This last is the strongest version, the one which does not accept any limits or attenuations, the one which claims that foreign policy is firstly and solely determined by the national interest. Hans Morgenthau claims the dominance of the national interest, by proclaiming that it should be in states' foreign policies:

«the one guiding star, one standard thought, one rule of action.»⁵⁴

⁵¹ *Ivi*, pp.214-215.

⁵² *Ivi*, p.216.

⁵³ *Ivi*, pp.218-219.

⁵⁴ Morgenthau, Hans. *In Defense of the National Interest*, New York, 1952, p.242. Quoted in Allen Buchanan. *Human Rights ,Legitimacy, & the Use of*

Surely, the national interest plays a big role in the issue of humanitarian intervention, because it can affect directly a decision or a renounce of military intervention. For this reason it is very important to study and to analyse its implications and consequences on the protection of human rights.

According to the «Obligatory Exclusivity Thesis», when there is a conflict between the national interest and other values, like the protection of human rights, there must not be any doubt in deciding for a foreign policy which will ensure and maximize the interest of the nation. In other words, if the policy makers or decision makers of a nation have the possibility to make a choice which could follow the interest of their own nation, they should have no doubts or hesitations in taking the selfish decision.

In particular, Allen Buchanan focus his reflection and his critical examination on the weaker variant of the dominance of the national interest, the «Permissive Exclusivity Thesis»⁵⁵, for two main reasons. The first concerns the fact that this variant is less demanding and easier to justify than the «Obligatory Exclusivity Thesis», and the second one is that by doing this he can show the supremacy of the negative aspects of the «Obligatory» theory automatically by demonstrating the in-defensibility of the «Permissive» one⁵⁶.

The «Permissive Exclusivity Thesis» asserts that foreign policy has the possibility to be determined by the maximisation of the national interest, even if a violation of basic human rights could spring from the decision. By following the structure of the relationship between the national interest and the foreign policy, the scholar distinguishes three different «Permissive Exclusivity Thesis»⁵⁷:

· «The Permissive Exclusivity Thesis»: the foreign policy can be

Force, New York, Oxford University Press, 2010, p.218.

⁵⁵ Buchanan, Allen. *Human Rights ,Legitimacy, & the Use of Force*, New York, Oxford University Press, 2010, p.218.

⁵⁶ "If it is not permissible to do something, then it cannot be obligatory to do it".
Ivi, p.219.

⁵⁷ *Ivi*, p.220.

determined solely by the national interest.

- «The Permissive Protection Thesis»: the foreign policy can be determined solely by the national interest if doing the contrary could consequentially cause a dangerous setback to the national interest.

- «The Permissive Survivalist Thesis»: the foreign policy can be determined solely by the national interest if doing the contrary could consequentially create a security risk to the national survival.

The first justification of the examined theory comes from «Fiduciary Realism»⁵⁸, by focussing on the actors of a states' foreign policy. In this sense, they assume that national leaders have a real obligation to maximise the interest of the nation they are ruling, because their first work is to ensure and to protect the well-being of the population they lead. Another justification comes from «Instrumentalism»⁵⁹, which claims that although the national interest is not the most power full moral value, international relations' conditions determine the need of acting, by decision makers and policy makers, like if it was. According to this point of view, subordinating the national interest to any other value would be irrational and dangerous. Then, by maximising the national interest, national leaders could maximise also other states' one⁶⁰. Finally, the «Epistemic Justification»⁶¹ focus on the accessibility of values different from the national interest, which can become the goals of a state foreign policy. For the supporters of this theory, the goal of national interest is, in fact, more knowable, identifiable and practical then, for example, the protection of human rights.

The problem of this three arguments, according to Allen Buchanan, is that they all do not consider the possible accommodation that could be created between the national interest and the respect of human rights. These two possible goals of the foreign policy can actually coexist and work together. This is what

⁵⁸ *Ivi*, p.223.

⁵⁹ *Ivi*, p.228.

⁶⁰ «The needed explanation presumably would be of the invisible hand variety- the world-political analog of the theory of the ideal market.» *Ivi* p.229.

⁶¹ *Ivi*, p.232.

Buchanan calls «Accommodationist strategy»⁶². There are two types of thoughts in this strategy, one confirms the existence of certain fundamental human rights and the other is a little bit more sceptical about human rights. The first, called «human rights accommodationists strategy»⁶³ wants to persuade national leaders to not concentrate the foreign policy of the state only in the national interest, but also to enlarge it at the protection to all persons' basic human rights. For them, the national interest is the first and most important goal, but it is important to consider also other values such as human rights. The second strategy, called «subjectivist accommodationists»⁶⁴ stress on the care about foreigners just for a sense of human identity, and the national interest is not in conflict at all with respecting this relevant part of our identity.

Allen Buchanan⁶⁵, after having analysed all these possible thoughts and theories about the dominance of the national interest in foreign policy, comes to the conclusion that if we do really believe in the existence of human fundamental rights, we could not agree with the «Permissible Exclusivity Thesis», and as a consequence with the strongest «Obligatory Exclusivity Theory». The scholar highlights that those who believe hardly in the dominance of the national interest generally do not deny the existence of human fundamental rights, but they argue that human rights can be sacrificed when it represents a necessity for the national interest. That is to say that whenever the protection of human rights, like it can happen in humanitarian interventions, could cause a considerable setback to the national interest it is urgent to protect this last and not the human rights. This position is considered by Allen Buchanan totally «untenable»⁶⁶.

This conclusion is important because, by rejecting the dogma of the undisputed dominance of the national interest, it has as a direct consequence a revision of the action of the foreign policies, in

⁶² *Ivi*, pp.236-239.

⁶³ *Ivi*, p.237.

⁶⁴ *Ibidem*.

⁶⁵ *Ivi*, pp.246-248.

⁶⁶ *Ivi*, p.248.

particular about humanitarian intervention. According to Allen Buchanan's examination, humanitarian intervention is no more an action aimed at maximising the national interest of a nation, but it is above all an action aimed at preventing widespread violations of human rights in a compatible way with the proper national welfare.

2.3 The illegal reform

When NATO took the decision to military intervene in the crisis of Kosovo, two different justifications were given to the international community. The official and most advertised one concerned the need to prevent an imminent dangerous humanitarian disaster, as a consequence of the brutalities perpetrated by the Serbs upon the Albanian population in Kosovo. But there was another justification, proposed by some leaders (including Madeleine Albright, the U.S. Secretary of State), which was the one that saw the NATO intervention in Kosovo as a very important step for the establishment of a new humanitarian intervention customary norm which could allow a military intervention also without the formal authorisation of the UN Security Council.

Allen Buchanan⁶⁷ chooses this example of illegal humanitarian intervention to show the important difference between an illegal action presented as a necessary break of rules in the name of human rights protection and an illegal action aimed at reforming the present international system. For the scholar it is really important to diversify between these two situations -represented by the two justifications of NATO intervention in Kosovo- because in the first the agent does not need at all a commitment to the rule of law, by contrast the second needs an agent who gives a deep importance to the system's role of ensuring justice. For this reason, illegal acts with the only goal of a reform of the legal system has to be taken in deeper consideration, because their aim is the improvement of the international legal system.

⁶⁷ *Ivi*, pp.298-306.

Buchanan raises the question and concentrates his analyses on the answer of: «under what conditions, if any, is it morally justifiable to engage in acts that violate existing international law in order to bring about supposed moral improvements in the system of international law?»⁶⁸

2.3.1 *The limits of the international law*

First of all, it is important to specify the problems⁶⁹ linked to the sources of the international law, which can be identified in treaties and custom. On the one hand it is very difficult to improve the international legal system by treaties because they need a long process of consensus and above all because too many state could put reservations or certain understandings to particular clauses. For instance, it could be very difficult to create an international norm which requires the protection of human rights and the permission of an armed intervention in the case of gross violations, when other actions have failed. A lot of states could refuse this kind of treaty, with the result of a failure of the reform.

On the other hand we find customary norms, namely norms created with the persistent behaviour of a relevant part of the international society and with the belief of the *opinion juris sive necessitatis* of that behaviour. The first problem which determines a real limitation on the side of a possible international legal system reform is the possibility of dissent that a state actually possess regarding the customary norm. This is the case of a power full state, like USA, which decides to not follow the repeated behaviour, because in fact it is not obliged at all to be subjected to that customary norm. Furthermore, another restriction is linked to the fact that the repeated behaviour, before formalising the crystallization of the customary norm, has to be really “widespread”. This creates immediately the difficulty to find a perfect quantity of states that could determine the crystallization of the customary norm. Thirdly and finally, the component of the *opinion juris* could be deeply unclear and very disputable by states.

For these different reasons the sources of international law

⁶⁸ *Ivi*, p.299.

⁶⁹ *Ivi*, pp.301-304.

actually present a lot of restrictions and limitations for a reform of the international legal system, mainly for the fact that both customary norms and treaties have in common the idea that the consent of states is absolutely essential. This is the reason why, to improve the legal international order, it is necessary to travel another road.

2.3.2 *The attraction of illegal acts*

Allen Buchanan shows with three practical examples⁷⁰ the real desirable nature of certain illegal acts as important steps to a moral improvement of the system, given the problems of the development of international law (particularly for the weak and actually inadequate protection of human rights).

- Case 1: Iraq, under the strong pressure of the international community, decides finally to give the autonomy to Kurdish people. But after a period of formal autonomy, Iraq decides to violate the agreement and, consequently, the multinational armed forces authorised by the UN General Assembly but not from the Security Council intervene to rebuild the Kurdish autonomy.
- Case 2: Burundi is torn with a genocide. French forces, allied with the American ones, decide to intervene to stop the massacre. They disarm the culpables of the genocide, they arrest the leader of the massacre and they finally send them to an international genocide tribunal.
- Case 3: a Latin America country has recently reached its first democratic election, but a group of colonel abolishes democracy by using its armed forces. The Organisation of American States intervenes with the military force and rebuilds the democracy with the restoration of the elected government.

The problem is under what conditions illegal acts of reform could be justified from the moral standpoint. Historically, a lot of illegal acts have had as a direct consequence the improvement of the international legal order. It is indicative the case of the outlawing of

⁷⁰ *Ivi*, pp.303-304.

genocide, which was above all one of the biggest success of the Nuremberg War Crimes Tribunal. At that time, a customary norm or treaty which prohibited the “crimes against humanity” did not exist at all, but anyway the Nuremberg Tribunal actually invented the nomenclature and punished these kind of crimes even if they did not really exist in the international law. Thanks to the Tribunal, nowadays, the rights of humans subject to medical experimentation are recognised internationally, aggressive war is prohibited and the genocide is out of law. Another example can be given by the prohibition of slavery, reached also thanks to the English navy which attacked the transatlantic slave trade.

The point that Allen Buchanan is trying to make is that given the difficulties of lawful change linked to the resources of the actual international legal system, the analysis of the issue of the illegal reform represents a necessity. Our international system is actually ruled by states, which have the real power to make the difference. In this sense, states' behaviour could always determine a stranding of a positive reform of the international system.

2.3.3 Guidelines to the «Illegal Legal Reform Justification»

The problematic issue, for Allen Buchanan, is to find a practical and efficacious way to weigh the morality of an illegal act aimed at providing a positive and innovative reform of the international legal system. For this reason he finds eight different guidelines⁷¹ which should be used at this purpose and which represent like a ruler of the morality and the acceptability of the «illegal legal acts»⁷². The only limitation of the guideline is that they absolutely do not indicate the conditions under which an intervention is justified. They have to be applied to the projects of illegal intervention, only when all the acknowledged conditions of justified intervention have been respected. So they represent a way to determine whether an illegal act is aimed at improving the system by reforms, and whether there is a sincere will to bring international relations under the rule of law.

In the first guideline Buchanan says:

⁷¹ *Ivi*, pp. 318-324.

⁷² *Ibidem*.

«Other things being equal, the closer a system approximates the ideal of the rule of law [...] the greater the burden of justification for illegal acts.»

He captures the idea that if a system reaches or even get nearer to the ideal compositions of several elements (e.g. generality, publicity or clarity of laws), that is to say the rule of law, the consequence is a presumption of respect of that system of rules. But satisfying the conditions of the ideal of the rule of law is not sufficient to appreciate the morality of a legal system. The first guideline is necessary but not sufficient. For this reason he introduces the second guideline, which claims that a legal system should also promote justice:

«Other things being equal, the less seriously defective the system is from the standpoint of the most important requirements of substantive justice, the greater the burden of justification for illegal acts.»

This means that a system ought to exemplify seriously and concretely the norms of the rule of law. Given the fact that the protection of human rights is a goal of the international legal system, it is important to consider seriously the substantive justice, because it permits to determine whether an illegal act is morally justifiable or not.

The third guideline focus on the need, for a legal system, to be a legitimate system:

«Other things being equal, the more closely the system approximates the conditions for being a legitimate system [...] the greater the burden of justification for illegal acts.»

This is because we would be willing to support a system with an high degree of legitimacy and we would be pleased to follow its rules.

The fourth guideline states the importance for an international legal system's reform of not only the effective improvement that it creates but also of the preservation of what is valuable in the system, without changing it. In Allen Buchanan words:

«Other things being equal, an illegal act that violates one of the most

fundamental morally defensible principles of the system bears a greater burden of justification.»

Of course, the improvement of the system has to be a real concrete change from the pass international legal system. For instance, if the illegal act goal is to create a new customary norm, this means that the new behaviour has to represent a real improvement of the status quo. In this sense the fifth guideline says:

«Other things being equal, the greater the improvement, the strongest the case for committing the illegal act [...] and if the state of affairs the illegal act is intended to bring about would not be an improvement in the system, then the act cannot be justified as an act of reform.»

Buchanan concentrates the next guideline on a fundamental tension: on the one hand the reformer pays attention on the importance of the law in human rights protection or in others important moral values' respect, and on the other hand the need of coercive imposition of rules. For this reason the system has to follow some moral standards which permit the justification of the system itself. In other words this guideline states the distinction between justice and legitimacy. The project of an improvement of the system has to be linked with the efforts to ensure that the system has all the characteristics to ensure the justice thanks to its morally acceptable processes. For all these reason the sixth guideline says:

«Other things being equal, illegal acts that are likely to improve significantly the legitimacy of the system are more easily justified.»

The seventh guideline is linked to the third one, and it follows Buchanan's critics to all the opponents of illegal reform who claims that for a system it is necessary the only respect of the rule of law. This guideline says:

«Other things being equal, illegal acts that are likely to improve the most basic dimensions of substantive justice in the system are more easily justified.»

The last guideline argues that a reformer who is trying to

conforming the system to its own best principles, by acting illegally, he is just supporting the system. For this reason the reformer, even if his acts are illegal, is more easily justified. In fact, the last guideline says:

«Other things being equal, illegal acts that are likely to contribute to making the system more consistent with its most morally defensible fundamental principles are more easily justified.»

The guidelines given by the scholar are designed particularly to guide a responsible actor who recognises the relevance of analysing and taking into consideration both the rule of law in international relations and the need of improvement that the international system requires. He finally recognises that the actor has to be aware of the impossibility to reach a significant change on the system by following legal means. Sometimes humanitarian interventions can seem or be really illegal acts, like it happened with the NATO intervention in Kosovo. But, following the analysis of Allen Buchanan it is important to not only concentrate the attention on the “illegality” of the act, but also on whether the act was carried on with a desire of improving the international legal system. Intervening, even illegally, for the protection of human rights could constitute a very important improvement of the international legal system and for this reason, and only in this case, it should be considered a morally justifiable act.

2.3.4 The test case of NATO intervention in Kosovo

The eight guidelines should be analysed in a more practical way to better grasp their real function and utility. This is the reason why Allen Buchanan applies his guidelines to the historical case of the NATO intervention in Kosovo, by concluding that this military illegal intervention did not constitute a justifiable case of illegal legal reform⁷³.

The Kosovo war was an armed and bloody conflict which concerned the autonomous region of Kosovo from the year 1996 to 1999. In that region, there was a large majority of Albanian

⁷³ Kehoane, Robert O., 'Introduction' in J.L Holzgrefe and Robert O. Kehoane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, New York, Cambridge University Press, 2003, p.4.

inhabitants. In 1989, the autonomy of this particular area was revoked thanks to the strong pressure of the Serbian government, which was guided and headed by Slobodan Milošević. From 1996 to 1999 the forces of UCK (the Albanian separatists) forcefully revolted, and the police answered to that protest by repressing with strong and terrible violence. In 1999 NATO took the decision to intervene against the Serbian government of Milošević, by siding with the UCK and the Kosovo.

We have already noticed that, for this intervention, two different justifications were given: one concerned the need to stop the violations of human rights and the other argued that the intervention was the first step to create a new customary norm which would allow humanitarian intervention without the authorisation of the UN Security Council. Allen Buchanan concentrates his analysis -the application of the eight guidelines to NATO intervention in Kosovo- on the second justification, because it is directly linked with a legal reform of the international legal system⁷⁴.

Starting by the first three guidelines, it can be observed that there are no problems with the NATO's intervention in Kosovo. The living international system respected the ideal of the rule of law, the principles of substantive justice and it was a legitimated system. The intervention starts to present problems when it is compared with the fourth guideline. In fact, one of the most fundamental rule of the system was violated by this decision of intervention. The norm of sovereignty which permits the military intervention -when an aggression occurs- only in the case of self-defence, or of the protection, of other states, existed in that period and it was violated by the NATO intervention⁷⁵. However, the fourth guideline does not completely determinates the non-justifiability of these intervention. The reason is that the guideline counts for or against the intervention depending upon whether the change carried

⁷⁴ Buchanan, Allen. *Human Rights, Legitimacy, & the Use of Force*, New York, Oxford University Press, 2010, pp.321-324.

⁷⁵ Charter of the United Nations signed 26 June 1945, entered into force 24 October 1945, Chapter VII, Articles 39-51. Available at <<http://www.un.org/en/documents/charter/>>.

on by the illegal act would result a real improvement for the international legal system.

Guidelines 5-8 are crucial. They all concern one main principle: the real improvement of the system that, in this case, the NATO intervention should concretely create. It is important to recall that this intervention was aimed at producing a new customary norm and, as we have seen before, the process of new customary norms' creation is complex and difficult to achieve. The intervention of the North Atlantic Treaty Organisation in Kosovo, was an armed action carried on by a regional military alliance created for the defence of its own members in a case of aggression (Article 51-52)⁷⁶. Even if a new customary norm arose, that would not depended only upon the behaviour of NATO, because it would be necessary a consistent behaviour of other states belonging to the international community. There is no doubt about the fact that a new customary norm which allowed an intervention in internal conflicts to protect massive violations of human rights would constitute a great improvement of the system. But, for Allen Buchanan the problem is that the intervention was undertaken without the permission of the UN Security Council. A regional organisation like the NATO one should not be considered as the right candidate to intervene without the Security Council authorisation. It is unacceptable that the rule requiring an authorisation of the UN Security Council should be deleted and replaced by a new rule which gave the power to regional defence alliances to military intervene at their total discretion.

For all these reasons Buchanan concludes that the morality of the NATO intervention in Kosovo has to be considered «extremely doubtful»⁷⁷. The scholar specifies⁷⁸ that he actually comes to his critical conclusion without taking into consideration one of the most commonly accepted objection to the intervention. That is to say that he did not consider the fact that NATO intervention in

⁷⁶ Charter of the United Nations signed 26 June 1945, entered into force 24 October 1945, Chapter VII-VIII, Articles 51-52. Available at <<http://www.un.org/en/documents/charter/>>.

⁷⁷ Buchanan, Allen. *Human Rights, Legitimacy, & the Use of Force*, New York, Oxford University Press, 2010, p.324.

⁷⁸ *Ibidem*.

Kosovo violated the principle of proportionality of any given humanitarian intervention. In fact, Allen Buchanan finally points out that the intervention of this military defence alliance in the region of Kosovo instead of stopping the ethnic massacre of Albanians, it actually accelerated it.

A CRITICS BY NED DOBOS: STRENGTH, SCOPE AND PRIORITY

3.0 Abstract

The concept of the internal legitimacy has been deeply analysed by Allen Buchanan in his work “Human Rights, Legitimacy, & the Use of Force” (2010). The issue concerns, as it can be seen described in the first section of the first part of my work, the citizens of the intervening states rather than the inhabitants of the beneficiary state. My aim here is to analyse the critics that Ned Dobos makes to Allen Buchanan's conception of internal objection. This important critics focus on three different aspects: the understating

of internal objection's strength, the overstating of its scope and the priority attributed to the internal legitimacy rather than the external one.

3.1 The strength of the internal objection

First of all, Ned Dobos criticizes Allen Buchanan for his carelessness in the strength of the internal objection. For Buchanan, the internal objection comes from a particular idea of the social contract (the «discretionary association»⁷⁹ view) which expects the government to act for the only reason of promoting and ensuring its interests. According to this particular view, citizens have empowered the government to act only for the unique reason of protecting the self-interests of the state. For this reason, and only for this, inhabitants agree with paying tax. The problem is that this social contract do not explicitly consider the use of public resources to protect human rights in other countries.

Buchanan strongly think, and this is his deep premise, that we must protect human rights when it does not cost too much to ourselves and when we are able to do so. For this reason, he states that the most wealthy countries should always sacrifice their own proper resources for the defence of human rights. For the scholar this could happen only when the military intervention of the foreign state does not have as a consequence a deep worsening of its situations and when the humanitarian intervention does not expects the foreign state to take a too much great risk.

Ned Dobos criticizes Allen Buchanan by saying that even if sometimes there is a *prima facie* obligation to spend our own internal resources to intervene for the protection of human rights in a foreign country, anyway the anarchical nature⁸⁰ of the

⁷⁹Buchanan, Allen. *Human Rights ,Legitimacy, & the Use of Force*, New York, Oxford University Press, 2010, pp.71-87.

⁸⁰«By anarchic I simply mean absent an overarching power capable of enforcing rules of peaceful cooperation.» Dobos, Ned. "Justifying humanitarian intervention to the people who pay for it", University of Melbourne, Praxis, Vol. 1, No. 1, Spring 2008, p.39.

international society must be taken into consideration, a nature that makes humanitarian intervention always considerably risky⁸¹. According to Ned Dobos, the first mistake of Allen Buchanan is to think that the discretionary association view cannot endure a *prima facie* positive obligation towards foreigners. In fact, the discretionary association supporters would admit this positive duty, but they would add also that there is an important proviso, the one concerning the high costs of the hypothetical humanitarian intervention, that absolves states from the requirement to follow and respect the duty to intervene for the protection of human rights.

The second mistake of Allen Buchanan is, for Ned Dobos, to not consider at all the moral contract between the state and its armed forces⁸². This contract is different from the one that links the citizens and the state. In particular, soldiers promise and agree to fight and die for their own state, absolutely not for the basic human rights of other people of other foreign countries. For this reason Ned Dobos says that we could never oblige soldiers to fight in a humanitarian intervention.

In conclusion, Ned Dobos is not implying that the internal objection is totally non acceptable, but he is just claiming that Allen Buchanan minimizes its strength. He is claiming that even the most committed advocates of the discretionary association view would reject the premise of Allen Buchanan: states can use their own proper resources to protect foreign countries' human rights without putting their own inhabitants at risk⁸³.

3.2 Over stating the scope

The discretionary association view sees the pursuit of the national interest as the only reason of a permissible decision of waging war. In this sense, humanitarian intervention should be carried on only if

⁸¹Dobos, Ned. "Justifying humanitarian intervention to the people who pay for it", University of Melbourne, Praxis, Vol. 1, No. 1, Spring 2008, pp.34-41.

⁸²*Ivi*, p.39.

⁸³*Ivi*, p.41.

it would be motivated by national self-interest. But this kind of intervention, aimed at protecting human basic rights of foreign citizens, should be naturally carried on with a humanitarian reason, feeling and sentiment.

Anyway, when humanitarian intervention is truly driven by national self-interest, it can be considered in accord with the social contract and with the soldier-state contract, as described by the discretionary association theory. For Ned Dobos the very problematic issue is when we take into consideration the possibility that the humanitarian intervention would be expected to benefit also non natives.

Before specifying his critics, Ned Dobos highlights Charles Krauthammer's position by remembering that he talked about the «strategic necessity»⁸⁴ as the only permissible motivation that can determine a state's military intervention. By contrary, Ned Dobos focus on the importance of the improvement of the international relations claiming that a positive international reputation should be considered as a relevant and crucial variable in deciding a military intervention to protect the national interest. In fact, the national self-interest can be protected by the positive reputation of a state in the international community and it can also facilitate a country's economic prosperity⁸⁵.

For the scholar, Allen Buchanan does not realize that the internal objection can only bear against *some* humanitarian intervention, particularly those which are disinterested or untouched by national self-interest⁸⁶. The discretionary association view do not render totally «impossible»⁸⁷ the internal legitimacy of humanitarian intervention because, as the descriptive realists state, a wide range of cases subject to the internal objection can be presumed to be driven by national self-interests.

⁸⁴*Ivi*, p.44.

⁸⁵*Ivi*, p.45.

⁸⁶*Ibidem*.

⁸⁷Buchanan, Allen. 'The internal legitimacy of humanitarian intervention, *The Journal of Political Philosophy*, Vol.7, No. 1, pp.71-87

3.3 Internal or external priority?

For Ned Dobos, Buchanan tends to attribute a logical and moral priority to the internal degree of legitimacy. By contrary, the external dimension of legitimacy concerns the citizens of the foreign country and its government. The problem, according to Dobos, is that Buchanan claims that the question of the external legitimacy has to be raised only after the internal one⁸⁸.

The question of whether a state, which decides to intervene, honours the rights of its own citizens cannot be determined independently and *prior* to the question of whether this act is externally considered just, and it can not be raised before asking the question of the external legitimacy.

The first reason is that we cannot be obliged to help with our economic resources our government's externally unjust and immoral actions. Secondly, a military externally unjust act carried on by a state could one day create very negative consequences on its citizens for the fact that they all will have to pay for the reparations of the misadventures of their own state.

Finally, and this is considered by Ned Dobos the most important cause of the importance of the external legitimacy question, the state is empowered by citizens to act on their behalf and for this reason if this state invaded a foreign country without give any justification it would be very morally damaging for its citizens.

⁸⁸Dobos, Ned. "Justifying humanitarian intervention to the people who pay for it", University of Melbourne, Praxis, Vol. 1, No. 1, Spring 2008, pp. 46-49

Conclusions

Humanitarian intervention is one of the most unclear and undefined global issues and, at the same time, it is one of the matters that needs limits and definitions the most. I have noticed the problems linked to find a definition of the phenomenon, which presents no clear and sure boundaries. In this sense, I have particularly highlighted the need of looking for a lowest common denominator of the military actions aimed at preventing or stopping gross violations of human basic rights in foreign countries. The

ideas and the theories of Allen Buchanan and J.L Holzgrefe have been particularly precious for this aim. In effect, they allowed me to analyse in a deeper way one of the most interesting, attracting and influential phenomenons of the International Relations, helping me to look for and find some limits to it.

In this conclusion my aim is to sum up in four points what, in my opinion, can be identified as the essential boundaries of humanitarian intervention. With "essential boundaries" I am refereeing to the fundamental limits, the relevant basis, the important characteristics that humanitarian intervention absoultely has to possess to avoid any relevant excessive act of arbitracry by single states, a group of states, or a relevant part of the international community. An act of military armed force addressed to a state which is perpetrating mass violations of fundamental basic rights has to:

1. Be based on a humanitarian interest;
2. Respect the populations who pay for it;
3. Be authorised by the United Nations Security Council;
4. Achieve both the internal and the external legitimacy ;

For the first essential boundary, humanitarian intervention only has to be carried on with, and based on, a humanitarian interest. There must be no place for the national self-interest in an action of military force aimed at preventing or stopping humanitarian disasters. A state - or a group of states- which decides to intervene in another foreign country's humanitarian crisis has to possess the only reason of stopping that brutality. This is the real and unique "Just Cause" which, in my opinion, should exist, and it is also the only sincere and true one. What happened in Rwanda, in 1994, was the complete indifference and apathy of all the occidental developed world. Actually, this was because the African state of Rwanda did not present high and strong economic or political interests for west countries. For three "long" months the population of this region has been burned, destroyed, tortured, and atrociously killed without any intervention of the international community. The

story of Rwanda tells us the inefficacy for an act of humanitarian intervention, and the obstacle's entity that selfish national interest could represent for a humanitarian intervention aimed at saving lives.

The second essential boundary of humanitarian intervention is the respect of the populations that are really involved in the act of military force. The intervention should firstly constitute a just, reasonable and sustainable action for the inhabitants of the intervening state, and this is not so difficult to achieve when the first boundary is respected (humanitarian interest). As a consequence, the respect of the will of the inhabitant of the intervening state is an important condition because this population has to bear the costs of the intervention. Secondly, the armed humanitarian action should be carried on above all with the respect of the target population because, like Ned Dobos has particularly highlighted, this is the part of the population which pay the most for the intervention. The principles of *jus in bello* and *post bellum* could considerably support this particular aim.

The third essential boundary is really fundamental. I strongly believe that the permission and the authorisation of the United Nation Security Council should never be missing. The reason of that is the urgent need of limitations to arbitrary acts of states. Furthermore, the requirement of a permission by the UN Security Council constitutes also the legality's condition of the act of humanitarian intervention itself.

The last requirement, which is strongly linked to the second one, is taken from the critics that Ned Dobos makes to Allen Buchanan's position. As I have described and analysed in the last part of my work, Ned Dobos strongly claims that any priority should be accorded to internal legitimacy rather than to the external one. I sincerely agree with the point of view of the scholar. The act of military force aimed at preventing or stopping widespread massacres of human basic fundamental rights should be legitimated both by the internal perspective and the external one. The "humanitarian justification" is essential for both. An externally illegal and unlegitimated act is an intervention that could cause

deep difficulties also for the population of the intervening states.

In conclusion, independently of the different theories and ethics of humanitarian interventions- which anyway has to be always taken into consideration for a real deep comprehension of the phenomenon- it is clearly urgent to grasp and try to define some areas of boundary to better control, limit and regularise this important global issue. This is particularly important above all when, as the genocide in Rwanda in 1994 and the story of Kosovo war in 1998 have demonstrated, humanitarian interventions decide for human beings' dignity, well being, and lives.

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