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INTERNATIONAL RESPONSIBILITY FOR MILITARY INTERVENTION

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Introduction

It is generally felt that military intervention raises an array of responsibilities for intervening organizations and states and for the wider international community. The purpose of this essay is not to explore these responsibilities in detail, but to concentrate on international responsibility for military intervention. In particular, we ask three related questions. First, what is the legal framework which determines international responsibilities where states and other agents undertake military intervention? Second, what are the main ethical justifications for international intervention or non-intervention? Finally, in those few cases where intervention may be morally and/or legally justified, what are the relevant criteria for responsible intervention?

During the later 1990s, a number of organizations and networks, some of which are grouped under the 'international ethics and military intervention umbrella', have addressed these and related questions. For example, the development, content, and significance of the NATO just war against Serbia have been investigated. There has been an examination of the United Nations Security Council's intervention in Chad and southern Libya with a multinational expeditionary force, an investigation into the pertinent questions of legality and legitimacy with respect to humanitarian intervention, and a project on responsibility and accountability in common security. While this emerging literature is of the highest quality, it exhibits the beginning of a process rather than the end. Thus, the forthcoming volume on the United Nations, regional security organizations, and their members provides an incisive overview of the ways in which governments, supranational bodies, and armed forces have responded to military interventions in a variety of case studies. But we need an equally detailed picture of the corresponding international reaction. Similarly, the debate over the criteria for international responsibility across the UN-Chapter VIII divide is complex and uneven. What is needed, then, is an overall assessment of the legal context, the ethical justifications for international intervention and non-intervention, and the criteria for responsible international responsibility for intervention per se. At each of these levels, many of the more detailed questions identified in the subsequent essays below point to important new directions.

Keywords: Military Intervention, International, Responsibility International law.

1.1. Background and Context

This chapter sets out the key analytical lines of the essay. It presents the main argument of the section, proceeds to spell out the research questions, and explicate the various dimensions of the essay's approach. It explains how recent changes necessitate a reexamination of the topic of international responsibility for military intervention, as well as the plan for the essay.

This essay examines the question of international legal responsibility in the specific context of war-making UN member states carry out in the territory of other members without the permission of the latter. This, of course, is no new question in and of itself. However, the essay suggests that an analysis of the most recent legal scholarship and political debates in Vietnam, Cambodia, Nicaragua, Iraq, and Georgia would confirm a widespread but little

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articulated feeling that international responsibility has become a more visible issue than it used to be. This is not only due to the unsatisfactory or otherwise settlement of the disputes that brought the intervening state into the picture (the reasons for the intervention do remain of great interest for politicians and lawyers). More than before, the legality of intervention or the potential legal consequences of acting outside the collective security system are argued about as a matter of principle. More than before, states are not merely defying the law in a gratuitous or principled manner, with all the predictability and irrelevance of the outcome that would follow. No, the law itself has latent and not so latent consequences now.

1.2. Purpose and Scope of the Study

Peace and security are essential preconditions for social progress, economic development, and respect for human rights. The need for the maintenance of peace and security has resulted in the development of the collective security mechanisms of the United Nations. However, in practice, a significant number of conflicts occur where basic peace and security are threatened because the international community is collectively unable or unwilling to respond. This may be because the Security Council, the principal collective security organ, gives different priority to issues because of geopolitical factors or is deadlocked, e.g. by the use of the veto. The effective working of the collective security system largely depends on the strong will of the "central" members of the Security Council. For instance, Great Britain could have "blackmailed the Soviet" Union using its army in Berlin in 1948-1949, but they did not intervene. Conversely, the main deterrent to illegal military intervention is the anticipated response of the powerful states, usually members of the Security Council, which can take effective collective measures or other steps to remove the threat or breach of peace which served as legal justification for the intervention.

Military intervention, even when justified in terms of the use of force to protect persecuted minorities, must be carried out within the limits of international law, which, among other things, embodies the democratic principles of human rights and the right to self-determination. There can also be no question of the use of force to intervene in the internal affairs of sovereign states by powerful states for purposes other than the maintenance or restoration of international peace and security. If intervention has occurred and is inconsistent with the UN Charter, what international responsibility has been incurred by the putative violating state or states? A significant amount of work has been done on the law justifying intervention and, indeed, the wider use of force (jus ad bellum). This essay focuses on the consequences of unjustified or unauthorized force and the relationship between the use of force and responsibility.

2. Conceptual Framework

To identify international responsibility for military intervention, one must clearly define the terms of analysis. Responsibility signifies a legal or moral duty to bear repercussions for one's own decisions and activities. In terms of conduct, responsibility can be based on a voluntaristic act, an omission, control, or failure to control. There are four possible objects of responsibility within the international legal system: (a) States, as primary objects of international law; (b) entities that are separate and distinct from States and not having a direct legal personality within the states: i.e. national government, civil servants and the military person particular the military planners; (c) organisations proper, as subjects of international law with a separate personality; (d) humanity as such.

There are similarities and differences between Responsibility to Protect and humanitarian intervention. First, both concepts are triggered by the harm and suffering caused by armed conflict or repression happening in the territory of a sovereign State. Second, it is the Security

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Council that has primary responsibility to make a determination as to whether civilians are being harmed. Third, the key actors of humanitarian intervention in the context of international accountability are individual States engaging in military action; the Security Council in its possible activist role within the United Nations; United Nations agencies and their staff; the personnel of intergovernmental and non-governmental organisations directly involved in humanitarian action; components of International Financial Institutions (IFIs) that would finance, indirectly, humanitarian operations; Troop Contributors and Partnerships involved in the intervention activities; regional international human rights agencies.

2.1. Definition of Military Intervention

Entitled 'Responsibility for Military Intervention Under Modern Standards of International Law', this research is designed to shed light on the issues relevant to international criminal law, indicating military intervention as one of the main breaches of jus cogens. By addressing the matters of what military intervention is and how it is qualified under international law, the following section not only sets out the scope and delimitation of this work but also serves as an analytical sketch or editorial.

Military intervention derives from the Latin verb intervenire, meaning 'to intervene'. As per the states' understanding of Latin in the medieval periods, 'inter' and 'venire' (come) together meant "to come between", to mediate, to interfere, or to intercede. However, in modern times, "intervention" has been supposed to be connected with the actions being taken in furtherance of any forms of peace or humanitarianism. In modern times, military intervention has been understood to be any use of force in a sovereign territory without its consent, in the exercise of collective or individual self-defense, and lastly, the recurrent or keeping in check of any internationally wrongful act in the territory. In dissecting the features of this definition, there emerges a basis for expressing reservations on the strict and broad interpretation and postulation of the right of self-help. First, there may be a possibility as to how strictly to interpret an international wrongful act, to whom, and by whom.

2.2. Types of Military Intervention

Distinct types of military intervention may be outlined, depending solely on the grounds and circumstances for which military force is used. Hence, while the simplest classification distinguishes between interventions that are unlawful and lawful (further refined), in terms of types, military intervention can be further defined. Nonetheless, one should bear in mind that there are also classifications other than based solely on the conditions of intervention.

The first classification, according to the means and instruments for achieving policy objectives, developed taking into account the United Nations Charter's provisions, consisting of Articles stating that the applicability of the prohibition of intervention does not limit the right of the United Nations to impose sanctions against aggression. According to Article 42, Member States may take "such action" against the aggressor "as may be necessary to restore international peace and security."

This classification distinguishes between: Enforcement military intervention and punitive military intervention. The first type of intervention is conducted in self-defense of the victim of aggression or through collective security (authorization of the Security Council).

Enforcement intervention is carried out solely to restore the status quo ante bellum (the way things are prior to the conflict). The interval is not the end result itself and cannot intrinsically bring an end to the breach of an obligation; it can, however, force that end result.

Punitive intervention, in turn, entails intervention in order to punish the aggressor, either in whole or in part, or in order to create an additional deterrent. It may be conducted either as an independent or a dependent form of enforcement response.

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3. Legal Framework

1. The United Nations Charter, hereinafter U.N. Charter, is the cornerstone of the legal ban on the use of military force by states within the territorial boundaries of other states. Accustomed as an innovative innovation, it has had a profound impact on the related provisions of established customary international law. A simple internal rule that governs the unilateral use of military force (jus contra bellum) provides for the following: a) under Jamaican customary international law, state consent to foreign armed intervention may, in principle, be based on a treaty or institutional judgment; b) for the time being, it recognizes state recognition of established exceptions involving the use of military force; c) absolutely prevents states from using coercive force without a mandate from the Security Council, unless it is in accordance with the ferrox and established exceptions.

2. As a related part of the normative system that regulates the use of military force in international affairs of the U.N. Charter, juproxposes the jus contra bellum, which governs the legal parameters surrounding the jus pace (the actual rules of conflict applicable between belligerent parties in an armed internment). In other words, the jus ad bellum of the U.N. Charter completes the jurisdiction in operation and presents a strict path for military intervention. The jus ad bellum governed by Chapter VII of the U.N. Charter prohibits a powerful situation between states that are members of the U.N., unless it is deemed necessary according to the principles of the UN Charter for UNSTIN, unless military intervention is realized, formulated as a means of all coastal peaceful defense of democracy in international affairs. This statement is based on the "sovereign equality of all countries," "[p] state interventions are not simply individual rights to withdraw," and "should be seen as a means of last resort agreed by the United Nations." A military intervention authorized by the Security Council is.

3.1. United Nations Charter

The question of whether military intervention is permissible under international law is determined by the sources of international law. So far, no legally binding international treaty exists that would address the issue of war in general, exclusively or explicitly. Instead, the law on the use of force or war emerges from yet another charter of the United Nations.

The prohibition of the use of force is specifically set in Articles 2.3 and 2.4. Article 2.3 provides that: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Subsequently, Article 2.4 states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Therefore, under these Articles, military intervention is not permissible. Nevertheless, the Charter still recognizes certain situations where military intervention is lawful. First, Article 51 of the UN Charter stipulates that: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." This principle of self-defense is seen in customary international law.

3.2. Customary International Law

Another main source of international law, together with treaties, is the customary international law (CIL). According to the International Conference of South Asia, a

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custom is defined as "a general practice accepted as law." Although it is not written down into laws or treaties or included in any concrete formal agreements, it reflects a 'general practice' that exists. Many other scholars have defined custom in the same way. This practice should be generally accepted as carrying quite some weight, and although there is no general description of the type of states that participate in these actions, some claim that it includes states that have done so in good faith, and others say that states that follow actions because of solidly internal situations do not fall under this category. The direct and overwhelming accumulation of states engaging in this practice eventually makes it 'customary.' The United States Diplomatic correspondence - specifically government argument - also rests sources and doctrines over this 'general' claim.

No matter the sources of CIL, customary international law - like laws and treaties - reflects an established norm that carries quite some weight. A powerful argument made by Bontekoe suggests that the applicability of this formal source of international law could be demonstrated by 'having been followed by a consistent, repetitive pattern of state practice over a century or longer.' Although there may be some disagreement among scholars - this doctrine is referred to as 'custom' - about what exactly this pattern denies this, most settle courts decide this based on how international customary law actually affected the government actions of states and how states have consecrated treatment to one another. This would reflect international attitudes as part of a guiding norm concept.

4. Justifications for Military Intervention

What are the justifications for military intervention, including incursions on the territoriality of sovereign states? The dominant reasons, discussed in significant detail at the beginning of the chapter, include presently the moral right and duty of humanitarian intervention and the assertion of an "intervention right" in the post-Cold War era. The former perspective is frequently associated with jus post bellum, and the United Nations doctrine of the Responsibility to Protect (R2P); while the cusp between the intervention reasons involves an appeal to the potentially universalist norms of humanity and/or justice and recognizably universal institutions and procedures of the international community. This section of the chapter therefore teases out both conceptual roots of a can aggregate right/div duty.

Framed in terms of duties it discusses both perspectives irrespective of which right is established. Even if the latter is conceded, however, it is possible that a duty of intervention will not necessarily flow therefrom: this remains a matter primarily of enforcement discretion. Humanitarian intervention can be justified, in the main, primarily via reference to two separate but often paired concepts—the human right of protectable distress, or the need to protect human ('fundamental') rights from such abuses. Corresponding appeals to duties can be framed respectively in terms of negative and positive (to protect) duties. The concept of intervention justification based on a legal (inter-state) duty of guaranteed protection is generally distinguished from humanitarian intervention, though the demand for intervention can be motivated by either a desiderative or an obligatory right discourse; however, the rights appealed to in this case are the states' jurisdictional and territorial rights of mutual non-intervention.

4.1. Humanitarian Intervention

According to Weiner (2008: p.6), "Humanitarian intervention" became a term of art in international discourse only after double genocides occurred in Bosnia and Rwanda. When it is used in this paper, it is defined as the use of military force by one or more countries to redress an allegedly grave violation of the fundamental human rights of a state's own people. The support of international norms has also been forthcoming in favor of humanitarian intervention. For instance, pursuant to Article 2(4) of the UN Charter, it prohibits the use of

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force against the territorial integrity or political independence of any state. However, Article 2(7) states that nothing contained in the treaty shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any country.

Indeed, it should be borne in mind that invoking humanitarian intervention should be the absolute last resort in resolving potential conflicts involving human rights violations. According to Thompson (2000), humanitarian intervention faces three kinds of ethical puzzles: one which pertains to distinguishing it from other principles; one related to its need for force; and one compounded of epistemic and motivational problems. In terms of the first puzzle, humanitarian intervention contains two distinct principles regarding morality: jus ad bellum and jus in bello. The former differs from the latter in that it concerns the so-called causes of war and the decision to use force between the rights of states and the rights of groups. Jus ad bellum, encompassing the right of self-defense, separates the "good" war from the "bad" in order to establish criteria that can help further the cause of justice. The distinguishing factor between jus cogens norms and other norms is that while those that fall within the category of jus ad bellum is a coato liberalis which upholds the principles that any acts of war should be driven by a just cause, should be based on what is right, or rather, should be premised upon a well-meaning intention. This is attributed by Shue (2012) to the idea that comity to one's fellow human beings necessitates that a person or state defend value over and above survival.

4.2. Responsibility to Protect (R2P)

The concept of Responsibility to Protect (R2P) was first introduced in a report by the International Commission on State Sovereignty and Intervention in 2001. Though R2P is a controversial principle, it is rarely the sole - or even primary - justification for military intervention. States more commonly invoke international law, particularly Chapter VII of the United Nations Charter, and the protection of national (usually first) interests. Today, most states accept that the international community has a responsibility to protect populations from genocide and other mass atrocity crimes. They do not necessarily accept the principle of a right or duty to intervene in order to protect, but they are generally comfortable with a responsibility on the part of an international body to provide the necessary protection.

The principles of R2P are threefold. First, the primary responsibility for the protection of populations lies with the states in which those populations reside. Second, if that state is unable to protect its population and is manifestly unwilling to ask for international assistance, the international community has a responsibility to act in its stead. Third, the international community's response should always be the most minimally intrusive option. Historically, the state has been the key unit in international law. Providing direct protections to particular peoples seemed, in some regards, a radical idea. The emergence of a more robust international law, however, has meant that states must be accountable not only to other states but also to the international community and - increasingly - must behave not just legally but ethically toward their citizens. The calling of states into accountability is a regular feature of global politics today and the use of force has been justified not only on the basis of legal obligation but also as a force for good, a righteous act. The norm of protection has been transformed into both an international expectation and a legal requirement. As such, states that fail to protect their own rely on the international community for protection.

5. Criteria for Legitimate Military Intervention

Define the two fundamental principles for when military intervention can be considered legitimate: proportionality and last resort. Indicate the thresholds established by each of these principles that must be met before intervention can be justified. Justify why the

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right to military intervention must be this restrictive in nature.

The right to military intervention is commonly justified by two fundamental principles. These are that military force must only be used in proportion to prevent serious harm and should only be used after all reasonable alternatives have been exhausted.

The first principle, proportionality, indicates the type of instances where the use of military intervention could justifiably be used. A reasonable interpretation of this principle is that only violations of a certain threshold will justify military intervention. It indicates the harm that could potentially arise from an infringement and can prompt a response that matches the extent of the potential harm. However, not all possible instances will meet the severity threshold. A militarily enforceable right to protect the states may exist where only the use of military force will provide sufficient security and protection of the basic human rights of those affected. The right to protect does not create a duty.

The second principle, last resort, also indicates the instances under which military intervention could be legitimately used. This principle sets the threshold of the response. If alternatives are possible, they should be implemented before resorting to the use of military force. This approach is based on the assumption that military force is particularly harmful and should only be used when no other response is appropriate. It is mechanistically justified in order to protect the basic human rights of those directly affected by the response. Unlike the use of military intervention as allowed by the proportionality principle, the last resort principle allows a presumption against the use of military force. It provides a fairly concise and simple way of characterizing the general threshold for when the right to military intervention is triggered.

5.1. Proportionality

Proportionality may be considered as the 'in-between principle' which moderates the universal compass of the responsibility to protect and establishes specific protection responsibilities on the duty bearers by measuring means. Proportionality relates to the requirement that the scale, duration, and intensity of an intervention must be proportionate to the threat it seeks to prevent and must not have negative humanitarian consequences in relative terms greater than the violation. Whereas proportionality, as traditionally considered under the doctrines of just war, international humanitarian law, and human rights law, is hinged on the principle of necessity, it is critical to stress the ethical meaning of this principle in the present scheme.

This may be captured in the question: given the reasonable options to preempt, prevent, halt, terminate, or repel a given harm, what is the scale of intervention that is ethically justified? This question represents the 'fullest and most exact application' of the principle of proportionality where the use of military intervention is to be justifiable. However, Ethiopian Abiy Ahmed defends the principle of intervention in relation to the necessity and humanitarian ground in the Ethiopian Tigray. Ahmed's view is similar to the Burkean theory of war that acknowledges the ethical commitment or 'sacrifice' involved in peacekeeping. Despite the reluctance of military intervention or engagements in peace operations, realist William C. Martel has to admit the complex nature of ethical dilemmas that peacekeepers have to make. Proportionality theory, thus, considers practical reason of not engaging a certain act that is necessary to repel a harm that is complicit with humanitarian reasons.

5.2. Last Resort

Last Resort. The principle of last resort usually surfaces in the context of defining when it may be legitimate to use force intervention (military or otherwise) in the international arena. Cochrane describes it as the international

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analogue of police powers. As such, the principle is usually treated as a conditional norm which commands that force may not be resorted to unless and until all peaceful alternatives have been exhausted or, in the argot, "untried means" have been explored. As a principle of international morality, it respects as well as transcends the principle of sovereignty, establishing the conditions under which the former ought to prevail over the latter.

The conventional wisdom in the literature takes the just cause threshold and the last resort criterion to be logically independent. It is possible to regard a use of force as necessary for self-defense in one's own country but not as a last resort invasion of a foreign country. The structure of the argument in this paper assumes this position. I shall first develop the last resort criterion quite independently of the just cause threshold, focusing not only on the moral arguments in its favor, but also strategically what the criterion tells us about the necessary alternatives or policy criteria that are required before a country chooses war. I will focus on the criteria of "likelihood of success" and "proportionality" (overkill or underkill) as the necessary features of the set of peaceful means failing which would legitimize the use of force.

6. Case Studies

6.1 The Kosovo Intervention

On 24 March 1999, NATO commenced Operation Allied Force with a cruise missile strike on the Federal Republic of Yugoslavia. NATO's stated objective was to end the humanitarian catastrophe engulfing Kosovo, and more specifically, to ensure that up to one million Internally Displaced Persons (IDPs) were able to return to their homes. Yet political leaders in NATO member states also pointed to Milosevic's broader criminal record, thereby suggesting that Operation Allied Force was not solely a humanitarian intervention. NATO launched its first war against a sovereign state to confront a regime whose agents were committing atrocities against an ethnic minority and the time has since been cast as immoral.

It took 78 days for Operation Allied Force to bring Milosevic to the point of agreeing to withdraw Serbian armed forces and to accept the terms of a Security Council resolution calling for an 'end of hostilities'. The casualty count is not widely agreed, but it is generally acknowledged that between 500 and 1500 Yugoslav non-combatants died as a result of NATO bombing. Up to 800,000 ethnic Albanians were expelled from Kosovo during the first months of NATO military action. As of the time of writing, 19,340 NATO troops make up the NATO-led Kosovo Force (KFOR). This force is a peacekeeping force and is described as having been deployed to ensure a 'safe and secure environment for all the people of Kosovo.' On the one hand, it initially may seem that NATO achieved its objectives as Kosovo is now under UN administration and while not all IDPs have successfully returned to Kosovo, the majority are living in Kosovo. On the other hand, the UN protectorate in Kosovo is a long way from democracy and Kosovo remains inhabited by ethnic Albanians. NATO's true motives for intervention remain open to debate.

6.1. Kosovo Intervention

6.1 Kosovo Intervention

Fourth, it is necessary to assess the criminalization of the states involved in the Kosovo intervention and their military commanders representing their states. After the atrocities in former Yugoslavia, there is moral motivation to look for alternatives to criminal trials against the states or individuals held primarily responsible. In the Theory of Just War, several exceptions are made to legitimate military interventions. In this paper, the Kosovo intervention is focused upon as a case study to view argumentation as expressed by the theory of just war. The choice of this intervention is based on events which led Pinochet to a British court, the echoes of the Holocaust in at least four recent cases, and the necessity to choose one intervention for a case study.

In March 1999, NATO forces, mostly dominated by USA's military hardware, began to bomb

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Belgrade. There was a just claim in hundreds of intelligent observations and morally competent evaluations that aiming to stop Milosevic was a just claim; yet, the American-Britain led action is, unfortunately, not legally legitimate, unless being carried by the majority and international organization. This argues that the essence of the principles of the United Nations Charter was violated. However, NATO's prudent judgment is not beyond criticism; one should distinguish between the successful three-day Rambouillet conference ending February 23 and the commencement of bombing Kosova and Serbia on March 24, except Belgrade, and the failure to call off the venture. It requires a change of heart in Washington and London, the allies or their US-dominated leader of the moment, to not prolong the war. Those who pioneered this disaster are now responsible for the atrocities. Although an American policy review is crucially urgent, we should not expect that the US-led NATO will be the source of its own nemesis.

6.2. Libya Intervention

In August 2010, when its intervention in the Iraq War caused international outrage, the African Union (AU) certainly had in mind that the United Nations (UN) Security Council had previously legitimized an intervention in another Arab/Muslim state, Libya. Thus, this intervention seems exemplary and probably controversial. To date, few works have analyzed all its aspects and dimensions in a broad and balanced way. I propose to scrutinize its background, justifications, implementation, and consequences. I will try, as far as possible, to approach the problems raised, leaving aside my personal opinion.

I append an analytical table, attempting to present all the viewpoints and the legal issues at stake for each stakeholder. As the 1973 UN Security Council Resolution illustrates, Western leaders justified the intervention mainly on humanitarian grounds, as an action to prevent an "impending massacre". Instead of accepting a ceasefire, Muammar al-Gaddafi allegedly threatened to take up arms against his own people. Meanwhile, international public opinion absorbed the regional geopolitical interpretation of Gaddafi being forced out of the economic dynamics of the capitalist system traced by the French philosopher Bernard-Henri Lévy. Officially, France, the UK, and the U.S. together with a majority of UN members believed that military strikes that would include Libya's no-fly zone were necessary in order to save human lives. Transatlantic and transmediterranean dynamics played a crucial role in the international agreements of the Revolution Support Group (RSG) composed mainly of the Arab Gulf states, such as the Emirates and Qatar, that pledged arms and funds to the opposition. Overall, Great Britain and France led the operations on behalf of the United Nations like in a sort of indirect mandate.

7. Challenges and Criticisms

There are many challenges for any argument defending military intervention as lawful. Much of the most vehement criticism of the concept has been concerned, not so much with the mechanics of the doctrine itself, but rather with the theoretical soundness of it. Typical of this approach has been the avalanche of writing claiming that the UN Charter essentially bars the use of force, except in cases of self-defense. This, of course, reflects an earlier discussion about the proper scope of humanitarian rights.

Further discussions in favor of humanitarian intervention reveal a large diversity of opinion as to precisely how one might justify such invasive acts. Some writers argue that the opening up of a society to outside assistance is paramount, citing Asia as an example of a possible place where rampant violation of rights does not, per se, give a universal right of intervention. Other writers have aimed towards establishing a strong enough set of moral reasons which, in sum, will allow for an a priori possibility of intervention. That no consensus has been reached as to the specific elements of a doctrine of moral intervention suggests that calls for such doctrines are not likely to meet with success, and that by and large the status

quo remains unchallenged in most academic circles.

Others, however, have argued that there is no reason why non-binding UN resolutions and treaties cannot function as legal evidence of jus cogens norms of customary international law. This would mean that collective military interventions could not 'violate' international law, at least not if all members of the international community agree on the importance of the violated norm. It would even demand such interventions, since Article 55 of the UN Charter commits all Members to promoting 'universal respect for, and observance of, human rights and fundamental freedoms'.

7.1. Violation of State Sovereignty

The rise of military intervention represents a challenge to the principle of state sovereignty. The intervention in the domestic affairs of sovereign states raises two types of tensions and dilemmas. Firstly, there are legal and normative dilemmas and problems associated with intervention. At the heart of the principle of sovereignty is a principle of legal non-intervention: the international legal apparatus constitutes and provides for a prohibition on one state or states further manifesting political, military, or economic coercion within the jurisdiction of another sovereign state. Thus, any form of intervention constitutes a breach of the positive, formal law: at the very least, states that interfere create a situation in which international law is not being followed voluntarily or in which an undesirable norm is being sent.

This legal prohibition is undergirded by a moral and political commitment to the norm of self-determination: autonomous, independent of outside interference, states are accountable and responsible for the actions taken within their jurisdiction to and for their own citizenry. Territories are inviolable and citizens should not be interfered with in their pursuit of the various and multifaceted goods of social and political life. Paraphrasing, Kenneth Waltz functions as a dyke against the encroachment of other states, in the name of rights associations and individuals, and those that would seek to further imperialism. The social, internal, liberal arguments for interventions are at their core justifications for abrogating an old right – the inviolability of territory and citizenry – for the guaranteeing of new rights such as life, liberty, and the pursuit of happiness.

7.2. Lack of Consensus on Justifications

There is an extensive literature on humanitarian military intervention or the responsibility to prevent atrocities, but, in contrast to earlier stages of R2P discussions, there is a lack of agreement on the justifications for such military intervention among those writing in this field. This is not, of course, for a lack of trying. Both critics and proponents of military intervention in response to crimes against humanity or genocide spend much of their time and energy in lengthy philosophical or empirical debates attempting either to refute or articulate the justifications for such involvement, as the debates on Libya and Syria have again evinced. This pattern of debate is, in fact, heavily implicated in both the overall skepticism surrounding the concept of R2P (and human rights) that the earlier sections of this volume have identified and the refusal of some cosmopolitans to engage with a position that they find utterly unconscionable. The reason why there is such vehement and divisive debate on R2P is that there are disagreements about what is ethical, what is legal, and what there are reasons for (external) political actors to do, of the kind described in this section.

First, there is general disagreement about the so-called state directiveness requirement: the claim that states, as the primary moral community, should not be subject to any military intervention whatsoever. At one end of the scale are those of a broadly anarchist position who question whether any military intervention can, in practice, be justified, and who view even the humanitarian (let alone the liberal) interventionist as a form of dominator or

aggressor. Anyone working in international relations will know the exasperated versions of this position springing from the mouth of high diplomats talking about the idealist who refuses to hold the lesser violator worse than the greater. At the other end, there are those who claim that, whilst a large number of interventions are justified, only a very small portion of this category are directed at states. In between these extremes, one also finds many 'cosmopolitans'.

8. Accountability Mechanisms

Responsibility is unlikely to have any lasting impact without mechanisms in place to reflect and reinforce it. Moreover, if military intervention is justified on the basis of the responsibility to protect, then the mechanism for attributing responsibility to others is not accountability in the sense of responsibility for wrong. Instead, liability for responsibility for wrong will be determined by the grounds and legality of the actions. Nevertheless, it is important to ensure that anyone involved in military intervention is held to account.

The most significant legal framework for accountability is the International Criminal Court (ICC). The ICC can exercise jurisdiction over individuals for war crimes and crimes against humanity where the Security Council refers the situation (Art. 13(b) and (c) ICC Statute), where a non-party state consents (Art. 12(3) ICC Statute) or in respect of conduct on the territory of a state party to the Rome Constitutional which consents to the exercise of jurisdiction of the Court (Art. 12(2) ICC Statute). The theory behind using international courts and tribunals in this context is twofold. First, by trying decision-makers in a neutral forum, those individuals may be held accountable when they would be immune from suit at home. Secondly, an international court may have more legitimacy and be free from bias than a national court.

Institutions have mechanisms in place for dealing with abuse. In instructions of troops, the Secretary-General refers to international humanitarian law by noting that 'as a matter of general policy, reasonable grounds for a risk of a serious breach of humanitarian law should be sufficient grounds to exercise every precaution to avoid military deployments that could interfere with the rendering of aid or could even endanger humanitarian personnel'.

8.1. International Criminal Court

The objective of the International Criminal Court (ICC), established on 1 July 2002, is to ensure international criminal accountability and justice for preventing or prosecuting persons who have committed the crime of aggression. The initiative of invoking responsibility of states for military intervention, as well as the continuous adoption of international pieces of legislation in this respect, critically converge on involving responsibility on either entities or individuals, and this by virtue of international criminal tribunals. International criminal justice has enjoyed an unprecedented development ever since the 1990s in terms of institutions and procedure, as well as the degree of internationalization and its concern for the application of international humanitarian law as a part of international criminal law for bringing allegations historically linked to the rights of peoples and self-determination. In such conditions, international criminal and international humanitarian law instruments have enjoyed significant synchronization processes throughout almost two decades.

In achieving the proposed goals, collective institutions and individual prosecutions went hand in hand, and international criminal tribunals, while not placed in an exclusive position, have exercised universal and international jurisdiction for the purpose of sustained criminal justice, notably in discovering which international laws have been violated. The ICC, the world's court for addressing international crimes which involve individual or collective responsibility of international state institutions, is a major actor whose development needs to be closely watched in relation to recent allegations of

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responsibility for or accountability in relation to military intervention, as well as for international responsibility and formal attributions to states as collectives or as organizations. Therefore, in the current social contract of international law, the ICC appears with both a criminal agenda concerning individuals and a general public international agenda of fixing national responsibility and claiming through judicial resources international law's 'moral superiority'.

8.2. UN Security Council

The fundamental key international body having a say with respect to military interventions is the UN Security Council (SC). In the course of the 2000s, the diplomatic importance of the SC has been underscored by the American administration. Accordingly, as it will be elaborated on in more detail later on, the authorization by the SC has the power to justify an exemption of the prohibition of the use of force. However, even if it does not authorize, the SC has a say with respect to an intervention in other respects. According to the rules of the UN Charter, the SC, which consists of permanent and non-permanent members, is the international body that is called upon, first of all, to keep or restore international peace and security. In this regard, the SC may, pursuant to Chapter VII of the UN Charter, authorize Member States to use force, or in its absence, establish sanctions or other measures as a reaction to a situation which is likely to disturb or actually disrupts peace and security. The practice of the SC has widely expanded its historically limited role since 2001 by providing Ch. VII mandates for operations in countries in conflict, in order to restore order and reconstruction.

The SC can also play a role in the regulation of armed conflict and peace negotiations. It can establish special committees, set up peacekeeping missions, or undertake both to monitor and take enforcement action with respect to peace agreements. Over the years, the SC has turned into an institution in which Member States endorse decisions on military interventions and peacekeeping operations. This essay does not aim to give a comprehensive analysis of the SC's personality and way of working, but it gives some indications of how it is organized, and how it works, and what is the nature of its new missions. The SC is composed of fifteen members, split into permanent and elected members. Only the former have veto power with respect to decisions about the authorization of interventions or peace operations based on a Chapter VII mandate. It is hence possible (and frequent) for a minority of seven out of the ten elected members to oppose the adoption of a resolution of the SC. The disapproval of a permanent member like China, France, Russia, the United Kingdom, or the United States of America implies either its veto or the risk of not respecting the resolution. In many cases, the SC has given its mandate to regional organizations to organize a military intervention in their own area. This has been recently the case of NATO's operations in Afghanistan in 2001 and subsequent to the fighting in Libya in 2011. In some cases, the SC has given to Member States blue helmets to work out peacekeeping agreements (Bosnia-Herzegovina) or enforce a ceasefire (Mali) decided by a government and opposition. In other cases, as it has happened in Kosovo in 1999, the SC has authorized bombing campaigns without allowing 'boots on the ground'.

9. Future Directions

I have outlined a range of issues and considerations relevant to the future direction of policy and research on intervention for the protection of populations from grave violations of human rights. With these directions, I seek to engage a number of questions. In particular, whether recent innovations in the practice of military intervention have rendered the concept of the Responsibility to Protect superfluous or whether, following de Lestrange's line of argument, we are seeing an international concern gradually emerge with the Authentication and Monitoring of atrocities. But, this international concern with "eventual target selection" beyond the Authentication and

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Monitoring stage is incredibly rare at the moment.

I then draw on evidence of state practice in order to try to ascertain whether we can characterize the shifts outlined in these 11 practice stances as a "general normative evolution towards the acceptability of more intrusive responses". Or, for example, whether, as Nadal and Reich have argued, we can only see a possibility that outside of bipolarity, the great powers in the current international order will intervene in trans-ethnic crises. A second and related question I wish to address concerns the nature and scope of the concept of international responsibility. Namely, I seek to explore whether we may be seeing a movement from an emphasis on the Responsibility to Protect or more specifically the right of humanitarian intervention to a broader understanding of responsibility to establish oversight, intervention, and state-society relationship building that are capable of preventing and resolving the occurrence of political violence.

This future research might speculate further on what more nuanced prudential concern was, and whether or not it could be relaxed. It might also consider whether these points may be reinforced by advocates of full-spectrum additional duties to disrupted countries, though of course these too give rise to new debates. In all the debates discussed in this Boston University workshop, we will need to further consider a number of important issues.

9.1. Emerging Norms and Practices

While the normative and empirical analysis of military intervention in the previous chapters is an attempt to understand the existing state of play, we can also observe the seeds of change and novelties already emerging. Drawing on the discussion of trends and dynamics, norms and rules in Chapter 5, it is worth pondering these seeds of change for possible future developments and directions. Europe and the Global South continue to invest considerable resources and engage in debates on the normative frameworks for intervention. They do so to justify more autonomous political choices and possibly open the way for a better debate on institutional reform at the international level. The change, then, is a dynamic process and therefore it is worth considering it at a more micro level of detail. The coexistence of new initiatives with old state practices suggests that the former are part of a process of renegotiating existing norms and institutional adjustments rather than something completely at odds with the existing state of play.

Broadening the normative framework for intervention by complementing a liberal logic with non-western liberal logics is not without importance. It opens an additional corridor for action beyond the traditional channels of UNSC authorization or humanitarian emergencies. It is particularly relevant for reflecting political strategies at the UN level and for opening the way towards discussions aimed at reforming existing conventional norms. Nonetheless, we should not set expectations too high. Competing paths for future development of intervention are available. As Trigger terms them, a world society-centered solution that focuses on the extension of international responsibility and supplements state-imposed responsibility can be envisioned as one where a dense transnational society of solidaristic norms and intergovernmental organizations extends international standards from the global level experienced today to sub-global levels. In this world, if the establishment of such international standards is to be established in a democratic manner involving all relevant stakeholders, the trend towards interpretive privilege is likely to be unproblematic.

10. Conclusion

This volume offers an exploration of international responsibility for military intervention based on a selective analysis of episodes of intervention since 1990. It moves between a direct account of the law in English to, at times, explore its connection to some dominant ideas of public international law as a

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challenge and set of legal practices. It reflects and draws on a good number of the key concerns that have animated work on international law in the twentieth century. By analyzing case law and considering these cases in their political contexts, the collection opens up avenues for thought about the role of the international lawyer in society. What do these legal rules mean? How do they reflect broader institutional pressures on practitioners? And in which ways do they shape these practices? The collection, then, is particularly rich and suggestive for scholars of international law, although emerging scholars may appreciate context from further references for some incidents of intervention.

The collection suggests a number of arguments, of varying scope, in conclusion. For international law, the collection highlights change over time, although it is unclear, at this point, whether or not the legal framework for intervention is in a process of transformation. A focus on complex systems, whether of multinational military operations or international law, is required. Like Law's maxim, these essays suggest we might think of arguments about intervention as "fitting better" or worse within the existing framework. A quite resistant and resilient framework of non-intervention, and of hermetic differences between sub-rules of this principle, is contested. Rather than the black and white of individual act and individual responsibility, the studies of facts within this collection suggest the uncertainty of the locating of rights and duties generated by intervention and the investigation of international society, introducing additional complexity not only into thought about legal entitlements but also in relation to the remedial actions necessary to acknowledge who these effects of intervention have been upon.

10.1. Summary of Key Findings

This chapter has identified some of the challenges concerning the distribution of responsibility for military interventions between those who intervene directly in enforcement actions and those who provide assistance. On the one hand, as the Western allies discovered in Iraq, air campaigns and support functions make them susceptible to being held responsible for the acts of the intervening forces. Alternatively, the United States has been highly critical of states providing military and financial support for its opponents even though this aid does not include personnel and thus may not amount to participation in the hostilities.

This chapter has also suggested that in a situation such as Vietnam, extensive foreign assistance/aid (in money, materiel and also peacekeepers) to local forces engaged in military operations against the government constituted direct involvement in the hostilities. At the same time, the foreign troops may not have properly appreciated the ramifications of their aid and nor would they expect to lose their protection as peacekeepers.

Less specific, we have indicated that countries will have assumed international legal responsibility for the acts of those providing aid depending on the arrangements for providing and controlling such aid. For instance, detailed control of the foreign assistance (materiel, money, and training) to the local forces in Vietnam might make the foreign donor more responsible for the recipients' behaviour as that donor would know more precisely how the aid would be or was put to use. At the least, such a situation might also aid an evaluation of whether the foreign assistance was so substantial as to amount to direct participation in the hostilities.

10.2. Implications for International Law

10.2. International Law

The international legal order, like any system, reflects changes that occur in the political system. This essay charts the evolution of an international legal regime applicable to military interventions. This is not only a descriptive task, so it will be argued that the use of force is regulated in order to protect the international

society and the peace and security of society members. Such regulation will not only provide criteria for military interventions, but it will also demarcate international responsibility in this policy area. As a consequence, it does not link international responsibility to the jus ad bellum doctrine on the use of force, and it does not require a (common) strand in international relations theories. If international responsibilities are not derived from a (common) standard, international responsibility in general will not materialize in a distinct legal order. But this will raise several European or national responsibilities if the responsibility is not attributed to an organization. Arguably, post-Iraq developments in the political system have shown that reaching consensus on the jus ad bellum rules is ever becoming more difficult.

Moreover, an alternative regime may depoliticize the decision-making process on military interventions. Military interventions are closely linked to the regime on the use of force (jus ad bellum). Coordinated military interventions by the USA and cohorts may be expected in order to pursue joint objectives. Moreover, a collective intervention by states or by an organization may be expected. The regime will affect the use of force in at least three ways. Apartheid has become a gross violation, which justifies military intervention against the territory involved. This complementarity is a conceptual link between the regime on military interventions and the laws of war (jus in bello). The regime on the use of force does not allow forceful peaceful means. For instance, appearing as if military personnel are not linked to the armed forces of a belligerent will outlaw military action or inaction. The jus ad bellum doctrine does not, however, provide guidance on the aims of a military intervention, the humanitarian substance, and the behavior in the territory where a military intervention is pursued. After all, it permits forceful military intervention by states that accepted ICC jurisdiction against a belligerent terrorist community. But the ICC would not have jurisdiction.

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