Department of Political and Social Sciences

Justified Non-Intervention?
International Responsibility and Grave Humanitarian Crises

Hannes Peltonen

Thesis submitted for assessment with a view to obtaining the degree of
Doctor of Political and Social Sciences of the European University Institute

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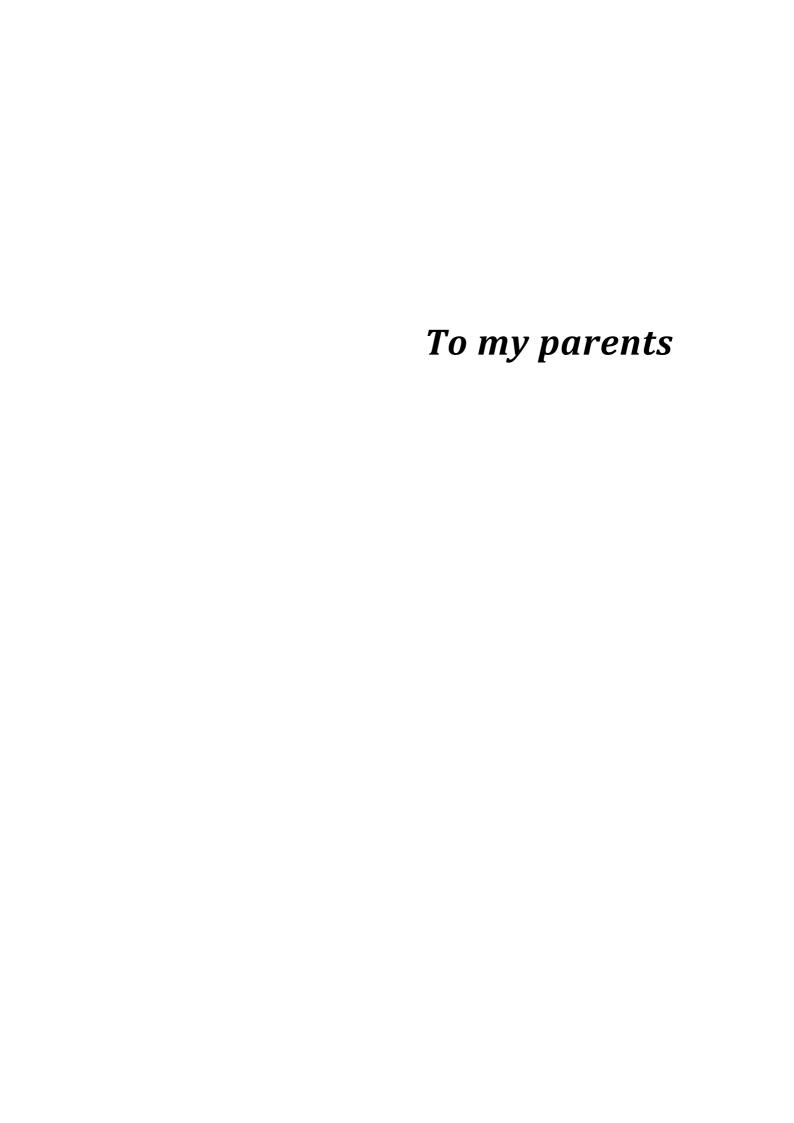
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To my parents

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ACKNOWLEDGEMENTS

I once talked about the acknowledgements of doctoral dissertations with a person who had read perhaps more than one too many of them. Allegedly they are all alike. It is as if there is a formula set in stone how one should write the acknowledgements section. Thinking about it now, when it is my own turn to acknowledge the help and support I have received during my doctoral research, there certainly seems to be one obvious way to do it. One mentions that writing a doctoral thesis is an arduous task and moves on to thanking the supervisor, other reviewers, commentators, and secretaries as well as one's friends and family. Naturally, one cannot mention everyone, who has been part of the process, and thus an apology is in order to those who are left unnamed. As I discovered when I wrote the first draft of my acknowledgements, this formula is hard to break and perhaps it would be missing the mark to attempt a radically different approach. After all, this section is about honoring the people who have contributed to this thesis, each in his or her own way.

My doctoral research began in September 2003 in Florence, Italy, thanks to the funding provided by the Academy of Finland. The first course I took in Florence was an intensive Italian class, and as it happened, my supervisor Professor Friedrich "Fritz" Kratochwil was attending the same class. Little did he know then that he would be stuck with me for the next five years or what an intellectual impact he could have on a young soul – or maybe he did but took no heed of it. The past years have been remarkable thanks to Fritz, and I'm much obliged to him for calling a spade a spade. Allegedly in the beginning, my papers were not the best ones he had ever read, as he once put it so aptly, and I must agree that he was more than right. That my papers are much better now is all thanks to him. Thank you for all your advice – academic and non-academic – for your patience, for challenging me, for knowing how to challenge me, and for caring, Don Corellone.

Andrew Glencross, Thomas Teichler, and Xymena Kurowska began their doctoral research at the same time as I did, and they were all also supervised by Fritz. After the first year we were not just colleagues but also friends. The "Dinners" played

an important part in solidifying the friendships. The first Dinner took place in my apartment, where I had invited Andrew, Thomas, and Xymena as well as Fritz. Fritz took over the cooking, and I'm pretty sure the word "deadbeat" was used, while he tried to teach us how to cook his specialty dishes. Although none of us supervisees had similar topics, we all learned much from each other. Thank you for all the good times and the support you have given me.

Moreover, Thomas and I used to spend a day every now and then trying to explain our own work to each other. Perhaps it was more about explaining it all to oneself, but in any case these intensive but relaxed "workshops" that he and I shared were an enormous help in seeing the research on a higher level or at least differently. We used to call these workshops "Camp Davids," and I hope that there will be many more in the future. Thank you Thomas for your patience, for your time, and for your interest in my work.

The term "Camp David" is actually owed to my brother Tuomas, who coined it with Aaron Mehrotra. For me, one of the perks for coming to Florence was to be in the same city with my brother. Because of my earlier studies, we had been in different countries for years. It was unfortunate for me that he got an offer he couldn't refuse after the first Christmas, but the months that we shared made up for all the years of separation. In addition to being an excellent bigger brother, I should thank him for telling me to apply to the EUI.

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[viii]

Although the good friends I made during these years may not have directly contributed to this thesis, they have nevertheless had their impact indirectly. Thank you for your friendship and for all the good times Juho "Wingman" Härkönen, David "Gollum" Lebovitch, Tambiama "Tambi" Madiega, Tiago "Maniac" Fernandes, and Thomas "Wolverine" Teichler. I would also like to honor Aaron Matta and Nikolas Rajkovic as they have honored me with their friendship.

Finally, I wish to dedicate this thesis to my parents, Leena and Kauko, who have always supported my choices and they have valued education and educating oneself. They are the best parents I could ask, and without them none of this would have ever happened.

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ABSTRACT

The traditional debate concerning humanitarian intervention has changed since the publication of the *Responsibility to Protect* (R2P) report. This thesis addresses both the debate before the publication of the R2P report and the report itself by examining in-depth the international responsibility, which the international community shares in relation to such grave humanitarian crises as genocide. It is argued that the debate before the R2P report made implicit assumptions about international responsibility. Moreover, international collective responsibility is examined both at a conceptual level and at a practical level, thus contributing to the discussion after the publication of the R2P report. It is argued that especially the conceptualization of international responsibility is lacking in the report, and this thesis suggests a conceptualization of international collective responsibility, which is then modeled in the second half of this thesis. Furthermore, the responsibility model and its functioning are illustrated first with the help of a thought experiment and then by examining the Rwandan genocide in 1994 and some of the international responses to the tragedy. The responsibility model serves also as a tool for evaluating the international responses, and thus the justifications of non-intervention are assessed.

On a higher level this thesis contributes to an understanding of the functioning of international politics. For example, the thesis argues for a particular understanding of the international community as well as state practice within the community. Moreover, the thesis addresses some of the roles that states have and some of the expectations that we have of states at the international level. Finally, the use of discretion in practicing international politics is an underlying theme of this thesis, thus addressing both what is the *politics* in international politics and how it is or should be conducted.

ABBREVIATIONS

CDR	Coalition pour la Defense de la République
DGSE	Direction Générale de la Sécurité Extérieure
DNA	Deoxyribonucleic acid
DPKO	Department of Peacekeeping Operations
FAR	Forces Armées Rwandaises
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
NATO	North Atlantic Treaty Organization
PARMEHUTU	Parti du Mouvement de l'Émancipation des Bahutus
PDD	Presidential Decision Directive
R2P	The Responsibility to Protect report
RPF	Rwandan Patriotic Front
SI	International System of Units
UN	United Nations
UNAMIR	United Nations Assistance Mission to Rwanda

INTRODUCTION

You need to believe in things that aren't true; how else can they become?[1]

When studying international politics we often study things that are the creation of our minds. What is the balance of power, the state, or sovereignty but products of our imagination? We cannot point to or touch anything that would correspond with "the state" or "sovereignty." For example, although a national flag is a symbol of a state, it hardly *is* the state. Similarly, it would be a mistake to claim that counting tanks or missiles would equal to determining the balance of power. Naturally, tanks and missiles do contribute to determining the balance of power, but they would remain pieces of metal welded together, if we did not assign them as "tanks" and "missiles" and as something that ought to be counted in the balance of power. In a similar vein, such concepts as "justice" and "fairness" do not exist "out there." We believe that justice should prevail, and we believe in fairness. Yet, it is our beliefs and our commitment to being just or fair that conjure these concepts, and it is our actions that make them real despite being intangible.

For some reason, however, we limit the applicability of our own creations. Justice, for example, is considered to be a cornerstone of civilized society, yet only relatively recently has the notion of justice been discussed extensively in relation to the international level. Admittedly, the idea of justice does not enter the international realm for the first time, but it seems that it has not yet found its place. The demarcation between domestic and international realms perpetuates the impression that rules and norms familiar from the domestic context are not applicable at the international level.[2] Allegedly, there are other more important concerns, such as *raison d'état*.

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[1] Death in *Hogfather* by Terry Pratchett.

[2] Niccolò Machiavelli, *The Prince*, trans. Harvey C. Mansfield (Chicago: University of Chicago Press, 1998).

Not all, however, concur with the notion that simply because one is operating at the international level one ought to dismiss certain ideas. During the past four decades or so, much effort has been put into demonstrating how for example reasons of state do not necessarily dictate the neglect of moral considerations.[3] Whether dealing with for example decolonization, world hunger, human rights, or soft power, contributors to these debates have argued for a place for norms and ethics in international politics. Yet, perhaps only the most hardcore power- or security-maximizers have denied ethics its place at the international level. These authors have highlighted the prudence of self-interest in a world where a war of all against all is possible and where today's friend might be the enemy tomorrow. It is unfortunate, though, that such theories tend to be both attractive and self-fulfilling prophesies.

There are also people who wish for world peace and draw inspiration usually from Kant linking perpetual peace with democratic peace. Allegedly, if the people who suffered from the consequences of wars were allowed to decide whether to go to war or not, there would be no more wars. In other words, if all states were democratic (good) and not something else (bad), all states would be peace-loving, and it would mark the end of inter-state wars. Regrettably such over-simplifications hide crucial aspects, which ought to be taken into account.

Despite there being a tendency for democratic states to avoid war with each other, the question is more about these states having solved and internalized *how to solve* political problems without resorting to arms than about the peace-loving nature of democracy as such. One need only examine the past five years of one of the oldest continuous democracies – the United States – in order to realize just how peace-loving democracies can be. It is not democratization *per se* that would end conflicts as the bitter experiences of Rwanda and Sudan demonstrate. In 1994 Rwanda, a "democratic republic" since 1962, witnessed genocide killing an estimated 800,000 men, women, and children, and since 2004 Sudan, another

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[3] See e.g. an early effort by Arnold Wolfers, *Discord and Collaboration: Essays on International Politics* (Baltimore: Johns Hopkins University Press, 1962).

"democratic republic" since 1956, has been accused of genocide.[4] One might argue that neither of these states was truly democratic, but more importantly, it is evident at least in the Rwandan case how the decision-makers did not believe in the ideas of democracy and ignored the democratic process with devastating results.

Both Rwanda and Sudan raised calls for humanitarian intervention.[5] There have been other cases, where humanitarian intervention was demanded, but these two represent recent cases, where external, physical intervention was necessary in order to prevent the deaths of hundreds of thousands of innocent people. These two are also cases that have been labeled genocide,[6] and they are cases where the international community stood by.[7] Many wondered what happened to the solemn promise – "Never again!" – that was made in the aftermath of the Second World War, when the extent of the Holocaust was realized. This promise has been documented for example in the Genocide Convention. Although important in condemning genocide and acts of genocide as punishable crimes against humanity, the Genocide Convention, however, locates the main responsibility to punish the perpetrators with the state within whose borders the acts are committed.[8] Obviously, there are some problems with this formulation.

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[4] See e.g. Barbara Slavin, "Powell Accuses Sudan of Genocide," *USA Today*, September 9 2004, available at <http://www.usatoday.com/news/washington/2004-09-09-sudan-powell_x.htm>. See also International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina V. Serbia and Montenegro)*, 2007). Available at http://www.icj-cij.org/docket/index.php?sum=667&code=bhy&p1=3&p2=3&case=91&k=f4&p3=5.

[5] In this thesis, humanitarian intervention is understood to include a military component. See below.

[6] See e.g. BBC, "US House Calls Darfur 'Genocide'," *BBC News Online*, July 23 2004, available at <http://news.bbc.co.uk/2/hi/africa/3918765.stm>; Barbara Slavin, "Powell Accuses Sudan of Genocide," *USA Today*, September 9 2004, available at <http://www.usatoday.com/news/washington/2004-09-09-sudan-powell_x.htm>; United Nations, *Secretary-General Observes International Day of Reflection on 1994 Rwanda Genocide (April 7, 2004)*, 2004). Available at http://www2.unog.ch/news2/documents/newsen/sg04003e.htm; United Nations News Center, "Marking 10 Years since Rwanda Genocide, UN Officials Voice Regret and Resolve (April 7, 2004)," (United Nations, 2004). Available at <http://www.un.org/apps/news/story.asp?NewsID=10344&Cr=rwanda>.

[7] One might also mention e.g. Cambodia in this context, but this thesis will focus primarily on Rwanda.

[8] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide* (1948). See especially Articles 5 and 6.

Considering the amount of literature on humanitarian intervention, especially since the 1970s, one would imagine that humanitarian interventions would be more common than they in fact are. The discrepancy between the amount of literature and the occurrence of humanitarian interventions cannot be explained by a lack of humanitarian crises; in any given year there have been several "hotspots" around the globe which could have been classified as grave humanitarian crises, and they were thus worthy candidates for humanitarian intervention.[9]

On the other hand, it would be wrong to claim that nothing is being done. The United Nations (UN), acting on behalf of the wider international community of states, has currently 16 peacekeeping operations around the world. Since 1948, the UN has had 61 operations with over 41 billion dollars spent in total.[10] The bulk of these operations, however, consists of traditional peacekeeping operations, and despite UN peacekeeping having evolved from simple ceasefire-monitoring between warring parties at their request to "multidimensional peacekeeping,"[11] *uninvited* humanitarian interventions remain rare.

Whether uninvited, external intervention ought to be the rule rather than the exception in grave humanitarian crises could be the theme of another research project; instead, this doctoral thesis focuses on the justification of inaction by the international community in grave humanitarian crises. Such focus must inevitably address also international responsibility, which is the major theme of this thesis. In order to shed some light to the reasons for choosing this focus, consider that there seems to have been a normative shift in international politics from having to justify action in humanitarian crises to demands for action, even to such a degree that members of the international community have felt the need to excuse inaction. In other words, the burden of proof seems to have done an about-face.

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[9] Of course, this all depends on the definitions of humanitarian intervention and of humanitarian crisis, but one could consider for example the following: the current Iraqi refugee crisis, the conflicts in Congo, Sri Lanka, Afghanistan, Uganda, or Sudan, the situation in Kenya, or simply world hunger and its effects.

[10] United Nations, *United Nations Peacekeeping Operations: Background Note, 30 November 2006* (2006, accessed January 2007), available at <http://www.un.org/Depts/dpko/dpko/bnote.htm>.

[11] United Nations, *How Has Peacekeeping Evolved?* (accessed January 2007), available at <http://www.un.org/Depts/dpko/dpko/faq/q4.htm>.

This is no small feat in a world where allegedly "the standard of justice depends on the equality of power to compel and that in fact the strong do what they have the power to do and the weak accept what they have to accept."[12]

The above quote from the *Melian Dialogue* has often been considered to mirror the "true" nature of international politics. Never mind that the *Dialogue* may have never proceeded as Thucydides recorded it,[13] it has founded realist perspective(s) of international politics.[14] Being more powerful than one's peers, according to realists, allows actors – in this case states – the liberty of choosing their courses of action according to their interests without having to submit to the will of other actors. From this perspective, power enables, and questions of responsibility do not arise, because an actor is only accountable to oneself, if he is powerful enough. In cases where an actor is not superior in power, on the other hand, that actor might find himself answering to those superior to him.

To present international responsibility in such crude terms as above is a gross over-simplification of responsibility as well as of the international system of states. To give an example to which most if not all realists might agree, consider that Great Powers have been expected to play – and they have willingly taken – certain roles regarding the maintenance of international order. Due to their power and hence position in the international system, Great Powers need to take an active stance in maintaining order, since order might not be realized unwilled. Although some kind of order might arise "spontaneously" or as a net effect of independent actions, maintaining of that order would require conscious efforts. This maintenance can usually be provided only by the Great Powers. Thus, their relative power and position imply responsibilities. The two world wars serve as illustrations of what can happen, when Great Powers, for whatever reason, fail to

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[12] Thucydides, *History of the Peloponnesian War*, trans. Rex Warner (London: Penguin Books, 1972), 5.89.

[13] In the introduction to the *History of the Peloponnesian War*, M.I. Finley reminds us that Thucydides confesses in Book 1, 22 that the speeches in the *History* were not exact reproductions but that his method was "to make the speakers say what, in my opinion, was called for by each situation." Thus, we cannot know what Thucydides added, omitted, or changed in order to fit his personal preferences.

[14] Thucydides is often quoted as one of the founding fathers of realism. Interestingly, a convincing counter-case could be made for him being a constructivist. See Richard Ned Lebow, *Coercion, Cooperation, and Ethics in International Relations* (London: Routledge, 2007).

play the roles imposed on or required of them. Weak Powers, in contrast, have not been expected to participate actively in the maintenance of international order, perhaps because they may have not been allowed to due to lack of standing among more powerful states. Nevertheless, Weak States have been expected to contribute to the maintenance of international order by not disturbing it. What could the above mean but that both the Great and the Weak States ought to behave responsibly within a given framework? Weak and Great Powers may have different parts to play, but no actor is without his or her responsibilities.

If the above is correct, power seems to imply responsibility in a certain sense. The implied responsibility, or responsibilities, *ought* to be met, but there are no guarantees that they *will* be met. Nonetheless, there seems to be no good reason why the implied responsibilities must be limited to the maintenance of order defined as the absence of major war. One could make such a limitation, if one were content with the absence of war and desired nothing else. If that were the case, the expectations on the Great Powers would be limited to the mere maintenance of order, or better to the avoidance of chaos. Whether previously that has been the case is uncertain, it nevertheless seems clear that at least with the rise of human rights as the alleged new standard of civilization[15] a simple absence of chaos is insufficient. In other words, as the calls for action in grave humanitarian crises demonstrates, states are expected to be proactive and further international order (and peace), and not just ensure their nonparticipation in reducing order (and peace). Furthermore, we can observe a correlating requirement to excuse inaction.

As for example in the R2P report, the expectation to be proactive is assigned to the international community.[16] It is the international community who is supposed to save the people from genocide or come to the rescue of tsunami victims. Already that such expectations exist are radical to some theories of international politics. Traditionally, sovereign states were territorially limited entities in a

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[15] Jack Donnelly, "Human Rights: A New Standard of Civilization?," *International Affairs* 74, no. 1 (1998).

[16] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

"billiard-ball" model.[17] Now, states (and perhaps also other international actors) are part of an international community that might ultimately challenge the internal functioning of a state especially in matters relating to human security. In other words, it is implied that the international community exists above sovereign states, and that it is more than the sum of its parts. Is there hierarchy in the anarchical world?

Among states, there might not be formal hierarchy at the international level, but there is at least some order and differences in status in the anarchy of international politics as for example the UN Charter illustrates. The Charter distinguishes between states assigning the permanent members of the Security Council a privileged position in comparison to other states. Since the permanent five were the victorious allies in the Second World War, it is no surprise that the order, which they created after the war, favors them. Moreover, the Council as a collective actor is acknowledged as the ultimate authority in matters pertaining to international peace and security. Article 51 of the UN Charter clearly affirms that individual and collective self-defense remains unimpaired "*until* the Security Council has taken measures necessary to maintain international peace and security."[18] Thus, there seems to be at least theoretical ordering, if not a hierarchy in international politics.

Whether the practice of international politics confirms the above conclusions, is, however, a different question. On many occasions the Security Council has been either ignored or its authority has not been recognized. The Council has also failed several times to maintain international peace and security, although thankfully this has not resulted in another world war. One explanation for this disharmony between theory and practice relates to noncompliance and existing sanctioning mechanisms. As the UN remains dependent of its members and their contributions, and since it has at its disposal only a few tools apart from symbolic sanctioning mechanisms, the strong might do as they please, especially if they are convinced that there will be no serious repercussions. After all, being a signatory

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[17] See e.g. Arnold Wolfers, *Discord and Collaboration: Essays on International Politics* (Baltimore: Johns Hopkins University Press, 1962).

[18] Emphasis added.

to a treaty or a charter does not limit a state's options, it merely makes certain acts illegal or illegitimate. Yet, noncompliance by itself does not debase the UN or the Security Council as a collective actor. Even if faced with absolute noncompliance, the UN would probably not vanish, but we might ask whether it remained a relevant actor.

These examples have been about demonstrating that there are levels within what has been called anarchy. Whether one could assert that there is hierarchy, is unclear and perhaps uninteresting. What seems clear, however, is that states themselves have created these levels. In addition, references were made to the possibility of ignoring actors or their actions. The "actor" that seems to have been ignored until recently is the international community.

For some, calling the international community an actor might be an overstatement. Admittedly, the international community is an actor more at the level of ideas than in any concrete terms. There are no offices or dedicated spokespersons for the international community. Yet, the international community is often referred to, it is called to take action, and it is given responsibilities.[19] If we act *as if* the international community existed, and if others act *as if* it existed, should we not pursue the possibility of including the international community as one central part of international politics?

On the other hand, whether the international community *really* exists is not as important as asking whether it is useful to think that it does. Bank notes are just pieces of colored paper, but it is useful to consider that they hold a particular value depending on their numeration. In order for pieces of paper to pass for currency, however, a whole host of underlying assumptions and background conditions must be present. Similarly, certain background conditions must be present and many puzzles must be solved before we can consider that the international community is an actor. One condition for taking seriously the existence of the international community is letting go of some of the traditional

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[19] See e.g. *The Responsibility to Protect* report that assigns the international community certain responsibilities. International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

assumptions about international politics. The process of de- and re-learning international politics can be frightening, because it requires abandoning familiar ideas for a leap to the unknown.

This thesis has less to do with the question whether the international community exists than with the benefits of acting as if it existed. Thus, for example, when addressing the main theme of the thesis – international responsibility vis-à-vis grave humanitarian crises – the issue of the international community arises inevitably, because it is argued that if such a responsibility can be said to exist, it would be a collective responsibility and fall foremost on and for the international community. Chapter three is devoted to this topic, and in it, I discuss responsibility in general and also model collective international responsibility regarding such grave humanitarian crises as for example genocide. Here, naturally, denying one would mean denying the other, as the collective responsibility would not exist without the international community. On the other hand, the existence of the international community might imply the collective responsibility but not necessarily.

Recognizing the existence of the international community could facilitate the abandoning of simplistic representations of international actors such as portraying states as billiard balls.[20] Of course, such images are not even meant to be accurate correspondents of reality. Yet, the power of analogies should not be underestimated nor should one overlook any other over-simplifications. To give an example from a recent article in the *International Organization* titled "Intervention and Democracy," interveners (that were readily assumed to be states) were considered to be either democratic or non-democratic.[21] Although the article suggests some interesting predictions about the differences in the democratizing effects of interventions between the United Nations, and democratic and non-democratic interveners, it completely fails to consider the context of different interventions. Moreover, the authors seem to forget how their

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[20] Arnold Wolfers, *Discord and Collaboration: Essays on International Politics* (Baltimore: Johns Hopkins University Press, 1962), 19-24.

[21] Bruce Bueno de Mesquita and George W. Downs, "Intervention and Democracy," *International Organization* 60, no. 3 (2006).

predictions depend on current conditions remaining stable *ad infinitum*. Similarly, drawing an analogy for a thing from the billiard table gives one quite a different mental image than drawing another analogy for the same thing from a spider's web or from chaos theory. In other words, the different metaphors and analogies focus our attention differently, and thus we "see" different things depending on the metaphors and analogies we use.

The notion of international community suggests a plurality of interconnected actors who, despite their individual characteristics, share something in common. Moreover, it would also suggest the existence of two identities in addition to "I" and "you": namely "we" and "us." Like the etymological root of "interest" (*inter-esse*) referred to something between us without it being neither yours nor mine, but something which could be discovered through processes of negotiation and discussion,[22] so would the international community lie "between" international actors. Purely self-interested, self-referential, and two-dimensional actors, however, would not make the discovery of something existing between them. Thus, our theories and representations of the "world" must be more complex, if we are to even entertain the notion of an international community.

Hence, in this thesis actors are considered to be individuals in the sense that they are all particular.[23] Naturally, it is possible to categorize some actors as states or international governmental organizations, but while such categories may serve important purposes, they hide crucial differences among actors within a category. Not only do actors operate under historical conditions,[24] over which they may have little influence, but they are also the products of historical processes. It is, however, not always possible to bring out these differences among for example states in the following pages. When references are made to such categories, one should remember that at no point of this thesis it is argued that for example all states are similar, even when referring only to "states." One of the arguments

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[22] Friedrich Kratochwil, "Rethinking The "Inter" In International Politics," *Millennium* 35, no. 3 (2007).

[23] By referring to states being particular, I do not mean to impose personhood on states, something which might be going too far at least at this point. See e.g. Alexander Wendt, "The State as Person in International Theory," *Review of International Studies* 30, no. 2 (2004).

[24] Karl Marx, *The 18th Brumaire of Louis Bonaparte* (London: Electric Book Co., 2001 [1852]).

throughout the thesis is exactly that states, instead of being inanimate objects, are complex organizations capable of deliberation and choosing their own courses of action (out of limited possibilities), that they therefore can be ascribed a will, and that studying them ought to take this into consideration.

Another underlying theme of this thesis is political will. Although the purpose has not been to address political will – or the lack thereof – directly, any discussion on non-intervention in humanitarian crises is clearly linked to the question of political will. Regardless of almost everything else, in a crisis the question remains whether there is sufficient political will to support a certain course of action. This is also one of the fundamental problems regarding humanitarian intervention; much of the discussion is directed at producing ever better arguments legitimizing intervention, yet little is said about the ways in which political will can be built in order to save strangers.[25] Surely, good arguments and justifications are part of constructing political will, but without addressing adequately for example how the fate of others might be linked to our own fates, even the best justification for allowing humanitarian intervention would do little to turn the heads of the decision-makers. On the other hand, despite a theorist being capable of analyzing different options and their consequences, it might not be his place to advocate for one particular course of action. Yet, as "scientific" as it might be to keep one's distance, "theory is always *for* someone and *for* some purpose."[26]

Some might claim that the reason for the lack of political will regarding issues of global concern is due to there being no *inter-esse*, i.e. there being no "international community" due to there being no identities corresponding to "we" and "us." Perhaps regional identities exist, as in the case of the European Union despite such identity being suspect, but a true cosmopolitan community identity might remain an utopia. Yet, there seems to be a growing understanding that despite the borders between us, we are all members of humanity. Recognizing one's membership in such an overarching community does not necessarily require

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[25] This phrase is from Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

[26] Robert W. Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," *Millennium* 10, no. 2 (1981): 128. Original emphasis.

altruism. Just like in a family, the different members are free to pursue their own interests and even ignore the needs of the other members or the family as a whole. Taking others into consideration, or not, however, shapes a family. Similarly, even though the deaths of even hundreds of thousands on the other side of the world do not directly affect us, they – like our responses – nonetheless have an effect on the *kind* of humanity we are part of.

Moreover, not only are these issues of ethical and moral concern but they are also of very practical and political concern. For the political and practical significances to become clear, one need only to consider the distances people are willing to migrate from all parts of Africa to Europe in the hopes of finding a better life. We would do well by at least attempting a solution at the source of the problem and not only when it is at our doorstep.

There is, however, always more talk than action, and to this also I must plead guilty. In my defense, I try to show in the following chapters how on a conceptual level in international politics we have moved to a completely new discussion, and how we would do well by re-evaluating our own positions in it. Moreover, I also show how it is possible to perceive of international collective responsibilities and to assign shares of the collective responsibility to the individual members of the collective without committing a fallacy of composition or falling into vicious circles mired with collective action problems.

In order to substantiate my claims, the next six chapters focus on the issues just mentioned. In chapter one, I flesh out my general research approach and I discuss humanitarian intervention as an exception and the roles interpretation and argumentation play in politics. Chapter two, on the other hand, serves to set the departure point for the research by showing how both the assumptions in the humanitarian intervention debate and the kind of right the right of humanitarian intervention would be, if it existed, require a focus on responsibility. Chapter three, then, focuses explicitly on responsibility and international collective responsibility in relation to such grave humanitarian crises as genocide. Chapter four describes a model of responsibility and illustrates its functioning with the help of a thought experiment. The responsibility model is put through another

test in chapter five, where the Rwandan genocide in 1994 is summarized before examining some of the international responses to it with the help of the responsibility model. The final chapter reviews the issues from the first five chapters on a higher level, thus providing deeper insights to the theme of this thesis.

CHAPTER ONE:
GENERAL RESEARCH APPROACH

Utopia and reality are … the two facets of political science.[27]

INTRODUCTION

Although they were written almost seventy years ago, the words of E.H. Carr find their resonance still today: "sound political thought and sound political life will be found only where both [utopia and reality] have their place."[28] Carr, often misread to advocate only realism, understood that politics could not stand on only one leg: although we must remain sensitive to the realities in our lives, we cannot live without dreams, which in turn inform us in what kind of political projects we should engage. Similarly, there is a tension between different kinds of methodologies for understanding politics. For example, empirical knowledge can help in understanding or in explaining the general, while other methods might be more suitable for the analysis of the particular and exceptional. As students of politics, however, we should follow Carr's advice and aim at understanding both the general and the exceptional so that reality and utopia could find their place in our conceptions of politics.

In this chapter I try to follow Carr's advice and incorporate both reality and utopia in my understanding of international politics. In other words, this chapter is dedicated to outlining how I conceive of international politics, at least as far as it is relevant to the topic of the thesis.

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[27] E. H. Carr, *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations* (New York: Palgrave, 2001), 10.

[28] Ibid.

The reality of things, how things are (despite being contestable most of the time), is that humanitarian intervention is exceptional, and this is discussed in the first section of this chapter. This has not, however, been the case always. Despite efforts of pushing the first humanitarian intervention ever further in time,[29] there was a time, when there were no humanitarian interventions, or at least the people at that time did not call them with such terms.

This brings me to the second section of this chapter, namely the role interpretation plays. Here I discuss how we interpret things most of the time, even when conducting "pure" empirical research. Interpretation, however, is not without its pitfalls, some of which are discussed below.

The third section focuses on argumentation, because that is one way to solve differences in interpretation. It is also central to any notion of politics. Despite there being talk of for example "power-politics," the arbitrary use of one's power would hardly qualify as politics. To put it in different terms, even when power is used, it is used as part of an argument as will be illustrated below.

If solving conflicts of interpretations calls for the use of arguments, how is one to make sense of different, even contradicting, arguments? This is the topic of section four, where an analogy is made between evaluating arguments and adjudication. Courts engage in evaluating the different arguments put forward by a plaintiff and a defendant, who are most of the time arguing for the exact opposite of each other. Thus, learning from the methods judges use would not be a wasted effort.

Finally, before a concluding summary of the chapter, section five explains how casuistic reasoning is the underlying approach used in this thesis. Casuistry, after all, focuses on the particularity of each case, and as it has been mentioned earlier, each humanitarian intervention is unique. Admittedly, casuistry may have a bad reputation, but it is due more to misinterpretation of how casuistry operates rather than to what can be achieved with its use.

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[29] See e.g. Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in *The Culture of National Security: Norms and Identity in World Politics.*, ed. Peter J. Katzenstein, *New Directions in World Politics* (New York: Columbia University Press, 1996).

HUMANITARIAN INTERVENTION AS AN EXCEPTION

In the daily operation of international politics, humanitarian intervention is an exception. Not only are cases of humanitarian intervention few, but they contradict one of the fundamental principles among sovereign states, namely the rule of non-intervention in the affairs of other sovereigns. Moreover, if humanitarian interventions are justified as an exception to the "normal" rules, as they often are, they are, by definition, exceptional. In times of crisis, according to the advocates of humanitarian intervention, some of the "normal" rules ought to, and can be, extended. The question that remains, however, is when such an extension is justifiable.

One should note that although rules can be broken unilaterally, extending rules can only be done intersubjectively. Thus, the question, when can the normal rules be extended, is a demand for reasons and justifications as to the circumstances that qualify for an exception. Clearly, this only begs a further question: What are good (enough) justifications and reasons for extending the applicability of normal rules?

A quick look at history shows how what has been considered the norm at a given point in time may not have been universal or everlasting. Slavery and slave trade are clear examples of how something that once used to be normal is strictly forbidden and despised today. In fact, it is considered that there is not even the possibility of justifying slavery under any circumstances. Another example is debt collection. As Finnemore explains, debt collection was once accepted as a legitimate reason for the use of force.[30] For a state to invade another state in order to collect debts would be unthinkable today.

Of the legitimate justifications for the use of force besides self-defense, humanitarian reasons have gained currency. Humanitarian imperatives have also become accepted as reasons for suspending the rule of non-intervention. This development took place especially during the 1990s, when military interventions into sovereign states were justified and legitimized using humanitarian rationales.

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[30] Martha Finnemore, *The Purpose of Intervention: Changing Beliefs About the Use of Force* (Ithaca: Cornell University Press, 2003), ch. 2.

Clearly, humanitarian justifications may not have been the only basis for military action, but it appears that since the early-1990s they have become sufficient reasons by themselves. In historical perspective, this marked a distinction to earlier times, when humanitarian concerns were judged insufficient for suspending the rule of non-intervention.

The 1970s provides an example of a period, when humanitarian justifications for military action were inadequate or even counterproductive. In 1971, during her intervention in East Pakistan, and in seeking to legitimize her action, India first included humanitarian justifications in her overall explanation of her action. When, however, it became clear that humanitarian concerns fell on deaf ears or were undermining the legitimacy of India's action – whatever the reason may have been – the rhetoric changed quickly, humanitarian grounds were forgotten, and legitimacy was sought by focusing on self-defense.[31]

During the Cold War, self-defense served as the primary justification for action that might today be labeled as humanitarian intervention.[32] Some authors, such as Nicholas Wheeler in his *Saving Strangers*, have argued that these interventions should count as examples of humanitarian interventions, even if they were not explicitly justified on humanitarian grounds. Thus, with motive lacking from his threshold criteria, Wheeler is able to count India's intervention in East Pakistan, Vietnam's intervention in Cambodia, and Tanzania's intervention in Uganda as examples of humanitarian intervention during the Cold War. Others, such as Martha Finnemore, have argued that it was not that humanitarian reasons were invalid during earlier times, but that "humanity" was limited to white Christians.[33] Both strategies serve to demonstrate a practice of humanitarian intervention. In other words, by demonstrating a practice, these authors show how rules have been suspended or expanded before, and that they can be legitimately suspended again also in future cases.

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[31] See for example Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 55-77.

[32] Ibid.

[33] Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in *The Culture of National Security: Norms and Identity in World Politics.*, ed. Peter J. Katzenstein, *New Directions in World Politics* (New York: Columbia University Press, 1996).

The inclusion or exclusion of humanitarian motives in determining whether a given intervention could classify as humanitarian intervention has stirred emotions. Wheeler's exclusion of such motives as necessary may not suit some. Similarly, Finnemore's inclusion of motives, which can only be called muddled, may not win the argument establishing a practice of humanitarian intervention from as far back as the nineteenth century. As Finnemore admits herself, the humanitarian claims were intertwined with geo-strategic interests of the intervening states.[34]

The issue is further complicated by a distinction between intention and motive. For example Fernando Tesón has argued following John Stuart Mill that intention is relevant for characterizing and evaluating behavior. With this distinction, Tesón argues that for example the invasion of Iraq can be justified morally as a humanitarian intervention, because the intention was to liberate Iraq despite the Coalition having had questionable motives.[35]

Although Tesón makes a valid distinction between intentions and motives, something which one ought to consider also regarding humanitarian interventions, his defense of the invasion in Iraq as a humanitarian intervention is problematic, as pointed out by for example Terry Nardin.[36] If intention is what is willed, and motives are further goals one wishes to achieve with the intended act,[37] and if one considered it sufficient that intervention is intended to have a positive humanitarian outcome, one can, like Tesón, count the operation in Iraq as morally justified as a humanitarian intervention despite the motives having been for example securing access to oil or other non-humanitarian motives. This, however, twists the whole notion of humanitarian intervention from concern

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[34] Ibid.

[35] Fernando R. Tesón, "Ending Tyranny in Iraq," *Ethics and International Affairs* 19, no. 2 (2005).

[36] Terry Nardin, "Humanitarian Imperialism: Response to 'Ending Tyranny in Iraq'," *Ethics and International Affairs* 19, no. 2 (2005).

[37] Fernando R. Tesón, "Ending Tyranny in Iraq," *Ethics and International Affairs* 19, no. 2 (2005): 5.

about the wellbeing and often indeed about the very survival of "strangers" to being about "us" rather than being about "others."[38]

I shall return to this issue of humanitarian motives later, but for the present discussion it is enough to note that in the contemporary world humanitarian claims and justifications are perceived as valid for the use of force in some circumstances. Moreover, humanitarian reasons may perhaps suffice by themselves, and perhaps they may be even required for the legitimate use of force except in cases of self-defense.

It is understandable that legitimacy for earlier humanitarian interventions was sought through self-defense. During the 1970s, humanitarian intervention was a new topic even in the theory of international politics, and with the Charter of the United Nations, self-defense was the only recognized justification for the use of force in addition to enforcement action as authorized by the Security Council. Thus, where the Security Council had not authorized enforcement action under Chapter VII powers, unilateral interventions had as their best bet arguments referring to self-defense in order to receive the approval, or at least to avoid the disapproval, of the international community. It is remarkable how two decades later the same action could have been better legitimized with reference to humanitarian imperatives rather than to self-defense. Despite this apparent change, however, one should remember that the use of force is still forbidden except in self-defense or under instructions from the Security Council, and that humanitarian claims, even if legitimating factors, are not universally recognized exceptions. In other words, where one would not doubt the rightness of a state defending itself against the attack by another state, humanitarian imperatives (still) do not automatically guarantee the legitimacy of an intervention.

Moreover, humanitarian imperatives are not the only candidates challenging traditional rules regarding the legitimate use of force. For example, counter-terrorism and proliferation of weapons of mass destruction test the conventional rules and seek to modify them to fit the needs of the contemporary world. For the

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[38] See e.g. Terry Nardin, "Humanitarian Imperialism: Response to 'Ending Tyranny in Iraq'," *Ethics and International Affairs* 19, no. 2 (2005): 23.

present purposes, however, it is enough to observe that international actors operate within a "social" context, where actors may have several reasons for a particular act, and that actors justify or seek to legitimate their actions especially when they are clearly not within the commonly established and accepted rules.

For some theorists of international politics, it may seem unorthodox to consider that states justify their actions. Even more surprising might be the implication that states debate, among themselves, over their actions as was hinted at above. Both of these statements require strong assumptions about international politics which might not fit for example realist or neo-realist theories. In these theories, states are motivated by the relative power advantage in comparison to other states, by national interests, or by systemic reasons; there is little room for justifications or debates. Although one might say colloquially that power, national interests, or systemic factors justify certain courses of action, more precisely speaking they *explain* state behavior and possibly proscribe how states should act in order to secure survival or to gain advantages. In these theories, in fact, the justification for particular state behavior is the self-preservation of that state.

One might make the argument that states do not make any justifications, only the representatives of states make them. Thus, at a certain level of abstraction, it would be unnecessary to focus on what the representatives do or say. This line of reasoning, however, seems absurd, because it would simply make the study of states redundant. States do not act or make statements; there is no state to touch or to look at. We study them *as if* they existed but in fact we study the actions of the representatives of states, which we then superimpose on states. In sum, whether the representatives of states use realist theories or some other backing for their actions, the study of the justifications they use are worth our while.

The practice of international politics supports the claim that states debate and justify their actions. Even the word "politics" implies discourse and interaction, not tyranny of the strongest, something which seems to have been forgotten at times at the international level, where it is often mentioned that discourse is mere rhetoric and that talk is cheap. If that were the case, however, it would be odd how much time and energy is spent on such "insignificant" things. States spend

great lengths of time and energy in making their various cases to their publics, whether to their domestic or international audiences. To give an example, consider how the United States may have been set on invading Iraq in 2003 regardless of the Security Council's decision, yet she still sought the approval of the international community and spent much of her time and energy to that end.[39] The usual reply is that even though it is all for the show of it, it just happens to be how the game of international politics is played.

To say that the practice of international politics is marked with rhetoric and cheap talk might not be too far off the mark, but to say that it is not important would be to delude ourselves. Surely, many times there are gestures and talks at the international level that were never meant as anything but symbolic. Yet, even those symbolic gestures are part of the functioning of international politics, and one can only imagine how the world would be without them. Furthermore, not all talk is cheap, and what is being said is carefully listened to by the other actors. Finally, politics is about actors coming together in order to bargain, trade, and seek solutions to common issues to name only three examples. Actors seek the approval of others and their support, or they might choose to bandwagon, or to confront and to cause conflict. These things would not be possible with mere rhetoric and symbolic gestures. Thus, although some talk can be cheap, it cannot all be so.

In addition, political actors have various political projects, and in order to realize these projects, actors engage in building their cases for them. In this respect, the international level is no different from the domestic. Whether it concerns a trade agreement, or gathering a coalition of the willing, states argue for their causes in order to obtain support and acceptance from their audiences or to avoid conflict and resistance at the minimum. After all, communication is one of the cheapest, yet most effective, resources that political actors possess.

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[39] For an alternative perspective on the Iraqi operation, see e.g. James Fallows, *Blind into Baghdad* (The Atlantic Online, 2004, accessed September 16 2004), available at <http://www.theatlanticonline.com/doc/print/200401/fallows>.

Usually, states need to address either the domestic or the international audience, if not both, on a particular issue. Some issues are no concern of the international sphere, and thus, not all things must be explained at the international level. From a domestic point of view, however, any international issue might become also a domestic issue needing explanation or justification for the domestic audience, this being true especially within democracies. Naturally, there are issues which require that both audiences are satisfied, but the way how to do it might depend on which audience is being addressed. In other words, on a particular issue, a state might highlight some aspects to the domestic audience, while focusing on (perhaps completely) different aspects when communicating with the international audience. Moreover, for example matters of national security might forbid certain topics or aspects of a topic to be discussed at either level.

An objection to what has just been claimed might be the following: states do not *need* to address any audiences, especially if they are powerful enough. Surely, this might be the case, but which state is so powerful that it would not benefit from communication and from at least trying to gain support for its projects? Surely it would be folly not to use all means possible, including communication, in order to achieve one's goals, or to at least cut the costs. On another level, the objection concerns the "need" in the sense as if there were some "jury" that must be satisfied. Admittedly, there is no world jury as such, but nevertheless the "world" listens and judges. If taking the hunt for the weapons of mass destruction in Iraq as an example, the "world" was very keen on first of all seeing the evidence demonstrating that there were such weapons in Iraq, and second, to be shown them after the invasion. Furthermore, to consider that the United States did not lose credibility with her "snake-oil peddling" would be naive. Finally, regardless whether there is a need to address the different audiences, states – even the most powerful ones – at least try to win the support of their audiences. In sum, the practice of international politics supports the above claims.

One example of a forum, where states engage in political bargaining and in the practice of arguing, is the United Nations. Furthermore, within the UN, the Security Council provides another example. During (and outside) Council

sessions, states communicate, argue, and bargain with other states. Various issues might be linked when states bargain, and such issue-linkages might be fair or not. Important to note here is that states argue, even if some of their communications might resemble more threats than arguments. Nevertheless, within the Council, the communication, arguing, and bargaining serve the purpose of guaranteeing nine votes out of fifteen, which any resolution must meet in order to be passed.[40] Despite not being fully democratic, the Council procedure ensures that passed resolutions, unless they remain at a high level of abstraction and therefore meaningless, are the result of a political agreement among the members of the Council.[41] This political agreement, however, might not be reached thanks to such communicative action, where the participants talk and argue with reasons until a mutually satisfied conclusion is reached.[42] A conclusion is more likely to be reached when a concerned party uses reasons supporting his favored conclusion *and* ensures the cooperation, or at least the indifference of others, by offering (or threatening to withdraw) support for the projects of others or by using traditional "carrot-and-stick" strategies.

In most circumstances, political arguing, bargaining, and justification take place *ex ante*. Just as in the Iraqi case, the United States attempted to justify, and thus legitimize, her invasion of Iraq before crossing the border. Despite perhaps having been determined to proceed with the invasion whether wider support than the coalition of the willing was forthcoming or not, the United States nevertheless could have changed her course of action, or mended her plans according to the feedback she received from the domestic and international audiences.[43] In this sense, seeking justification *ex ante* leaves more room for maneuver than justifications *ex post facto*.

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[40] Naturally, a resolution cannot be passed if even one of the five permanent members opposes it since each permanent member has a veto over any resolution.

[41] One might criticize the Security Council for passing too abstract resolutions too often.

[42] Jürgen Habermas, *The Theory of Communicative Action*, 2 vols. (Boston, MA: Beacon Press, 1984).

[43] In fact, this is probably what happened. In other words, the American administration most likely mended its initial plans after receiving feedback from its domestic and international audiences.

Justifications *ex post facto* might be harder than *ex ante*, especially if one's actions have not received wide support. For one, what have come to pass cannot be changed anymore, and it might be difficult to put the right spin on things afterwards, more so if there have been embarrassing episodes. Moreover, justifications *ex post facto* might transform into excuses and into the need to excuse oneself. In situations, where one's actions have not received support or they have even been condemned, a pressure or expectation to excuse oneself might rise. As an example, one can think of the excuses the international community made for not intervening or doing enough in Rwanda in 1994.[44]

To claim that states might excuse themselves is another point of controversy. For the most part, theories of international politics have little to say about this issue. To take realism and neo-realism as examples, a state is responsible and accountable only to itself (and maybe to its citizens), and therefore the issue of internationally excusing oneself is a non-question. Other, non-mainstream theories such as allegedly "constructivist" theories, also, seem to have little to say about this topic. As far as I am aware, there is no seminal work on this theme. That there is little work on this topic, however, is not proof that it is an unimportant point.

Once again, I refer to states' and their representatives' behavior in order to illustrate how international practice supports my claims. One of the clearest examples of states' excusing themselves is from the aftermath of the Rwandan genocide in 1994. World leaders, including the President of the United States Bill Clinton, the UN Secretary-General Kofi Annan, and the Belgian Prime Minister Guy Verhofstadt, expressed their regret, as official representatives of their state or world organization, and apologized for failing to prevent the killing of hundreds of thousands of Rwandans.[45] Thus, even if it might be rare that states excuse their actions, those occasions are worth examining.

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[44] I shall return to this better in the following chapters.

[45] See for example BBC, "Belgian Apology to Rwanda," *BBC News Online*, April 7 2000, available at <http://news.bbc.co.uk/1/hi/world/africa/705402.stm>; BBC, "UN Admits Rwanda Genocide Failure," *BBC News Online*, April 15 2000, available at <http://news.bbc.co.uk/1/hi/world/africa/714025.stm>.

If a state, or its leader, attempts to excuse an act, there are several aspects that deserve our attention. First, an excuse is an indication of a wrongful act, or of an act that was not according to commonly accepted rules. Second, there are such things as commonly accepted rules. Third, commonly accepted rules are an indication of a community. Fourth, a community where excusing takes place is clearly more than simple coexistence; it is a *social* community. By social community, I mean that the members of the community interact meaningfully towards each other.[46] In other words, there seems to be much to examine in relation to this issue, and it is the purpose of this thesis to study it at least partially and to have some insights to the functioning of international politics from this perspective. To continue this line of analysis at this point would take the present discussion too far off the mark at this point. These four points, however, run through the thesis and will be returned to at suitable occasions.

Coming back to the topic at hand, namely humanitarian intervention, states have sometimes justified intervention on humanitarian grounds, but they have also excused their non-intervention in some grave humanitarian crises as was illustrate above. Both of these points raise a question: *When* are humanitarian justifications sufficient to legitimize humanitarian intervention, and *when* is non-intervention excusable in a grave humanitarian crisis?[47] For the time being, I focus on the first part of the question.

Clearly, humanitarian justifications are sufficient for an exception to the rule of non-intervention when there is a sufficiently grave humanitarian crisis, or at least this is the gist of the humanitarian intervention arguments. To frame it in these terms is to beg the question: What constitutes a sufficiently grave humanitarian crisis? From a humanitarian perspective, an answer to this question would refer to the exceptional humanitarian suffering or distress. The key word seems to be "exceptional," because an exception to the "normal" rules can be made during exceptional times. In colloquial terms, this translates into the following statement:

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[46] See e.g. Max Weber, *Soziologische Grundbegriffe*, 3rd ed. (Tübingen: Mohr, 1976).

[47] Naturally, these both questions assume that humanitarian intervention is not part of the normal state of affairs.

Humanitarian justifications for intervention are sufficient in a "bad enough" humanitarian emergency.

There are many grave humanitarian crises in the world but not all of them would necessarily justify military intervention by a state, or an international organization, into another sovereign state. In other words, how to define a grave enough crisis that could justify humanitarian intervention? A prudent attempt at defining a grave humanitarian crisis might leave aside any numbers of deaths either in their absolute or relative (percentage) form. Such definitions would be easily contested, arbitrary, and perhaps abused. Instead of numbers, a grave enough humanitarian crisis could be defined as a crisis that shocks the conscience of mankind.[48] With this definition, Michael Walzer captures quite accurately our common understanding of what kinds of circumstances we think of when we hear the words "grave humanitarian crisis." Unfortunately, there is little precision to this definition. For one, how are we to know if a particular crisis shocked the conscience of mankind? Nicholas Wheeler, on the other hand, defines a grave humanitarian crisis as one in which "the only hope of saving lives depends on outsiders coming to the rescue."[49] Although Wheeler's definition is more precise than Walzer's, it is not without its problems either: How are we to know beforehand that the only hope lies with outside intervention? Afterwards it might be possible to construct a counter-factual demonstrating how outside intervention would have been crucial, but before or during a crisis it might not be so clear whether the *only* hope was limited to outsiders. Admittedly, in the Rwandan case, it seemed clear that the only hope really lay with the outsiders,[50] but perhaps the point is really more about whether we would wish to limit the definition of a grave humanitarian crisis to situations where it can be known that the only hope would lie with the outsiders. There might be circumstances where the conscience of mankind would be shocked, yet there could be hope that the

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[48] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000), 107.

[49] Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 34.

[50] Perhaps the hope lay with the outsiders also in the sense of them not interfering. There have been allegations that the French assistance to the Rwandan government, and thus to the genocide perpetrators, hindered the advancement of the Rwandan Patriotic Front.

crisis could be solved without direct outside intervention, even though outside help could bring an end to the crisis more swiftly. In such circumstances, should we not allow for the outside help and for humanitarian interventions?

As it has become evident, it is difficult to define a grave enough humanitarian crisis that could justify an exception to the rule of non-intervention. Although only a couple of definitions have been examined, it seems clear that no single, unchallenged definition exists. If it existed, most of us would use it. Perhaps one should not blame the theorists for the lack of a single, commonly accepted definition; a definition of this kind falls under mental and institutional facts.[51] Social things are not simply "out there" waiting to be observed, but they require interpretation, and our perceptions shape them. For this reason, it is beneficial to consider an interpretative or a hermeneutic approach in the sense of engaging in "imaginative reconstruction" of the "significance of various elements of social action."[52] In other words, instead of trying to provide *the* definition of a grave (enough) humanitarian crisis or exceptional enough circumstances, it would be better to focus on the significant elements that are part of *a* definition. In this way, we can have a better understanding of the relevant circumstances without losing focus.

What are the significant elements of a grave humanitarian crisis? At least five significant elements come to mind. First, the scale of a crisis is important: How many people are directly (and indirectly) affected, whether in absolute or relative terms? Whichever criteria one uses, the amount concerned must be considerable enough. Second, the way in which people are affected by the crisis is part of a definition of a grave humanitarian crisis. Although a financial crisis might affect millions of people, one would not label it a humanitarian crisis, unless there were other reasons for it. In other words, the way, in which people are affected by a grave humanitarian crisis, ought to correspond at least loosely with the notion of being shocking to the conscience of mankind. Third, outside help can be a defining

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[51] Friedrich Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambrige University Press, 1991), 21-28.

[52] Daniel Little, *Varieties of Social Explanation: An Introduction to the Philosophy of Social Science* (Boulder: Westview Press, 1991), 68.

character of a grave humanitarian crisis. In other words, the need for outside help, or the positive humanitarian impact it could have, might classify a given crisis as grave enough and justify an exception to the rule of non-intervention. Fourth, another significant element is the speed with which a crisis unfolds. Here the question is crucially linked to allowing for an exception to the rule of non-intervention. For example malnutrition due to structural reasons is a grave humanitarian crisis, yet its slow process might neither justify nor require breaching the rule of non-intervention. In contrast, if the deaths of tens of thousands were imminent due to malnutrition *and* their government was unwilling to cooperate with outside help, the rule of non-intervention might be justifiably extended. This last point brings me to the fifth significant element of a definition of a grave humanitarian crisis, namely the willingness and the ability of the particular government(s), on whose territory the crisis is located, to provide a solution to the crisis. Humanitarian intervention, as it is understood in this thesis, is distinguished from humanitarian assistance, where the former includes an element of unwelcome humanitarian action, while the latter denotes cooperation with the local government.

The just discussed five significant elements of a definition of a grave humanitarian crisis contribute to an evaluation whether a given crisis is grave enough to justify an exception to the rule of non-intervention on humanitarian grounds. Such an evaluation, however, remains the result of interpretation. To give an example, let us consider the last significant element: willingness by the local government to provide a solution. It might be that a government would show signs of cooperation without actually cooperating. Formally, the government of the Sudan promised to cooperate with the UN sanctioned investigators, but there are doubts that the cooperation has been as extensive as it could have been.[53] In other words, although some pitfalls may be averted with the help of a good definition, new challenges lie ahead.

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[53] United Nations Security Council, *Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, 1999, S/1999/1257.

The new challenges are related to the interpretation of the answers we have for each significant element of the definition. The question is not whether or not a given crisis is grave enough; the question is whether given circumstances are interpreted or can be interpreted to constitute a grave enough crisis. The significant elements focus on points which should be part of this interpretation and evaluation, but by themselves they do not tell us much about a particular crisis. In other words, the exceptionality of given circumstances is a matter of interpretation and degree. Thus, because interpretation is so central, the next section discusses is explicitly.

ON INTERPRETATION

Scientific realism assumes that "the world exists independent of human beings, that mature scientific theories refer to this world, and that they do so even when the objects of science are unobservable."[54] Scientific realism is correct in observing that our planet would not stop revolving, or that states exist even if we cannot touch or see them. Where scientific realism fails, however, is in fully acknowledging that the social world would not exist without (social) human beings. Thus, even though the existence of a given state does not depend on any particular person or people, states have not existed throughout history, and when they have, they have come in many different shapes and forms. In other words, despite its merits on some questions, scientific realism might not offer the best tool for examining all aspects of the social world.

One reason for the shortfall of scientific realism is its dependency on an idealized image of observation in the natural sciences.[55] Even in the natural sciences, observation is not without its problems, because observation is done through the lenses of theories. Things do not have an essence waiting to be discovered, but the meanings of things are created through our perceptions and interpretations. In this task, we use theories to help us make sense of what we observe.[56] One might counter these claims by pointing out that measuring is an objective way of observation. Measuring, however, remains meaningless unless the results – and even the tool used for measuring – are placed within a context. To use Friedrich Kratochwil's example, a deviation of one millimeter is meaningless when building a skyscraper but highly significant when making a watch.[57] Moreover, no such thing as a meter or a yard exists naturally in the world, but both are conventions,

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[54] Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 47.

[55] See e.g. Stephen E. Toulmin, *Return to Reason* (Cambridge, MA: Harvard University Press, 2001), ch. 4.

[56] As told by the students in LSE, in one of his lectures Karl Popper entered the room, and as he sat down, he asked the students to observe. Only after a good while did someone ask what they were supposed to observe. In other words, observation requires one to have an idea what to observe. Thus, at least a minimal "theory" is required.

[57] Friedrich Kratochwil, "Leaving Sovereignty Behind: An Inquiry into the Politics of Post-Modernity," (European University Institute, Florence, Italy: 2007, forthcoming as a chapter in an edited volume by Richard Falk and Ramesh Thakur).

made and agreed by people, for the convenience of measuring a certain distance. Furthermore, those conventions are tied to other conventions.

To illustrate this final point, let us consider the definition of a meter (m). Bureau International des Poids et Mesures (International Bureau of Weights and Measures), the final authority[58] on the seven base units of the International System of Units (SI), defines a meter as "the length of the path travelled by light in vacuum during a time interval of 1/299 792 458 of a second."[59] Not only is it evident that the time interval chosen is, if not arbitrary in many senses, a matter of convention and not something likely to correspond with the "essence" of a meter. In addition, a meter is defined by referring to a second, another measuring unit, which is equally nothing more than a convention. A second, on the other hand, is defined as "the duration of 9 192 631 770 periods of the radiation corresponding to the transition between the two hyperfine levels of the ground state of the caesium 133 atom."[60] Even if the caesium 133 atom's particular periods of radiation correspond with the second, and even if those periods might occur naturally in the world, the second is defined in this particular way, because the caesium 133 atom's behavior corresponds (approximately) with earlier definitions of a second, and because its behavior is stable and can therefore be used reliably for calibration. Thus, if even our tools and units of measurement are conventions, should we not abandon the Cartesian quest and accept that also our results are not ultimate truths?

To conclude that interpretation is central in the social world is not necessarily to simplify matters. In any given situation at any given time there exists a multitude of different objects for interpretation, and thus, one must decide first of all what objects are of relevance to one's study, and whether relevant conventions exist creating shortcuts so that we can almost neglect interpretation. For example, money is a convention where it has been agreed that certain pieces of paper are

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[58] This is another convention.

[59] Note also that this is the most recent definition, and that there is no guarantee that it will be the ultimate definition. See the BIPM's website at the following URL: <http://www.bipm.org/en/si/base_units/>.

[60] Ibid.

legal tender. Clearly, not all pieces of paper are legal tender, only notes of a certain kind, and which have been officially issued by the national central bank, and only to the value of the numeration imprinted on them. Most of the time, there is little doubt whether a particular note is legal tender, and thus, transactions can occur quickly, because one does not have to pause to interpret whether a note is worth 100 dollars or not. There are, however, situations, when due to discoloring or for some other reason such as when one is handed a 600 euro note with pictures of semi-nude men or women on it,[61] one should wonder whether the particular note is legal tender. In other words, until we encounter a border-line case, we might not notice that we interpret things around us. In relation to science, our theories assist in determining which things are relevant, and whether they are in need of further interpretation.

The philosophy of science, on the other hand, attempts to clarify whether our theories allow us to conclude anything, or at least anything meaningful. For example, the idea of falsification provides a way of knowing whether a given theory can be correct.[62] Falsification, in a nutshell, is based on the idea that scientific hypotheses or theories must be falsifiable. Karl Popper illustrated his idea of falsification and the problem of induction with the example of white and black swans. In the example, after first stating that all swans are white we discover a black swan, thus challenging our primary statement. Despite Popper's deep insights, he has received much criticism,[63] which, however, would move the discussion too far away from the present purpose, if they were discussed here.

The purpose of referring to the philosophy of science and falsification was not to begin a discussion on the merits of falsification or of the criticism it has received.

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[61] The European Central Bank hosts a display of counterfeit euro notes that were accepted as legal tender by shopkeepers. Apart from odd numerations such as 300, 600, and 1000 euro, some of them, if one looked closer, have pictures of semi-naked men or women imprinted on them.

[62] Karl Popper, *The Logic of Scientific Discovery* (London: Routledge, 2002).

[63] See for example Paul K. Feyerabend, "Against Method: Outline of an Anarchistic Theory of Knowledge," in *Analyses of Theories and Methods of Physics and Psychology*, ed. M. Radner and S. Winokur, *Minnesota Sudies in the Philosophy of Science* (Minneapolis: University of Minnesota Press, 1970); Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 2nd ed. (Chicago: University of Chicago Press, 1970); Imre Lakatos, "Falsification and the Methodology of Scientific Research Programmes," in *Criticism and the Growth of Knowledge*, ed. Imre Lakatos and Alan Musgrave (Cambridge: Cambridge University Press, 1970); Alan Sokal and Jean Bricmont, *Fashionable Nonsense: Postmodern Intellectuals' Abuse of Science* (New York: Picador, 1998).

The purpose was to provide a further illustration of the centrality of interpretation. Let us consider Popper's swan example. In the example, falsification only applies, if we agree that the black bird resembling a white swan in all but its color can be taken to be a black *swan*. This conclusion does not obtain necessarily. We could have agreed to hold on to our primary statement, which made clear that swans can only be white. Naturally, we would have had to call the black bird something else other than a swan, but inventing a new name would surely not have been difficult. Scientific examination, on the other hand, might have informed us that the two birds, the white swan and the black bird resembling a swan, had the same DNA for the most part. With this information, one could have made a strong case for calling the black bird a swan, thus requiring a revision of the initial statement. Yet, the acceptance that birds, which do not share identical DNA, can nevertheless belong to the same category, namely swans, would beg the question: How much of the DNA must be shared for two similar, but not identical, birds to be put into the same category? Clearly, the question is flawed, because two beings can share identical DNA only if they are identical twins. Nonetheless, there is a percentage of DNA that swans must share for them to be called swans regardless of their color, and that figure is most likely arbitrary and context-dependent. In other words, whether because of arguments derived from the DNA of the black swan or otherwise, there might be good reasons to conclude that it is a black swan, but that conclusion was the result of interpretation, not the product of discovering the "essence" or "nature" of the black bird.

Misinterpretation, or conflicts of competing interpretations, is naturally always a possibility. Even two people who witness the very same event, side by side, could experience, and therefore interpret, that event differently. Similarly, which "facts" or "evidence" are taken into account may change completely a given interpretation. To give an example, consider that two people see a man drive a car and hit a dog. After stopping the car, the man gets out of the car, and shoots and kills the wounded dog. Now, the first witness might think that the car hit the dog accidentally, and that the man realized how badly hurt the dog was and decided, mercifully, put it out of its misery. The second witness, however, could easily

interpret the events so that the driver had purposefully hit the dog and finished, with a gun, what he had intended to do with the car. Whether the driver had seen the dog, whether he had lost control of his vehicle, whether the dog had ran unexpectedly from the side of the road, or whether the driver had driven behind the dog, are all details that could change our interpretation of what "really" happened.

Sometimes, on the other hand, it is of little importance whether agreement is reached over a particular interpretation. In a friendly conversation it is of no real importance whether one establishes a mutually satisfactory interpretation of the weather conditions as partially cloudy, overcast, or cloudy. In contrast, at times it can be of utmost importance that no misinterpretation takes place. One can only think how disastrous it could have been during the peak of superpower rivalry had one of the superpowers gravely misinterpreted the intentions of the other.

Most of the time, however, general agreement over interpretation exists. In the above example, there were no contesting interpretations of the dog being first run over by the car and being shot afterwards. At stake was the question *why* it had happened. A similar example can be given regarding traffic rules. Traffic rules leave little room for misinterpretation. The meaning of such rules as "drive on the right-hand side of the road" or "always stop at red light" can hardly be misinterpreted. When traffic accidents happen, it is not because the rules have been misinterpreted, but mostly because they have been ignored. To give another example of interpretation and rules, the rules of soccer specify that the winner is determined according to how many goals each team has scored. A goal, then, is scored when the ball passes over the goal line.[64] In other words, the rules of the game allow us to interpret the events, which would otherwise remain meaningless.

Conflicting interpretations, however, are likely when the tools used to help the task of interpretation (such as rules) are themselves in dire need of

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[64] Naturally, there are further rules which specify that for example the ball could not be touched with hands (except by the goalkeeper), and that the player who scored could not have been offside for the goal to count.

interpretation. An example of rules which strongly require interpretation is the following. Although we might all agree that killing another person is forbidden and condemnable except in cases of self-defense, we might not agree on what constitutes self-defense or whether killing in particular circumstances was self-defense. The general rule "do not kill" functions in clear cases, but when exceptions are allowed, matters are complicated significantly. As Jonsen and Toulmin remind us, "once we move far enough way from the simple paradigmatic cases to which the chosen generalizations were tailored, it becomes clear that no rule can be entirely self-interpreting."[65]

Moreover, interpretation is often linked with appraisal, at least in the social sciences, where norms play a significant role. When interpreting, we engage in acts of appraisal in order to know whether that which we interpret is for example "good" or "bad" or "irrelevant." It is in this manner of combining interpretation with appraisal that we give meaning to things.

In international relations, as elsewhere, essentially contested concepts exist.[66] As the earlier discussion illustrated, grave humanitarian crisis – not to mention humanitarian intervention – is an example of a contested concept. Not only do we disagree on what constitutes a grave emergency, but we might not agree on whether the circumstances of a given case fulfill the description. Similarly, despite being such central concepts to the working and jurisdiction of the Security Council,[67] threats to international peace, breaches of international peace, or acts of aggression are not self-explanatory. Certainly, there are legal texts and precedents that help in determining whether a particular case is for example an act of aggression. The emphasis, however, is on the word "help;" cases or circumstances do not interpret themselves. It is hardly so that a state would send an ultimatum to another state and begin it with "Dear adversary, this is an act of

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[65] A. R. Jonsen and S. E. Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (London: University of California Press, 1989), 8.

[66] Walter Bryce Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56 (1956). See also James W. Davis, *Terms of Inquiry: On the Theory and Practice of Political Science* (Baltimore: Johns Hopkins University Press, 2005).

[67] See e.g. Article 24 in United Nations, *Charter of the United Nations* (1945).

aggression…" Even if a state sent such an ultimatum, much would still depend on what followed the first line.

Contested concepts are perhaps best examined by focusing on their use and how actors themselves interpret them. Here the concept "threat to international peace" serves as an example. There are many interpretations of what could constitute a threat to international peace. From the top of my head, I could invent a number of situations which could count as threats to international peace. Some of my musings might correspond with for example the Security Council's earlier interpretations, while the rest might not. How the Council interprets (or has interpreted) the concept, however, is much more important than the musings of any other single actor. The UN Charter, after all, assigns the Council as the authority for determining the existence of any threat to the peace.[68] Thus, as a first step in understanding the concept of threat to international peace, one ought to examine which circumstances have led the Security Council to call them a threat to peace. Certainly, one should not rely solely on the Council's interpretation, because it may have been contested by other international actors. The Council's work, not to forget, is subject to the whims or interests of each permanent member and their veto power. Thus, the interpretation of interpretation is important, and despite being essentially contested in their nature, the general meaning of contested concepts can be known. The meaning of such concepts depends on their intersubjective usage.

Moreover, concepts change over time, or better, what they refer to change over time. To give an example, the Security Council's interpretation of "threat to international peace and security," and what it refers to, has changed in the past decades quite radically. At least since the 1990s this concept included not only traditional (military) threats but also new forms of security threats.[69] Davis has

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[68] Ibid., Article 39.

[69] See e.g. Resolution 688 (refugees threaten international peace and security), Resolution 731 and 1044 (terrorists threaten international peace and security), Resolution 748 (Libya's nonresponse threatens international peace and security), Resolution 794 (large scale human tragedies threaten international peace and security), Resolution 1053 (illegal and uncontrolled arms flows threaten international peace and security), and Resolution 1054 (non-compliance with Security Council resolutions threatens international peace and security): United Nations Security Council, *Security Council Resolution Number 688 of April 5 1991*, SC/RES/1991/688; United Nations Security Council, *Security Council Resolution Number 731 of January 21 1992*, SC/RES/731/1992; United Nations

correctly drawn attention how most of the debate concerns marginal cases or interpretations and the drawing of conceptual boundaries.[70] Humanitarian intervention is certainly a marginal case, or an exceptional case as has been argued, that requires shifting the boundary of legitimate and legal action at the international level, if it is to be accepted among other legitimate and legal acts. Thus, on a higher level the discussion concerning humanitarian intervention has been about the position of that boundary.

For some, the existence of several definitions of humanitarian intervention demonstrates that there is little agreement over the position of the boundary delineating legitimate action towards humanitarian ends. On the other hand, the lack of one universal definition should not necessarily be taken as a sign of weakness. Being aware of multiple definitions gives one an advantageous position for evaluating the actual circumstances of a given case from several angles in order to determine whether that particular case could fall within one or several definitions. Similarly, an examination of different meanings reveals which parts of a definition are widely accepted, and which are contested. The contested parts of a definition are part of the problem in drawing clear boundaries, and there seems little one can do about them, except being aware of such fuzzy boundaries.[71]

One method for determining, where the boundary lies, is through argumentation. Academics as well as other professionals debate whether a particular act constituted or could constitute a humanitarian intervention, and in this debate one evokes reasons. Likewise, political actors engage in argumentation. Naturally, power relations loom in the background, but nevertheless, international political actors engage in bargaining, they link issues for better leverage, and justify and argue for their acts of commission or omission. Even a rudimentary form of threat

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Security Council, *Security Council Resolution Number 748 of March 31 1992*, SC/RES/748/1992; United Nations Security Council, *Security Council Resolution Number 794 of December 3 1992*, SC/RES/1992/794; United Nations Security Council, *Security Council Resolution Number 1044 of January 31 1996*, S/RES/1044/1996; United Nations Security Council, *Security Council Resolution Number 1053 of April 23 1996*, S/RES/1053/1996; United Nations Security Council, *Security Council Resolution Number 1054 of April 26 1996*, S/RES/1054/1996.

[70] James W. Davis, *Terms of Inquiry: On the Theory and Practice of Political Science* (Baltimore: Johns Hopkins University Press, 2005).

[71] Ibid.

could be perceived as a form of argument.[72] Admittedly, sometimes conclusions are hard to reach, or arguments may have fallen on deaf ears. Yet, most important to note is that actors engage in arguing with each other, because it is a sign of accepting the other – at least as "somewhat worthy" of dialogue[73] – and acknowledging one's own position within a wider community. The next section clarifies better my thoughts on argumentation.

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[72] See below.

[73] Note how for example terrorists are often not considered to merit such acceptance as is exemplified by such policies as not negotiating with terrorists.

ON ARGUMENTATION AND ARGUMENTS

An important element in executing political projects is argumentation. There is a myriad number of political projects, and some of them might be more praiseworthy than others, but they all share an inherent need to be "constructed," among other things with the help of reasons, arguments, claims, and justifications. These are needed in order to invite others to participate in the projects, or at a minimum, to secure the non-interference of others.

Some might claim that coercion bypasses effectively the need to argue one's case. Coercion, however, is relatively costly, unsustainable in the long run, and – short of simply using random brute force with the target having to guess what he is supposed to do – a form of argument. To explain this last part better, consider a back-alley robbery, where the robber holds a man at gunpoint demanding his valuables or his life. Even in this case, the robber makes his case by establishing a link between the handing over of valuables and the gun pointing at the victim. By saying: "Your valuables or else," the robber in fact makes the following argument: "*Either* you give me your valuables, and I let you live, *or* I take your life *and* your valuables. It is better for us both, especially you, that I only take your valuables." The gun trumps all counter-arguments, and is in that sense the ultimate backing for the robber's argument.

The above example should not be interpreted to suggest that international politics operates at gunpoint but to show how arguments are central even when using brute power or force. By itself, the gun would hardly do much. First of all, it must be pointed at the victim with a clear indication that it is loaded, and that the person holding the gun is not afraid to use it. Moreover, at least a suggestive signal is required as to what the person holding the gun desires. It would be an odd robbery indeed, if at all unless a robbery á la Monty Python, if the gun was held for example sideways and not a word was spoken. Perhaps it seems strange to claim that threats are a form of argument, because argumentation is usually associated with positive circumstances or to situations, where the other person is in a position to make counter-arguments. To claim, however, that the victim in the example has no choice, would be mistaken. The victim can make his counter-

argument in several ways, all of which will undoubtedly fail miserably, if the robber's gun is loaded, and if he in fact is not afraid to use it.

To some, my view on argumentation may seem too liberal. How is one to differentiate between coercion and argumentation, debate and authoritarian rule? The claim that I have made, however, is a simple one. Argumentation takes place where reasons, and backings for those reasons, are evoked. Whether the parties to an argument have an equal standing, or whether one is in fact in any position to counter such reasons, are different questions. To illustrate, the robber could have simply shot the man and taken his valuables; he did not need to engage in any argumentation or to give his victim a chance to keep his life.

In terms of how arguments proceed, little has changed since Aristotle, as Corbett explains: "we must state our case, and we must prove our case – the proof involving not only the substantiation or our own arguments but also the refutation of opposing arguments."[74] How arguments have been analyzed, on the other hand, has focused on differentiating between the propositions made in a given argument. Conventionally arguments, or perhaps better syllogisms, are described to be composed of a minor premise, a major premise, and a *so* conclusion, where the conclusion follows necessarily from the two premises. A simple example could be: humanitarian intervention can save human lives (minor premise), saving human lives is good/desirable (major premise), and *so* humanitarian intervention is good/desirable.

To describe arguments in this manner, however, would be to over-simplify as Stephen Toulmin argues. According to him, there are three main reasons, why a more complex description of arguments is required. First, the Aristotelian model, as described above, is an inaccurate description of arguments. In contrast to premises, "arguments are like organisms" with "both a gross, anatomical structure and a finer, as-it-were physiological one."[75] The main anatomical units of

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[74] Edward P. J. Corbett, "The Changing Strategies of Argumentation from Ancient to Modern Times," in *Practical Reasoning in Human Affairs: Studies in Honor of Chaim Perelman*, ed. James L. Colden and Joseph J. Pilotta (Boston: D. Reidel Publishing Company, 1986), 34.

[75] S. E. Toulmin, *The Uses of Argument* (Cambridge: Cambridge University Press, 2003), 87.

arguments are "the main phases marking the progress of the argument from the initial statement of an unsettled problem to the final presentation of a conclusion."[76] The finer physiological level, on the other hand, is located at the level of individual sentences. At this level, "the idea of logical form has been introduced, and here … the validity of our arguments has ultimately to be established or refuted."[77] In addition, traditional syllogisms, such as "all A's are B's," are deceptively over-simplified and hide crucial differences in the practical functions of syllogisms.[78]

The second reason, why Toulmin calls for a more complex approach to arguments, is to bring out aspects that are neglected in the Aristotelian approach. Even simple arguments contain not only claims and data but also warrants for them. Arguments, such as "Given Data D, therefore Conclusion C," require warrants (W) to make the step from D to C intelligible.[79] In more complicated arguments one finds also qualifiers (Q), or "explicit reference to the degree of force which our data confer on our claim in virtue of our warrant,"[80] conditions of exception or rebuttals (R), and backings for warrants (B).[81] Thus, the structure of arguments, and the position of its elements, can be illustrated in the following way:
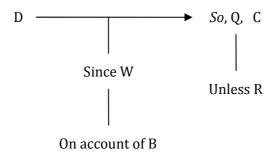

Figure 1: Elements of arguments, reproduced from Toulmin (2003:97).

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[76] Ibid.

[77] Ibid.

[78] Ibid., 100-05.

[79] Ibid., 91.

[80] Ibid., 93.

[81] Ibid., 93-100.

Toulmin's third reason for advocating a more complex approach relates to being able to distinguish between analytic and substantial arguments. Unlike in substantive arguments, in analytic arguments "the backing for the warrant authorizing it includes, explicitly or implicitly, the information conveyed in the conclusion itself."[82] Clearly, this distinction between analytic and substantive arguments could not be done without first differentiating between backings and warrants. There is, however, a problem with genuinely analytic arguments: if "the purpose of an argument is to establish a conclusion about which we are not entirely confident by relating them back to other information about which we have greater assurance, it begins to be a little doubtful whether any genuine, practical argument could *ever* be properly analytic."[83] This is significant, because in the field of analytic arguments the *so* conclusion may in fact follow necessarily, whereas in the substantive arguments this is not necessarily the case. As an example, mathematical arguments appear genuinely analytical in the sense that the conclusions follow necessarily from the premises. Mathematical arguments, however, seem to be a special case, allowing for the Aristotelian simplification, whereas most other arguments are substantive. In sum, the default description of arguments should not be based on a special case of arguments.[84]

Toulmin's more complex description of arguments supports a better evaluation of competing arguments. In other words, by comparing the different elements within and across arguments, one is in a better position to decide on the merits of a particular argument among competing alternatives. Most importantly, the elements supporting an argument must make the steps from data to conclusion coherently and in an intelligible fashion. Whether this is the case determines whether the argument is plausible or a "good" argument. Whether a particular argument makes the steps better than other arguments determines whether it is superior to others.

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[82] Ibid., 116.

[83] Ibid., 117. Emphasis in original.

[84] Although not necessary for the present discussion, Toulmin distinguishes between four different kinds of arguments: 1) analytic vs. substantial, 2) warrant-using vs. warrant-establishing, 3) conclusive vs. tentative, and 4) formally valid vs. not formally valid. See especially chapter 3.

For the elements of an argument to carry it from data to conclusion, they must be appropriate within the context in question. For example, the color of fire engines has no relevance in determining whether the fire engines are well-equipped to extinguish fires. The elements are thus context-dependent. As a first step, then, the evaluation of competing arguments begins by ensuring that all the elements in the arguments are appropriate before continuing to evaluate, whether the elements compose a coherent whole.

In addition, the evaluation of arguments benefits from separating between different fields of arguments:

> Two arguments are said to belong to the same field when the date and conclusions in each of the two arguments are, respectively, of the same logical type; they will be said to come from different fields when the backing or the conclusions in each of the two are not of the same logical type.[85]

Logical types are for example historical reports, predictions, observations, and geometrical axioms. Thus, in evaluating arguments, one should distinguish between field-invariant (or constant) and field-dependent (or variable) elements. Evaluating elements across logical types is either tricky or futile.

The upshot of this last point is that the merits of arguments can be evaluated only within a given argument's field. Mathematical arguments can be appraised within the field of mathematics and legal arguments within a given legal system. In contrast, the terms of assessment, such as impossible, likely, and plausible, operate across fields. As expressed by Toulmin, "all the *canons* for the criticism and assessment of arguments … are in practice field-dependent, while all our terms of assessment are field-invariant in their *force*."[86]

Thus, the assessment of arguments is possible, when the elements of different arguments are explicitly examined. Such an evaluation, however, must first determine, whether the argument's elements are relevant, and whether the

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[85] S. E. Toulmin, *The Uses of Argument* (Cambridge: Cambridge University Press, 2003), 14.

[86] Ibid., 35.

conclusion is intelligible given the elements. In comparing and contrasting two different arguments, the first step is to determine, whether they both belong to the same field, and then as a second step to evaluate their individual merits within the field. This naturally implies that there is no universal standard, but that all arguments must be evaluated within their own appropriate contexts. In order to clarify this process of evaluation, I wish to discuss adjudication as a practical example of assessing competing arguments.

ADJUDICATION AS AN ANALOGY TO EVALUATING ARGUMENTS

In the previous section, it was suggested that adjudication could provide an analogy for evaluating between competing arguments. Although adjudication concerns the assessment of competing claims within a particular legal system, it nevertheless provides an illustration of a method through which a decision is reached in situations where a self-evident conclusion is not available.

Various legal scholars have suggested models of adjudication. For example, Ronald Dworkin has famously argued for a "one right answer" theory of adjudication.[87] Dworkin asserts that a discoverable, exclusive, and correct answer exists to each question faced by a judge. To credit Dworkin, his theory might serve as a good guide in paradigmatic or uncontroversial cases, where there are no multiple, equally plausible answers. Thus, in the vast majority of cases, Dworkin's theory might be helpful. The situation is different, though, when one moves away from paradigmatic cases to ones, which can have multiple plausible answers. In such cases, some extra-legal criteria must exist, on which the judge can base her decision, a point which Dworkin excludes. Moreover, to conclude in such cases that the chosen decision was the only "correct" conclusion, by virtue of it having been chosen among equal alternatives, would be simply wrong.

Legal positivists, such as H.L.A. Hart, Joseph Raz, and Neil MacCormick, have also proposed their own versions of adjudication.[88] These theories, however, face similar problems as theories proposed by natural lawyers. Although the separation of law from ethics or morality is certainly useful if not required in many cases, it might not always be possible, especially if we are to choose one answer among multiple equally plausible answers. Again, in such cases, there must be something outside the law that allows for selecting one rather than another answer. The cases, where multiple equally plausible answers exist, are comparatively rare – and in this sense hard cases – but despite their rareness, a

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[87] Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977).

[88] H. L. A. Hart, *The Concept of Law*, 2nd ed. (Oxford: Clarendon Press, 1994); Neil MacCormick, *Legal Reasoning and Legal Theory* (Oxford: Oxford University Press, 1978); Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System* (Oxford: Oxford University Press, 1970).

theory of adjudication should nevertheless provide a guide how to arrive at a conclusion in such hard cases.

Joel Levin, on the other hand, provides an account of adjudication that incorporates extra-legal aspects into the decision-making process.[89] In Levin's theory, judicial decision-making operates on three levels. The first level represents the answers to the questions that come before the courts.[90] The second level covers the criteria that allow for the first-level answers.[91] Finally, the third level includes larger beliefs and attitudes "which tell what criteria can be used to reach a legal decision (as opposed to those respecting taste, politics, morality, religion, etc.)"[92] Levin's system operates so that a proposition can be used on more than one level, but if it is used on several levels, it is used in a logically different way.[93] Moreover, each higher level serves to justify any lower level.[94]

Certain parallels are evident between Levin's account of adjudication and Toulmin's description of arguments. In both cases, conclusions are reached gradually through steps or levels. In other words, both accounts consider the conclusions as constructions. These constructions are composed of various elements that can be used in different ways depending on the context and the needs of the case at hand. Such constructions are plausible, or "correct," when the elements are valid, and when the elements connect within and across levels in ways that justify the conclusion. Thus, there are two guiding questions: 1) Are the elements of an argument logical, rational, factual, plausible, acceptable, or something else? and 2) Do the parts construct the whole?

Moreover, adjudication takes place within a particular legal system that is embedded in a particular society and particular procedural rules. As has been argued, in certain hard cases, the law may be insufficient by itself to provide for an

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[89] Joel Levin, *How Judges Reason: The Logic of Adjudication* (New York: Peter Lang, 1992).

[90] Ibid., 18-19.

[91] Ibid., 19-20.

[92] Ibid., 15. See also 20-21, 96.

[93] Ibid., 16-17, 97.

[94] Ibid., 97.

answer, and thus extra-legal references are required. These extra-legal references, however, whether norms or non-legal societal rules, reflect the particular society, in which the legal question was posed. Again, the discussion returns to the requirement of taking into consideration the framework within which one operates. Thus, for example moral questions in international politics ought to be discussed within the moral framework of international politics, and not with reference to individual morality. As already pointed out by Machiavelli, morality may have a different role among princes than among common people.[95] Naturally, this does not imply that morality plays no role in the international sphere, although such conclusions may have been drawn, but that our examination of morality at the international level should reflect the practice of international politics as a whole.

Humanitarian intervention provides an example of a moral question at the international level. It also illustrates how morality operates differently at the international than at the domestic level. Let us consider only one aspect of humanitarian intervention, namely its justifiability. The justification for intervention arises in grave humanitarian crises, such as in genocidal situations. If one considers the domestic realm, however, even a single killing can cause moral outrage. Naturally, the value of human life is the same, regardless of the level, but the threshold criteria seem to differ depending on the level one considers. Similarly, we seem to allow more when acts are committed in the name of our country than when they are committed in the name of individuals.[96]

Humanitarian intervention is particular also for the reason that it lies at the crossroads of three different frameworks, namely international politics, international law, and morality. One could consider these three separately, but what is attempted in this thesis is the combination of these three fields. This is done by using a casuistic approach.

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[95] Niccolò Machiavelli, *The Prince*, trans. Harvey C. Mansfield (Chicago: University of Chicago Press, 1998).

[96] In this context, consider for example soldiers killing in a war.

CASUISTRY AS THE UNDERLYING APPROACH

Also known as case ethics or case morality, casuistry "resolves cases of conscience, applying the general rules of religion and morality to particular instances in which circumstances alter cases or in which there appears to be a conflict of duties."[97] Despite being usually associated with religious morality or the teachings of the Catholic Church, the core ideas of casuistry can be applied also elsewhere. Thus, what follows is a brief description of the history of casuistry and an outline of casuistic reasoning in order to discuss the kind of reasoning used in this thesis.

In its essence, casuistry involved the application of general rules in a particular, individual case. One of the main justifications for using this approach, when examining cases of humanitarian (non-)intervention, is that these cases are all quite different from each other, and that in all cases the general rules of international politics must somehow be accommodated. As was argued at the beginning of this chapter, each grave humanitarian crisis is unique, and each humanitarian intervention exceptional. Nevertheless, each individual case takes place within the wider framework of international politics. This framework, on the other hand, is not set in stone but it is in constant flux, thus disallowing a "one size fits all" approach. Moreover, humanitarian intervention represents a case, where there is a clear conflict of duties. To give an obvious example, on the one hand there is a perfect duty of non-interference by all states. On the other hand, the decision-makers of states have duties as members of humanity. This conflict is complicated by for example the *Responsibility to Protect* (R2P) report and the subsequent adoption of its main ideas by the General Assembly.[98] According to the report, and as acknowledged by the General Assembly, the international community is expected to take on the responsibility of states to protect their

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[97] Catherine Soanes and Angus Stevenson, eds., *The Oxford English Dictionary*, Revised ed. (Oxford Reference Online: Oxford University Press, 2006), definition of "casuistry".

[98] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001); United Nations General Assembly, *World Summit Outcome*, 2005, A/RES/60/1.

citizens, when a state is "unable or unwilling to fulfill [its] responsibility, or is itself the perpetrator."[99]

As a theoretical approach, however, casuistry fell into disrepute since the mid-seventeenth century. To scholars wishing to find certainty and to relate moral judgments to universal principles, casuistry appeared to excuse the inexcusable.[100] Perhaps the most forceful attack against casuistry came from Blaise Pascal in 1656. In his *Provincial Letters*,[101] Pascal criticized casuistry heavily. Yet, one can see that the critique was directed at *bad* casuistry rather than casuistry *per se*. By attempting to distinguish between "good" and "bad" casuistry, Jonsen and Toulmin have attempted to revive casuistic reasoning.[102] "Good" casuistic reasoning admits that differences of moral opinion among conscientious individuals are expectable in marginal or ambiguous cases. This, however, is not extendable to clear or paradigmatic cases. Thus, "bad" casuistry's possible consent to "anything is possible" finds no foothold with "good" casuistry. In other words, the strongest criticisms made against casuistry, and its relativistic nature, were misguided and should have been directed at the practitioners rather than at the approach itself.

The roots of casuistry lie in antiquity: in Greek philosophy, in the judicial practices of Roman law, and in the traditions of rabbinical debate in Judaism.[103] Starting with Greek philosophy, I shall explain the origins of casuistry before outlining its relevance to the research in the thesis.

Of the Greek philosophers, Aristotle was perhaps the greatest practitioner of casuistic reasoning. In his epistemological discussion, Aristotle differentiates between theoretical knowledge or analytical reasoning, and practical

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[99] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001). See also United Nations General Assembly, *World Summit Outcome*, 2005, A/RES/60/1.

[100] A. R. Jonsen and S. E. Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (London: University of California Press, 1989), 11.

[101] Blaise Pascal, *The Provincial Letters* (London: Encyclopaedia Britannica, 1990).

[102] A. R. Jonsen and S. E. Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (London: University of California Press, 1989).

[103] Ibid., 47-74.

knowledge.[104] Practical knowledge, moreover, could be *technai*, the technical knowledge of generic tasks or matters, or it could be a form of *phronesis*, the capacity to recognize and to understand specific kinds of cases. Both *technai* and *phronesis* are opposed to *episteme*, or theoretical knowledge. For Aristotle, ethics belongs in the realm of *phronesis*, because moral questions require perceptive and timely answers, as and when they arise. *Episteme*'s desire for universal and timeless truths cannot accommodate the needs of ethics, because ethics is concerned with questions that are concrete, temporal, and presumptive as opposed to abstract, atemporal, and theoretically necessary.

The judicial practices of Roman law, on the other hand, shared Aristotle's prudential thinking. In Rome, before her great expansion, formal adjudication was required only in marginal or ambiguous cases, which were referred to the College of Pontiffs. The Pontiffs were entrusted to apply their judgment wisely without a requirement to cite reasons or established rules. Their role was to arbitrate in the sense of exercising "judicial discrimination in assessing the delicate balance of facts at issue in a particular case."[105] Considered wise, the Pontiffs were to perceive the delicate balance of circumstances in each case and to arrive at a just or prudential conclusion. As Rome expanded and Emperor Constantine introduced judicial changes, the Pontiffs, however, lost their equitable jurisdiction.

Judaism, though, has remained essentially similar throughout history in its method of interpreting and explaining the Talmud texts by those who are learned in them. Disputed issues are debated by a large enough *schul*, formed of learned rabbis, who attempt to reach a conclusion by weighing different points of view relevant to the dispute at hand. Similar to the Pontiffs, these learned men are revered in their prudence. The Judaic tradition, however, has incorporated certain egalitarian ideas, similar to ideas held in ancient Athens, so that "the egalitarian

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[104] Aristotle, *Nicomachean Ethics* (Oxford: Oxford University Press, 1959).

[105] A. R. Jonsen and S. E. Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (London: University of California Press, 1989), 53.

wisdom of the people and the elitist authority of the rabbis coalesced into a mode of moral reasoning between the Roman and the Athenian."[106]

After antiquity, Christianity influenced the development of casuistry. In Europe, casuistry reached its heyday between the second half of the sixteenth century and the first half of the seventeenth century. Evidently, casuistic reasoning was applied to questions related to Christianity, whether to the interpretation of certain passages or to the application of the Church's teachings in practice. Around mid-seventeenth century, though, casuistry fell into disrepute, when it seemed capable of providing support for two contrasting claims, thus paving the way to relativism and allowing one to excuse one's actions either way. This position was not helped by the Cartesian quest for certainties and universal truths in the sciences that spread also to matters of morality.

Contemporary research, however, has demonstrated how the Cartesian quest is untenable. To give an example, as Davis argues, two-value logic, on which scientific positivism is based, and which is required by deductive logic, allocates things into two categories such as "yes and no" or "true and false". The problem is that in many cases we need a third category: "undecided."[107] These undecided cases are borderline cases, in the sense of being marginal or ambiguous. Davis's research, among many others, has thus enabled a return to casuistic reasoning by focusing exactly on the borderline cases.

The manner, in which casuistry enables a decision in marginal or ambiguous cases, is by examining the particulars of a given case. As a second step, one determines what the particular case is a case of on the basis of those details. Moreover, by locating the case within its context, one assesses which general rules are relevant and how they should be applied given the specifics of the case. A taxonomy, or a methodological map, highlighting significant similarities and differences among various cases enables the assessment, whether the particular

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[106] Ibid., 57.

[107] J. M. Ziman, *Reliable Knowledge: An Exploration of the Grounds for Belief in Science* (Cambridge: Canto, 1991). See also James W. Davis, *Terms of Inquiry: On the Theory and Practice of Political Science* (Baltimore: Johns Hopkins University Press, 2005).

circumstances of a given case are significant enough to require that the case be treated differently than other similar but not identical cases. Thus, instead of deciding what something is a case of and then applying predetermined rules to the case, casuistry both situates cases within their contexts and adds another layer of deliberation.

In relation to humanitarian crises, one often hears the complaint how similar cases are treated differently. Why did we intervene in Kosovo but not in Rwanda? Equally often, the added layer required by casuistry is absent in these outcries. Before jumping into conclusions, one could ask whether the particulars of different but similar cases might allow for a different response from the international community despite their apparent similarity. In the Kosovo versus Rwanda situation, the answer would undoubtedly increase the shame of those who decided to leave Rwandans to care for themselves but supported intervention in Kosovo. Alternatively, one might ask whether selective responses by the international community to grave humanitarian could be based on the particulars of the different cases, and if so, what criteria should be used.

In this thesis, thinking similar to casuistry is used in the following chapters. For example, the subsequent chapter examines first the humanitarian intervention debate before asking what kind of a right the right of humanitarian intervention would be if it existed. Although casuistic reasoning is implicit in this chapter, one can note how the use of for example a typology of rights fits well with the casuistic tradition. Similarly, chapter three, which focuses on responsibility, considers how certain details might affect the interpretation of a given situation or the distribution of responsibility. Chapter four, moreover, continues this line of thinking with a "practical" demonstration of a model of shared responsibility. Finally, chapter five questions the acceptability of the justifications certain international actors made in relation to the Rwandan genocide in 1994 and uses casuistic reasoning in the evaluation process. The final chapter is dedicated to stock-taking, and as such does not apply casuistic reasoning to any particular questions. One might, however, note that even in chapter six the manner of thought could resemble an approach similar to casuistry.

CHAPTER TWO:
A POINT OF DEPARTURE

Legitimizing principles triumph by being taken for granted.[108]

INTRODUCTION

Having outlined in the previous chapter the general approach taken in this thesis, this chapter discusses the starting position of the research. The point of departure in this thesis may seem controversial to some, because in many respects it represents a reversal of traditional presumptions. Usually, the discussion on humanitarian intervention has focused on the question whether the right of humanitarian intervention exists.[109] Here, for heuristic purposes of clarification, however, it is assumed that there is a right of humanitarian intervention under certain circumstances, namely in grave humanitarian crises.[110] This assumption is made in two different contexts in this chapter. The assumption is made for the first time, when examining the literature on humanitarian intervention, while the second time is when the discussion focuses on the kind of right the right of humanitarian intervention would be, if it existed. These two contexts represent also the two main parts of this chapter.

The first part of this chapter examines the literature. The amount of literature that there is in relation to humanitarian intervention is simply too vast to be covered

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[108] Henry Kissinger, *A World Restored: Metternich, Castlereagh and the Problems of Peace, 1812-1822* (London: Gollancz, 1973).

[109] Or so at least until the R2P report.

[110] This assumption is justified given the General Assembly's recognition that the international community shares a responsibility to protect victims of grave humanitarian crises. See e.g. United Nations General Assembly, *World Summit Outcome*, 2005, A/RES/60/1. This recognition, however, does not include individual right to intervene. In other words, although there are clear indications that the rule of non-intervention can be extended for humanitarian motives, the question still remains when and by whom it can be done.

completely. Thus, certain cuts have been necessary. Moreover, instead of reciting what other authors have written, the literature is approached by examining the implicit assumptions made within it. It will be argued that these implicit assumptions amount to an argument claiming that there first of all should be a right of humanitarian intervention and secondly, that there is a responsibility to exercise the right. In other words, in the literature, there exists a link between rights and responsibilities.

The second half of this chapter considers the link between right and responsibility by asking what kind of a right is in question. By using a Hohfeldian approach to rights, it is argued that the kind of right the right of humanitarian intervention is, if it exists, depends on the right-holder, and that there is a connection between the right to intervene and the responsibility to exercise the right. This connection, however, is not straightforward as will be explained below. Moreover, by using this method it is possible to clarify who could be the right-holders and on what basis.

SOME REMARKS ON HUMANITARIAN INTERVENTION

Most of the discussion on humanitarian intervention concentrates on two periods: interventions before the end of the Cold War and interventions since its end. The earlier period, however, is normally limited to the years between 1945 and 1990 with an emphasis on the 1970s. The most cited cases for this period are India's intervention in Bangladesh in 1971, Vietnam's intervention in Cambodia in 1979, and Tanzania's intervention in Uganda, also in 1979. Some authors, such as Martha Finnemore, have argued that cases of humanitarian intervention are not limited to the post-Charter era. In her examination of humanitarian intervention, Finnemore argues that cases of humanitarian intervention date as far back as the nineteenth century.[111] The debate, however, is whether all these cases can actually be included as examples of *humanitarian* intervention, because in most of them humanitarian motives were not self-evident or proclaimed by the interveners. Moreover, for example in the nineteenth century cases, the concept of humanity was restricted to white Christians, thus restricting the applicability of such cases from a modern perspective.

The early 1990s, on the other hand, marks a distinct point in the history of humanitarian intervention. Since then, humanitarian motives have been cited explicitly by the interveners, who have also attempted to use such motives as justifications for their military action. The examples that are discussed most often include Iraq in 1991, Somalia in 1993, Rwanda in 1994, the Former Yugoslavia throughout most of the 1990s, Sierra Leone from 1998, East Timor in 1999 and in 2006, and more recently Darfur at least since 2004. Some might include also Afghanistan and the recent invasion of Iraq as cases of humanitarian intervention since September 11, yet they both raise more questions than they can settle. For example, Human Rights Watch has strongly criticized US government's attempts to describe the Iraqi operation as a humanitarian intervention.[112]

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[111] Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in *The Culture of National Security: Norms and Identity in World Politics.*, ed. Peter J. Katzenstein, *New Directions in World Politics* (New York: Columbia University Press, 1996).

[112] Human Rights Watch and Ken Roth, "War in Iraq: Not a Humanitarian Intervention," (Human Rights Watch, 2004: May 10). Available at <http://hrw.org/wr2k4/3.htm>.

The explicit use of humanitarian justifications is a striking difference between cases before and after 1990. Cases that date before 1990 were justified mainly in terms of self-defense. It seems that humanitarian justifications were considered insufficient as the Indian example demonstrates. In 1971, when India intervened in Bangladesh, she used humanitarian justifications in combination with self-defense arguments. Later, however, India withdrew her humanitarian justifications, most likely because of the perceived possibility that they hindered her cause. In contrast, since the early 1990s, humanitarian justifications have been explicitly used to justify interventions as for example Somalia, Rwanda, Kosovo, and Darfur demonstrate. To some extent, one might even argue that humanitarian justifications are now required in order to legitimize intervention.

The difference between Cold War and post-Cold War cases of humanitarian intervention can surely be assigned to a normative change at the international level. The acceptability, if not even the requirement, of humanitarian justifications for the use of force reflects a shift within the wider discussion concerning the use of force and its exceptions. As forbidden by the UN Charter, force can be used legitimately either in self-defense or as authorized by the Security Council under Chapter VII powers. Neither of these exceptions, however, directly assaults traditionally perceived sovereignty of states and its fundamental rule of non-intervention. In contrast, allowing for humanitarian justifications as legitimate reasons for the use of force outside one's own boundaries conflicts with the rule of non-intervention, a point which has caused much concern.

States, and especially newly sovereign, non-Western states, have been protective of their interpretation of sovereignty as exclusive.[113] Similarly, some authors have expressed concern over the possibility that allowing for humanitarian justifications as legitimizing factors for the use of force can open the flood gates of selfish abuse of those justifications. The debate, however, seems one-sided, at least in terms of volume. In other words, one finds many accounts of the rightfulness of humanitarian intervention but few counterarguments apart from

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[113] Naturally, also "older," Western states are also protective of their sovereignty, but such states do not usually have poor human rights or humanitarian records.

references to the rule of non-intervention and concerns about the proliferation of the concept to areas and cases, where it does not fit.

Thus, to describe the "discussion," it is characterized by authors seeking better and novel ways to assert the same argument, namely that humanitarian imperatives ought to override the rule of non-intervention in grave humanitarian crises,[114] as if they were fighting a silent enemy, or as if the previous arguments had not been persuasive enough. That the case for humanitarian intervention must be remade over again reveals much about the international order. To paraphrase Mervyn Frost, the exception of humanitarian intervention has not become the rule, because it is still the exception of justifying humanitarian intervention, and not the rule of non-intervention in grave humanitarian crises, that requires special attention.[115]

One cannot, however, deny that a normative change has taken place. As supported by state practice, humanitarian imperatives have been accepted as legitimating factors for intervention, at least in some cases. This change is surely connected with the rise of the human rights regime and its growing importance since the mid-twentieth century. The question that remains, however, relates to the scope of this change. This thesis attempts to provide at least a partial answer to this question by examining international responsibility in relation to grave humanitarian crises. The existence of a responsibility to intervene, or to alleviate human suffering in grave humanitarian crises, would indicate that there has been a profound normative shift in this regard.

In the next section I discuss the humanitarian intervention debate in more detail. The purpose is not to provide a summary of the whole discussion but to focus on the assumptions that the discussants make. It is argued that the advocates of the right of humanitarian intervention argue for a fundamental change in the responsibilities of states and of the international community.

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[114] The newest twist in the discussion is the concept of responsibility to protect, to which I shall return later. See International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

[115] Mervyn Frost, *Ethics and International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996), 105.

A DISCUSSION OF THE HUMANITARIAN INTERVENTION DEBATE

Before discussing the humanitarian intervention debate, two disclaimers are in order. First, the following pages focus on the *humanitarian intervention* debate, and little attention is given to the *Responsibility to Protect* (R2P) report and the discussion it consequently stirred.[116] The reason for this is simple; the aim is to highlight the background and evolution of the debate, of which the responsibility to protect is the latest stage. Subsequent chapters, on the other hand, address responsibility along with the R2P report. The second disclaimer concerns the manner, in which the humanitarian intervention debate is approached. The implicit assumptions within the debate are at the locus of this discussion. Hence, no attempt is made to provide an exhaustive account of the literature, but rather to draw attention to the kinds of arguments that have been made. In what follows, some characterization may appear stereotypical, but this is done in order to clarify the distinctions involved.

Writing in 1859, John Stuart Mill may have been one of the first to discuss "humanitarian" intervention,[117] but it was only in 1973, when the debate received an impetus from Thomas Franck and Nigel Rodley.[118] Franck and Rodley's article set in motion an intensifying debate whether the right of humanitarian intervention existed or should exist. This debate has drawn mainly from the fields of international politics, international law, and moral philosophy.

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[116] See International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001). See also e.g. Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs* 81, no. 6 (2002); Rebecca J. Hamilton, "The Responsibility to Protect: From Document to Doctrine--but What of Implementation?," *The Harvard Human Rights Journal* 19, no. Spring (2006); S. Neil Macfarlane, Carolin J. Thielking, and Thomas G. Weiss, "Review: The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?," *Third World Quarterly* 25, no. 5 (2004); Max W. Matthews, "Tracking the Emergence of a New International Norm: The Responsibility to Protect and the Crisis in Darfur," *Boston College International & Comparative Law Review* 31, no. 1 (2008); Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?," *The American Journal of International Law* 101, no. 1 (2007); "U.S. Officials Endorse "Responsibility to Protect" Through Security Council Action," *The American Journal of International Law* 100, no. 2 (2006).

[117] John Stuart Mill, "A Few Words on Non-Intervention," in *Essays on Equality, Law, and Education: Collected Works of John Stuart Mill*, ed. John M. Robson (Toronto: University of Toronto Press, 1984).

[118] Thomas M. Franck and Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67, no. 2 (1973).

Three central questions have marked the debate. First, what is humanitarian intervention, and how does it differ from other kinds of interventions?[119] Second, if the right of humanitarian intervention exists, who is (are) the right-holder(s)? Third, when can the right-holder(s) exercise the right?[120] This last question was addressed in chapter one in relation to exceptional circumstances that justify humanitarian intervention. Thus, in what follows, attention is given to the other two questions.

The first question regarding the definition of humanitarian intervention has received a plurality of answers. Although there seems to be a general understanding of what constitutes an example of humanitarian intervention, there is no agreement over the "proper" definition of humanitarian intervention.[121] As Davis reminds us, the reason for the plurality of definitions might not lie with the theorists but with the concept and its fuzzy boundaries.[122] Nevertheless, despite their differences, most of the definitions of humanitarian intervention are quite similar. Fundamentally, humanitarian intervention is distinguished from humanitarian assistance by being uninvited by the targeted state. Moreover, humanitarian intervention is usually associated with the use of force, or at least the use of military with or without the use of force, in order to achieve humanitarian objectives. Lastly, humanitarian interventions are aimed at rescuing people, who are not the citizens of the intervening state(s). As Wheeler has put it aptly, humanitarian intervention is about saving strangers.[123]

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[119] Some may consider "humanitarian intervention" an oxymoron. See e.g. Stewart Patrick, *The Role of the U.S. Government in Humanitarian Intervention*, (U.S. Department of State, 2004, Remarks to the 43rd Annual International Affairs Symposium, "The Suffering of Strangers: Global Humanitarian Intervention in a Turbulent World", Lewis and Clark College, April 5, 2004). Available at http://www.state.gov/s/p/rem/31299.htm; Shashi Tharoor and Sam Daws, "Humanitarian Intervention Getting Past the Reefs," *World Policy Journal* 18, no. 2 (2001). See also Alex de Waal, "No Such Thing as Humanitarian Intervention: Why We Need to Rethink How to Realize the "Responsibility to Protect" in Wartime," (Harvard International Review, 2007). Available at <http://www.harvardir.org/articles/1482/>.

[120] A fourth question, namely whether there is a responsibility to intervene, has been introduced more recently. I shall return to this question explicitly in the following chapters.

[121] Anthony F. Jr. Lang, "Humanitarian Intervention - Definitions and Debates," in *Just Intervention*, ed. Anthony F. Jr. Lang (Washington DC: Georgetown University Press, 2003), 2-4.

[122] James W. Davis, *Terms of Inquiry: On the Theory and Practice of Political Science* (Baltimore: Johns Hopkins University Press, 2005).

[123] Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

The inclusion of humanitarian motivations in the definition of humanitarian intervention, on the other hand, divides the participants to the discussion. For example Wheeler has omitted motivations from his threshold criteria.[124] Through this omission, Wheeler has been able to count some of the Cold War cases as humanitarian interventions, thus arguing for a custom of humanitarian intervention, at least since the 1970s. Moreover, Wheeler is more concerned with the consequences of intervention rather than its explicit justifications. We are, after all, interested in knowing whether the end result was an improvement in the humanitarian conditions of the initial circumstances predating intervention.

On the other hand, for example Holzgrefe insists on humanitarian motives as part of the definition of humanitarian intervention.[125] This insistence attempts to delineate better between humanitarian and other kinds of interventions. The danger in omitting humanitarian justifications, according to authors including motives as part of their definition, is that almost any intervention might be counted as humanitarian just as long as the end result was somewhat better than the situation during a crisis. Since already the end of a crisis clearly marks an improvement in the humanitarian conditions, humanitarian intervention could be abused during times of crisis, if one does not insist on humanitarian motives as part of the threshold criteria for determining whether a particular intervention could be counted as humanitarian.

To discuss the inclusion-exclusion of humanitarian motives in the definition of humanitarian intervention, it is advisable to consider the justification for the use of force in humanitarian crises. The justification for humanitarian intervention relies on the argument that the use of force is necessary for bringing about a positive end state, namely the termination of hostilities against innocents and the alleviation of their suffering. In other words, the positive humanitarian outcome is not supposed to be some happy coincidence of the use of force; a positive humanitarian outcome is supposed to result from deliberated, planned action.

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[124] Ibid.

[125] J. L. Holzgrefe, "The Humanitarian Intervention Debate," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003).

Moreover, the use of force is justified only when it is likely that it will result in a positive humanitarian outcome. To put it differently, the use of force would not be justifiable, if it was likely that it would not make a difference, or if it could worsen the situation.

Some, on the other hand, might argue that the use of force is justified by the crisis, the human suffering. Arguing thus, a particular kind of crisis justifies the use of force, which is necessary for solving the problem. Whether or not the end result is in fact an improvement plays a secondary role in determining whether the intervention could be labeled humanitarian. After all, not all humanitarian interventions result in a positive outcome as the experience from Somalia so vividly demonstrates. In other words, should we discount interventions as humanitarian when they fail to achieve humanitarian objectives, even though they have been explicitly justified on humanitarian imperatives, and when there have been no geo-strategic interests involved on the part of the intervener(s)?

Moreover, as mentioned in the previous chapter, some such as Tesón make a distinction between intensions and motives. Following John Stuart Mill, Tesón differentiates intention as something that is willed, and motives as further goals one wishes to achieve with the intended act.[126] As Terry Nardin argues, however, Tesón's argument twists the whole notion of humanitarian intervention to being about "us" rather than being about "others."[127] As humanitarian intervention is understood within the bounds of this thesis, it should incorporate at least some humanitarian motives and not just intentions. Otherwise, the very idea why humanitarian intervention became an issue in the first place is lost.

In sum, although it might make sense to concentrate on the consequences of intervention, and to exclude humanitarian motives especially when examining for example the Cold War cases, a too narrow focus on the consequences of intervention at the price of the motives seems unjustifiable especially in the contemporary world. Evidently, the positive end state is part of the justification of

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[126] Fernando R. Tesón, "Ending Tyranny in Iraq," *Ethics and International Affairs* 19, no. 2 (2005): 5.

[127] See e.g. Terry Nardin, "Humanitarian Imperialism: Response to 'Ending Tyranny in Iraq'," *Ethics and International Affairs* 19, no. 2 (2005): 23.

the use of force, in the sense that it is considered to be able to bring about a positive humanitarian outcome, but the desire or motive to bring about that outcome should be acknowledged. Otherwise the following simplified, hypothetical example could be counted as a humanitarian intervention: Consider that state A desired to intervene in state B in order to take control of state B's oil reserves at a time, when state B was undergoing domestic turmoil resulting in the deaths of thousands of innocents. Consider further that state A's intervention and seizure of the oil reserves happened to tip the balance in state B to favor the revolutionary forces enough to bring about a change in government and peaceful times. It would be strange indeed, if cases like this could be counted as humanitarian interventions, something that would be possible, if humanitarian motives are not part of the definition of humanitarian intervention.

If humanitarian motives ought to be part of a definition of humanitarian intervention, so ought the lack of invitation by the targeted state. If humanitarian aid is requested by the government of a state, the resulting operation is best described as humanitarian assistance. In such situations, there is neither a conflict with the rule of non-intervention nor is the sovereignty of the targeted state challenged. Cases of humanitarian assistance are not covered in this thesis, because they pose different questions than those that are of interest in this dissertation.

The third fundamental aspect of a definition of humanitarian intervention is a present or imminent grave humanitarian crisis. As discussed in chapter one, it might not be self-evident what constitutes a grave enough humanitarian crisis to justify intervention. Evidently, the circumstances must be exceptional enough to justify the extension of normal rules, including the respect for the rule of non-intervention. Whether it is a question of conscience-shocking circumstances,[128] of outsiders being the only hope,[129] or of an overwhelming humanitarian

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[128] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000).

[129] Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

necessity,[130] from a humanitarian perspective, the "stakes are too high, the suffering already too great"[131] in circumstances that justify humanitarian intervention.

The fourth part of defining humanitarian intervention relates to the manner, in which the operation would be undertaken. Following Just War tradition, humanitarian intervention should be conducted in a manner that would not contradict neither the initial motives (and intentions) nor undermine the humanitarian character of the intervention. Clearly, actors hardly ever act for single motives, and to expect that humanitarian interventions occur out of pure altruism might be utopian. The argument, however, is not that humanitarian intervention should be motivated solely on humanitarian grounds, rather that humanitarian motives should play a significant part. In this sense, the manner, in which an intervention unfolds, should reflect on those motives. Similarly, the intervention should not cause more suffering than not intervening, thus remaining true to its character as "outside help."

These four parts of a definition of humanitarian intervention are how the concept is understood within this thesis. In other words, humanitarian intervention is understood as the use of force across state borders by a state (or a group of states such as a coalition or an intervention organization) aimed at preventing or ending a grave humanitarian crisis of individuals or groups other than its own citizens, without the permission of the state within whose territory force is applied, and in a manner which is consistent with the humanitarian aims of the intervention.

By providing a definition of humanitarian intervention, I could be accused of hypocrisy. After all, have I not been arguing that defining concepts with clear boundaries is difficult, if not impossible? Moreover, many elements of my definition are controversial. To name four examples, I have included motives as

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[130] This definition is from a memorandum by the British Foreign and Commonwealth Office, in which the UK explained her understanding of the legal basis of possible NATO action in Kosovo. Quoted in Richard Caplan, "Humanitarian Intervention: Which Way Forward?," in *Just Intervention*, ed. Anthony F. Jr. Lang (Washington DC: Georgetown University Press, 2003), 135.

[131] Michael Walzer, "Arguing for Humanitarian Intervention," in *The New Killing Fields: Massacre and the Politics of Intervention*, ed. Nicolaus Mills and Kira Brunner (New York: Basic Books, 2003), 21.

part of my definition. Similarly, my definition is highly state-centric. Third, I have not included the Security Council in my definition. Lastly, my definition is imprecise.

To answer such objections,first, *I wish to make it absolutely clear that the reason for providing this definition is to clarify how I understand the term within this thesis*. The purpose is not to operationalize the concept with this definition or to claim inside knowledge of what "humanitarian intervention" *really* means. My definition simply outlines one understanding of the concept and the elements that I deem central. Second, the state-centricity of my definition is due to the fact that in the contemporary world it is only states and inter-governmental organizations that can intervene in the sense that I understand humanitarian intervention. Third, the exclusion of for example the Security Council should be clear. My definition is about the *act* of humanitarian intervention, not about who would commit it. Finally, I acknowledge that the boundaries of my definition are fuzzy, because much interpretation is needed for example in determining a grave enough crisis as well as sufficiently humanitarian motives.

The second question that has received much attention relates to the right of humanitarian intervention: Does a right of humanitarian intervention exist, and if so, who are the right-holders? Most answers to this question begin by examining the rightness of intervention during times of grave crises. It is considered that because it is right to alleviate suffering by for example ending genocide, there must also be a right to intervene. Terry Nardin, for example, has argued for the moral basis of humanitarian intervention according to principles that "have been known for centuries, if not millennia."[132] In some senses, then, Nardin's argument aims to establish also a custom.

The usual way to establish custom, however, relates to cases of humanitarian intervention and to the demonstration that historically speaking humanitarian intervention is not new. As mentioned earlier, Wheeler establishes a strong record of humanitarian interventions during the Cold War by omitting

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[132] Terry Nardin, "The Moral Basis for Humanitarian Intervention," in *Just Intervention*, ed. Anthony F. Jr. Lang (Washington DC: Georgetown University Press, 2003), 25.

humanitarian motives from his threshold criteria.[133] Finnemore, on the other hand, considers the change in the extent of humanity from having been limited to white Christians to its universality in contemporary times. In this way, she establishes a custom or practice of humanitarian intervention as far back as the early nineteenth century.[134] Whether Wheeler's or Finnemore's attempts at establishing a custom are sufficient is doubtful. Wheeler's omission of motives from this threshold criteria, as discussed above, remains dubious, while Finnemore's acknowledgement that "humanitarian action was rarely taken when it jeopardized other stated goals or interests of a state,"[135] and that "in the nineteenth century European Christians were the sole focus of humanitarian intervention"[136] weakens the applicability of her arguments in relation to *contemporary* humanitarian interventions. Nevertheless, it is clear that actions similar to our current understanding of humanitarian intervention have occurred in the past, even if it is unclear whether they amount to a custom recognized by for example international law.

The right of humanitarian intervention is alleged also on the basis of international law, of which custom forms a significant part. By re-examining international law, authors, such as Tesón, and Arend and Beck, have argued that humanitarian intervention is at least permissible, even if the right has not been codified.[137] Moreover, Brian Lepard has constructed a fresh interpretation of international law based on ethical principles derived from world religions.[138] Drawing from world religions, Lepard argues that a restrictionist interpretation of law denying the legitimacy, if not also the legality, of humanitarian intervention is

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[133] Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

[134] Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in *The Culture of National Security: Norms and Identity in World Politics.*, ed. Peter J. Katzenstein, *New Directions in World Politics* (New York: Columbia University Press, 1996).

[135] Ibid., 168.

[136] Ibid., 184.

[137] Anthony C. Arend and Robert J. Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (London: Routledge, 1993); Fernando R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (New York: Transnational Publishers, 1988).

[138] Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions* (University Park: Pennsylvania State University Press, 2002).

insupportable. Simon Chesterman, on the other hand, has argued that "humanitarian intervention is illegal but … the international community may, on a case-by-case basis, tolerate the wrong."[139] Although establishing a custom lends weight to these legal arguments supporting humanitarian intervention, there is clearly no positive legal right to intervene.

The most recent evolution of the debate has been to rephrase it. The International Commission on Intervention and State Sovereignty (ICISS) attempted to rearticulate the debate and to draw attention to the victims of grave humanitarian crises with its *Responsibility to Protect* (R2P) report.[140] In simple terms, the R2P report advocates a new interpretation of sovereignty that includes the responsibility of sovereign states to protect their citizens. Where states are unable, unwilling, or themselves the perpetrator of atrocities, the responsibility to protect is transferred to the international community.[141]

In sum, the answer to who is the right-holder of the right of humanitarian intervention is complicated. Various participants to the debate assign the right usually either to no one, the Security Council, regional organizations, or concerned states.

The two central questions of the humanitarian intervention debate have divided the participants into three "camps." By camps, I do not mean to imply that there are settled positions with clear membership of authors. Rather, by camps I refer to clusters of arguments supporting a particular position in the debate. Thus, a given author's two different arguments might belong in different camps. The reason for this kind of – perhaps unusual – division is to avoid doing injustice to the authors in question, drawing arbitrary lists of membership, and pigeonholing the authors. Their arguments are too sophisticated, and their positions may have changed during the debate, to allow a clear division according to author. Instead, I

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[139] Simon Chesterman, "Hard Cases Make Bad Law: Law, Ethics, and Politics in Humanitarian Intervention," in *Just Intervention*, ed. Anthony F. Jr. Lang (Washington DC: Georgetown University Press, 2003), 53.

[140] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

[141] See e.g. para. 2.29 of the report.

focus on the main arguments are support a given main position in the debate. Emphasis is on the kind of arguments that are made for a given position in the debate. In other words, instead of labeling authors, arguments and clusters of arguments of a kind compose a camp.

The first of these camps represents the orthodox position by interpreting sovereignty as exclusive and absolute. The second camp is sympathetic to the concerns of the first camp but admits that morality might require the breaking or bending of rules on some occasions. Finally, the third camp argues that the rules have changed, or that they should be changed, and that the right of humanitarian intervention should be recognized. Below, each camp is discussed in more detail.

At this point, however, a disclaimer is in order. In what follows, certain stereotypes can be recognized. For example, I represent the first camp as corresponding with an undergraduate perspective on realism. Clearly, neither realism nor the first camp are as simple but more sophisticated and varied. Similarly, authors, such as for example Chesterman and Brownlie,[142] make more nuanced arguments than what is presented below. Yet, the simplification seems justified given that the purpose is only to sketch a general image of the debate as a background condition to the original contribution of this thesis.

Moreover, although one might have the impression, the three camps are not necessarily part of the same discourse. The "debate" began already in the early 1970s and gained momentum to reach its heyday in the 1990s. Although the debate still continues, it has now changed remarkably. In addition, there was no single debate as such, but rather interested parties who wrote regarding ethical, philosophical, political, and legal aspects in relation to contemporary events. As there is no Just War "theory" but rather a tradition, so there is no single humanitarian intervention "debate." Thus, it is worth remembering that this description of the debate is a simplification done for the purposes of this thesis.

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[142] Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1991); Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2003).

The first camp could be described as the orthodox position, which the arguments of the other camps attempt to overcome. Following a realist interpretation of sovereignty as exclusive, the arguments of this camp deny that any right or duty of humanitarian intervention exists. In a Machiavellian world, states are left to their own devices, and the citizens other than one's own state are not the concern of the international community, much less of any other state. Assistance can be given, but acts of altruism are not considered prudent in a world, where the friend of today might be the enemy of tomorrow. Finally, according to this camp, claims of humanitarian concerns are mere rhetoric in the world of *realpolitik*.

Furthermore, while there is no duty demanding states to assist strangers, there is a perfect duty of non-intervention. In a rule-consequentialist fashion, it is considered better to follow the existing, conventional rules, even if justice might be sacrificed for order in some cases. The "justice for order" tradeoff is deemed tolerable, as Louis Henkin argues: "Violations of human rights are indeed all too common and if it were permissible to remedy them by external use of force, there would be no law to forbid the use of force by almost any state against almost any other."[143] In addition, states have no right to risk the lives of their own soldiers in order to possibly save strangers, especially in cases where no vital national interests are involved.[144]

Few would confess belonging to this first camp.[145] Yet, whether imaginary or real, this camp sets the bar for the other two. In other words, the arguments of the first camp are tackled by the other two camps, even in the absence of a protagonist of the first camp. Perhaps this is telling of the impact of "mainstream" IR in the (sub)consciousness of authors. In any case, the first camp has sympathy for the victims of grave humanitarian crises. It simply feels that its hands are tied in an unfortunate tradeoff between single cases and the wider international order.

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[143] L. Henkin, *How Nations Behave: Law and Foreign Policy*, 2nd ed. (New York: Columbia University Press, 1979), 145.

[144] Allegedly, this was Samuel P. Huntington's argument as quoted in Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 31.

[145] Here, however, one might think of such authors as Edward N. Luttwak, "Give War a Chance," *Foreign Affairs* 78, no. 4 (1999).

According to this camp, it would be imprudent to recognize any right of humanitarian intervention, whether implicitly or explicitly.

The second camp, on the other hand, separates law from morality without excluding either from the practice of international politics. Humanitarian intervention, according to this camp, is illegal but nevertheless excusable at times due to moral imperatives, a point which for example Simon Chesterman makes.[146] Thirty years before him, Franck and Rodley reached a similar conclusion: the question of humanitarian intervention belongs in the realm of morality, where each decision-maker should come to terms with his or her own conception of what is right.[147] Thus, the use of force for humanitarian reasons is not sanctioned by law but by moral imperatives. Given the right circumstances, which unfortunately denote a grave crisis, and a combination of other factors, humanitarian intervention might be excusable. By making this excuse or exception to the normal rules, the rules that are broken or extended are, however, strengthened in a certain sense. In other words, breaking the rules requires recognizing them in the first place.

This second camp does not argue for a change in the rules of international politics. It merely points out that humanitarian efforts, even if they require force, should not be condemned outright. Legal acts are divorced from legitimate acts as was the case with Kosovo,[148] and in a sense this camp is very practical. In the words of Kofi Annan in relation to the Rwandan genocide: had there been a coalition of the willing, should it have stood by in 1994, if it had not received Security Council authorization legalizing the intervention?[149]

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[146] Simon Chesterman, "Hard Cases Make Bad Law: Law, Ethics, and Politics in Humanitarian Intervention," in *Just Intervention*, ed. Anthony F. Jr. Lang (Washington DC: Georgetown University Press, 2003). See also Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Responses, Lessons Learned* (Oxford: Oxford University Press, 2000).

[147] See Thomas M. Franck and Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67, no. 2 (1973).

[148] The Independent Commission argued that NATO action in Kosovo was illegal but legitimate. See Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Responses, Lessons Learned* (Oxford: Oxford University Press, 2000).

[149] United Nations Secretary General, *Secretary-General Presents His Annual Report to General Assembly*, (Press Release, 1999, SG/SM/7136; GA/9596). Available at http://www.un.org/News/Press/docs/errors/99999999.sgsm7136.html.

Finally, the third camp of the humanitarian intervention debate is the strongest in its advocacy of the right of humanitarian intervention. Not only is it considered that the Security Council may authorize humanitarian interventions, but that in some cases humanitarian interventions could be legal even without such authorization.[150] In other words, external intervention in grave humanitarian crises is morally desirable and legal, or at least interventions, which are motivated by humanitarian concerns, should be considered legal.[151] By establishing a custom of humanitarian intervention,[152] authors are in a position to argue that customary international law supports their position. In addition, by reinterpreting existing legal documents such as the UN Charter, for example through the lenses of word religions,[153] authors find further support for their legal claims.

In many ways, this third camp includes the most enthusiastic advocates of humanitarian intervention. Whether in attempting to assert the existence of the right of humanitarian intervention or its desirability, this camp faces the biggest challenge in overcoming the orthodox position represented by the first camp.

The three camps differ in their interpretations of international law, of the role of the Security Council, and of the place of morality in international politics. Morality, according to the first camp, has no place in international politics, and legal support for humanitarian intervention is nonexistent. Moreover, as asserted by this camp, the Security Council might have the power to authorize humanitarian interventions, but it lacks the jurisdiction. Allegedly, the Security Council has no jurisdiction over domestic matters of states, which is protected by Article 2.7 of the UN Charter. Thus, crises requiring humanitarian intervention fall

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[150] See e.g. Terry Nardin, "The Moral Basis of Humanitarian Intervention," *Ethics and International Affairs* 16, no. 1 (2002).

[151] See e.g. Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996).

[152] See e.g. the already discussed contributions: Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in *The Culture of National Security: Norms and Identity in World Politics.*, ed. Peter J. Katzenstein, *New Directions in World Politics* (New York: Columbia University Press, 1996); Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

[153] Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions* (University Park: Pennsylvania State University Press, 2002).

under the jurisdiction of those sovereign states, in which the crises occur. To explain, Article 2.7 safeguards states' domestic jurisdiction except under Chapter VII enforcement measures. Chapter VII powers, however, require a threat to or a breach of international peace and security, or an act of aggression. Traditionally, humanitarian crises have not been interpreted to constitute any of these. Hence, the first camp concludes that the Council does not have the necessary jurisdiction to authorize humanitarian interventions. As a final nail, the first camp reminds us that the rule of non-intervention was established for a good reason.

The second camp, on the other hand, agrees with the first that humanitarian interventions have little legal support. At the same time, however, this camp considers strange the insistence that humanitarian interventions are illegal. As the first camp appears to subscribe to a view where the strong do as they will and the weak as they must, it is strange indeed to insist on respecting the rules with regard to humanitarian crises. Reviewing the practice of international politics, the second camp reminds us that international law is not sacrosanct. Thus, more important than focusing on whether international law is breached is whether it has been breached for the right reasons. The second camp attempts to strike a balance between international law and politics without forgetting neither moral imperatives nor the *raison d'état*.

In relation to the Security Council, the second camp accepts that the Council has jurisdiction to authorize humanitarian interventions. The Council is charged with the "primary responsibility for the maintenance of international peace and security" (Article 24.1), and it can take "such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security" (Article 42). Most importantly in the context of humanitarian crises, the Security Council can use its discretion in determining "the existence of any threat to the peace, breach of the peace, or act of aggression" (Article 39). In other words, the Security Council can interpret its own jurisdiction. Thus, for the second camp, legal support for humanitarian interventions can be found in Security Council authorizations. Whether the Council can reach such a decision is, however, another question.

Unauthorized interventions, however, are not endorsed by the second camp as legal interventions. Yet, by focusing on the practice of international politics, and by divorcing legal acts from legitimate acts,[154] the second camp argues that in some cases, unauthorized humanitarian interventions should not be condemned. In other words, international politics is not void of moral choices, which could legitimize an otherwise illegal act.

The third camp, in contrast, places morality at the center stage. While agreeing with the second camp, it takes the argument further by claiming that the Security Council might have a duty to intervene in grave humanitarian crises. Moreover, in cases where the Council fails to act, the right, or even a duty, to intervene filters wider. Thus, international law is interpreted primarily through the lenses of morality. Allegedly, humanitarian interventions are not only desirable but required in some cases. By emphasizing human security and people(s) as the source of sovereignty, the third camp argues that the Security Council must play a proactive role.

The three camps, as described above, form the core of the humanitarian intervention debate at least as it was until the *Responsibility to Protect* report.[155] Obviously, not all arguments were described nor all participants included. In contrast, emphasis was placed on the positions the arguments take and on the kind of arguments that have been made within the debate. This was done in order to provide the background for the following chapters and in preparation for a discussion of the implicit arguments within the debate.

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[154] I return to this distinction below.

[155] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

SOME IMPLICIT ASSUMPTIONS WITHIN THE DEBATE

The previous section outlined arguments made within the humanitarian intervention debate by dividing them into three different camps. This section examines these arguments further with the aim of addressing some of the implicit assumptions. For the present purposes it is sufficient to focus on only some of the arguments, namely on arguments advocating for the right of humanitarian intervention, whether understood as the right thing to do (legitimate) or as there being a legal right. These arguments are labeled pro-humanitarian intervention arguments within this thesis.

To summarize pro-humanitarian intervention arguments in a crude fashion, states and such inter-governmental organizations as the Security Council and NATO are the main actors. These actors are the most important because of their capabilities to execute interventions and because of their general standing within international politics and international law. Due to the growing significance of the human rights discourse and the pressure by human interest groups, states and governmental organizations find it increasingly difficult to ignore their humanitarian obligations.[156] Moreover, domestic and especially human rights conditions seem to have become accepted as a legitimate concern of all states.[157] Although expressions of concern can take many forms, the use of force can be a legitimate expression, if it is used to alleviate human suffering on a grand scale. In some ways, peace has become the justification for war.[158]

To discuss the implicit assumptions within the pro-humanitarian intervention arguments, let us consider first the deontological assumption they make. It is assumed that under certain circumstances intervention should take place. Clearly, rights do not necessarily imply that they ought to be exercised, but the argument for having the right of humanitarian intervention is exactly that it *will* be exercised given certain circumstances. In other words, the argument for having

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[156] Andrew Hurrell, "Power, Principles and Prudence: Protecting Human Rights in a Deeply Divided World," in *Human Rights in Global Politics*, ed. Timothy Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999).

[157] Jack Donnelly, "Human Rights: A New Standard of Civilization?," *International Affairs* 74, no. 1 (1998).

[158] Chris Hables Gray, *Postmodern War: The New Politics of Conflict* (London: Routledge, 1997).

the right of humanitarian intervention is also an argument about the use of that right, namely that it ought to be exercised in grave humanitarian crises. If this were not the case, it would be strange to argue for the right in the first place. To illustrate, consider that, without a doubt, the right of humanitarian intervention did not exist. Consider further that acts of humanitarian intervention were deemed illegal and illegitimate. In this case, to argue for the right of humanitarian intervention incorporates assumptions about the right-holder and circumstances, which justify its use. After all, the purpose of having the right is to establish the legality and legitimacy of committing acts of humanitarian intervention. Otherwise, why argue for the right?

The second implicit assumption within the pro-humanitarian intervention arguments is that there is a right-holder who possesses the right of humanitarian intervention. This point should be self-evident unless one considered that humanitarian interventions could occur own their own. Who should be the right-holder, however, is not self-evident.

Generally speaking, in the humanitarian intervention debate, three main options as to the right-holder are suggested: 1) some argue that no legitimate nor legal right-holders exist;[159] 2) that the Security Council is the right-holder and also the source for authorizing humanitarian interventions;[160] and 3) that unilateral or multilateral interventions, even without explicit Security Council authorization, are at least legitimate if not legal.[161] For the time being, it is irrelevant which of these options is considered most convincing, although I shall return to these three options below. Important for the present discussion is to note how the pro-humanitarian intervention arguments are built to support one of these three options.

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[159] Thomas M. Franck and Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67, no. 2 (1973).

[160] This is perhaps the widest held position, to which even some of the so-called legal restrictionists subscribe, when there is arguably a threat to international peace and security. For a discussion, see e.g. Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 40-48.

[161] Terry Nardin, "The Moral Basis of Humanitarian Intervention," *Ethics and International Affairs* 16, no. 1 (2002).

The third assumption within the pro-humanitarian intervention arguments is that the right-holder (assumption no. 2) *ought to* exercise the right of humanitarian intervention under certain circumstances (assumption no. 1). In other words, the third assumption refers to a responsibility, if not even a duty, of the right-holder to exercise the right due to possessing the right. The right itself may not imply a responsibility to exercise it. Rights, after all, enable one to do something, protect from something, or function as trumps. The argument for *having* the right of humanitarian intervention, however, is an argument about *using* it in grave humanitarian crises.

The point of interest is the responsibility, to which the pro-humanitarian intervention arguments refer implicitly. For one, it is surprising how long the debate has taken to address this responsibility, and looking into the reasons for the shift within the debate at the change of the millennium might prove illustrative of a normative change in the practice of international politics, which was in turn reflected within the debate, or *vice versa*. Such an inquiry is, however, beyond the scope of this thesis. A second issue that arises from the implicit responsibility relates to the kind of right in question. Is it not a curious kind of a right, if its possession implies a responsibility to use it? I wish to pursue this question further.

WHAT KIND OF A RIGHT IS IT?

Before answering what kind of a right the right of humanitarian intervention is, it is necessary to focus first on the right-holder. As mentioned above, there are three likely candidates for the right-holder(s) of the right of humanitarian intervention. Deciding which one is the most convincing among these three candidates requires a heuristic assumption that the right of humanitarian intervention exists, because the purpose is not to engage with the debate whether or not it exists. This debate surrounding the existence of the right seems to have been entrenched, if not exhausted, for quite some time, and it is better to move on to the implications of its existence rather than to rehearse the familiar arguments.

The three usual options as to the right-holder are 1) no one, 2) the Security Council, and 3) "concerned" states whether unilaterally, multilaterally, or through regional organizations or the UN. Given the contemporary circumstances, the Security Council is the most convincing candidate for several reasons. For one, UN member states have forfeited their right to use force to the Security Council except in cases of self-defense.[162] The Security Council, on the other hand, can use or authorize under its Chapter VII powers the use of force in cases, which breach or threaten international peace and security. In addition, the Council can use its discretion in determining, which situations constitute a breach of or a threat to international peace and security, thus effectively determining its own jurisdiction.[163] Since within this thesis humanitarian intervention is understood to incorporate a military element, any humanitarian intervention would require the Security Council's interpretation of a breach of or of a threat to international peace and security, and an authorization by the Council, to be legal. Second, precedent cases confirm a Security Council practice to authorize humanitarian interventions, and these cases have been accepted as legitimate and legal.[164] Somalia was the first clearest example with Resolution 794, which authorized the

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[162] Moreover, even in cases of self-defense, force can be exercised legally without authorization only "until the Council has taken measures necessary to maintain international peace and security." See Article 51 of the UN Charter.

[163] See e.g. Articles 34, 37, and especially 39 of the UN Charter.

[164] Below, I shall return to this distinction between legitimate and legal.

United States to take military action under a Chapter VII mandate.[165] Another example is Resolution 929, which authorized the French-led Operation Turquoise in 1994 to use "all necessary means to achieve the humanitarian objectives set out" in Rwanda.[166]

The other two options, on the other hand, are less convincing. Due to the just mentioned reasons, there certainly seems to be at least one actor who could possess the right of humanitarian intervention, namely the Security Council. As to the third option, as Byers and Chesterman argue, arguments that unilateral intervention is legal require unwarranted assumptions about the international legal system.[167] In other words, although unilateral or multilateral interventions might be candidates for legitimate action, they do not wield similar legality as Security Council action. Thus, in terms of legality, the Security Council is the best candidate for the right of humanitarian intervention.

The legality of Security Council's humanitarian intervention is heavily related to the Council's ability to use Chapter VII powers. The use of these powers require "the existence of any threat to the peace, breach of the peace, or act of aggression" as determined by the Council itself.[168] It may have been only since the early 1990s, when grave humanitarian crises have been interpreted to constitute a threat to or breach of international peace and security. Yet, it is evident from the Security Council resolutions that this new interpretation, or even practice,[169] is becoming ever stronger. For example, as the president of the Council stated, "massive displacement of civilian populations in conflict situations may pose a serious challenge to international peace and security."[170] Similarly, three years later, a

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[165] United Nations Security Council, *Security Council Resolution Number 794 of December 3 1992*, SC/RES/1992/794.

[166] United Nations Security Council, *Security Council Resolution Number 929 of June 22 1994*, SC/RES/1994/929.

[167] Michael Byers and Simon Chesterman, "Changing Rules About the Rules? Unilateral Humanitarian Intervention and the Future of International Law," in *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J. L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003), 178-79.

[168] See Article 39 of the UN Charter.

[169] This could be a topic for further research.

[170] United Nations Security Council, *Statement by the President of the Security Council*, S/PRST/1997/34.

different president of the Council acknowledged that the Security Council "has the responsibility to address humanitarian issues relating to situations of conflict and to take appropriate action."[171] In this same document, also the representative of France reminds the Council that it has the primary responsibility "to deal with situations in which violations of international humanitarian law and human rights threaten international peace and security."[172] Finally, in addition to the above examples of Somalia and Rwanda, the Security Council has interpreted grave humanitarian crises as threats to international peace and security, as for example the Great Lakes region in Africa in 1996 demonstrated.[173]

Thus, a strong case can be made that the protective provisions of Article 2.7 of the UN Charter might not apply to the Security Council in grave humanitarian crises. This argument is supported by the Security Council's own practice, and it seems that there have been no serious objections to it by for example the vast majority of states. Moreover, the UN Charter itself lends its support with its emphasis on human rights and their promotion and respect.[174] Finally, the Security Council's candidacy as the right-holder for the right to intervene is strengthened by the fact that interventions bypassing the Council are not considered legal. This final point deserves further attention.

International treaty law does not support interventions without Security Council authorization, and the international customary law's perhaps only suitable supporting case, Kosovo, is too controversial to lend credibility to such claims – not to mention that one case hardly establishes a custom. Kosovo, however, reveals a crucial detail. As the Independent International Commission on Kosovo concludes in its report, NATO action was illegal despite being legitimate.[175] NATO intervention was illegal, mainly because it did not receive prior Security Council

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[171] United Nations Security Council, *Maintaining Peace and Security: Humanitarian Aspects of Issues before the Security Council*, S/PV/4109/2000.

[172] Ibid.

[173] See e.g. United Nations Security Council, *Security Council Resolution Number 1078 of November 9 1996*, SC/RES/1996/1078.

[174] See e.g. Article 1.3 of the UN Charter.

[175] Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Responses, Lessons Learned* (Oxford: Oxford University Press, 2000).

authorization, but it was legitimate, because it was justified, all diplomatic avenues had been exhausted, and it resulted in liberating the majority population of Kosovo from Serbian oppression.[176] Evidently, the Commission used a linguistic twist in order not to condemn NATO action in Kosovo or to restrict available options in the future.

At first glance, the Commission's distinction between legal and legitimate may seem odd. In common parlance, these terms are used interchangeably, yet there is a significant difference between them. The two terms are related in the sense that legal acts are also legitimate in most cases,[177] but legitimate acts are not necessarily legal. This distinction arises from the different points of reference. For legal acts, the reference point and authority is existing law, whereas the legitimacy of an act is determined with the help of inter-subjectively shared norms and standards without any necessary reference to law. In addition, this distinction is similar to distinguishing between *having* a right and something *being* right. Having a right relates to some form of established and recognized law, while something being right belongs to the realm of morality. Within the current discussion, the right of humanitarian intervention would be a legal right. Nonetheless, this would not forbid legitimate acts of humanitarian intervention.

Thus, the International Commission's conclusion on Kosovo implies that humanitarian intervention without Security Council authorization might be legitimate, or right in the sense of being in accordance with our consciences of what is just. By framing NATO action as legitimate, the purpose was presumably to acknowledge the Security Council's authority but at the same time to underline that NATO action should not be condemned, because exceptional times required exceptional measures, with or without the Council. If the Commission's conclusion can be taken as an indication, it seems that unauthorized humanitarian interventions may be legitimate but that there is no guarantee of such legitimacy. Since there is no legal right that would trump objections and establish the legality of unauthorized interventions, the choice to intervene in the absence of Security

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[176] Ibid.

[177] This is not to say that legality necessarily produces legitimacy. It is possible that valid law may not be congruent with inter-subjectively shared norms and standards.

Council authorization is left to the individual decision-makers, who must knowingly risk taking illegal action. Hence, without the Security Council's support, actors risk in engaging in illegal *and* illegitimate acts. The legitimacy of their action, however, may be established, and in such cases decision-makers may be praised for their acts, but one should note that it might be a fundamental characteristic of legitimate acts that they receive their legitimacy only *a posteriori*.[178] In other words, the world remains the judge and jury for legitimizing international acts, and judgment is passed only *ex post facto*.

In determining the legitimacy of unauthorized interventions, one should consider among other things the actions before intervention, the arguments for intervening and the manner, in which intervention is or was conducted, as well as the consistency between the arguments and the actual execution of the intervention. Here, for example, the academia and the media can play significant roles in providing legitimacy to unauthorized interventions. The Security Council, however, remains perhaps as the strongest retroactive legitimizer. Through its resolutions, the Security Council may determine afterwards that a given intervention was legitimate, if not also legal, even if the Council had not authorized the intervention beforehand. An upshot of this last point is that the Security Council can act as the legitimate and legal user of force as well as the legitimizer and the legalizer of the use of force.

For the present purposes, it is unnecessary to go into detail about the legitimating justifications of an unauthorized intervention. They are surely case-dependent and correspond to similar arguments as in the Kosovo case.[179] I would, however, draw attention to multilateralism as a legitimating factor, because it is sometimes argued that multilateralism *per se* legitimizes humanitarian interventions.[180] It

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[178] For example, NATO bombing campaign lasted from March 24 until June 10, 1999, and it was justified with humanitarian reasons. NATO action was, however, legitimized only after the campaign had ended. See e.g. Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Responses, Lessons Learned* (Oxford: Oxford University Press, 2000).

[179] See ft. 176.

[180] For example Finnemore argues that multilateralism is a legitimating factor. See Martha Finnemore, "Constructing Norms of Humanitarian Intervention," in *The Culture of National Security: Norms and Identity in World Politics.*, ed. Peter J. Katzenstein, *New Directions in World Politics* (New York: Columbia University Press, 1996), 180.

seems strange to argue that there is something inherent in multilateralism which legitimizes action, because a wrong committed by many does not magically transform into a right. Similarly, the number of actors committing an act has no relevance to the legitimacy of that act.[181] The justification of an act is independent of the number who commit it. Murder remains murder, while justified self-defense resulting in manslaughter is self-defense, regardless of how many people were involved. Admittedly, when a hundred people claim self-defense against one person, they may be in a weaker position than for example a group of states intervening without Security Council authorization. Nevertheless, the legitimating factor would be, respectively, whether that one person was in a position to threaten all one hundred persons with imminent death, such as in a suicide-bomber case, or whether the intervention was justified also on other grounds. Moreover, claiming that multilateralism safeguards against exploiting the intervention towards the national interests of the intervener is nonsensical, because if "governments have mixed motives, so do coalitions of governments. Some goals, perhaps, are cancelled out by political bargaining that constitutes the coalition, but others are super-added; and the resulting mix is as accidental with reference to the moral issue as are the political interests and ideologies of a single state."[182] It is equally worth remembering that "coalitions of the willing" are self-selective and rarely altruistic.

To summarize, the Security Council is the best candidate for having the legal right of humanitarian intervention (if it exists). Interventions without Council authorization are illegal and risk being also illegitimate. Thus, for the present purposes, and continuing to assume that the right of humanitarian intervention exists, the Security Council is considered to be the right-holder. It is important to note, however, that the Security Council's right remains at the collective level, and that it is not transferred to the individual members of the collective. Only when acting in unison can the Council exercise its right. Moreover, the Security Council can either intervene with blue-helmets, thus retaining operational command and

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[181] The exception in international politics is a case, where *opinio juris* is achieved, or when the "wrong" is committed by sufficiently many and recognized as a new practice.

[182] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000), 107.

control, or it can authorize a third party to intervene in its stead.[183] In its purest form, the first option is hardly possible, because the Council remains dependent on member states' contributions. There is, however, a significant difference in whether the Council exercises its right directly or transfers it to a third party. For one, authorizing a third party effectively establishes the third party's right to intervene. Thus, there are in fact two right-holders that ought to be considered: the Security Council and any third party as authorized by the Council. Second, the fact that the Council may transfer its right is highly relevant in determining what kind of a right is in question, as will be shown below.

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[183] See e.g. Articles 48 and 53 of the UN Charter.

A TYPOLOGY OF RIGHTS

One can think of rights in many ways. For example, H.L.A. Hart famously distinguishes between special and general rights.[184] For the present purposes, however, Hart's division is unhelpful, because if general rights "are rights which all men capable of choice have in the absence of those special conditions which give rise to special rights,"[185] and since it is neither desirable nor practical that the right of humanitarian intervention would be held by all, one can only conclude that the right of humanitarian intervention is a special right. Such conclusion hardly warrants further interesting reflections.

On the other hand, a more useful division between different kinds of rights was developed by Hohfeld.[186] Hohfeld's dual distinction between rights according to their correspondents and their reference groups, against whom a particular right is "claimed," allows for an extended discussion revealing not only the kind of right in question but also related deliberation about the consequences of the right of humanitarian intervention being *this* rather than *that* kind of a right.

Before proceeding, it is useful to remember the context within which Hohfeld contributed. His typology of rights was published already in 1913 at a time in the United States, when public law was to an extent unrecognized, unknown, or perhaps unwanted too.[187] His typology was originally aimed at private law relations, yet in the following pages I use his typology for more public relations purposes.

The significance of Hohfeld as such is somewhat irrelevant to the larger argument that I wish to make. I argue that the usual treatment of the right of humanitarian intervention is too simple, and that there is no single right of humanitarian intervention but rather *rights* in the plural. I further argue that the kinds of right in question have significant consequences to its use, and they also reveal how we

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[184] H. L. A. Hart, "Are There Any Natural Rights?," *Philosophical Review* 64, no. 2 (1955).

[185] Ibid.: 188.

[186] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. David Campbell and Philip Thomas (Aldershot: Ashgate, 2001).

[187] I owe this clarification to Jan Klabbers.

perceive of the functioning of international politics, at least as far as is relevant to this part of international politics. On an even general level, I argue that the usual binary logic of there being or not being a right not only obscures the issues at hand but also ensures that our discussions finish at dead-ends. For all this, Hohfeld *per se* is not relevant. It just happens to be that by using a Hohfeldian typology, I can make these arguments in a convincing manner.

There is, however, a more recent contribution by Carl Wellman, which could be of use to the present topic.[188] In his discussion, Wellman takes the Hohfeldian theory of rights to a new level by considering which rights are real rather than illusory. Real rights "have practical implications, most notably the legal and moral duties they imply."[189] Wellman discusses also at length who or what can be a right-holder. In what follows, I shall focus on a modified version of Hohfeld's typology. The reason for this is that in the overall argument, as explained in the previous paragraph, there seems to be little advantage in complicating the matters by focusing also on Wellman. For one, this would not only force me to compare and contrast the work of the two gentlemen but it would also force me to enter such topics as choice and agency, point on which the two might differ notably. Thus, although Wellman could be an added backing for my argument here,[190] it would seem to complicate matters unnecessarily for the argument I wish to make within the field of international politics.

Returning to Hohfeld, his typology of rights is two-dimensional but not binary. One dimension is the distinction between rights *in rem* and *in personam*, or multital and paucital rights as he calls them. Multital and paucital rights differ in their specificity of the group that holds a given right's correspondent, and whether there is an implied duty requiring positive action. To clarify this distinction better, consider that rights as claims can imply duties on other actors.[191] A right might require committing a positive act, and not a mere

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[188] Carl Wellman, *Real Rights* (Oxford: Oxford University Press, 1995).

[189] Ibid., 5.

[190] I wish to thank Martin Scheinin for pointing this out.

[191] Timothy Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999); Joel Feinberg, *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy* (Princeton: Princeton University Press, 1980); Wesley Newcomb Hohfeld, *Fundamental*

omission, and in such cases, the right would be paucital or *in personam*.[192] A good example of such rights follows from contracts. Consider that if Anne owes Bill hundred dollars, Bill has the right to expect that Anne pays him this amount. Correspondingly, Anne has the duty to pay Bill. In contrast, property rights serve as an illustration of rights *in rem*, or multital rights as claims. Property rights imply duties on all other persons, including even future or hypothetical persons. These kinds of rights hold "not against some specific namable person or persons but rather, in the legal phrase, against the world at large."[193] Moreover, in 'saying that "the whole world" has a duty to stay off my land, all I can mean, of course, is that any person in a position to enter my property has a duty to stay out.'[194] Here no positive action is required, because an omission suffices to fulfill the duty to stay out.

Hohfled's second dimension in his typology of rights relates to his main contribution, namely in arguing that 'the term "rights" tends to be used indiscriminately to cover what in a given case may be a privilege, a power, or an immunity, rather than a right in the strictest sense.'[195] Rights in their strictest sense are best understood as claims, which imply correlating duties on others.[196] On the other hand, rights as privileges, as powers, or as immunities have as their correspondents "no-right," liability, and disability.[197] Some examples help to illustrate these differences better.

Legal Conceptions as Applied in Judicial Reasoning, ed. David Campbell and Philip Thomas (Aldershot: Ashgate, 2001).

[192] Joel Feinberg, *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy* (Princeton: Princeton University Press, 1980), 131. This point is contentious or debatable, because it might be nonsensical to distinguish between positive and negative acts in this context. After all, even omissions require one to "act."

[193] Ibid., 134.

[194] Ibid.

[195] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. David Campbell and Philip Thomas (Aldershot: Ashgate, 2001), 12.

[196] Ibid. See also Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 39-43.

[197] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. David Campbell and Philip Thomas (Aldershot: Ashgate, 2001), 12.

Privileges, which are sometimes described as "weak rights,"[198] refer to the possibility of doing something. Thus, for example, Anne can give Bill permission to use her car, if he so wishes, and if she is not using it herself.[199] Bill can use the car but has no duty to take it. Yet, Anne cannot complain, if Bill actually takes the car, but neither can Bill complain, if the car is not available. In other words, Bill has the privilege to use the car, and Anne has a corresponding no-right against Bill taking the car, when she is not using it herself.

A right as power, on the other hand, "is an ability to cause, by an act of one's own, an alteration in a person's rights, either one's own rights or those of another person or persons, or both."[200] Property rights provide again an example: As a property owner, I have the power to give rights of passage or entry to others. In addition to powers, one could also possess "meta-powers," which Thomson define as "the ability to cause oneself and others to acquire or lose powers."[201] Persons in positions of authority, such as judges, normally possess not only powers but also meta-powers in this sense. For example, when passing judgment on the rightful owner of a piece of land, a judge exercises her meta-powers by awarding property rights containing powers, such as the power to grant rights of passage, to one of the claimants. Yet, there is another way to understand meta-powers. A meta-power could also denote the ability to determine how a given rights is to be used and what are its limits.[202] For example, when determining the rightful owner of a piece of land, a judge not only awards property rights to the owner but also sets limits to how those rights can be exercised, namely within the limits set by law.

Rights as immunities provide protection against rights as powers: "for X to have an immunity against Y is just for Y to lack a power as regards X."[203] Alternatively,

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[198] Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 45-52.

[199] Hohfeld uses a salad example, where Anne would give Bill permission to eat her salad if he can. In this example, Anne could not complain, if Bill eats the salad, but neither could Bill complain, if Anne manages to hold so fast on the plate that he cannot eat it.

[200] Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 57.

[201] Ibid., 58.

[202] I owe this second interpretation of meta-powers to Friedrich Kratochwil.

[203] Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 59.

'an immunity is one's freedom from the ... power or "control" of another.'[204] Fundamental human rights serve as examples of immunities, because they provide protection from for example one's state's legal or physical abuse.

Thomson argues that Hohfeld's typology overlooks a further distinction that should be made between privileges and liberties.[205] Unlike Hohfeld, Thomson differentiates between the two, because liberties entail a claim of non-interference while privileges make no such claims. In order to explain this better, let us return to the above car example, where Bill has the right to use Anne's car, if he so wishes, and when Anne is not using it herself. In the example, Anne makes no assurances as to the availability of the car. In fact, Anne is in a position to frustrate Bill's desire or need to use the car without breaking her promise by simply using the car all the time, or by not using it when Bill would not be able to drive it anyway. Because of this detail, Thomson would argue that Bill is not *at liberty* to use the car, and that hence Bill's privilege cannot be equaled with a liberty. According to Thomson, we cannot say that a person "is at liberty to do a thing unless both he is under no duty at all to not do it (thus has a privilege against everyone doing it) and everyone else is under a duty toward him not to interfere with his doing it."[206] For Bill to have a right as liberty to use the car, Anne would have had to promise that the car is available, whenever he would like to use it. In other words, proper rights as liberties are compound rights in the sense that they contain other rights.[207]

In sum, the two dimensions of this Hohfeldian[208] typology of rights can be brought together as shown in table 1. Since multital rights (or rights *in rem*) and paucital rights (or rights *in personam*) are not further types of rights, such as claims or

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[204] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. David Campbell and Philip Thomas (Aldershot: Ashgate, 2001), 28.

[205] Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 53.

[206] Ibid., 53-54. Emphasis removed.

[207] The merits of making the distinction between rights as privileges and rights as liberties are debatable. For the present purposes, however, this distinction is worth making, because it highlights certain details that would be lost otherwise. See below.

[208] To emphasize, the proposed typology is not Hohfeld's typology, because a modification has been made that takes into consideration Thomson's distinction between rights as privileges and as liberties.

privileges, but two different versions of claims or privileges, the horizontal axis of the table is divided into multital and paucital, whereas the vertical axis is divided into claims, privileges, liberties, powers, and immunities. There are thus ten different "kinds" of rights in this typology as shown in table 1.

"VERSION" OF A RIGHT

KIND OF RIGHT	*In rem* or multital	*In personam* or paucital
Claim		
Privilege		
Liberty		
Power		
Immunity		

Table 1: Modified Hohfeldian typology of rights.

With the help of this typology of rights, the next step is to determine, which of these rights correspond best with the right of humanitarian intervention as held by the Security Council and any third party as authorized by the Security Council.

THE SECURITY COUNCIL'S RIGHT

The first right-holder of the right of humanitarian intervention to consider is the Security Council. Before asking whether the Council's right is more multital than paucital, one should determine whether the Security Council's right is a right as claim, as privilege, as liberty, as power, or as immunity. A process of elimination is sufficient to determine which of these five corresponds best with the right of humanitarian intervention as held by the Security Council.

Two kinds of right can be excluded immediately: immunity and privilege. Immunities are excluded because the right of humanitarian intervention as immunity would denote for example protection from intervention or from the use of force as prescribed by Article 2.4 of the UN Charter.[209] Privileges, on the other hand, are excluded because they do not include guarantees of non-interference by other actors. It would be odd, and in contradiction with the UN Charter, if other actors could legally interfere with Security Council's humanitarian intervention.[210] Hence, three kinds of right remain: claim, liberty, and power.

To be sure, the Security Council's right has the characteristics of a right as claim including a corresponding duty of non-interference by others, yet the right also incorporates elements of a right as privilege. In analogy to the car example, one could say that UN member states have agreed, both through explicit agreement and practice, to give the Security Council the right to intervene in situations breaching or threatening international peace and security, that the Council is under no duty to intervene but can use its discretion in determining when and where to intervene,[211] and that states cannot challenge a Council decision to intervene, at least not on the basis of an infringement on their rights. Likewise, in cases of non-intervention, states can voice their objections to the Security Council's decisions, but apart from taking the matter to the General Assembly or to the International Court of Justice – or by intervening themselves – there does

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[209] Fundamental human rights provide further examples of immunities. They provide protection to peoples from abusive states. Another example is the rule of non-intervention, which is a "right" to remain free from the interference of other states.

[210] See e.g. Article 51 of the UN Charter.

[211] See Article 24 and 39 of the UN Charter.

not seem to be a clear path to challenge the Security Council's decision. Despite the provisions of Uniting for Peace[212] it seems unlikely that recourse to the General Assembly would be taken, as is evident from the lack of such action during the past five decades or so. Similarly, as the *Pan Am* case illustrates, resorting to the International Court of Justice against the Security Council would most likely be equally fruitless.[213]

That the Security Council's right has both the characteristics of a right as claim and a right as privilege encourages one to interpret the Security Council's right as a right as liberty. The right is a right as claim, because there is a corresponding duty of non-interference, and the right is a privilege, because there is a corresponding no-right. The combination of these two points, however, indicates that the Security Council is best described to be at liberty to intervene. In other words, instead of describing the Security Council's right of humanitarian intervention either as claim or as privilege, it can be called a right as liberty, a right which combines both the characteristics of rights as claim and as privilege.

On the other hand, the Security Council can authorize others to intervene on its behalf. This indicates that the right is also a right as power, because by authorizing, the Council effectively gives the right to a third party. Thus, the Security Council's right is best described as having a dual character: a right as liberty and a right as power.

Whether the Council possesses meta-powers is less straightforward. As discussed above, meta-powers can denote either the ability to give powers to other actors or to regulate the use of granted rights by other actors. In the first sense of the term,

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[212] United Nations General Assembly, *United Nations General Assembly Resolution 377 of November 3 1950*, A/RES/377.

[213] Generally speaking, the International Court of Justice is reluctant to become involved so that it could be brought into conflict with the Security Council. In the *Pan Am* case, the International Court of Justice found that it could not order provisional measures against an earlier Security Council decision, because according to Article 103 of the UN Charter obligations arising from the UN Charter precede over any other obligations. See International Court of Justice, *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya V. United Kingdom)*, 1992). Available at http://www.icj-cij.org/icjwww/idocket/iluk/iluk2frame.htm. See also International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua V. United States of America)*, 1986). Available at http://www.icj-cij.org/icjwww/icases/inus/inusframe.htm.

the Security Council does not have meta-powers. Counter-factually speaking, if it did, it would mean that the Council could pass on the right of humanitarian intervention to a third party, who in turn could pass it on to a further party. This is hardly a possibility in the contemporary world. In the second sense of the term, however, the Security Council has meta-powers, because it would regulate the use of the right it gave to a third party. Even if the Security Council gave a *carte blanche* authorization to a third party, the right of humanitarian intervention would remain against a certain other and within a certain context. Moreover, the Council would retain the possibility of revoking the authorization. Thus, the Security Council's right as power would include meta-powers in the sense of regulating the use of the right it would invest on a third party.

Is the Security Council's right to intervene more paucital than multital? In a certain sense, the right originates from a "contract" and practice among states. States have thus bestowed the right to the Security Council, and therefore the right has a paucital character. This interpretation is supported also by the specificity of the right, in the sense that the right is to be exercised against a specific other. Moreover, despite it being possible to argue that for example UN member states have a certain obligation to contribute towards Security Council action,[214] international practice demonstrates how that obligation remains at a theoretical level, and how all contributions remain voluntary. In contrast, the Security Council's right implies for example a duty of non-interference, which can be fulfilled by mere omission. This last point supports interpreting the right as a multital right.

In addition to omissions being capable of fulfilling the implied duties of the Security Council's right of humanitarian intervention, the multital character of the Security Council's right is supported on another account. It is not specified in detail against whom the right is to be exercised. The right can be exercised against states, in which people face a grave humanitarian crisis, but because any state may be a host to a grave humanitarian crisis, for example due to a natural disaster, the other, against whom the right is to be exercised, includes also future

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[214] See e.g. Article 43 of the UN Charter.

and hypothetical states. In other words, one cannot say that the right is to be exercised against a specific, namable other. Due to the impossibility of pre-determining the other, apart from limiting it to states which face grave humanitarian crises, or to states which abuse their peoples, I argue that the Security Council's right of humanitarian intervention is more multital than paucital. After all, otherwise we could actually have to name those states, against whom the right of humanitarian intervention applies.

To summarize the Security Council's right of humanitarian intervention, it was argued that the right would be best understood as a multital right, which has a dual character. On the one hand, the right is a right as liberty, and on the other hand, it is a right as power. Alternatively, one might say that the Council's right is a bundle of rights, because embedded in the notion of the right of humanitarian intervention are, among others, the Council's right to determine whether a grave humanitarian crisis exists, whether there is a threat to or breach of international peace and security, whether there is need for outside intervention, and who is to intervene and how. In other words, despite using a single term "right of humanitarian intervention," in the case of the Security Council it denotes a lot more than just the legal right to intervene in a grave humanitarian crisis. A whole host of other concepts and systems need to be in place, before one can use such a short-hand, if its use is to make sense.

AN AUTHORIZED THIRD PARTY'S RIGHT

Since the Security Council can authorize others to act on its behalf, one should consider also the kind of right an authorized third party would have. In what follows, it is considered that the Security Council bestows the right of humanitarian intervention to a generic third party, which could be either a single state, a coalition of states, or inter-governmental organizations. I shall not distinguish between these possibilities below, because the right of humanitarian intervention, as granted by the Security Council, would remain the same regardless of the kind of actor receiving it. Similar to determining the Security Council's right, I begin with a process of elimination.

Three kinds of right can be excluded immediately: rights as power, as immunity, and as privilege. First, the authorized third party's right of humanitarian intervention cannot be a right as power, because the Security Council does not have meta-powers in the sense that it can grant rights as powers to other actors, at least in the case of the right of humanitarian intervention.[215] Second, the right would not be a right as immunity, because a right as immunity would refer to the opposite of what the right of humanitarian intervention implies.[216] Last, the authorized third party's right of humanitarian intervention is not a privilege, because others have a duty of non-interference in the execution of the right.

Conceivably, the authorized third party's right of humanitarian intervention could be described as a right as claim. Yet, if it were a claim, however, there ought to be a corresponding duty. Supposing that State X had been authorized by the Security Council to intervene in State Y, what could the corresponding duty of Y be with regards to X?[217] It is difficult to imagine what the corresponding duty could be, especially because all the possibilities seem to resemble a duty of allowing or welcoming the intervention. Not only is it implausible that such duties existed, but

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[215] See above.

[216] One might argue that once authorized, the third party would become immune from interventions on itself. As discussed both above and below, the Security Council can invoke the right it granted or otherwise interfere with the execution of the delegated right. Thus, an authorized third party would not be immune from Security Council intervention.

[217] The idea of correspondence is illustrated the example of Anne owing Bill hundred dollars, where Anne has a duty to pay Bill, and Bill has the right to be paid.

it would also complicate matters theoretically, since humanitarian intervention is distinguished from humanitarian assistance by being uninvited intervention into another state.[218] One might argue, however, that once the humanitarian intervention was underway, the targeted state has a duty to cooperate. Such duties would contradict the inherent right to self-defense.[219] Since humanitarian intervention denotes military action, claiming that a state should welcome such action effectively strips the state of its right to defend itself. Whether a state, which abuses its citizens should have a right to self-defense, is however a question, which takes the present discussion too far from the mark, and which should be taken up elsewhere.[220]

The process of elimination has left right as liberty as the last choice, and on the surface it seems that the only difference between the Security Council's right and the authorized third party's right is that the Council may pass on its right while the authorized third party cannot. Yet, other differences exist which cast doubt on characterizing the authorized third party's right as liberty. The authorized third party's right would include certain general and particular limitations. The general limitations refer to the general manner, in which an intervention should be conducted, and to the kinds of states that could be targeted. Particular limitations refer to the exceptional circumstances calling for intervention, to the specific state(s) which should be targeted, and to the timeframe during which the right would remain valid. Moreover, the Security Council could still revoke the authorization at any point. Thus, an authorized third party would not be at a complete liberty to exercise the right. Yet, all other actors except the Security Council have a duty of non-interference. For these reasons, an authorized third party's right might be best characterized as falling somewhere between a right as privilege and a right as liberty.

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[218] This distinction is done at least in this thesis.

[219] One should note that as members of the United Nations, states have forfeited their right to use force except in self-defense. In cases of self-defense, however, the right to use force remains unimpaired only until the Security Council has taken necessary measures. See Article 51 of the UN Charter.

[220] In this context, see e.g. John Stuart Mill, "A Few Words on Non-Intervention," in *Essays on Equality, Law, and Education: Collected Works of John Stuart Mill*, ed. John M. Robson (Toronto: University of Toronto Press, 1984).

The right of humanitarian intervention as held by an authorized third party would be against a specific other, as instructed by the Security Council, and not against the world at large. This makes it a paucital right. Moreover, the paucital interpretation is strengthened by the implication to commit the act of intervention. In other words, authorization is given with the understanding that the authorized party is willing and will exercise the right of humanitarian intervention. I shall come back to this point later.

To summarize, an authorized third party's right of humanitarian intervention might be best characterized as a paucital right which can be located between a right as privilege and a right as liberty. Since, in contrast, the Security Council's right is a multital, dual right as liberty and as power, it seems that the kind of right the right of humanitarian intervention is depends on the right-holder. Thus, in table 2, "Security Council" is placed on both liberty and power, while "Third Party" is between privilege and liberty denoting its special character.

"VERSION" OF A RIGHT

KIND OF RIGHT	*In rem* or multital	*In personam* or paucital
Claim		
Privilege		
Liberty	Security Council	Third Party
Power		
Immunity		

Table 2: Summary of the Security Council's and an authorized third party's rights.

CORRELATIVES OF THE KINDS OF RIGHT IN QUESTION

In addition to being able to conclude that the kind of right depends on the right-holder, Hohfeld's typology of rights includes also correlatives of rights, which allow for more insights. Hohfeld listed duty as the correlative of right as claim, and "no-right," liability, and disability as the correlatives of rights as privilege, as power, and as immunity.[221] Multital and paucital do not have their correlatives, because they represent two different versions of claims, privileges, powers, and immunities. Instead of discussing all the correlatives, it is sufficient to focus on the correlatives of the kinds of right the Security Council and an authorized third party would have, namely on the correlatives of rights as privilege, as liberty, and as power. Unlike above, Hohfeld did not distinguish between rights as privilege and as liberty. Hence, the correlative of right as liberty requires some attention.

Above, right as liberty was distinguished from right as privilege, because the former included a duty of non-interference by all others while the latter did not. A right as liberty, then, is a right as privilege in combination with a duty of non-interference. Some might argue that this crude decomposition of right as liberty fails to acknowledge that the whole, liberty, is more than the sum of its parts. For the sake of the argument here, however, this seems excusable. Thus, the discussion on the correlatives will focus on no-right as the correlative of a right as privilege, on liability as the correlative of a right as power, and on the duty of non-interference.

Starting with no-right, Hohfeld exemplified it thus: 'the correlative of X's right that Y shall not enter on the land is Y's duty not to enter; but the correlative of X's privilege of entering himself is manifestly Y's "no-right" that X shall not enter.'[222] In other words, Y has no rightful say regarding X and his entering (or not entering) his own (X's) property. If one places this within the humanitarian intervention framework, the right of humanitarian intervention as privilege correlates with other actors' no-right that the intervener executes an intervention. For example, if the Security Council authorized State X to intervene in State Y, and

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[221] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. David Campbell and Philip Thomas (Aldershot: Ashgate, 2001), 12.

[222] Ibid., 14.

because in this case the right of humanitarian intervention would be a right as privilege, other states would have a no-right regarding the intervention. Yet, because a right as privilege does not include assurances of non-interference, the no-right might not amount to a perfect duty of non-interference. To put it differently, although the right of humanitarian intervention as privilege trumps all legal attempts to interfere with an intervention, except when the Security Council intervenes in the intervention, other, non-legal or legitimate, interferences might be allowable. This is a somewhat similar argument as in the Just War tradition, where external intervention in a war is justifiable if for example it is to balance an earlier external intervention.[223] In other words, although actors, who have not received authorization, are not in a position to initiate intervention, they can nevertheless monitor the situation, and legitimately interfere, if for example the authorized intervention is insufficient, poorly conducted, or simply aimed at selfish ends by the authorized actor. One can easily imagine that a neighboring state to a country, where a humanitarian intervention which despite initial humanitarian successes turned sour, could legitimately intervene, even if this neighboring state was not the original right-holder of the right to intervene. The legitimacy of this intervention by a neighboring state depends naturally on the circumstances, whether for example the original right-holder abused its right or was simply unable to meet the humanitarian goals, and whether the action taken by the neighboring state corresponded in general with the spirit of legitimate humanitarian interventions.

The duty of non-interference that correlates with the right of humanitarian intervention as liberty applies to all other actors except the Security Council for two reasons. First, obviously, when the right-holder is the Security Council, the duty does not apply to itself. All other actors, however, have a duty of non-interference arising from the right of humanitarian intervention and the UN Charter. Second, when the right-holder is an authorized third party, the duty of non-interference does not fall on the Security Council, because the third party's right is not a pure form of a right as liberty. In other words, although the Security

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[223] See e.g. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000), 86-108.

Council can authorize a third party to act in its stead, the Security Council still retains the power to de-authorize the third party. Thus, while an authorized third party can expect (legal) non-interference from all other actors, it still answers to the Security Council, and the right, which it has been granted, can be revoked. Hence, compared to all other actors, the Security Council remains in a privileged position even when it authorizes others to act in its stead.

A further point regarding the duty of non-interference invites discussion, namely whether also the targeted state shares this duty. If the targeted state had the duty of non-interference, when either the Security Council or an authorized third party intervened in it, the duty would be in conflict with the fundamental right to self-defense. Perhaps better, the right to self-defense would be in conflict with the right of humanitarian intervention, if the two were considered to be separate. In other words, if the right to self-defense was granted to all sovereign states on the count of them being sovereign, the right of humanitarian intervention would conflict with it. On the other hand, if one followed for example John Stuart Mill's old argument about "savage" nations and how they are not protected by the rule of non-intervention,[224] or Donnelly's more recent argument,[225] one could argue that there is no conflict, because a state, which by its own actions – by for example committing genocide – forfeits the protection of the rule of non-intervention and the right to self-defense. Alternatively, in many cases where humanitarian intervention is necessary, the target might not be a sovereign state but a "failed" state or no state at all.[226] Moreover, the UN Charter's explicit statement that the right to self-defense remains unimpaired "until the Security Council has taken measures necessary to maintain international peace and security" lends support to this argument.[227] After all, once the Security Council has decided to intervene or

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[224] John Stuart Mill, "A Few Words on Non-Intervention," in *Essays on Equality, Law, and Education: Collected Works of John Stuart Mill*, ed. John M. Robson (Toronto: University of Toronto Press, 1984).

[225] Jack Donnelly, "Human-Rights, Humanitarian Crisis, and Humanitarian Intervention," *International Journal* 48, no. 4 (1993); Jack Donnelly, "Human Rights: A New Standard of Civilization?," *International Affairs* 74, no. 1 (1998).

[226] Somalia might serve as an example of such a failed or "stateless" state. On failed states, see e.g. Robert H. Jackson, *Quasi-States: Sovereignty, International Relations, and the Third World* (Cambridge: Cambridge University Press, 1990).

[227] See Article 51 of the UN Charter.

authorize intervention, it has taken necessary measures to address a breach of or threat to international peace and security, if this action was appropriate in the particular circumstances.

Thus, the question is whether a state may lose its rights or some of its rights depending on how it treats its citizens. From a practical point of view, this question merits little attention. A targeted state would most certainly engage in self-defense if it could. From a theoretical perspective, the question is intriguing not only in relation to humanitarian intervention but to sovereignty in general. What kind of behavior would result in a state losing some of its rights? How does the process of losing rights take place? Can a state "re-earn" its rights? Moreover, does the sovereignty of a state belong to the state or to the people, and by extension; does the right to self-defense belong to the state or to the people? These are questions to which I unfortunately have neither the answers here nor would this be the appropriate place to answer them, since each might require a thesis of its own. Moreover, the twist provided by the *Responsibility to Protect* report, and its reformulation of the debate in terms of a responsibility rather than a right, has bypassed many of these questions in relation to grave humanitarian crises. Hence, for the time being, I will leave these questions and return to the discussion about the correlatives of the right of humanitarian intervention.

The last correlative to discuss is the correlative to the right of humanitarian intervention as power: liability. According to Hohfeld, right as power is correlated with liability, which is understood as "responsibility," as the "opposite of immunity," or as "subjection."[228] As an example of liabilities, consider innkeepers who are under liabilities rather than duties: "Correlative to those liabilities are the respective power of the various members of the public. Thus, for example, a traveling member of the public has the legal power, by making proper application and sufficient tender, to impose a duty on the innkeeper to receive him as a guest."[229] With respect to the right of humanitarian intervention, the Security Council's right as power casts the shadow of liability on states and relevant

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[228] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. David Campbell and Philip Thomas (Aldershot: Ashgate, 2001), 27.

[229] Ibid., 25.

international organizations. It is unclear whether this shadow of liability consists of only the possibility of being authorized to intervene or also of a requirement to volunteer. It is apparent, however, that once an actor is authorized by the Security Council and holds the right of humanitarian intervention, the actor *ought to intervene* as instructed by the Council. After all, authorization is given with the understanding that the authorized will exercise the right of humanitarian intervention, and it is this process of authorization that creates certain obligations to the authorized. Although states have clearly more say about their obligations and whether they intervene in a humanitarian crisis than innkeepers have for example about the appearance of their guests, states would not be able to escape the obligations arising from the process of authorization. Obviously, the Security Council would not authorize an actor without being convinced that the actor wanted to be authorized, and that the actor was capable of delivering what was required of it. The question, however, is more whether the Security Council has a liability to authorize humanitarian intervention, once for example a concerned state had made its case by demonstrating sufficient evidence of a grave humanitarian crisis and had asked for authorization.[230]

This last point requires further consideration. Drawing from another discussion on liabilities, let us consider Wade L. Robison's discussion on trust and the rule of law. Robison points out in relation to state troopers that "because the officer has such special powers ... an officer also has a special liability to have a duty to ensure" that for example evidence is properly collected and handled.[231] The possession of powers makes the power-holder liable for certain things. The Security Council's right as power, in comparison, brings liabilities to other actors but also to itself due to a similar "possession." Clearly, this liability might not be more than the requirement to address and consider cases of grave humanitarian crisis, but if for example the International Commission on Intervention and State Sovereignty (ICISS) and Kofi Annan are right, it is much more than that.[232]

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[230] This is a central aspect in relation to the possible abuse of humanitarian intervention.

[231] Wade L. Robison, "Trust and the Rule of Law," (Rochester Institute of Technology, 2003). Available at <www.rit.edu/~wlrgsh/Trust&law.pdf>.

[232] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001); United Nations Secretary-General, *If

SOME IMPLICATIONS OF THE KINDS OF RIGHT

The above discussion on the kind of right the humanitarian intervention is, if it existed, revealed several insights, and thus, the heuristic assumption that the right exists was justified. First, the discussion hopefully clarified how and why the Security Council would be the most suitable right-holder, given the contemporary international arrangement. Granting the right to the Security Council would not exclude other actors from the possibility of gaining the right (momentarily), but it would require following a process, in which the Council would authorize an actor desiring the right. The Security Council would thus play a central regulating role.

Second, a distinction was drawn between legal and legitimate acts. In this context, unauthorized interventions would not be legal but they could be legitimate. Thus, the debate, whether the right of humanitarian intervention should be limited to the Security Council, or whether other actors should possess the right even without receiving authorization, is mistaken, or at least useless, because the lack of the right of humanitarian intervention does not limit the choices available to all actors. Legitimate interventions are possible in the absence of the right. Clearly, the aim is not to encourage a proliferation of intervention but to remind concerned actors of their options. Moreover, this point serves to show also what a hollow defense of inaction it is to hide behind the lack of a right of humanitarian intervention.

Third, the Hohfeldian typology of rights demonstrated that the kind of right depends on the right-holder. For the most part, the discussion on the right of humanitarian intervention has assumed that there is one right, which a varied number of actors possess depending on the author in the relevant literature, but it should be clear that the use of plural – *rights* of humanitarian intervention – would be more appropriate, even if the principal right-holder were only the Security Council. The difference in the rights reflects the general position of the Security Council and the other rights, privileges, and powers as assigned to it by the UN Charter, other international treaties, and international practice. The

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State Unable, Unwilling to Protect Citizens against Extreme Violence, Security Council Must Assume Responsibility, 2005, SG/SM/10000, SC/8444.

Security Council holds a privileged position, which both enables and restricts its courses of action. In relation to humanitarian intervention, whether conducted by the Security Council or by other actors, the Security Council would remain the last place where ultimate responsibility rests due to its position and powers.

Moreover, as has hopefully become evident, the binary logic of there being or not being a right is less than helpful. Rather, a closer examination with the help of a simple question, which seems to have remained unasked until now (what kind of a right is it?), demonstrated that the issues involved are not only more complex than is usually considered but they also give more hope regarding the future, especially in relation to using the right.

A final main insight was that the right of humanitarian intervention *per se* does not imply a duty to intervene.[233] If duties can be said to arise from the existence of the right of humanitarian intervention, they are due to the right as power by the Security Council and any consequent authorization by the Council. Thus, the implicit assumptions in the pro-humanitarian intervention arguments about the responsibility to exercise the right make their case starting from the desirability of intervention. Yet, also the existence of the right would support such conclusions. On the other hand, granting the Security Council the right of humanitarian intervention would increase its responsibilities not only directly but also indirectly, and it is doubtful whether in its present form the Council could manage such responsibilities. A Council reform, as well as some reliability of contributions to operations, would certainly be necessary, if the Council were granted a clear right of humanitarian intervention for that right to be meaningful.

As with the earlier discussion about the implicit assumptions in the pro-humanitarian intervention arguments, also here responsibility is indicated as a central theme. The issue of responsibility is central not because the right necessarily implies it but because the *possession* of the right requires its sensible and responsible use. Moreover, despite a focus on the kind of right in question, it is clear that the present discussion on rights would result in other dead-ends,

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[233] At this point no distinction is made between duties and responsibilities.

even if some of the dilemmas were solved. Thus, the ICISS did well in rephrasing the discussion. For example, the issue of conflict between the right to self-defense and the right of humanitarian intervention or the question, to whom does the right to self-defense belong, were bypassed by this reformulation. Instead of wading in a debate over a right – or rights as argued here – the discussion seems to have taken a significant turn towards what *is* right.

Chapter Three:
On Responsibility

The price of greatness is responsibility.[234]

Introduction

The previous chapter argued that the debate concerning the right of humanitarian intervention should address also issues of responsibility. Moreover, the *Responsibility to Protect* (R2P) report,[235] published in 2001, makes the focus on responsibility explicit. Subsequently, the discussion has focused on the report and its implications, leaving behind the discussion about the right of humanitarian intervention. The General Assembly's adoption of the main ideas within the R2P report confirms that a significant step has taken place in reformulating the issues at stake, and that questions of responsibility rather than of rights should concern us.[236]

To describe the R2P report in a nutshell, it brought the humanitarian intervention debate onto a new level. Instead of implicit assumptions or moral imperatives, the report argues in a straightforward fashion that inherent in the notion of sovereignty is the general responsibility to protect, which embraces three specific responsibilities: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. Sovereign states have the responsibility to protect primarily vis-à-vis their own citizens, but in situations, where a state is unable or

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[234] Sir Winston Churchill.

[235] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

[236] See especially paragraphs 138-139 in United Nations General Assembly, *World Summit Outcome*, 2005, A/RES/60/1.

unwilling, or is itself the perpetrator of atrocities, the responsibility to protect is transferred to the wider international community.

Instead of describing and criticizing the R2P report, I focus on two issues that seem to have been neglected both in the R2P report and in the *World Summit Outcome*, namely, first, the meaning of responsibility in the report and at the international level in relation to grave humanitarian crises, and second, the distribution of burden arising from the responsibility to protect when it is transmitted to the international community. As I shall show later, the R2P report defines "responsibility" in loose terms. It is possible, and even likely, that the International Commission did not wish to limit its work by providing a too strict definition, and thus allowing for a better evolution of its work and the concept of responsibility to protect. I shall argue, however, that there might be little reason to attempt a "better" definition, because the subject does not yield to strict, simple definitions. Nevertheless, a better conceptualization is possible, and I provide a conceptualization of "responsibility" in the "responsibility to protect" as it seems appropriate to me in light of the R2P report.

I shall also argue that the responsibility in question is a collective responsibility. Although the state, whose citizens face a grave humanitarian crisis, has the primary responsibility, the responsibility to protect is nevertheless a collective responsibility shared by the international community. If this were not the case, the transfer from the individual state to the collective international community would risk committing a fallacy of composition. It is more sober to consider that the responsibility to protect is assigned by the international community to sovereign states as part of being sovereign together with the recognition of sovereignty. In this way, in cases where a state fails to fulfill its responsibilities, the responsibility is not transferred to the international community but it is merely reactivated. Obviously, collective responsibilities require collective burden sharing, which I will model at the end of this chapter.

Thus, the first half of this chapter conceptualizes responsibility and international (collective) responsibility, while the second half provides a model for dividing the burden of a collective responsibility among the members of the collective. As just

hinted at, no attempt is made at providing a technical solution by first defining "responsibility" and by then applying this definition to the costs of fulfilling a collective responsibility. Instead, this chapter provides a demonstration that such technical "solutions" are unnecessary, and that a "road map" or a framework can be constructed otherwise. On a higher level, it is argued that technical solutions might not be the best ones to political problems, but one can hope to have signposts which bring focus and enable action without predetermining it.[237]

A few remarks are still necessary. First, I shall use legal examples, yet a full-blown legal argument is neither the purpose nor it is attempted here. Legal examples are used to illustrate a particular point within the general argument, which could be best described as ethico-political. Second, it is acknowledged that legal, moral, and political responsibilities are not necessarily linked.[238] For example, legal responsibility does not necessarily denote moral responsibility or political responsibility. Where it is required to distinguish between these three, I refer to legal responsibility as liability, to moral responsibility as responsibility, and to political responsibility as accountability.[239] Third, the aim is to build on the R2P report, but some criticisms are necessary. Thus, despite having been influenced by the report, this chapter is aimed to stand on its own. Fourth, despite the discussion revolving around military action for humanitarian purposes, the Just War tradition seems irrelevant, at least within this chapter, because the purpose is not to question any of the following: the Security Council's position as the right authority regarding military action, the requirement of right intensions (just cause), the requirement of proportionality, the requirement of reasonable prospects, or the requirement that force is used as a last resort. Finally, the collective responsibility model is a suggestion of how to conceive of collective responsibilities but no claims are made about its universal applicability or uniqueness in the sense of being the one and only possible formulation.

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[237] Here the influence of "good" casuistic reasoning is evident. See chapter 1.

[238] See e.g. H. D. Lewis, "Collective Responsibility," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman (Lanham: Rowman & Littlefield, 1991), 23.

[239] For a good taxonomy of responsibility see especially chapter 2 in Peter Cane, *Responsibility in Law and Morality* (Oxford: Hart, 2002).

A CONCEPTUALIZATION OF RESPONSIBILITY

The R2P report defines responsibility in three ways: 1) "state authorities are responsible for the functions of protecting the safety and lives of citizens and promotion of their welfare," 2) "national political authorities are responsible to their citizens internally and to the international community through the UN," and 3) "the agents of state are responsible for their actions ... they are accountable for their acts of commission and omission."[240] Thus, the report clarifies who are responsible, for what, and to whom. Yet, one is hard pressed to find a clarification of "responsibility." The deeper meaning of *being* responsible is left untouched.

In order to shed light on being responsible, and thus on responsibility, and on what in my opinion is the understanding of responsibility in the R2P report, let us first consider the concept's roots and its usage. Etymologically speaking, "responsibility" has its roots in the Latin word *respondeo* – I answer.[241] A reaction to this statement could be either "what does one answer for" or "to whom does one answer." In the former case, one could be answerable for something either in *ex ante* or in *ex post facto* sense.[242] The latter reaction, in contrast, is about the relative position of the responsible person within a wider social structure, and about who can legitimately question that person's actions.

A brief examination of the use of "responsibility" is in order. Since the meaning of concepts is in their use and not in their reference points in the world "out there,"[243] a brief Wittgensteinian examination is useful. In other words, examples from common use are the best illustrations of a concept's meaning.[244] First,

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[240] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

[241] J. R. Lucas, *Responsibility* (Oxford: Clarendon Press, 1993), 5. See also e.g. H. D. Lewis, "Collective Responsibility," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman (Lanham: Rowman & Littlefield, 1991), 22-23.

[242] Toni Erskine, "Making Sense of 'Responsibility' in International Relations: Key Questions and Concepts," in *Can Institutions Have Responsibilities? Collective Moral Agency and International Relations*, ed. Toni Erskine (New York: Palgrave, 2003), 8.

[243] See e.g. Friedrich Kratochwil, "Of False Promises and Good Bets: A Plea for a Pragmatic Approach to Theory Building (the Tartu Lecture)," *Journal of International Relations and Development* 10, no. 1 (2007): 3.

[244] The following common use examples of the word "responsibility" are taken from Catherine Soanes and Angus Stevenson, eds., *The Oxford English Dictionary*, Revised ed. (Oxford Reference Online: Oxford University Press, 2006).

responsibility is often used in relation to taking responsibility for something, such as childcare. Second, one can be responsible for an act, an event, or a set of circumstances and be answerable for it or them, as for example when a terrorist group claims responsibility for a bombing. Third, responsibility can denote certain kind of behavior; responsibility requires the "exercise of discretion by deliberate and thoughtful decision in the light of a sound calculation of probable consequences and a fair evaluation of claims."[245] Thus, responsibility indicates also a person's capacity to "act independently and take decisions without authorization."[246] Lastly, responsibility is assigned to certain roles and positions, such as to judges or to other office-holders.

These common examples merit further discussion. As the second example illustrated, responsibility can be claimed. Claiming responsibility, however, does not require that one has actually committed the act for which one claims responsibility. For example, a terrorist group might claim responsibility for a bombing without actually having committed it. Alternatively, one can view this as taking upon oneself the responsibilities of others.

In addition, it is clear from the examples how responsibility differs from duty and obligation. For a man to be called dutiful, all he needs to do is to fulfill his obligations or duties, but to be called responsible would require something more as Pennock argues: "A moron might be dutiful, but we would hardly speak of him as a responsible person."[247] Duties and obligations refer to cases which are simple and clear-cut. Responsibilities, on the other hand, indicate situations where "judgment or discretion is or ought to be exercised."[248]

A third additional remark relates to the transferability of responsibility, which requires a special focus.

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[245] J. Roland Pennock, "The Problem of Responsibility," in *Responsibility*, ed. Carl J. Friedrich, *Nomos* (New York: Liberal Arts Press, 1960), 13.

[246] Catherine Soanes and Angus Stevenson, eds., *The Oxford English Dictionary*, Revised ed. (Oxford Reference Online: Oxford University Press, 2006).

[247] J. Roland Pennock, "The Problem of Responsibility," in *Responsibility*, ed. Carl J. Friedrich, *Nomos* (New York: Liberal Arts Press, 1960), 12.

[248] Ibid., 9.

TRANSFERABILITY OF RESPONSIBILITY

In this subsection, I wish to address the issue of transferring responsibility. For example, in the case of responsibilities belonging to a particular office, one often considers that the responsibilities are transferred from one office-holder to another. In many ways, this might be the case. Yet, it might be best to consider that the responsibilities remain unmoved *in* the office, while the previous office-holder is relieved from his responsibilities and the new office-holder is assigned those same responsibilities. This is just one example of some misleading arguments one might encounter, and by engaging other examples of such arguments, I hope to illustrate further insights about responsibility.

Let us first consider the argument that responsibility is transferred, when a person is responsible for another person's actions, because the latter is incapable of acting responsibly. Clearly, this argument is confused, because no transfer of responsibility can take place, if the other person could not act responsibly in the first place. To give an example, the responsibilities of children and mentally challenged people are not transferred to the people who care for them; responsibilities and liabilities are created to their custodians. When children learn to distinguish between right and wrong, and develop the ability to deliberate, we can expect them to act responsibly at least to a certain extent. In turn, old enough children take responsibilities upon themselves, while their custodians are relieved from some of the responsibilities. Thus, one is not born with responsibilities that are, at birth, transferred temporarily to one's custodians. Instead, responsibility is something one learns and integrates as a member of a society.

One might ask what about such cases, as when one's friend is too intoxicated, is it not true that the friend's responsibilities are transferred to oneself? Also in such cases of temporary incapability, responsibilities are not transferred. To give an example, a drunk driver cannot use his intoxication as an excuse or as an argument for a lesser sentence in case of an accident, quite the contrary! Admittedly, there is a law prohibiting driving while under the influence of intoxicating substances, and pleading guilty to being drunk while causing the

accident would clearly be self-incrimination. Yet, even in the absence of such a law, it would hardly be acceptable for someone to excuse his reckless driving by pointing out the amount of liquor he had consumed before sitting behind the wheel. We could, for example, be willing to accept a sudden medical reason for the temporal incapability of acting or driving responsibly. In other words, the responsibilities are present, but the question is whether the particular circumstances allow for us to overlook the responsibilities and the temporary incapability of being able to fulfill them.

Another confused argument relates to the limits of transferability of responsibility, particularly to the transferability of causal responsibility. It is often argued that causal responsibility cannot be transferred, because it is "concerned with how a particular outcome is generated [and] does not even require that one is referring to an agent, let alone a moral agent."[249] For example, Hart attributes causal responsibility not only to humans but also for example to animals and events.[250] Such arguments, however, confuse two distinct issues, namely causality and responsibility. In order to clarify this confusion, let us consider the following two examples: 1) The wind knocks down a tree; and 2) While cutting down a tree, I warn you not to approach but you reply: "I'll take my chances," and consequently approach and injure yourself.[251] In neither of these examples would it make sense to say that the wind or I was responsible for what happened, despite "causing" the outcome, and I wish to explain why this is the case.

In the two examples, both the wind and I caused the falling of a tree. The wind, however, did not intend to knock down the tree (how could it?), whereas I clearly intended to cut down the tree. Thus, despite the wind being part of the causal chain, it could not properly be called responsible for knocking down the tree,

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[249] Toni Erskine, "Making Sense of 'Responsibility' in International Relations: Key Questions and Concepts," in *Can Institutions Have Responsibilities? Collective Moral Agency and International Relations*, ed. Toni Erskine (New York: Palgrave, 2003), 8. See also e.g. Peter Cane, *Responsibility in Law and Morality* (Oxford: Hart, 2002); H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Clarendon Press, 1968).

[250] H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Clarendon Press, 1968).

[251] The latter is an example used in J. Roland Pennock, "The Problem of Responsibility," in *Responsibility*, ed. Carl J. Friedrich, *Nomos* (New York: Liberal Arts Press, 1960), 7.

because it had no choice, it was not even capable of having a choice, and the whole thing was a matter of chance having much more to do with the accidental combination air flow, the strength of the roots, soil quality, and other factors rather than with responsibility. In the other example, despite being also part of the causal chain and in fact intending to cut down the tree, my warning and your acceptance of the risk and possible consequences of coming closer placed the responsibility upon your shoulders. In other words, I may have been responsible for cutting down the tree, but not for your injuries.

One reason for the confusion over "causal responsibility" might be due to neglecting liabilities or moral responsibilities that are present but not explicitly stated in cases which are used as examples. In a similar vein to the second example just mentioned above, Pennock points out correctly that "if I cause you to fall and injure yourself ... I may be responsible; but this is because I am, under the circumstances, legally liable, or morally accountable, or both."[252]

Moreover, responsibility does not require being part of the causal chain, as an example from legal liability demonstrates.[253] A classic legal example is that of escaped cattle, where the cattle owner could be found liable for damages caused by the escaped cattle without the cattle owner having been negligent or having done anything wrong himself. A landmark case of liability without negligence is the English case of *Rylands v. Fletcher*,[254] which concerned the escape of water onto a neighboring land. *Rylands* was a significant step in developing legal policies relating to modern industry, risk allocation, liability, and negligence. Although the case may have codified only strict liability, and not absolute liability,[255] for the present purposes it is sufficient to note how in the absence of negligence and without intending to cause the escape of water onto Fletcher's land, Rylands was found liable. In other words, responsibility, liability, and accountability are due to

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[252] Ibid.

[253] One should also note here the earlier example of claiming responsibility and vicarious responsibility or liability. On vicarious responsibility, see e.g. Peter Cane, *Responsibility in Law and Morality* (Oxford: Hart, 2002), 175-77.

[254] *Rylands V. Fletcher*, L. R. 3 H. L. 330 [1861-73], (1868).

[255] See e.g. Frank C. III Woodside et al., "Why Absolute Liability under Rylands V. Fletcher Is Absolutely Wrong!," *The University of Dayton Law Review* 29 (2003).

specific rules that are applied within a set of circumstances, and in determining them, causality may or may not play a role. Thus, in the example of me cutting down a tree and you injuring yourself despite my warnings, the question of my liability would be determined within the existing law. A decision on this case would most likely take into consideration the sufficiency of my warnings, whether I had taken adequate precautions, and so on.

One final remark about the transferability of responsibility is related to the warnings in the above example. If it is true that some responsibilities can be transferred, or better one can be relieved or excused from them, through contracts, warnings, and changes of office, it is also true that certain kinds of contracts are not valid, warnings may be insufficient, and retirement from office does not guarantee immunity from one's actions while one was still in office. Another legal example serves to illustrate this point. Let us consider the famous American case *MacPherson v. Buick Motor Co.*,[256] which removed privity from negligence actions. The significance of the case was that the car manufacturer was found liable to a distant third party, whereas in previous cases, such as in *Winterbottom v. Wright*,[257] the case would have been dismissed, because no direct relationship existed between the plaintiff and the defendant. In other words, the court found that the car manufacturer was not relieved of certain liabilities, namely product safety, by selling the product to a reseller. Thus, some responsibilities, liabilities, or accountability cannot be transferred.[258]

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[256] *Donald C. Macpherson V. Buick Motor Company*, Court of Appeals of the State of New York, 111 N.E. 1050 382-401 (1916).

[257] *Winterbottom V. Wright*, Court of Exchequer, 152 Eng. Rep. 402, 403 (1842).

[258] In this context, see e.g. Lewis's doubt that moral responsibility can ever be transferred in H. D. Lewis, "Collective Responsibility," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman (Lanham: Rowman & Littlefield, 1991), 26.

CONCEPTUAL CHANGE

The above *MacPherson* case serves to illustrate also a change in the conceptualization of liability. The ruling in this case broke away from earlier practice, which had been codified as in *Winterbottom*. According to earlier logic,

> Negligence claims were dismissed if the plaintiff failed to allege an undertaking by the defendant, if the plaintiff complaining of injury on defendant's land had the status of a mere trespasser, if the plaintiff's injury bore only a remote relation to the defendant's negligence, or if the plaintiff suffered a type of harm (such as pure emotional stress) against which the defendant was not required to guard.[259]

In contrast, *MacPherson* embraced a new model of negligence, and thus it was no longer required to ask whether a particular defendant owed a given plaintiff the duty of care. The new logic of tort of negligence imposed a general duty of reasonable care owed by all to all.[260] Within eight decades, the conception of liability through negligence had thus undergone a remarkable transition.[261]

It is no surprise that the conception of liability, or moral responsibility for that matter, changes over time. Legal systems adapt to new circumstances, to new laws, and to new interpretations of law. Similarly, our conception of moral responsibility has changed over time. To give an obvious example, the now infamous white man's burden was lauded in its heyday. Moreover, new developments, such as technological breakthroughs, pose novel scenarios, to which our conceptualizations must adapt.

Our conceptualizations are also context dependent.[262] For example, a given understanding of liability is valid only within its own legal framework. Likewise,

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[259] John C. P. Goldberger and Benjamin C. Zipursky, "The Moral of Macpherson," *University of Pennsylvania Law Review* 146, no. 6 (1998): 1749-50.

[260] Ibid.: 1769.

[261] It is worth noting that a similar transition is yet to take place with regard to duty of rescue in the Anglo-American common law systems, where such a general duty does not exist. See e.g. Frank E. Denton, "The Case against a Duty to Rescue," *Canadian Journal of Law and Jurisprudence* 4, no. 1 (1991). On the other hand, it seems that the no-duty tradition might be based on historical decisions which no longer represent good law. See e.g. Peter F. Lake, "Bad Boys, Bad Men, and Bad Case Law: Re-Examining the Historical Foundations of No-Duty-to-Rescue Rules," *New York Law School Legal Review* 43 (1999).

[262] On conceptualization and its problems, see e.g. James W. Davis, *Terms of Inquiry: On the Theory and Practice of Political Science* (Baltimore: Johns Hopkins University Press, 2005).

even though there might be a certain level of global agreement over fundamental principles of morality, it is the application of those principles, or the agreement over exceptions to those principles, that differs from one society to another. In sum, our conceptualization of responsibility seems practical in being concrete, temporal, and presumptive in the sense that Jonsen and Toulmin use these terms.[263]

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[263] A. R. Jonsen and S. E. Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (London: University of California Press, 1989), 27-28.

COLLECTIVE RESPONSIBILITY

So far, the discussion has remained at an abstract level and it has not differentiated between individual and collective responsibility. A focus on collective responsibility is central to the discussion, because the responsibility to protect is a collective responsibility held by the international community. Moreover, as will be argued in the next subsection, international responsibility in relation to grave humanitarian crises is a collective responsibility.

Most of the debate on collective responsibility centers on the question, whether "collectives are capable of bearing ... responsibility for outcomes, even when none of their members is in any degree *individually* responsible for those outcomes."[264] Most of the time, the focus is on collective moral responsibility, and it seems that neither side can be declared winner. One of the early rebuttals of collective moral responsibility came from H.D. Lewis, who asserts in his 1948 article that "it is the individual who is the sole bearer of moral responsibility."[265] In contrast, in an article published three decades later, David Cooper insists that collectives are more than the sum of their parts, because "there is such a thing as Collective Responsibility that is not reducible to Individual Responsibility."[266] Downie's response to Cooper, however, demonstrates that "although there is a sense in which the actions and responsibilities of a collective cannot be analysed in terms of the actions and responsibilities of the individual persons, who compose the collective, it is not *moral* responsibility which is involved."[267] Thus, many of the later contributions, such as Joel Feinberg's[268] or McGary's[269] contributions, focus

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[264] Seumas Miller and Pekka Makela, "The Collectivist Approach to Collective Moral Responsibility," *Metaphilosophy* 36, no. 5 (2005): 634-35. See also e.g. Larry May, "Collective Responsibility, Honor, and the Rules of War," *Journal of Social Philosophy* 36, no. 3 (2005): 297.

[265] H. D. Lewis, "Collective Responsibility," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman (Lanham: Rowman & Littlefield, 1991), 32.

[266] D. E. Cooper, "Collective Responsibility," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman (Lanham: Rowman & Littlefield, 1991), 45.

[267] R. S. Downie, "Collective Responsibility," in *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, ed. Larry May and Stacey Hoffman (Lanham: Rowman & Littlefield, 1991), 47.

[268] Joel Feinberg, "Collective Responsibility," in *Doing and Deserving* (Princeton: Princeton University Press, 1970).

[269] Howard McGary, "Morality and Collective Liability," *The Journal of Value Inquiry* 20, no. 2 (1986).

exclusively on moral responsibility, while others ask whether[270] and what kind of a collective could be morally responsible.[271] As Cane rightly observes, this puzzle "about group responsibility is a function of an excessively agent-focused approach."[272]

For the present purposes, however, the collective responsibility literature's focus on moral responsibility poses more as a problem than as a source for solution. Admittedly, the focus in this thesis has been also, but not exclusively, on moral responsibility, yet as tempting as it might be to proceed in the footsteps of others and concentrate on moral collective responsibility, the aim of building on the R2P report would be lost. Surely, the International Commission intended more than assigning moral responsibility to the international community; it sought a way to make the international community act. Moreover, given that even the General Assembly has confirmed the existence of the collective responsibility "to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity,"[273] it seems unnecessary to debate whether the international community can share a collective responsibility. Instead, following Cane's example,[274] attention should be given to the societal role of collective responsibility and to the kind of collective responsibility in question.

It seems clear at least to me that the International Commission advocated for a practical conception of the international community's collective responsibility in relation to grave humanitarian crises, and that this collective responsibility is similar to the conceptualization of responsibility outlined earlier. The reasons for

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[270] See e.g. Virginia Held, "Can a Random Collection of Individuals Be Morally Responsible?," *The Journal of Philosophy* 67, no. 14 (1970). See also Manuel G. Velasquez, "Why Corporations Are Not Morally Responsible for Anything They Do," *Business and Professional Ethics Journal* 2, no. 3 (1983).

[271] See e.g. Stanley Bates, "The Responsibility of 'Random Collections'," *Ethics* 81, no. 4 (1971). See also Toni Erskine, "Assigning Responsibilities to Institutional Moral Agents: The Case of States and 'Quasi-States'," in *Can Institutions Have Responsibilities? Collective Moral Agency and International Relations*, ed. Toni Erskine (New York: Palgrave, 2003); Peter A. French, "The Corporation as a Moral Person," *American Philosophical Quarterly* 16, no. 3 (1979).

[272] Peter Cane, *Responsibility in Law and Morality* (Oxford: Hart, 2002), 165.

[273] United Nations General Assembly, *World Summit Outcome*, 2005, A/RES/60/1.

[274] Cane's primary thesis is that responsibility should be analyzed in relational terms, namely in terms of the role responsibility plays in practical reasoning and regarding how we should behave toward others. See Peter Cane, *Responsibility in Law and Morality* (Oxford: Hart, 2002).

this interpretation are the following: First, the international community is expected to take on the responsibility of states to protect their citizens, when a state is "unable or unwilling to fulfill [its] responsibility, or is itself the perpetrator."[275] Second, for the international community to bear the responsibility to protect, it does not have to be part of the causal chain: "While the state whose people are directly affected has the default responsibility to protect, a residual responsibility also lies with the broader community of states."[276] Although the choice of word is "residual," it would have made more sense to use another term, such as (re)activated, to describe the process better. As was argued earlier, it makes more sense to perceive of the international community's responsibility as "dormant" or "deactivated" until and unless a particular state is unable or unwilling to protect its citizens or is itself the perpetrator. Otherwise questions and problems of transferability arise, as well as the possibility of committing a fallacy of composition.

The third reason for drawing similarities between the earlier conceptualization of responsibility and the International Commission's perception of responsibility is that the report clearly states that "the responsibility to protect implies an evaluation of the issues from the point of view of those seeking or needing support."[277] Thus, the report calls for the use of discretion and recognizes the international community's ability to deliberate. Finally, the responsibility to protect is an inalienable responsibility arising from "sovereignty as responsibility"[278] and from membership in a community: "in granting membership of the UN, the international community welcomes the signatory state as a responsible member of the community of states ... the state itself, in signing the Charter, accepts the responsibilities of membership flowing from that signature."[279]

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[275] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

[276] Ibid.

[277] Ibid.

[278] Ibid.

[279] Ibid.

In order to illustrate the *kind* of collective responsibility in question, let us consider briefly the history and evolution of fire departments. Before fire departments became institutionalized, it was common that on discovering fire, the discoverer had the responsibility (or duty) to alert the other members of the community and to ensure that the fire was either contained or extinguished. Naturally, all members of the community were expected to deliberate on the best course of action, and to work together to the best of their abilities. For example, a strong, young man was expected to contribute more than a pregnant woman, who may have been excused from the responsibility of contributing to the extinguishing of the fire.[280] In addition, contributions to the common goal were unequal. Had everyone had to carry one bucket of water to the fire, or had everyone had to try to save an equal share of what could still be saved, the house would have burned down quickly and little would have been saved. In other words, coordination and dividing the burden along some set of criteria made the management of fires possible without fire departments.

At a certain point in history, however, the task of extinguishing fires was delegated to professionals, who were properly equipped and trained, and who were required to respond to alarms of fire, while the rest of the society was not, or at least this is the case to a large extent today. Naturally, one is still required to alarm the fire department, and do what one can without risking oneself or others before the fire department arrives, but once the fire department arrives, "civilians" are required to step aside.[281] In sum, the management of fires, and therefore also the responsibility to extinguish them, became institutionalized with the introduction of fire departments.

Several puzzles were solved by institutionalizing the collective responsibility to extinguish fires. For example, fire departments are more efficient, because they can be especially trained and equipped for the sole purpose of extinguishing fires.

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[280] Here one should note that in the event that there was only the pregnant woman or pregnant women present, they would not have been excused from the responsibility. It is only the presence of others who are better suited to fight the fire that could "do" the excusing.

[281] At least this is the case under normal circumstances. In large forest or field fires, the fire department might ask for help from the general population, but even then, usually some training would be given before a layperson was allowed to help.

The institutionalization also bypassed collective action problems, located responsibility squarely with the fire department, and thus also allowed for better apportioning of praise and blame. Clearly, institutionalizing collective responsibility might not always be possible, but where it is, there can be several advantages to such a move.

Obviously, the fire department analogy should not be taken literally. At the international level, there is no similar institutionalization of collective responsibility regarding grave humanitarian crises, and the Security Council, for example, has certainly not been provided with as good of a chance to meet its responsibilities as fire departments.[282] Nevertheless, there seems to be something to the analogy, if considering for example the reactions to Rwanda in 1994, or to Darfur, Chad, and Kenya more recently; there is a strong expectation that the international community, and especially the Security Council, take action and put down the flames in such hot spots of the world. In what follows, this analogy, although imperfect, underlies the discussion.

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[282] There have been some calls to form an international "911" to respond to grave humanitarian crises. Perhaps the most sophisticated of these proposals is the SHIRBRIG. See Multinational Standby High Readiness Brigade at http://www.shirbrig.dk. On the Security Council's responsibilities, see e.g. Article 24 of the UN Charter.

INTERNATIONAL COLLECTIVE RESPONSIBILITY AND HUMANITARIAN CRISES

In 2005, the General Assembly acknowledged the responsibility of states to protect their citizens and the subsequent responsibility of the international community to take collective action through the United Nations, including under Chapter VII powers if necessary.[283] This act by the General Assembly resembles more an acknowledgement of moral responsibility and political accountability than legal liability. Moreover, once again, theory does not seem to meet practice, because although the concept of responsibility to protect may have been accepted, it is yet to be incorporated into practice.[284]

Evidently, the International Commission chose to make its ethico-political argument via the concept of "sovereignty" instead through law, because international law would not support, without controversy, claims of state obligation or liability to intervene in other states.[285] The legal discourse, however, clarifies the collective nature of this international responsibility as possibly something analogous to an obligation *erga omnes*.

Obligations *erga omnes* are a special case of international obligations. The extraordinary character of these obligations is that they are binding on all states without exceptions, and that each state is considered to have a legal interest in their protection.[286] Thus, consent is not a requirement of obligations *erga omnes*. Common examples of these obligations include the outlawing of aggression, the

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[283] United Nations General Assembly, *World Summit Outcome*, 2005, A/RES/60/1.

[284] See e.g. Warren Hoe, "Intervention, Hailed as a Concept, Is Shunned in Practice," *New York Times*, January 20 2008, available at <http://www.nytimes.com/2008/01/20/world/africa/20nations.html?_r=3&ref=world&oref=slogin&oref=slogin&oref=slogin>.

[285] The responsibility to protect is not only about intervention for humanitarian purposes, but the likely requirement to intervene, as many actual cases of crisis demonstrate, is a central part of the argument.

[286] See e.g. Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford: Clarendon Press, 1997), 17.

outlawing of genocide, the protection from slavery, and the protection from racial discrimination.[287]

An authoritative document on the outlawing of genocide is the so-called Genocide Convention.[288] As verified by the International Court of Justice (ICJ), "the rights and obligations enshrined by the [Genocide] Convention are rights and obligations *erga omnes*."[289] Some, such as Ragazzi, have argued that these obligations are not restricted to the prohibition of genocide but include also the prevention and punishment of genocide.[290] Such arguments are, however, contentious. Surely, the ICJ did not mean that states would have a duty to intervene in other states, to intervene even militarily if necessary, in order to prevent, punish, or end genocide. As Judge *ad hoc* Kreća explains:

> As an absolutely binding norm prohibiting genocide, it binds all subjects of international law even without any conventional obligation. To that effect, and only to that effect, the concrete norm is of universal applicability (a norm erga omnes) … The position is different, however, when it comes to the implementation or enforcement of the norm of genocide prohibition. The norm prohibiting genocide … is applicable by States not in an imaginary space, but in an area of the territorialized international community.[291]

Moreover, as Judge Oda clarifies, these obligations

> are borne in a general manner erga omnes by the Contracting Parties in their relations with all the other Contracting Parties to the Convention – or, even, with the international community as a whole – but are not

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[287] See e.g. *Barcelona Traction, Light and Power Company Limited*, International Court of Justice, 33-34 (1970).

[288] United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide* (1948).

[289] International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, 1996.

[290] Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford: Clarendon Press, 1997), 96.

[291] "Dissenting Opinion of Judge Kreća," para. 101, pp. 765-766 in International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, 1996.

> obligations in relation to any specific and particular signatory Contracting
> Party.[292]

In sum, obligations *erga omnes* are shared among the members of the international community, but they do not belong to any particular individual member. They are collective obligations that cannot be transferred to the individual level.

In comparison, the responsibility to protect, as enshrined by the R2P report, resembles in many ways an obligation *erga omnes*.[293] For one, it is shared by all sovereign states, since it arises from peer-acknowledged sovereignty.[294] In addition, all sovereigns can be considered to have an interest in upholding this responsibility, because it ultimately, in the report, grants states their sovereign status. Finally, the responsibility to protect does not belong to any particular member of the international community, because "if the state is unable or unwilling to fulfill this responsibility, or is itself the perpetrator, ... it becomes the responsibility of the international community to act in its place."[295] For obvious reasons, the R2P report recognizes the Security Council as the "first port of call,"[296] but this does not equal to assigning the responsibility solely to the Council. As the report emphasizes, if the Council "fails to discharge its responsibility to protect in conscience-shocking situations,"[297] the General Assembly under "Uniting for Peace" procedure, regional or sub-regional organizations, or concerned states "may not rule out other means to meet the gravity and urgency of that situation."[298]

Coming back to the fire department analogy, the similarities should be evident. Upon discovering a "conscience-shocking situation" or genocide, states are

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[292] "Declaration of Judge Oda," para. 4, p. 626 in Ibid.

[293] This is *not* to argue that the responsibility to protect *is* an obligation *erga omnes.*

[294] International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001). See also Foundation A in "The Responsibility to Protect: Core Principles" in the same report.

[295] Ibid.

[296] Ibid.

[297] Right Authority F in "The Responsibility to Protect: Core Principles".

[298] Right Authority F in "The Responsibility to Protect: Core Principles".

expected to cry alarm and "call upon the competent organs of the United Nations."[299] The Security Council operates as the first port of call,[300] and it is expected to act in order to alleviate the situation. Although perhaps "dormant," the collective responsibility, however, remains valid at all times. Like in the fire department example, until the fire department arrives, or if it never arrives,[301] the people close to the fire are expected to do what they can within reasonable limits. Similarly, there is an apparent implication in the responsibility to protect that the members of the international community would not be relieved of their responsibilities by simply informing the Security Council, especially in cases where the Council fails to act in a timely manner for whatever reason.[302]

On the other hand, the fire department analogy fails on many accounts. Most importantly, the Security Council hardly enjoys a similar status and capabilities at the international level as fire departments in domestic circumstances. Moreover, the Council has not been provided with a standing, properly-equipped personnel ready to fight the flames at the sound of alarm, nor could it simply jump to a mission, even if it had such troops.[303] There are certain procedures, provisions, and other requirements that must be met before the Council can act, and when it acts, it issues a resolution leaving the execution to the member states or to regional organizations. The Security Council's role, however, is highly important in coordinating and legitimizing action.

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[299] See Article 8 in United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide* (1948).

[300] See ft. 296

[301] Also fire engines can break down. The probability of this ever happening is obviously minimized, and whatever small possibility might remain is covered by there being multiple fire engines in a fire department and several fire departments in a city.

[302] Note here how under the UN Charter, also the right of self-defense remains unimpaired until the Security Council has taken necessary measures. See Article 51 of the UN Charter.

[303] Originally the drafting process of the UN Charter envisioned that member states would make available the necessary personnel, equipment, finances, and other assistance at the call of the Security Council. The reality has been much different, though. See especially Articles 43, 45, and 47 of the UN Charter.

Yet, exactly because the international responsibility is not institutionalized like the domestic responsibility to fight fires,[304] criteria are needed for coordinating efforts and for dividing the burden of fulfilling the responsibility, especially if the Security Council fails to act. In sum, a central question is how to distribute the collective responsibility among the members of the collective without losing its collective nature. The next section outlines a model and one possible set of criteria for the division of the collective responsibility in relation to grave humanitarian crises.

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[304] One might be able to make the case that the current situation reflects a point somewhere between the situation before and after the introduction of fire departments, because there is some level of institutionalization of the responsibility. I owe this consideration to Chris Brown.

"VARYING DEGREES OF RESPONSIBILITY" MODEL

In the above discussion, it was argued that the international community shares a collective responsibility in relation to grave humanitarian crises. Some might object because there is no clear legal liability. Instead of entering this debate, whether or not there is a legal liability to alleviate human suffering, I shall quote the World Summit Outcome, which acknowledges the existence of an international responsibility to protect victims of grave humanitarian crises. Whether this responsibility is only moral, political, or both, is beside the point at this stage. More interesting is to perceive of ways how to think about this collective responsibility of the international community.

The international community is often equaled with all sovereign states, or with members of the United Nations, and in most cases rightly so. States are the privileged actors in the international sphere, and they are also the only actors capable of effectively intervening in other states. Also, regional and other kinds of governmental organization are usually subsumed under this heading, because they are often no more than the sum of their parts; they are a collection of states acting together for a common goal. Sometimes, the United Nations, the largest inter-governmental organization, and especially the General Assembly, is considered to be the "embodiment" of the international community.

Yet, to favor all states equally as the only possible kinds of members of the international community appears unjustifiable, at least in relation to the responsibility in grave humanitarian crises. For one, not all states are capable of effectively intervening to alleviate for example genocide, not to mention the incapability of a large number of states even being able to solve their own problems. Moreover, some non-state and non-governmental organizations may in fact possess better capabilities and experience in dealing with grave humanitarian crises than most states. In addition, although the use of legitimate force remains in the hands of states, some grave humanitarian crises might not require the use of force, and even if they did, not all problems can be solved with force. Also, concerted action between state and non-state actors might be the best solution sometimes. Finally, some non-state actors exist for the sole purpose of alleviating

human suffering. It would seem odd to discount such actors in a discussion about grave humanitarian crises.

Thus, for the purposes of what follows, the international community is understood to constitute of states, of inter-governmental organizations, of regional organizations, of the international civil society, of international non-governmental actors, of the international media, and of other international actors that might be relevant to the fulfillment of the responsibility to protect and the alleviation of human suffering in grave humanitarian crises. These are the actors that share the collective responsibility, but their individual allocation of the responsibility is unequal. Below, I explain the criteria used for determining the degree an actor shares in the collective responsibility. Rather than being a formal, mathematical model, the criteria are a (casuistic) way of thinking about the collective responsibility and the expectations regarding it.

VARIOUS ACTORS

As mentioned above, the international community is considered to compose of very different kinds of actors, and one should differentiate between them. Although some theories of collective responsibility focus on corporations as collective actors,[305] the similarity of being a collective actor but being internally composed of different kinds of actors is not extendable to the international community. Thus, these theories help little, because the international community is not like a corporation, yet it is a collective actor, or at least we act as if it were a collective actor.

Some of the actors who compose the international community differ in their formal status. For example sovereign states enjoy a more privileged position than non-governmental actors in this respect. Other actors differ despite their formal equality. As an example, one can consider how the United States and Iceland are formally equal as sovereign states, yet there is little doubt about the practical inequality between them. These, and other similar, differences ought to be taken into consideration when distributing responsibility.

Furthermore, the members of the international community exist in a territorialized world, where distance and geographic location matter. Some members of the international community will always be closer to any given crisis, while other members will remain at the other side of the planet. Similar to the continental duty to rescue, one would expect, and thus assign responsibility, first to those nearby. In cases where a nearby actor is unable to act, the expectation would naturally filter wider.

Some actors, however, are global actors in the sense that they can act anywhere on the globe, if they so desire. For example, the international media can provide coverage *from* anywhere *to* virtually anywhere in the world. In a similar vein, the United States could intervene in a crisis anywhere in the world, if the political will was strong enough. Yet, to place such global actors at level with others would

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[305] See e.g. Peter A. French, "The Corporation as a Moral Person," *American Philosophical Quarterly* 16, no. 3 (1979); Manuel G. Velasquez, "Why Corporations Are Not Morally Responsible for Anything They Do," *Business and Professional Ethics Journal* 2, no. 3 (1983).

discount their special character and their costs for acting globally. To put it differently, to assign the United States an equal share of the responsibility than to a strong state neighboring a grave humanitarian crisis would fail to recognize the costs the United States would have to bear in order to reach the crisis. In the most extreme case, the crisis might be situated on the opposite side of the globe to the United States. Hence, even in the case of global actors, distance plays a significant role.

Proximity, though, can be more than simple physical proximity. In this globalized world, one does not have to be physically present in order to influence circumstances far away. Examples of non-physical proximity are special relationships among actors, privileged or other kind of special information about a crisis, common history with those affected by a crisis or with those causing it, and other non-physical involvement in a crisis or with its parties. Evidently, one would expect such actors to take on more of the collective responsibility rather than actors who have no ties to or knowledge of the crisis.

VARIOUS RESOURCES

In distributing the burden of fulfilling a collective responsibility, attention should be given to what the members of the collective could contribute. An obvious point of departure is material capabilities and resources. Intuitively, one would expect the actors with most capabilities and resources to contribute more than the rest, while actors with few capabilities and resources could contribute the least and still be fulfilling their share. A similar logic is used in determining the UN membership payments.

Intangible capabilities and resources are also important. A good example of an intangible resource, which all international actors have, is voice. For example, in cases of genocide, it is important not only to work to stop it but also to condemn it. Moreover, voice can be used in many fora in order to, for example, rally assistance or distribute information. Voice is also *the* ability, which enables politics in the first place, and by voice I do not simply mean the making of audible sounds but speech, whether oral or written. Hence, resources should be interpreted imaginatively to include tangible and intangible things.

The expectation that members of the international community should contribute some of their resources to a common cause is further determined by particular types of resources, whether a member has an abundance of a particular resource, and whether a certain resource is unique to some members. Thus, one would expect that actors make available relevant resources, which they have in abundance, or in which they have special competency or advantage compared to others. In other words, the expectation to pool relevant resources is based on the principle of comparative advantage. As examples, one could consider the following. Only a few militarily powerful states or inter-governmental organizations have global airlift capabilities. A good reputation and important networks may prove crucial in conflict settlement. Experience for example in civilian police training would be helpful in post-conflict situations. The international media can spread information and raise awareness globally. Transnational movements and non-governmental organizations can mobilize

support, strengthen and channel the political will to act, and provide help on the ground, sometimes in places where governments cannot go.

On the other hand, some actors have a leading edge in several fields or types of resources. For example, the United States has a multitude of leading competencies and comparative advantages. To expect, however, that such an actor, due to its relative position, would have to take on most of the collective responsibility most of the time would effectively transform the collective responsibility into an individual responsibility of that single actor. In contrast, one would expect that such actors, as the United States, would contribute either heavily in one field or lightly across a range of fields.

Moreover, some actors possess resources that provide checks and balances. For example, the international media or the academia might not be able to contribute directly in a humanitarian intervention, but they are in an advantageous position to observe and monitor the development of a crisis and the international responses to it. Not only can these actors provide special insights, but, for example, they are capable of engaging in a strategy of shaming, something that might be a powerful incentive to improve one's record.

The kind of sensitive focus on various resources and actors as just outlined above allows for an evaluation of actors' performance, and hence also the apportioning of praise and blame. A "one size fits all" model, where all actors would be expected to contribute equally, would not take into consideration the differences in actors or in the actors' special or relative resources. Intuitively, a more sensitive model makes sense. For example, one could not expect the international media or states without military forces, such as Costa Rica or Iceland, to contribute troops to a military contingent of a humanitarian operation.[306] On the other hand, one could blame the media for the coverage, or the lack thereof, it provided of a humanitarian crisis, or one could question why Costa Rica did not condemn a particular genocide, or why Iceland did not use her voice within North Atlantic Treaty Organization.

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[306] It is laudable that Iceland has participated in peacekeeping operations despite not having standing armed forces.

VARIOUS CRISES

The third set of criteria within the "Varying Degrees of Responsibility" model focuses on different kinds of crisis. To many, genocide is the most shocking kind of grave humanitarian crisis, but what about the enduring suffering from lack of access to sufficient food by over 850 million people, or the suffering from hunger of one third of the population in some countries?[307] These are crises where military intervention might not help much in achieving humanitarian ends, but are they not grave humanitarian crises that ought to fall under the spirit of the responsibility to protect? I do not wish to imply that one kind of a crisis is graver than another; one should simply note that humanitarian crises come in many shapes and forms with the human suffering being the constant.

Different kinds of crises, as well as different instances of similar crises, might require different approaches and solutions. One kind of a crisis might require the rapid deployment of neutral troops, while another might call for a long-term strategy which addresses the systemic causes. A third kind of crisis might concern only some of the members of the international community, whereas a fourth kind of crisis might demand a response from the international community as a whole.

Thus, part of the expectation we assign to those, who are responsible to act, is a reflection on what kind of response, or kinds of responses, is (are) warranted by a particular crisis. In other words, we ask: "What is required to solve a given problem?"[308] and we expect the responsible parties to live up to the answer we give. Part of the answer is determined by the conceptualization of the problem, because by framing the problem in *these* instead of *those* terms will start very different processes. Another part of the answer concerns the kinds of actors, strategies, and resources we think would bring about a solution. Both of these parts are informed by our theories about the world. Unfortunately, part of the problem here is that there is usually no agreement over our theories or their

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[307] Food and Agriculture Organization of the United Nations, "The State of Food Insecurity in the World 2006: Eradicating World Hunger - Taking Stock Ten Years after the World Food Summit," (Rome, Italy: 2006).

[308] Naturally, this requires the assumption that there is first of all something, which is defined as a problem, and second, that this problem is solvable and ought to be solved.

effectiveness or appropriateness in a given crisis. Thus, there is a need for *politics* and argumentation.

These three sets of criteria focusing on various actors, various resources, and various crises are the core of the "Varying Degrees of Responsibility" model. Instead of attempting to provide an exhaustive list of all possible factors that could play a role, emphasis was placed on a way of thinking about the issue of international collective responsibility, on the plurality of dimensions, and on the required sensitivity to details. Moreover, providing an exhaustive list might prove impossible; responsibility denotes deliberative action, which in many cases cannot be predetermined. Thus, in determining responsibility, in sharing it, or in apportioning praise and blame, the particulars of a given case guide us.

SOME REFLECTIONS ON RESPONSIBILITY AND THE SUGGESTED MODEL

This chapter made use of analogous reasoning. For example, the development of fire departments was used to illustrate the institutionalization of a collective responsibility, which previously was *ad hoc* or there was a tacit understanding between the members of a community. This same example was later used to think about the responsibility to protect, and it was also in the background in the criteria of the "Various Degrees of Responsibility" model. The purpose of analogous reasoning was to compare similarities between things that are otherwise dissimilar, and thus the argument has not been that the evolution of the responsibility to protect is the same as the evolution of fire departments, or that at the international level there is something like fire departments, ready to relieve humanitarian crises where they may occur. It was also not argued that there should be something akin to the fire departments at the international level in relation to grave humanitarian crises.

The purpose of the analogy was to draw attention to how we appear to think about the two cases in similar ways, and how one has the impression that there are similarities between the two.[309] Interesting in the fire department example was how a collective responsibility first developed within a community, and how the collective responsibility was distributed according to some criteria among the members of the community before the responsibility was institutionalized in the hands of relatively few professionals. From the international perspective, on the other hand, the R2P report seems to argue for a similar kind of practical collective responsibility mixed with some level of institutionalization. Partially, the responsibility is institutionalized within the Security Council structure, but as the report argues, other actors should not rule out the possibility to act without the Council if the situation so commands. Moreover, even within the Security Council structure, the burden must be distributed, because the Council does not have any troops or material of its own. Thus, despite partial institutionalization, the

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[309] Again, I wish to stress that the evolution has not been the same in both cases, or that the international level is at some point along a similar trajectory as the fire departments experienced.

situation at the international level resonates with the conditions before the introduction of fire departments within domestic societies.

The era before the existence of fire departments inspired a model of graded collective responsibility for considering the contemporary international responsibility vis-à-vis grave humanitarian crises. The criteria suggested in the "Varying Degrees of Responsibility" model emphasize a focus on various actors, various resources, and various crises in determining how to distribute the burden of fulfilling the collective responsibility, which the international community shares in grave humanitarian crises. Evidently, the suggested model is more philosophical than mathematical. No attempt was made to create a formal model, because as was argued at the beginning of this chapter, the very notion of responsibility does not fit formal models. Responsibility is a matter of deliberation and good judgment rather than "if … then" clauses.

Admittedly, the "Varying Degrees of Responsibility" model is not without its faults. There are still no guarantees that any victims of grave humanitarian crises will be saved. There is no plain understanding of what constitutes a grave humanitarian crisis in the first place. There is neither a detailed division of responsibility nor an uncontroversial description of the meaning of this particular collective responsibility. Some of these faults cannot be helped, while others require a return to the first part of this chapter and the underlying argument in this whole thesis.

During the first half of this chapter, while conceptualizing responsibility, it was argued that part of responsibility is *being* responsible. Being responsible, on the other hand, implies the capacity to act independently and the use of good judgment. Moreover, responsibility was differentiated from duties and obligations exactly because the former requires deliberation, whereas the latter two demand only the (blind) following of rules. Thus, since the subject is international responsibility, and not international obligations, the purpose was to imagine how to think about the responsibility rather than to establish rigid rules or best practices.

On the other hand, the "Varying Degrees of Responsibility" has its merits. Not only does the model demonstrate a way to think about collective responsibilities that corresponds with our intuitive understanding of this particular responsibility, but it also addresses the expectations we have of the members of the international community, and on what basis we have those expectations. Moreover, the model provides criteria for the apportioning of praise and blame, as well as some concrete suggestions how individual members of the international community can meet their share of the collective responsibility. Some of the suggestions showed that there are low-cost ways to contribute, a point which will hopefully lower the threshold for contributing, and which with some luck will have a positive impact on the political will to act. Furthermore, the model identifies the members of the collective rather than simply referring to the international community, a faceless "actor." Lastly, the model attempts to bridge the conceptual level with the level of practice. After all, responsibility is a practical question in the sense that we aim to establish responsibility in *a* given situation and not in *any* given situation.

In order to flesh out the "Varying Degrees of Responsibility" model better, the next chapter will consider the model further with the help of a thought experiment, namely a case of genocide.

CHAPTER FOUR:
"VARYING DEGREES OF RESPONSIBILITY"
MODEL AND GENOCIDE

Genocide is the most potent of all crimes against humanity because it is an effort to systematically wipe out a people and a culture as well as individual lives.[310]

INTRODUCTION

If the argumentation has been correct so far, the international community could be seen as sharing a responsibility in relation to grave humanitarian crises. This responsibility does not belong to any particular member or members of the international community, but it is shared among all the members of the international community. In order to provide a way to think about this collective responsibility, the previous chapter suggested the "Varying Degrees of Responsibility" model. In this model, responsibility is graded along a set of criteria, so that individual actors' share of the common responsibility differs from one actor to another according to the criteria. It is important to note, however, that the individual actor's share of the common responsibility is due to that actor's membership in the community and its function or position within the collective whole. In other words, similar to the Security Council's right of humanitarian intervention, if the Council has such a right,[311] the individual members of the Council do not have the right. Thus, the individual members of the collective do not have a responsibility in relation to grave humanitarian crises, but as members of a community, which has the responsibility, the individual actors ought to work together as a collective to fulfill the common responsibility. The

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[310] Jerry Costello.

[311] See e.g. chapter 2 above.

"Varying Degrees of Responsibility" model is an attempt at theorizing such circumstances with the help of expectations of each actor, and on the basis of differences in those expectations.

The "Varying Degrees of Responsibility" model was introduced in the previous chapter, and it is the purpose of this chapter to demonstrate its functioning. To this end, the first section of this chapter constructs a theoretical case of genocide, to which the model is applied in the second section of the chapter. The third and final section of the chapter discusses justifications of inaction, which arise in the first two sections.

There are two main reasons for choosing to develop a so-called thought experiment rather than using a historical case. First, the purpose is not to criticize. A focus on historical cases would easily transform into a criticism of how grave humanitarian crises have been dealt with in the past. Surely there have been errors and mishaps, which have been pointed out by a number of authors in relation to any given grave humanitarian crisis. It is equally clear that the international community could have done more in any of the cases. Criticism, however, serves no purpose here, but it would be a distraction. To give an example, a focus on a historical case would require the accounting and interpretation of the events. In attempting to make sense of the various accounts of the events, I would necessarily have to engage in criticism and selection. My reader, on the other hand, might disagree with the interpretation I provided, and thus the higher aim of illustrating the responsibility model would be endangered. Moreover, instead of focusing on past cases, a thought experiment demands an orientation to the future. After all, the aim is to suggest how future cases could be handled. Thus, by providing a generic example, from which one may extrapolate, and which draws attention to particular generic details of grave humanitarian crises, these issues are hopefully solved or at least bypassed.[312]

The second reason for providing a thought experiment is the following: limiting oneself to one or a few historical cases restricts which details can be examined.

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[312] I will, however, use a historical case in the next chapter to further illustrate the points made in this chapter as well as additional issues of justification.

The underlying argument throughout this thesis has been that it is the details which determine a case, and by taking one or two cases would necessarily invite not only questions about the selection but also about the applicability of the results in other cases. In contrast, a thought experiment provides once again a background for a way to think about certain kinds of cases, a skill which is more generic and applicable across a wider range of cases allowing one to "browse" through various scenarios and cases. Naturally, the aim is not to provide a completely fictional thought experiment in the sense of being out of touch with reality but to construct a "realistic" thought experiment of a case of genocide and how it might proceed.

A THOUGHT EXPERIMENT: GENOCIDE

In order to illustrate the functioning of the "Varying Degrees of Responsibility" model a thought experiment is outlined in this section. This thought experiment consists of creating a hypothetical case of genocide. This hypothetical case represents chains of events, which might occur in real life. Naturally, this is not to argue that what follows provides a blueprint or accurate description of how genocide occurs. What is described, however, characterizes one plausible progression of genocide and some international responses to it.

Theoretically speaking, there are numerous possible chains of events creating a variety of different scenarios of how a case of genocide might progress. Clearly, it is impossible to perceive or imagine all the scenarios, which might be possible. Thus, instead of attempting to provide an exhaustive list of various scenarios, here the emphasis is placed on the most plausible or likely scenarios and main chains of events.

In the thought experiment, the events unfold in phases for the sake of clarity. The first phase consists of the initial stages, such as the discovery of genocide or allegations of genocide. The second phase concerns defining the crisis as genocide or as something else. In the third phase, it is determined which are the appropriate responses to the crisis as defined in phase two. The final, fourth phase includes the execution of the decisions made during earlier phases. Clearly, there are no guarantees that all the possible chains of events would necessarily go through each of these phases. A chain of event might be broken at any stage without reaching all phases. Similarly, it is conceivable that a given chain of event might either skip some phases or return to an earlier one before a "conclusion." It might even be possible that events in different phases are occurring simultaneously. For example, it is possible that actor A is engaged already with planning a response to a crisis it has defined, while actor B is still concerned with defining the crisis.

One last remark is in order before describing the four phases of the thought experiment. The main focus in the thought experiment is on the United Nations Security Council. As discussed in previous chapters, the Security Council has a

special position within international politics and the international system, and it is also the first port of call in relation to the international community's responsibility in relation to such grave humanitarian crises such as genocide. Moreover, the Security Council can influence greatly how a given crisis is defined. On the other hand, although the Security Council is emphasized, other actors are not excluded in the thought experiment. For example, individual states and humanitarian organizations among other members of the international community are present in the thought experiment even if they are not always explicitly stated.

To describe the four phases of the thought experiment, allow me to begin with the first phase: *Initial Stages*. During the initial stages of the thought experiment, there are "rumors" about a possible genocide occurring somewhere in the world. For the purposes here, it is irrelevant where the rumors locate the genocide. Yet, for the sake of the argument, let us consider that the rumors place the genocide somewhere in the sub-Saharan Africa. Certain parts of this region have been tormented by "ethnic" conflict for decades, and almost one and a half decades ago genocide took place in this region, while the past years have been rife with claims of yet another genocide in the sub-Saharan Africa. Thus, placing the genocide in the thought experiment in this region might correspond with reality quite well. Other regions, however, are not to be excluded, since the argument is not that genocide is something "typical" of Africa.

The existence of a rumor that genocide was taking place would create both an interest and a pressure to investigate the matter. Some actors, such as the international media or humanitarian organizations, would have a clear interest in investigating the matter further. Here one also thinks of "fact-finding" missions by for example states with relations in the crisis area or with presence in the region. It might also be that these are the same actors who are making the allegations about genocide. On the other hand, the Security Council for example would not necessarily have an interest in the same sense as these other actors, but the Council would certainly face some political pressure to make inquiries. For one, the Council or at least the Secretariat ought to be aware of such matters and

events. Second, various pressure groups and humanitarian organizations, although not capable of influencing the Council directly in the Security Council meetings, would most likely attempt to influence the members of the Security Council indirectly, whether in the form of protests, "hallway lobbying," or something in between.

It is unlikely that there would be any large-scale investigations into the verity of the rumor in the beginning. More likely is that only a few actors, perhaps the international media, if its attention was not demanded for some verified "hot" story, or for example Amnesty International or a similar human rights advocacy group, would examine the rumors without spending too much time, effort, or money. Clearly, whatever these actors might discover should be communicated to the world, yet there is a problem with the kind of information that would be communicated. Depending on their situation, some of these early investigators might have an incentive to twist their findings, whether for better or worse. On the other hand, it is likely that there are several interested parties, and here one thinks of neighboring countries or international business, who would not only have an interest in finding better information themselves, but also a limited responsibility to make inquiries and communicate them. Admittedly, international business might not as such bear a responsibility to find out whether or not a genocide was about to take place, but for example multinational corporations certainly have responsibilities towards their share-holders, who most certainly would be interested in knowing where and to what purpose their investments were used. Similarly, actors who are present in the region, such as for example a World Bank operation, would under the responsibility model share some degree of responsibility to cooperate at least in the dissemination of information or in providing what information they might have to actors who were taking initiative in attempting to discover what was happening. Other actors, in other words actors with no presence or traditionally perceived interest in the region, would not be expected to share in the responsibility at this stage.

The results of the preliminary investigations are likely to be one of the following two possibilities: one, there is supporting evidence of genocide or at least of a

grave humanitarian crisis, in which acts of genocide have occurred; or two, no evidence is found supporting the allegations. The latter possibility does not denote that the rumor was incorrect and that no grave humanitarian crisis is unfolding. It could well be that at this point there was no conclusive evidence supporting the allegations, or that actors, in the absence of undeniable evidence, would disregard what evidence they found. In any case, if no supporting evidence was found, it is most likely that the chain of events from the international interest perspective would stop here, at least until a time when new rumors emerged or new evidence was discovered. For the sake of continuing with the thought experiment, however, it is required to consider that some supporting evidence was indeed found by the investigating actors.

The supporting evidence that actors might discover would by no means be necessarily conclusive. Most plausibly, the supporting evidence would indicate that further monitoring of the situation was necessary instead of clearly indicating that full-scale genocide was underway. One imagines that what information was available would be fragments from here and there, which could only warrant uncertain and vague conclusions. Alternatively, there might be indications of a less wide-spread humanitarian crisis, such as for example a distress in one particular corner of a country, while the rest of the country was enjoying stability as usual. It might equally well be that the evidence was linked to a crisis that had already passed. Although we live in a globalized world with the possibility of instant communication, there are large segments of the world, which are not part of this hyper-linked world, and where things might happen without anyone on the outside knowing about it except perhaps afterwards. For example in the case of the international media, events have to meet a threshold before they can become news, and afterwards they compete with other news for airtime and print space. On the other hand, if a full-scale genocide was taking place anywhere in the world, it is unlikely that it could be hidden for long. Thus, at this point in the thought experiment, there are indications that a grave humanitarian crisis might be in the making but there is no clear proof of its extent or gravity.

The analysis of the meaning of the evidence signals that the thought experiment has moved already into phase two: *Defining the Event*. By attempting to understand the evidence, one is also attempting to define what they are evidence *of*. Phase two is crucial in the unfolding of events and in determining which chains of events might take place. Defining the situation for example as a civil war would justify and call for different kinds of responses than if the same situation was defined as genocide. Thus, defining a crisis in a particular way may foreclose certain possibilities and require a specific manner, in which the crisis ought to be addressed, independent of whether such a definition corresponded perfectly with "reality." For example, one definition, such as genocide, might emphasize heavily the responsibility of the international community to intervene in the crisis, whereas another definition, such as civil unrest, might not require or even prove to be an obstacle for a response from the international community as a whole.

In phase two, the procured information about the situation on the ground might support various interpretations of the crisis. One interpretation might label the situation as genocide, another claim that genocidal acts had occurred. Yet another interpretation might emphasize the unfolding of a humanitarian crisis without any reference to genocide or genocidal acts, while a fourth interpretation might define the circumstances as the aftershocks of a crisis that had taken place but was already waning.[313] Furthermore, it is even likely that attempts at definition based on such partial and incomplete information would be hasty and perhaps even counter-productive.

For the purposes of the thought experiment and its progression, however, I focus on the interpretation that the evidence from the crisis area indicates genocide or at least genocidal acts being in progress. The other possible interpretations are also interesting, but as the international community's responsibility is clearest in cases of genocide, the thought experiment ought to focus on such cases rather than on others. To give a quick impression of the interesting aspects of other possible interpretations of the crisis, one could consider for instance the possibility that genocidal acts had occurred but that there was no evidence that

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[313] Naturally, there could be also other possible interpretations.

such acts continued. In such a case, the international community would be confronted with obvious questions: What to do about grave violations of human life and dignity that have been politically motivated, such as attempts at ethnic cleansing, but which for one reason or another were not carried all the way through? Should the international community seek to punish the perpetrators and follow the spirit of the Genocide Convention? How far back can we go in history in the hunt for the perpetrators? Should the international community strive to establish an international tribunal? If so, how should it be constructed and to what specific purpose?[314] More practical questions might also be posed, such as whether and what kind of humanitarian assistance was required? All these questions are related to a larger framework, which is concerned with the division of labor once a decision to take action has been made.

Coming back to the thought experiment, it continues by focusing on the consideration that genocide or genocidal acts were taking place or were imminent somewhere in the sub-Saharan Africa. This consideration is supported by the evidence from the field. At this point, one should note that despite such evidence, the crisis might not be defined as genocide or a grave humanitarian crisis including acts of genocide by international actors. Some might draw this conclusion, such as human rights groups, but many others, for their own reasons, might even work to obscure the "facts" or labor to define the situation in a completely different manner. For example, the Security Council might not be able to reach a compromise interpretation due to the actual use or perceived use of the veto powers of its five permanent members or due to lack of sufficient votes in general.

Since "things" do not define themselves but are defined by others and in relation to others, some members of the Security Council, for example, might avoid certain kind of terminology, such as genocide, in order to avoid tying their own hands or strengthening assumptions about their responsibility to act. For example, in avoiding references to genocide or to acts of genocide, actors would attempt to

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[314] I thank Nikolas Rajkovic for reminding me that each international tribunal is individually constructed to serve a particular purpose.

diminish the relevance and applicability of for instance the Genocide Convention and of the responsibility to protect. If the crisis was defined as genocide, there would most certainly be outcries for the lack of action and demands made on the Security Council and the international community as a whole to take action in order to alleviate and stop the atrocities. After all, genocide is a crime against humanity, which the signatories to the Genocide Convention have condemned, and which is recognized universally as forbidden as discussed in chapter three. Yet, moral outrage and imperatives apart, political will to act would most likely be missing, especially if the region where the crisis was taking place was not wealthy in minerals or otherwise of traditional interest, and this lack of political will would be reflected in the efforts to deny what for example the international media and humanitarian organizations claimed.

From the perspective of the "Varying Degrees of Responsibility" model, efforts to hinder fact-finding, obscuring information, and deliberately attempting to define the crisis so that it would not fall under the common responsibility of the international community would merit blame and shame. Instead of working to undermine the events, one would expect that international actors took measures to increase awareness, to learn more about the conditions, and to begin taking the necessary measures, whether by applying political pressure or otherwise, in order to stabilize the region and to alleviate human suffering.[315] To use the Security Council again as an example, instead of spending the meetings in discussion about whether the crisis was a case of genocide, a discussion with no end most likely, one would expect that the time was spent better by learning as much as possible about the situation and by recognizing that a crisis was unfolding. By now, in the thought experiment it ought to be clear that some kind of crisis was either already taking place or was imminent, even if labeling it genocide was controversial. Thus, special attention should be directed at the situation on the ground.

So far the thought experiment has not been sensitive to the particulars of the Security Council which has been considered in too simplistic terms. Reality is

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[315] Thus, taking some positive action would merit at least some praise, even if it was not enough to solve the situation.

much different, for example because the Security Council operates according to specific rules and procedures. First of all, it does not operate proactively. To explain this better, let us consider the procedural rules of the Security Council. The President of the Council calls a meeting of the Council at the request of any member of the Council, if "a dispute or situation is brought to the attention of the Security Council under Article 35 or under Article II (3) of the Charter, or if the General Assembly makes recommendation or refers any question to the Security Council under Article 11 (2), or if the Secretary-General brings to the attention of the Security Council any matter under Article 99."[316] The provisional agenda for each meeting is drawn by the Secretary-General and approved by the President of the Council. Items that may be on the agenda are restricted to communications from states, from other organs of the United Nations, or from the Secretary-General, and to unfinished items from previous agendas.[317] To put it differently, the Security Council operates passively by reacting to communications from three different sources: member states, other organs of the United Nations, and the Secretary-General. For the crisis in the thought experiment to be even considered by the Security Council it would have had to have been brought to its attention by at least one of these three sources.

Since the Security Council is quite restricted already in terms of what can be on its agenda, it is quite possible that a given crisis would not be placed on its agenda. For example, one is hard pressed to find an official Security Council meeting about the situation in Chechnya. If the crisis was not communicated to the Security Council and placed on its agenda, the thought experiment would proceed along different paths excluding the Council until the crisis was brought to the attention of the Security Council. Yet, because the aim of the thought experiment is to include the Security Council as much as possible, it is assumed at this stage that the crisis is communicated to the Security Council and placed on its agenda. It is of no real significance from whom the communication comes, but for the sake of an example, let us consider that a neighboring state to the crisis, concerned with the instability in the region and the incoming refugee flows, asked the Security

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[316] United Nations, *Provisional Rules of Procedure of the Security Council*, 1983, S/96/Rev.7.

[317] Ibid.

Council to act. One might ask, who has the responsibility to bring such matters to the attention of the Security Council? The "Varying Degrees of Responsibility" model provides one answer to this question, and I shall return to it later, because otherwise the description of the thought experiment is disrupted.

Having described how the crisis would be brought to the attention of the Security Council, the third phase of the thought experiment consists in *Determining the Appropriate Response*. Having been summoned, the Security Council would convene to address the communication it had received in order to determine the appropriate response. The courses of action available to the Security Council are quite limited. In very simplistic terms, the question is whether or not the Security Council issues a resolution. A secondary question is, if the Council decides on a resolution, what does that resolution contain?

Given the nature of international politics and the functioning of the Security Council, it is likely that in the event that a resolution is passed during the first meeting concerning the crisis in the thought experiment that the resolution calls upon the parties to the conflict to cooperate and perhaps to cease hostilities and affirms that the Security Council will remain seized on the matter.[318] It could be that given time and new developments the resolutions would become stronger, even calling for arms embargo if not also intervention.

From the perspective of the thought experiment it is of no substantial relevance whether the Security Council passes a resolution calling for intervention after its first or tenth meeting regarding the crisis.[319] Of interest is whether such a resolution is passed. Here, it is important to consider both options, namely that despite several meetings, the Security Council does not pass a resolution calling for intervention in the crisis, and that the Security Council passes a resolution to such end. I shall consider both options beginning with the former.

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[318] Even a brief glance at past resolutions by the Security Council affirms that this is the Council's most favored (first) response to situations.

[319] Clearly, the more time passes, the more one would expect other actors to make their independent decisions, if the Security Council failed to address the crisis in an adequate fashion.

It is quite possible that the Security Council does not pass a resolution calling for effective intervention in the crisis despite having met to discuss the matter several times, and there might be several reasons behind this outcome. For one, the crisis area or the issues involved might be too sensitive to one or several of the veto-holding permanent members. It might be possible that the mere perception that this was the case would hinder any attempt at passing a resolution. After all, the actors calculate and form their perceptions not on a single issue but across a range of issues. Moreover, some actors might not wish to risk a possible political retribution in a different issue, which might be more important to them. Yet, if the crisis at hand was highly sensitive to one or more of the veto-holding members, it is unlikely that the matter would have ever been placed on the Security Council's agenda, despite it being possible for any member state to communicate a matter to the attention of the Council. It is plausible that states, whether being informed informally by the veto-holding powers or through their own cognition, would not wish to bring up a topic, which would be doomed from the start.

Another probable reason, why the Security Council would not pass a resolution calling for intervention, could be the lack of troops, material, and finances. The Security Council remains dependent on the goodwill of its and the UN's members, and their contributions. In the event that there were no volunteers, who could be authorized to intervene, or that it was evident that no troops would be offered despite passing a resolution calling for an intervention, it is a small surprise that the Council would not even attempt to pass a resolution. Of course, the Security Council could pass a resolution calling for intervention, but normally there would already be some idea where the intervening forces would come, even if it was only an informal discussion among some of the members of the Council, or thanks to the efforts of the Secretary-General.

The actual reasons why the Security Council could not agree on a resolution calling for intervention, or on who to authorize, are not of central importance in the thought experiment. It is more important to consider the consequences of a

no-resolution situation, in cases where perhaps some of the Security Council members had recognized correctly the available evidence as indicating genocide.

If considering the matter in broader terms, the no-resolution by the Security Council would not necessarily mean that there would be no intervention. It is possible that a regional actor or a coalition of actors would nevertheless attempt an unauthorized intervention. As discussed in chapter two, humanitarian interventions which are not authorized by the Security Council are illegal but they might qualify as legitimate interventions. Thus, an actor or actors might not rule out the possibility of taking action after having been frustrated by the lack of action by the Security Council. Naturally, such an illegal intervention would invite investigations into its possible legitimacy. In these investigations and assessments, one would consider among other things the action taken, by whom, on what grounds, the manner it was conducted, and what was the result of the action. In justifying the unauthorized action, the intervener(s) might refer to the responsibility to protect. If the intervener(s) could demonstrate that action was required, the claims to legitimacy would receive a boost. Moreover, it could well be that the Security Council would legitimize the unauthorized intervention *ex post facto* but there are no such guarantees.

Alternatively, in the event that the Security Council did not pass a resolution calling for intervention, it is possible that no intervention would take place, unauthorized or otherwise. The mere existence of a grave humanitarian crisis might not be enough to motivate for example states to fight for humanity in a possibly "far-away country," as history so aptly shows.[320] In the event that no intervention occurred and genocide indeed took place, one can only imagine the ensuing blame game and finger pointing and their counterparts, namely excusing and dodging accusations. One needs to consider only the amount of literature that the non-intervention in the Rwandan genocide has generated. In general terms, in the aftermath of a "failure" to intervene, questions of responsibility, of who should have done and what, would be central topics.

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[320] One thinks of for example Neville Chamberlain's comments in 1938.

In contrast to the chain of event just considered, it is possible that the Security Council would pass a resolution authorizing intervention in what at this point would be recognized as genocide. By so doing, the thought experiment would move into phase four: *Implementing Decisions*. Yet, even at this point there would be no guarantees that intervention would necessarily occur, not to mention that there would be any success. The result of the resolution could still be complete inaction due to there being no contributions, some form of humanitarian assistance, efforts to compose an intervening force without it ever materializing in time, or an inadequate force. At this point, however, the responsibility to protect has come into play quite strongly, because with its resolution, the Security Council would have determined that the international community ought to act. One should note, though, that at this point it might not be exactly clear how the international community ought to act.

Leaving aside the possibility that there would be no or insufficient contributions, let us consider that a number of states responded to the Security Council's call, and that they were earnest about their contributions. The contributions might come either in the form of willingness to be authorized by the Security Council, or as readiness to participate in an operation led by the UN. If the former was the case, there would normally be a coalition of states or an international organization such as NATO which sought authorization. Thus, in its resolution the Security Council would indicate such parties and also instruct what measures could be taken and to which end. In this case that there was a third party willing to be authorized it is quite likely that intervention would actually take place. Clearly, the actors seeking authorization would be keen to take action, perhaps for their selfish reasons in addition to the humanitarian imperatives, because otherwise they simply would not seek authorization. Whether the intervention would be successful, sufficient, or even timely from the humanitarian perspective, would be different questions.

On the other hand, if the Security Council was seeking contributions to a UN force, again the possibility of there being no, or at least no timely, contributions would be present. Since the Council does not have any troops at its disposal, any

operation that it wants to execute requires that the Secretary-General visits possible donors asking for their support. Naturally, this process of seeking support would take a considerable amount of time,[321] and the results could vary heavily. It is quite possible that UN member states would support Security Council action in principle without being willing to contribute to the force. Thus, a broad range of conclusions is possible ranging, again, from no intervention through half-hearted or untimely intervention to a good likelihood of success thanks to generous contributions and commitment to the cause.

If there were insufficient or no contributions, there would clearly be no blue-helmets on the ground, but it might still be possible that a third party decided to pursue the action called for in the Security Council resolution. In other words, a possibility exists that the Security Council would determine the existence of genocide and pass a resolution calling for humanitarian intervention, but when trying to form a task force, the Security Council would realize that there were no contributions or an insufficient amount of contributions, and that in realizing this, a third party might step in and take on the mandate designed for the UN task force until such a task force was ready. This was more or less what happened in Rwanda in 1994 when the French *Operation Turquoise* effectively took over the mandate designed for a UN force.

The issue of contributions to an operation mandated by the Security Council is rife with questions about responsibility: Who should contribute, what, and how? The "Varying Degrees of Responsibility" model could be of use in answering these questions, as will be discussed in the next section.

Before, however, I would like to draw attention to how the thought experiment is left open at this point. Many of the possible chains of events were discussed, but many could not be pursued too long. Quite naturally, it could be possible to tell stories and imagine many of the likely possibilities, but that would hardly serve a purpose here. Instead, the open-endedness of many of the possible chains of events, as well as the very end of the thought experiment, shows the uncertainty

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[321] One should note that also in the event that there were many contributions, their coordination would be time-consuming.

of events, even when they are only imagined not to mention in "real" life, which is ultimately more complex, includes chances or "luck," and coincidences.[322] Hence, if even in this thought experiment only very few of the possible paths led to some kind of intervention – in fact only two quite precarious paths resulted in intervention – the chances of humanitarian intervention in the "real world" must be similar to a game of dice, if not a greater gamble.

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[322] One thinks of for example Clausewitz's famous fog of war. Carl von Clausewitz, *On War* (Princeton: Princeton University Press, 1976).

THE THOUGHT EXPERIMENT AND THE RESPONSIBILITY MODEL

Having outlined the thought experiment, I now turn to the issue of responsibility within the thought experiment with the aim of providing examples of how the "Varying Degrees of Responsibility" model operates. During all four phases of the thought experiment, issues of responsibility arose.

In the first phase, responsibility was related to questions of whether and who should investigate the genocide rumors.

In the second phase, responsibility arose on multiple occasions. For example, if genocide had taken place, the question would be what the international community should do in such situations. Also, if there was a recognized, continuing genocide taking place, the international community's responsibility, following the R2P report, to alleviate the suffering would be quite strong, but it is not entirely clear how this responsibility should be conceived. It was also mentioned in the thought experiment that there is no automatic procedure for the Security Council to address grave humanitarian crises, but that the Council remains reactive to communications from a limited number of sources. Who would have a responsibility for communicating grave humanitarian crises to the attention of the Security Council?

During the third phase of the thought experiment references were made to a possible blame-game ensuing non-intervention in the genocide. In such a "game," actors would attempt to shift the responsibility away from their own shoulders by using various strategies, most of which would most likely focus on demonstrating that they themselves were not responsible. On a higher level, arguments would be made concerning action and inaction, who should have done and what, and what was even possible to do.

In the final, fourth phase of the thought experiment the requirement for dividing the burden of acting responsibly was the clearest, because this phase concerned the execution of the decisions made during the earlier phases. Here, in the event that the international community decided to intervene in the genocide, one would most certainly want to have some criteria according to which to divide the

consequent burden for intervening and most likely also for the post-conflict rebuilding of the society or societies where genocide had occurred and which had been influenced by refugee flows.

Thus, questions of responsibility arose on many occasions during the thought experiment, as would be expected also in "real life" situations, and as mentioned, the purpose of this section is to highlight how the "Varying Degrees of Responsibility" model could be of assistance in determining responsibility and perhaps also in proposing courses of action for different actors.

To illustrate the assistance the responsibility model could offer, let us start with the initial stages of the thought experiment, namely the genocide rumors and the question who should investigate the veracity of the rumors. Clearly, one would not expect all members of the international community to take it upon themselves to investigate the matter further. Yet, certain kinds of actors, such as human rights advocacy groups or the international media, would have not only an interest in investigating but more of a responsibility than the rest of the international community, at least if applying the "Varying Degrees of Responsibility" model. The rest of the international community, however, could not be expected to become involved, although if they did, it could only be appraised.

It is difficult to determine a precise threshold when one would expect more actors and more different kinds of actors to become involved. Generally speaking, the responsibility model suggests that with more and more complete information about the genocide the number of members of the international community, who are expected to assist in fulfilling the international community's collective responsibility, should increase. In other words, at the beginning, when only few of the members of the international community are aware of the genocide rumors and capable of investigating them further, one could only expect these actors to act responsibly in light of the possibility of genocide taking place, while later when there was more and better evidence supporting the rumors, one would expect that for example the situation was communicated to the Security Council thus bringing also the Security Council into play.

Two questions arise at this point: one, what does responsible behavior mean in the early stages of the thought experiment, and two, should sovereign states become involved already at this stage? The answer to the former question is quite commonsensical; responsible behavior would incorporate efforts to investigate the rumors, communicating or sharing one's information about the situation, or supporting or at least not hindering other actors' efforts at fact-finding. To answer the latter question, states in general would not be expected to become involved. It could be that some states, such as neighboring states to the crisis area or states with particular interests in the region, would become involved from their own initiative. Yet, it would be too much to expect that all states as members of the international community should be concerned of mere rumors. Thus, passivity would not be condemnable at this stage, but later with more evidence of the genocide, as is the case in the thought experiment, it would become increasingly difficult for states to justify a passive or indifferent stance, especially if they were members of the Security Council, central actors in the crisis region, or otherwise influential.[323]

To consider a different part of the thought experiment, let us consider the possibility that genocide had already taken place, or that the systematic killing had ceased. In light of the R2P report, its responsibility to rebuild, and the Genocide Convention, what would be expected of the international community? Should the international community engage in seeking and punishing the perpetrators? If so, how should it proceed? Should the international community pool resources in order to stabilize the region further and assist in the re-building of the devastated society? The answers to these questions are hardly straightforward. For one, the expectations on the international community are not clear. Surely, there is the possibility of setting up an international tribunal, but it is not a requirement. Moreover, the actual structure and functioning of such an international tribunal could take many forms, all of which should be considered in light of the local conditions. Whether the international community should engage in helping the survivors, is an equally tricky question, because it might be that the

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[323] All this, naturally, does not mean that the actors would not try to justify their passivity, or that they had to act. It would simply mean that the justification of inaction would be more difficult.

majority of the survivors in the country were the perpetrators. It is apparent, though, that in answering these questions, sovereign states as representatives of the international community, and as members of the Security Council in particular, would need to agree on the responses. Humanitarian organizations could and perhaps should provide assistance. Most likely, the help that these organizations can offer would be indispensable, and one would expect them to live up to their mission statements. The larger perspective, though, would fall for example on the Security Council, on the relevant regional organizations, and on the General Assembly and other relevant UN organs. Out of the members of these organizations, one would expect that some "champions" of the cause would arise to the occasion. For example, if it was decided that an international tribunal should be founded, one would expect that so-called "broker states" would step in and offer their neutrality and reputation for unbiased decisions for the advancement of justice whether in the form of judges, investigatory teams, or otherwise.

One should consider, though, that there are approximately two hundred states and perhaps a greater number of regional and humanitarian organizations, which could be "relevant" to the crisis in the sense of either operating in the region or having a mission statement which includes the kinds of crisis in the thought experiment. Surely, one could not expect that all these actors should use their resources on a single case. After all, the crisis in the thought experiment would be just one case among several crises taking place in all parts of the world. Here, the "Varying Degrees of Responsibility" model could be of service in justifying focusing on only some of the crises. For example, many politicians would most likely be confronted with the question why their nation was not helping in this and that crisis, and the response could include references to the assistance the nation was already giving in other crises, the shifting of responsibility to act to other actors, whose responsibility was stronger based on the responsibility model, or the demonstration of what the nation was already doing, even if that did not fall within a traditional understanding of development or crisis aid, namely for example by rallying support among other contributors or by keeping the crisis

still relevant in the discussions among more powerful but perhaps disinterested actors.

Justifying passivity, however, would be more difficult if the genocide had been recognized, especially if the Security Council had recognized the crisis as genocide. The difficulty would be due to the responsibility of the international community to act in such grave humanitarian crises as genocide, because the recognition of genocide would also denote the applicability of the responsibility in this particular crisis. Thus, one would expect that the members of the international community would increase their efforts in fulfilling their collective responsibility. The likely reality, though, is that most states would simply ignore the situation, unless they were in the Security Council, located or operating in the region, or otherwise internationally active and concerned. Looking at cases of grave humanitarian crises, one notices how a relatively small number of states, for example, have been involved in a given crisis. In light of the "Varying Degrees of Responsibility" model, it is only expected that not each and every state would participate in each and every effort to alleviate the suffering in grave humanitarian crises. One would, however, expect that each state would condemn genocide, at the bare minimum, and have justifiable reasons, within the model or otherwise, which could count for their passivity. To what extent such justifications could be acceptable depends on many factors and is case-dependent. The idea behind the responsibility model is, though, that the more shocking the humanitarian crisis, the better the justifications of passivity would need to be in order to be acceptable.[324]

The acceptability of justifications for passivity would be not only case-dependent but also actor-dependent. In other words, it would make a difference who made a particular justification, because from one actor a particular justification might be a plausibly acceptable argument while from another it would not be satisfactory. In order to illustrate, let us consider the question of who should bring the genocide in the thought experiment to the attention of the Security Council. In order not to complicate matters unnecessarily, let us further consider three

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[324] The next section and chapter examine some of these justifications explicitly.

actors: states A, B, and C. The first state, State A, has no knowledge of the genocide. State B, on the other hand, has privileged information that genocide is taking place, or that at least acts of genocide have been committed. State B, however, is not a party to the Genocide Convention, unlike State C which has also information about the genocide or about the acts of genocide. Out of these three actors, State C has the strongest responsibility to bring the case to the attention of the Security Council for the following reasons. The fact that State A has no knowledge regarding the genocide or the acts of genocide absolves it to a large extent from the responsibility regardless whether or not it is a signatory to the Genocide Convention, because it can claim ignorance. Whether the claim of ignorance is credible, is another question, but for the sake of the present argument, it can be left aside. State B, on the other hand, is not a signatory to the Genocide Convention. Although the Convention does not demand that signatory parties call upon the Security Council if they have discovered acts of genocide, the spirit of the Convention does imply that some action ought to be taken upon such discoveries. Thus, due to its knowledge of the situation and by being a signatory to the Genocide Convention, of these three actors one would expect that State C brings the matter to the attention of the Security Council, either directly or indirectly through the Secretary-General.

In the example just mentioned, the argument is not that State A and State B have no responsibility, but that in comparison with State C their responsibility or the strength of their responsibility would be less. One could argue, for example, that regardless of State A not being a signatory to the Genocide Convention, the fact that the outlawing of genocide is an obligation *erga omnes* imposes a certain level of requirement to be aware of acts of genocide, if State A wishes to be an integrated part of the international community. Similarly, State B with its actual knowledge of the events should have taken measures in the spirit of the obligation *erga omnes* despite not being a party to the Genocide Convention. Without discussing the merits of these arguments, for they are surely not wholly convincing, the overall point should be clear. The fact that State C would have a stronger responsibility does not mean that others, such as State A and State B, have no responsibility. Moreover, the strength relates not only to the implied

responsibility to commit positive acts but also to the more difficult position to justify one's inaction.

One example of justifying one's inaction might arise in the "blame game" that was mentioned in the thought experiment. As the name implies, the blame game consists in actors shifting blame away from themselves onto others or in protecting themselves from possible blame for inaction or insufficient action. Clearly, any engagement in such a game incorporates an implicit or explicit recognition that there was a responsibility to act or to commit to a certain course of action, because otherwise the game would be nonsensical. Admittedly, it might be possible that a responsibility is imposed on the actors, much like pro-humanitarian intervention arguments or the R2P report before its message was recognized by the General Assembly. If that were the case, then the actor to whom the responsibility was imposed could demonstrate there was no such responsibility or that it at least did not apply to this particular actor. This could be the chosen strategy of some of the actors, even if they had, or shared in a responsibility, when they would justify their inaction. Nevertheless, whether or not the responsibility is recognized and accepted, the blame game implies a responsibility and the failure to fulfill it. Yet, there is no necessary requirement that the responsibility exists and that it is accepted by the actors themselves, because the game is about shifting the burden of proof and not about ultimate truths.

The concept of blame game requires further clarification. In colloquial terms, one might describe the game as finger-pointing. As mentioned, at the heart of the game is the shifting of the burden of proof. To give an example which resonates with the aftermath of the Rwandan genocide, if the intervention in the thought experiment never materialized on time, it is likely that many humanitarian organizations, advocacy groups, and academics would engage in arguing what should have been done, by whom, and who to blame for the inaction and the international community's failure to live up to its responsibilities. Thus, for example the Security Council might be accused for the failure, and the burden of proof would be placed on the Council to justify its actions and omissions.

Naturally, the Council might not engage in a debate over its competency, but the discussion would most certainly proceed with or without the Council whether in the academia or outside it. One should note that I do not wish to imply that the Security Council should always engage the accusations that are levied on it. Rather, that the Council might be in a position to rebut the accusations. After all, most of the time the expectations on the Security Council are unrealistic, and second, as pointed out in the responsibility model and the earlier discussion about responsibility, the international community's collective responsibility does not translate into the sole responsibility of the Council, especially when the Council has not been provided with the necessary means to meet the responsibilities and expectations levied on it.

The "Varying Degrees of Responsibility" model can assist in the blame game in several ways. First, the model provides criteria for determining who should have acted and in what manner. Thus, it is possible to recognize who ought to have the burden of proof according to criteria, which are not random or arbitrary. Second, because the same criteria apply to the accusers and accused, the model can assist the actors with the burden of proof to make their cases concerning their courses of action or inaction. Moreover, because the model recognizes the individual situation and character of each actor, it allows for a variety of acceptable as well as unacceptable individualized answers. Thus, third, the model can assist in evaluating the accusations, justifications, or excuses. For example, by considering the degree of responsibility a given actor had, it is possible to evaluate an actor's actions in light of that responsibility as well as the justifications or excuses the actor made for its actions or omissions.

To some, it might seem odd to talk about justifications and excuses in relation to international politics. From the perspective of the mainstream theoretical traditions within the discipline, justification and excuses do not really play a role and are therefore unimportant or negligible. Yet, as discussed in chapter one, international actors justify their actions and excuse themselves, and it would seem odd not to consider this side of international politics. The justifications and excuses relate back to the concept of responsibility and also to its original

meaning as "I answer." As discussed in chapter three, a natural reaction to this statement could be either "What do you answer for?" or "To whom do you answer?" Justifications and excuses answer the first question by clarifying the extent of the responsibility, while they similarly answer the second question based on their intended audiences. In other words, justifications and excuses are made in relation to specific events or actions, and they tell us much about the substance of the responsibility in question. Moreover, the justifications and excuses are directed at particular audiences, which in turn reveal the location of the responsible actor vis-à-vis those who are in a position to question the actor's actions and omissions.

Justifications and excuses invite questions about their acceptability. The next section focuses explicitly on justifications and excuses of inaction with the aim of evaluating their plausibility in light of the "Varying Degrees of Responsibility" model.

JUSTIFICATIONS OF INACTION

As discussed above, the "Varying Degrees of Responsibility" model can assist in many ways, one being the evaluation of justifications of action and inaction. Since in grave humanitarian crises, states are usually unwilling to act, the justifications of inaction are of special interest. Other international actors, such as humanitarian organizations, are usually willing and keen on operating in grave humanitarian crises, but the same cannot be said of states. There are, naturally, many reasons for this inherent passivity of states. They, after all, operate according to different rules than humanitarian organizations, and the functioning of the international system limits state action. Yet, if the above chapters are correct in focusing on the international community's collective responsibility in relation to grave humanitarian crises, one ought to give special attention to states, the backbone of the international community. Thus, in what follows, a state-centric approach is taken to the justifications of inaction in relation to grave humanitarian crises, such as in the thought experiment, by members of the international community

First, a small clarification is necessary. When discussing justifications of inaction, I shall include both justifications and excuses for passive behavior and for not doing what the actor ought to have done. The shorthand "justifications of inaction" will refer to these justifications and excuses. I see no merit in distinguishing between justifications and excuses at this stage. Naturally, there is a difference between justifications and excuses. Justifications are things, such as facts or circumstances, which show an action or omission to be reasonable or necessary. On the other hand, excuses are explanations of a fault or offense given in the hope of being forgiven or understood, and they are thus closer to apologies than justifications. In order to avoid confusion as much as possible, I shall use justifications to cover both justifications and excuses, although some of the things that I refer to might be best described as excuses. Moreover, when discussing state behavior, it might be an exaggeration to talk about excuses, although as the next chapter will demonstrate, some state-leaders have apologized for their states' commissions and omissions.[325]

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[325] This could be an interesting topic for further research, namely to know how common such practices are.

In general terms, one can easily imagine certain generic justifications of inaction. The first generic justification is related to uncertainty about the situation, lack of reliable information, incomplete information, and even possible misinformation. After all, various actors for reasons of their own might have an interest either in exaggerating or downplaying the situation, or in providing incorrect information. Also, as always, actors would have to make their decisions under time pressure and with incomplete information. Naturally, the situation would not be helped with there being possibly contradictory accounts and interpretations of the situation. Thus, a generic justification for inaction could be based on the incompleteness of knowledge about the situation, or on certain accounts and interpretations of the situation, which would justify inaction, as opposed to other accounts and interpretations, which would demand action.

Moreover, some actors might have an interest in defining the situation according to their own interests. By trying to define for example the situation in the thought experiment as something other than genocide, an actor would engage in a higher order justification. In other words, the argument would be that there is in fact no requirement to act and thus justify inaction, because the situation does not command it. For instance, those members of the international community, who were unwilling to act, might engage in this kind of a gambit. Their argument would not deny the responsibility of the international community to act for example in cases of genocide, but that this particular situation did not constitute a case of genocide. This line of argument would naturally receive support from the perpetrators or supporters of the perpetrators. In some cases, the denial of the state in which genocide or acts of genocide were committed could be sufficient for defining the situation as other than genocide for a good period of time. After all, the government of a country should know what takes place within its borders, and in the event that there was no other contradicting evidence, the government would appear credible until new evidence emerged.

A third kind of generic justification of inaction relates to the discussion whether the international community has a right to meddle in the internal affairs of states. It is likely that actors, who wish to justify inaction, would argue that the internal

affairs of sovereign states are beyond the international community's concern, especially if there were no clear, undeniable evidence of full-scale genocide. At the heart of this justification are traditional perceptions of sovereignty and of a billiard-ball model of the international system. Sovereignty is to guarantee non-interference among sovereigns. The twist introduced by the R2P report, however, undermines this traditional interpretation of sovereignty, and advances a claim that abusive states are in fact not properly sovereign. Thus, in order for their justifications of inaction to be credible, actors such as in the preceding paragraph, or actors who are concerned that an intervention would set a dangerous precedent at the international level, would have to be able to demonstrate how with the new understanding of sovereignty, as endorsed also by the General Assembly, the particular situation would fall outside the reasonable concern of the international community and its responsibility.

A fourth generic justification of inaction could be inaction itself! Allow me to explain this better. Let us consider the latest stages in the thought experiment, where a resolution was passed calling for intervention in the crisis area. If there was no state, a coalition of states, or a regional organization to authorize, the operation would proceed under UN command, which would mean that the Secretary-General would attempt to gather the required contributions from member states in order for the operation to materialize. At this point, nothing could be easier for those actors who did not support the operation than to remain passive and by so doing encourage also others not to contribute to the operation. Alternatively, one might resort to doing everything "by the book," in which case, as we all know, everything would take a great deal of time while giving the appearance that everything is being done correctly.

It is quite possible that there could be more generic justifications of inaction apart from the four which were just discussed. Instead of attempting an exhaustive list of justifications, it is more important to focus on the likely resistance the idea of intervention would receive, even in genocide as we have seen during the recent years in Darfur, despite there being both good arguments for intervening and a recognized responsibility to act. More precisely, it is interesting to examine the

kinds of justifications which actors might use in order to evaluate their credibility and plausibility, as well as to gain insights to the mode of thinking and logic among international actors.

In broad terms, one could divide the kinds of justifications of inaction into at least seven different categories. The first category includes justifications which in their essence deny the requirement to act in the first place. As mentioned above, for example by arguing that the situation was not genocide, one could make a case that the international community's responsibility did not apply in this particular case. Thus, one justifies inaction by rejecting the premises of the requirement to act.

The second category is composed of justifications, which agree that there is a responsibility to act, but deny that it falls on any particular actor, namely the actor justifying inaction. This argument could be made in several ways. For example, one might refer to one's contributions or other humanitarian efforts, whether current or past, and argue that one has done or is doing one's share already. Alternatively, one might engage in an argument denying that the international community's responsibility is a collective responsibility, and that it could not be allocated or divided into shares on the individual level. Naturally, it would not be the fault of this actor that there is no substantial collective actor known as the international community, and simple membership in the community would not suffice for demands of action. Other ways to make this argument could include a combination of the two examples, or a denial that the collective responsibility applies in this particular case.

Justifications of inaction in the third category are based on claims about the futility of action. Again, these justifications do not deny the existence of a responsibility to act, but they claim that it would make little difference whether one intervened, or perhaps that intervention would be counter-productive. If it in fact were true that intervention would be futile or counter-productive, committing it would be difficult to justify. Yet, there is no certain knowledge that this would be the case. In other words, the justifications in this category rely on unknown strings of events about the future. After all, it is not possible to know

precisely how one's actions might influence the outcome of such complex situations as grave humanitarian crises. Certain, though, is that inaction would hardly alleviate the suffering. On the other hand, the same argument could be made by claiming that there are no guarantees that there will not be a return to the initial situation before intervention after the intervening forces have left. Alternatively, it could be argued that the intervening forces would be unable to stay in the country long enough to ensure such guarantees. In other words, this argument would resonate with for example Luttwak's call to "give war a chance."[326] Not only would the international community's resources be wasted, according to this argument, but certain conflicts ought to be allowed to proceed and reach a solution on their own for the good of the "long run" instead of suppressing them only to emerge later with a vengeance.

The fourth category of justifications of inaction refers to the high risk which would be imposed on the interveners. Here, an analogy is made to the continental duty to rescue. In other words, although some legal systems require assisting strangers in their emergency, the duty does not require putting oneself in danger. In relation to inaction in a grave humanitarian crisis, this justification might recognize the responsibility and need to act, but it would argue that fulfilling the responsibility would demand too much and place the intervening, good-willing forces into a high risk situation. In other words, the argument claims that the particular situation would be beyond the call of duty.

If actors use justifications of inaction from the fifth category, they point to the costs of action. Whether defined as financial costs, personnel costs, or otherwise, the justifications in this category emphasize that the fulfillment of the responsibility to act is simply too expensive, or that there would be a too high price to be paid in order to guarantee success. An example of this line of argument is the so-called Powell Doctrine, which argued during the early days of the Bosnian War that in order to stop the fighting 250,000 troops were necessary. At the heart of Powell's thinking was the use of decisive force, which would leave no

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[326] Edward N. Luttwak, "Give War a Chance," *Foreign Affairs* 78, no. 4 (1999).

doubts about the outcome.[327] The cost of such a decisive force, which would virtually guarantee success, could, however, be too high depending on the situation and the goals, at least in the opinion of some actors. Moreover, due to the high costs, and especially if there was a high risk to the intervening forces, the political will to act would surely be missing in most cases.

On the other hand, using justifications of inaction from the sixth category would attempt to disqualify oneself as a participant in the fulfillment of responsibility. Thus, for example one might argue that there was a conflict of interest, which would disqualify the particular claimant, namely oneself. Alternatively, one might illustrate how it was in the best interest of all if one would not act or if others acted instead. In colloquial terms, this category consists of strategies and justifications of "buck-passing."

Finally, the seventh category of justifications of inaction refers to some higher order or whole which would be endangered if a particular type of action was committed. For example, one might argue that the functioning of the international system is endangered if there is a proliferation of intervention. Here, one advances a utilitarian argument, where on the one hand one recognizes the responsibility or desirability to act, but on the other hand argues that the "greater good" is served by inaction.

In sum, there can be many different kinds of justifications of inaction. They are arguments, which are variously constructed to serve particular purposes, and the manners in which they are constructed draw from various logics and warrants in order to support the conclusions. As mentioned, some of the justifications aim at disqualifying the particular actor or action without denying that there would be a responsibility to act, while other justifications disagree with the responsibility and aim to demonstrate that there either is no responsibility or that it does not apply in the particular case at hand.

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[327] See e.g. Peter Maas, "Paying for the Powell Doctrine," in *The New Killing Fields: Massacre and the Politics of Intervention*, ed. Nicolaus Mills and Kira Brunner (New York: Basic Books, 2003).

The discussion has remained at an abstract level. In the following chapter I bring the discussion more to the level of practice by examining the justifications of inaction in relation to a grave humanitarian crisis, namely the Rwandan genocide in 1994.

Chapter Five:
Rwanda in 1994
and Justifications of Non-Intervention

We were not realizing that, with just a machete, you can do a genocide.[328]

Introduction

During the past two decades, two cases of non-intervention in grave humanitarian crises stand out. In 1994 Rwanda experienced genocide while the world stood by and watched thousands of bodies float down the Kagera River towards Lake Victoria.[329] Ten years later, Sudan has been accused of genocide in its western region, Darfur.[330] Despite UN Security Council resolutions calling for international action in Darfur,[331] the situation could still be described as non-intervention by the international community.[332] This chapter focuses on the justifications by the members of the international community for their inaction in such grave crises as Rwanda or Darfur in order to illustrate the abstract discussion of the previous chapter with a real-world case.

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[328] Boutros Boutros-Ghali.

[329] See e.g. Donatella Lorch, " Bodies from Rwanda Cast a Pall on Lakeside Villages in Uganda," *The New York Times*, May 28 1994, available at <http://query.nytimes.com/gst/fullpage.html?res=9C05E3D7143BF93BA15756C0A962958260>.

[330] See e.g. Barbara Slavin, "Powell Accuses Sudan of Genocide," *USA Today*, September 9 2004, available at <http://www.usatoday.com/news/washington/2004-09-09-sudan-powell_x.htm>. Robert McMahon, "UN: Powell Calls Darfur Atrocities 'Genocide,' as Debate Begins on New Resolution," *RadioFreeEurope, RadioLiberty*, September 9 2004, available at <http://www.rferl.org/featuresarticle/2004/9/CDB82A4B-4BEB-43B1-819B-A914BE5F8856.html>.

[331] See e.g. United Nations Security Council, *Security Council Resolution Number 1590 of March 24, 2005*, S/RES/1590; United Nations Security Council, *Security Council Resolution Number 1706 of August 31, 2006*, S/RES/1706.

[332] This being the case at the time of writing this thesis.

The case chosen for this chapter is Rwanda in 1994. The reason for choosing Rwanda is that it represents a shocking passivity on the international community's part. What makes the case even more disturbing is the fact that UN troops were on the ground long before the genocide began, and how there exists evidence demonstrating that UN officials were aware of an imminent crisis, but still when the crisis unfolded, the UN troops withdrew and Rwandan Tutsi and Hutu moderates were left to care for themselves. While Darfur represents a somewhat similar case of non-intervention, for the purposes of illustrating the points made in previous chapters, the Rwandan case provides a more fertile ground. In other words, Rwanda provides perhaps the starkest background against which to reflect on the responsibility model and justifications of inaction. Similar issues would, however, be present also in other cases, such as in the case of Darfur.

The main focus in this chapter is to recognize in the Rwandan case points at which the issue of responsibility emerged and the justifications, which relevant actors gave for their inaction. Three main actors have been chosen for this purpose, namely France, the United States, and the Security Council. As discussed in previous chapters, the Security Council is a central actor in grave humanitarian crises and in relation to the international community's responsibility in such crises. France and the United States, on the other hand, are permanent members of the Security Council, and in addition both possessed the capability to intervene, even alone if necessary, and they were in a position to influence also other international actors. Moreover, whereas the United States did not have any strategic interests in Rwanda, the French at least behaved as if Rwanda was part of their zone of influence.

Thus, the first part of this chapter outlines the case by providing a brief history of the events leading up to the genocide and its progression. The second part discusses the reactions of central actors to the crisis, namely France, the United States, and the United Nations and the Security Council. The third and final section examines the French and American justifications of inaction on the basis of the discussion in the previous chapter.

A HISTORY OF EVENTS LEADING TO THE GENOCIDE IN RWANDA

One of the most shocking crimes against humanity was leashed in April 1994 in Rwanda. For over an approximate period of three months, Rwanda turned into a killing field, in which up to a million people perished. The genocide took place in broad daylight with low technology weapons, such as machetes, achieving a five times greater kill rate than the Nazi extermination program during the Second World War. At the heart of the genocide was the Hutu extremists' plan to solve political issues once and for all with the ruling Tutsi minority. In their plans, the Hutu leaders calculated that the international community would remain either indifferent to the killing, or that the international community's reaction would in any case be too little and too late.

Overall, the international community did very little to try to save the victims of the genocide. Before the start of the slaughter, there were UN forces in Rwanda but they lacked troops, equipment, and a necessary mandate to alleviate the situation. For the most part of the killing, the Security Council failed to recognize the situation as genocide and remained unwilling to authorize intervention until it was virtually irrelevant in order to stop it. Although there were some exceptions, generally speaking the international community remained passive. The international media, however, provided some coverage of the genocide but only towards the end of the three months, which the genocide lasted. Humanitarian non-governmental organizations, such as Médecins Sans Frontiéres, provided some humanitarian relief, but there was little they could do to stop the massacre.

To understand the circumstances in 1994, one needs to begin a century earlier. The first Europeans to set foot in Rwanda were led by a German count, Adolf von Götzen, in 1894. Von Götzen was received at the Rwanda court, where he informed King Rwabugiri that at the Berlin conference of 1885 Rwanda had been awarded to Germany. The Germans, however, were impressed by the social order they encountered in Rwanda and decided not to impose direct rule but to rule the country through the monarchy and the existing structures.

To the Europeans, Rwandan society appeared to contain three social groupings: the Hutu, the Tutsi, and the Twa. The Twa were the smallest minority

incorporating perhaps only one percent of the population. These pygmies lived as hunter-gatherers. In contrast, the vast majority were Hutu, who usually cultivated the soil and could be described as having Bantu features, while the Tutsi were normally taller and thinner, and herded cattle. It seems that the division between Hutu and Tutsi was not tribal, ethnic, or class-based in its original form. Both lived in the same communities, and shared a language and a culture. Intermarriage may not have been customary but it was neither a taboo. The ethnic element in this division was introduced only after Belgium replaced Germany in ruling Rwanda.

After the First World War, German rule in Rwanda was substituted with Belgian rule. The change denoted also a departure from the German indirect governance to the Belgian direct rule of Rwanda and its society. Among the new measures, which the Belgians introduced, were the identity cards, which stated the "ethnicity" of the card-holder. At the time, racial theories, and especially theories of hierarchy of races on Darwinian grounds, were still popular in Europe, a point which was reflected in the Belgian mode of governance, and in the introduction of the identity cards. Racial theories served as the background for determining, which Rwandans "were" Hutu, Tutsi, or Twa. Moreover, based on these racial theories, the Belgians concluded that the Tutsi were the natural leaders of the society, because their features were closer to European characteristics, and therefore, according to the Belgians, the Tutsi were also more developed and more suitable to govern the country than the other "races." This favoritism towards the Tutsi was justified by the looming chaos which would allegedly result, if the "natural" position of the Tutsi was not embraced.[333] Thus, the ground was laid for ethnic conflict decades later: the results "of this heavy bombardment with highly value-laden stereotypes for some sixty years ended by inflating the Tutsi cultural ego and crushing Hutu feelings until they coalesced into an aggressively resentful inferiority complex."[334]

The new social system with its racial division and inequalities did not result in deadly ethnic conflict until some thirty years later. One violent incident occurred

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[333] Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 10.

[334] Gérard Prunier, *The Rwanda Crisis, 1959-1994: History of a Genocide* (London: Hurst, 1995), 9.

for example in March 1957, when a group of Hutu intellectuals published a document titled *Notes on the Social Aspect of the Racial Native Problem in Rwanda*, or the *Bahutu Manifesto* as it is also known. In the manifesto, the authors drew attention to the social inequality between the Hutu and the Tutsi, and to the unwarranted Tutsi minority dominance of the Rwandan society. Inadvertently, the manifesto did not demand the removal of ethnic identification from the identity cards, because it assisted in the statistical analysis on social inequalities. Little did the authors know at the time how the ethnic identification in the identity cards would make the execution of genocide faster and simpler. Despite some clashes after the publication of the manifesto, however, Rwanda remained relatively calm.

At the turn to the 1960s, Belgium was losing her control thanks to the wave of decolonization. Because of this, Belgium launched a process in 1959 with the aim of establishing self-government in Rwanda. The transition from Belgian rule to self-governance was difficult. The early 1960s witnessed an increase in the amount of refugees and internally displaced people. In addition, the election results reflected more the social inequalities than concern for good governance or democracy. Unsurprisingly, the first elections were won by the strong Hutu party PARMEHUTU (Parti du Mouvement de l'Émancipation des Bahutus) while Tutsi parties suffered defeat. Amid all this, on January 28, 1961 the sovereign democratic Republic of Rwanda was declared independent.

The declaration of independence, however, did not pacify Rwanda. Sporadic violence continued throughout the country, and many of the Tutsi were driven to exile. Some of these exiles organized themselves in Uganda and carried out raids against the now Hutu-controlled Rwanda. For the most part, guerrilla tactics were used in order to destabilize the newly elected Hutu government, yet in 1963, the exiles were able to launch an offensive, which was barely stopped before reaching the capital Kigali. The raids by the exiled Tutsi did little to alleviate the ethnic tension within Rwanda or the lives of the Tutsi still residing there.

The transition to self-governed democracy proved difficult. Soon the young republic under Hutu leadership resembled more the old monarchy than a modern

democracy. President Kayibanda had learned from the earlier Tutsi leaders, and now he used their methods in order to solidify his grip on the country. President Kayibanda's actions even encouraged a United Nations report to declare that the racial dominance and dictatorship of one party had been replaced by another.[335] Kayibanda's party executed "purifications" and checks on ethnic quotas preferring the Hutu in employment, education, and virtually everywhere. The Hutu rule, however, was subject to a North-South tension, which resulted in Habyarimana seizing control of the country in a "bloodless" coup in 1973.

In its early years, the Habyarimana regime may not have been popular but it was successful. The regime brought with it peace, stability, and development to Rwanda. The mortality rates were on the decline, whereas hygiene, medical care, and education were improving. Administrative control, however, remained among the tightest in the non-communist world.[336] Much of the improvements were achieved with a reliance on foreign aid, which grew steadily throughout the 1970s to reach enormous proportions by the late 1980s. In comparison to the other parts of Africa, with its low crime rate and orderliness Rwanda appeared as an idyllic target for foreign aid. Dependency on foreign aid was naturally detrimental in the long term, while at the same time Habyarimana's order rested on dangerous ideological foundations. Despite relative calmness in Rwanda, sporadic violence and raids by the Tutsi exiles continued.

The early 1990s was a trying time for the government of Rwanda. The dependency on foreign aid had increased, especially because the domestic economy relied heavily on one main export, coffee, whose world price had fallen. Moreover, foreign aid, especially by the French, was politically linked to further democratization efforts. Thus, Habyarimana quickly moved the government from one-party system to a multi-party system, and with the constitutional change, Rwandan politics witnessed the birth of various parties among a colorful variety of groups and declared goals. For the present discussion, the most significant of these new parties was the CDR or Coalition pour la Defense de la République, a

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[335] Ibid., 53.

[336] Ibid., 77.

radical, racist Hutu party. In addition, the constitutional change signaled also the emergence of a colorful press and radio covering all political flavors and touting their politically biased messages. The French were satisfied with at least the appearance of greater democracy in the country, but in reality Habyarimana's party continued to rule.

It was during this period of "liberalization" and "democratization" of Rwanda, when the exiled Tutsi army, the Rwandan Patriotic Front (RPF), was lead to believe that the Rwandan political system was in such turmoil that a small push by an external force could collapse it. Thus, the RPF advanced into Rwanda with the aim of toppling the Habyarimana regime, but although successful at first, the RPF was soon forced to retreat before the Forces Armées Rwandaises (FAR), which received help at least from Belgium, France, and Zaire. The RPF called for a protracted, popular long-term struggle against the Habyarimana regime and continued its efforts across the border from Uganda. Within Rwanda, though, the following years witnessed the acceleration of arrests and violence that sometimes could have been described as massacres.

During the summer of 1992, there was a fragile progress towards peace between the RPF and the Rwandan government. A cease-fire was signed in Arusha, Tanzania, but the peace negotiations proceeded slowly. The process was not helped by the domestic opposition, which was destabilizing the Habyarimana regime. On the other side, the RPF remained unconvinced of Habyarimana's sincerity. Despite the international community's pressure, neither party was dedicated to the peace process. During the next twelve months or so, resistance to the whole peace process grew within Rwanda and served to strengthen the radical circles within the country. Many demonstrations and acts of violence were committed by these radical elements. Furthermore, at some point the cease-fire broke, and had it not been for the French intervention, the RPF may have been capable of achieving its aims without the need to continue the peace process.

Finally, a peace agreement known as the Arusha Accords was signed on August 4, 1993.[337] Two months later, in October, the United Nations Assistance Mission to Rwanda (UNAMIR) was established in order to monitor the implementation of the peace agreement. The UN forces, however, arrived into an explosive situation. The period between late 1993 and early 1994 was marked with violence and an increase in the number of internally displaced people. Moreover, there were no signs of implementing the transitional government as required by the Arusha Accords. With its few resources and a Chapter VI mandate, there was little that UNAMIR was able to achieve. For example, despite having been informed of a weapons cache in a supposedly weapons-free zone, of the training of militias, and of the drawing up of lists of Tutsi, the UN forces were not authorized to depart from the monitoring tasks and to seize the weapons cache.[338] At this point, preparations for the coming genocide were clearly underway, but the UN forces may not have been fully aware of what was about to happen.

The genocide aimed at killing all Tutsi and any resistance to the Hutu extremists began on April 6, 1994. President Habyarimana was returning with his plane from Dar-es-Salaam, where the Rwandan president had been once again pressured to implement the overdue Arusha Accords, when the plane was shot down just outside the Kigali airport perimeter killing President Habyarimana, President Ntaryamira of Burundi, seven senior members of the Rwandan government, and a crew of three Frenchmen. Ironically, the plane crashed in the garden of Habyarimana's house.[339] Within the hour after the presidential assassination, the Interhamve[340] had organized roadblocks everywhere in Kigali and began searching houses. The Radio Télévision Libre des Mille Collines broadcasted

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[337] For an analysis of the peace agreement, see e.g. Michael N. Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002); C. Clapham, "Rwanda: The Perils of Peacemaking," *Journal of Peace Research* 35, no. 2 (1998); Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000).

[338] See e.g. Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 91-93.

[339] Michael N. Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002), 97.

[340] The Interhamve was first a civilian militia attached to the MRND, the predecessor of the MRND(D), but it became later the main militia executing the genocide. "Interhamve" means literally "those who work together."

direct incitements to murder; organized groups began to work their way through death lists. The genocide had begun.

INTERNATIONAL RESPONSES TO RWANDA

Having outlined a history of events leading up to the genocide, I now turn to some of the international responses to the events in Rwanda. Thus, I will not engage in describing how the genocide proceeded. Instead I discuss the manner, in which the international community acted and perceived the situation. Generally speaking, one could say that the international community's response was one of indifference. Rwanda was abandoned to its fate except for a small UN contingent, the Médecins Sans Frontiérs, the Red Cross, and some other humanitarian groups.[341] These actors, however, were incapable of making a difference in the well-organized massacre of up to a million people. The international actors, who could have altered the course of events, were for example the Security Council and certain key states, such as France and the United States.

The importance of focusing on these two states is rather obvious. For one, France and the United States are both permanent members of the Security Council, and they thus hold significant influence over any Security Council proceeding. Moreover, in relation to Rwanda, both France and the United States are unique actors due to their intelligence gathering capabilities, general capabilities and resources, and in the case of France, due to her close ties with the government of Rwanda. Furthermore, these were perhaps also the two states, who voiced clearly their objections to any enforcement of the UN forces in Rwanda or to any action under Chapter VII powers, points which make these two states of special interest in this discussion about the justifications of non-intervention.

The Security Council, on the other hand, has a unique position in international politics and in relation the international community's responsibility in grave humanitarian crises as discussed in previous chapters. For a better discussion about the role of the Security Council, see for example chapter three above.

In examining the international responses to the Rwandan genocide, I will focus on France, the United States, and the Security Council, respectively. Afterwards, I will discuss the justifications of inaction by the first two actors.

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[341] Gérard Prunier, *The Rwanda Crisis, 1959-1994: History of a Genocide* (London: Hurst, 1995), 273.

FRANCE

France had a special relationship with Rwanda. After all, being part of the *Francophonie*, Rwanda deserved a place in *Coopération*, the institutionalized way to extend French influence over the French-speaking parts of the world. Typical of French African politics were favoritism and close ties between the French and African heads of state.[342] Organizationally speaking, important decisions concerning Africa were handled mainly by the French president and the *Cellule Africaine*, or the African Unit, but naturally also other parts of the French government were involved, most notably the Ministries of Foreign Affairs, of Cooperation, of Defense, and of Finance as well as the Secret Service (DGSE). The special relationship between France and Rwanda and the multiplicity of the actors involved denoted also a complex relationship. For the purposes of the argument here, however, a simplified version of the relationship should suffice, because the focus is on the French reactions to the genocide rather than on the relationship itself.

One might argue that French interest in Rwanda was mainly cultural. Rwanda had few resources of high value, and as an economic partner Rwanda was hardly noteworthy. As mentioned above, since her independence, Rwanda had become increasingly dependent on foreign aid. Clearly, the French had an interest in ensuring that their foreign aid efforts were not wasted in Rwanda, but still more important appears to have been ensuring French cultural and linguistic foothold in central Africa. The so-called Fashoda-syndrome played a part in French determination to guarantee the survival of the French language and cultural traditions in the Francophone world.[343] There were of course geographic advantages in having close ties with Rwanda and keeping it as a base of operations. Being relatively calm, Rwanda proved a good location for monitoring southern Africa, while the country's closeness to the Indian Ocean should not be overlooked either. Thus, the French perceived their interests to include keeping good relations and a presence in Rwanda for cultural, trade, and security reasons.

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[342] D. Kroslak, "The Responsibility of External Bystanders in Cases of Genocide: The French in Rwanda, 1990-1994" (University of Wales, 2002) 128.

[343] On the Fashoda-syndrome, see e.g. Martin Meredith, *The State of Africa: A History of Fifty Years of Independence* (London: Free Press, 2005), 493 ff.

One might even say that France treated Rwanda as if it had been her former colony despite it having belonged to Belgium.

During the 1990s, among other African countries, Rwanda faced an external pressure to further democratize its society and domestic politics. Despite a few decades of independence, the young republics in Africa, like Rwanda, were democratic only superficially. France was one of the sources of external pressure to democratize Rwanda, and she used economic incentives to this end. Thus, the earlier unconditional economic aid was made conditional upon democratic transformation and the introduction of a multi-party system. The Rwandan President Habyarimana was quick to recognize the new winds, and made the transition, or at least he created the appearance of a more democratic society in 1990 by liberalizing the constitution to allow the creation of political parties. In practice, however, the Habyarimana regime continued to control the country. Whether a true transition to deeper democracy or not, the French seemed satisfied with Habyarimana's changes.

The military relationship between France and Rwanda was quite curious, perhaps even questionable, but most certainly not transparent. For example, French military forces were officially acting as military advisors in Rwanda, allegedly due to the RPF threat, but in practice it seems that French troops intervened heavily in the fight against the RPF aiding the FAR under *Operation Noroit* among others. Furthermore, there have been allegations that the French were involved not only in the training of the Presidential Guard and the regular armed forces but also in the training of the militias, at least indirectly.

The close ties between French and Rwandan elites and the French presence in Rwanda have made France suspect for having been informed about the looming genocide. Daniela Kroslak, for example, argues that the French were concerned with the ethnic situation in Rwanda already since October 1990, and that some of the French officials in Rwanda had included predictions of a possible genocide almost four years prior to its beginning in their correspondence with the French

headquarters.[344] These arguments are supported by the report issued on December 19, 1990, where the ambassadors of France, Belgium, and Germany as well as the representatives of the European Union in Rwanda imposed a warning of the possibility that the "rapid deterioration of the relations between the two ethnic groups, the Hutu and the Tutsi, runs the imminent risk of terrible consequences for Rwanda and the entire region."[345] Clearly, the message in the report may not have been referring to a plan to execute genocide, but the report or the details it enclosed should not have been ignored either.

It might be impossible to prove beyond reasonable doubt that the French were aware of the plan to commit genocide in Rwanda. Some, however, argue that "demonstrably known to the French, the Rwandan authorities began gradually drawing up lists. These extermination lists included opponents and Tutsi."[346] Whether such a demonstration is in fact impeccable, is doubtful. More certain is, however, that Paris was in a position to know about the developments in and around Kigali, and that France had inside information about the situation in the country. For example, by June 1991 the French were informed about *Akazu*, the powerful inner circle composed of Habyarimana's wife and her associates, all of them Hutu extremists.[347] Also, it is curious how on April 8, 1994, two days after the Rwandan presidential plane had been shot down, the French *Operation Amaryllis* arrived in Kigali in order to evacuate French and other foreign nationals. The evacuation expedition left Rwanda on April 14, and the curious thing about it is not its length or that it happened, but the fact that no such evacuation had taken place previously despite there having been incidents of mass violence and massacres. Furthermore, telling of the French special relationship with Rwanda and its elites is how during the *Operation Amaryllis* French troops were able to move freely in Kigali unlike UNAMIR troops, who constantly had to negotiate their

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[344] D. Kroslak, "The Responsibility of External Bystanders in Cases of Genocide: The French in Rwanda, 1990-1994" (University of Wales, 2002) 198-200.

[345] Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 36.

[346] D. Kroslak, "The Responsibility of External Bystanders in Cases of Genocide: The French in Rwanda, 1990-1994" (University of Wales, 2002) 212.

[347] Ibid. 207.

way around the capital.[348] Thus, although it might be impossible to prove anything conclusive, the French certainly appeared to have been aware of something unusual in April 1994, even if they had not known that genocide was about to begin.

For the purposes of this thesis, it is not necessary to demonstrate that the French were completely aware of the situation in Rwanda, a task which might prove impossible. It is sufficient to conclude that the French were clearly involved in Rwanda and Rwandan politics enough to be considered to have access to inside information, which other international actors did not have in comparison. In other words, the French were in a position to collect information on the ground and in a manner, which for example other members of the Security Council were unable to do. Thus, while other members of the Security Council relied heavily on the Secretary-General and his briefings on the situation in Rwanda, the French had access to the policy-makers and perpetrators of genocide in Rwanda. This dimension should be kept in mind for the later discussion about the Security Council in relation to the situation in Rwanda.

Despite their obviously privileged access in Rwanda and therefore privileged knowledge about the situation, the "French authorities insisted that the massacres were the result of the renewed war."[349] Only on May 15, over five weeks after the genocide began, the French Minister of Foreign Affairs, Alain Juppe, called the atrocities genocide. It took another month, debates in the Security Council, and the pressure of the international media before France announced her plan to launch a humanitarian mission to Rwanda on June 15. The very next day, *Operation Turquoise* was underway to Rwanda. One explanation for the rapid deployment of French troops is the existence of French rapid reaction forces that were set up in August 1993, and which are capable of intervening on a short notice almost anywhere in Africa from their bases in France. Moreover, France had approximately 8,400 troops already in Africa at the time, of which some

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[348] Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 142.

[349] D. Kroslak, "The Responsibility of External Bystanders in Cases of Genocide: The French in Rwanda, 1990-1994" (University of Wales, 2002) 306.

already in Rwanda. Furthermore, naturally the decision to intervene had been made some time before the announcement was made, thus giving time for preparations for the deployment. In sum, the rapid deployment of French troops can be explained without much embarrassment to France. More awkward for France is the fact that when the French troops arrived, the perpetrators of the genocide welcomed them, because they thought France had come to assist them against the advancing RPF forces.

During the five weeks or so before the French operation, France insisted that Rwanda was experiencing a renewal of the civil war and an outbreak of the age-old ethnic hatred, which unleashed the killing of Hutu by the Tutsi and vice versa. Given the special position France held in Rwanda, and given her information-gathering capabilities and access, why was France not better informed, if she earnestly perceived the situation in that manner? One explanation could refer to the complexity of the French relationship with Rwanda and the complexity of the French organizational structure. The fact that we might now discover some documents, which would be embarrassing for the French government at the time, does not mean that the decision-makers were informed of all the details or of all the reports that had been made. Proverbially speaking, it is not unusual in such complex organizations as the government of such a large country that the left hand does not know what the right hand is doing. Yet, it is likely, if France was better informed than what she claimed, that she neither had the inclination nor interest to learn more about the actual reality, or that she preferred not to make her privileged information public.

The French had a clear interest in trying to uphold the Arusha Accords and what was left of the Habyarimana regime. After all, France had supported Rwanda in general against the RPF, which was now advancing into Rwanda, and she had also sold and arranged sales of arms to Habyarimana's regime and continued to do so even after the beginning of April, 1994.[350] The French had invested in Rwanda,

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[350] Allegedly, once the genocide was underway, $13 million of the Rwandan government money passed through the *Banque Nationale de Paris*. Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 182. Also, Prunier claims that France continued to arm the Rwandan interim government in their fight against the RPF regardless of the UN arms embargo. See Gérard Prunier, *The Rwanda Crisis, 1959-1994: History of a Genocide* (London: Hurst, 1995), 278.

and their involvement in the country had been considerable. France was unwilling to abandon her partners so easily.[351] The RPF, however, continued their advance, and when its victory over the FAR forces seemed more likely unless French troops intervened directly, France insisted on the cease-fire policy, the Arusha Accords, and that the atrocities were the result of the renewed civil war. From the perspective of France, and if neglecting all moral considerations, holding on to the Arusha Accords was the only way to save the investments she had made in Rwanda. Supporting the Arusha Accords at the time, however, meant supporting the genocidal regime in Rwanda, a point which was either neglected, ignored, or accepted.

In the Security Council, France continued to insist on the civil war interpretation of events until mid-May. Just like the United States, France was careful not use terminology, which mentioned or referred to genocide. A reference to genocide committed by the interim government would have made it virtually impossible for France to support the Arusha Accords. It would have also encouraged the whole international community to take a different stance concerning the situation in Rwanda. Thus, being a member of the Security Council, and with known connections to Rwanda, French statements carried a special weight in the Council. From her actions and statements within the Security Council, it is evident that France appears to have been determined to keep the information about the situation in Rwanda unclear, if not to confuse it. To give an example, even after the UN Human Rights Commissioner Lasso and the French Foreign Minister Juppe had called Rwanda a genocide, on June 8 the French Ambassador to the UN Jean-Bernard Mérimée addressed the Security Council with the following words:

> My delegation recalls that there can be no military solution, and we urge the Rwandese parties to heed the voice of reason and tolerance, to conclude a cease-fire agreement, and to resume the dialogue that must lead to national reconciliation.[352]

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[351] Arthur Jay Klinghoffer, *The International Dimension of Genocide in Rwanda* (Basingstoke, England: Macmillan, 1998).

[352] Quoted in D. Kroslak, "The Responsibility of External Bystanders in Cases of Genocide: The French in Rwanda, 1990-1994" (University of Wales, 2002) 334.

If considering the French influence within the Security Council, it is a small wonder that the Council continued to describe the conflict as "mindless violence" being of "ethnic and tribal in origin" and having been "initiated by unruly elements."[353] These descriptions created an image of another "Somalia," whose shadow still loomed large in the minds of the members of the Security Council. One could draw the conclusion that France considered that the international community had little business in "failed states," especially if they were part of her sphere of influence. Yet, France did not advocate a complete withdrawal of UN forces from Rwanda but she had no objections either to the significant reduction of UNAMIR as commanded by Resolution 912.

In mid-May, however, France committed a *volte-face* recognizing that genocide was taking place, or at least the French Foreign Minister Juppe called it genocide. Also, France began to call for international intervention in Rwanda. This reversal reflected the pressure the French government faced both at home and internationally, for example in the Security Council, to alleviate the undeniable humanitarian crisis. Now, Ambassador Mérimée argued that "with a humanitarian catastrophe of such magnitude the international community could not fail to act"[354] and requested a Chapter VII mandate for Resolution 918. In the Security Council, however, France appears to have been referring to the civil war and its effects, and not the genocide, when talking about the humanitarian catastrophe. At this point, one heavily doubts French sincerity to act, because despite calling for the re-enforcement of UNAMIR in the form of UNAMIR II, France offered no troops, equipment, or financial contributions. Nevertheless, a month later, in the daily *Libération* on June 16, Foreign Minister Alain Juppe acknowledged a responsibility to intervene in Rwanda,[355] and soon thereafter France intervened with *Operation Turquoise*. Even at this point, French sincerity is questionable, because her intervention coincided with the imminent victory of the RPF forces as

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[353] See e.g. United Nations Security Council, *Draft Resolution of April 21 1994*, 1994, S/1994/488; United Nations Security Council, *Report of the Secretary-General on the Situation in Rwanda of May 13, 1994*, 1994, S/1994/565.

[354] Quoted in D. Kroslak, "The Responsibility of External Bystanders in Cases of Genocide: The French in Rwanda, 1990-1994" (University of Wales, 2002) 339.

[355] Gérard Prunier, *The Rwanda Crisis, 1959-1994: History of a Genocide* (London: Hurst, 1995), 280.

they drew closer to Kigali. Kroslak, for example, has argued that France was merely trying to secure her back and to achieve a "moral high ground in light of the international passivity that in some respects it had helped engineer."[356]

France and her statements about the situation in Rwanda had surely an effect on the international community. Her continued reference to the re-emergence of civil war, where admittedly bad things were committed, must have carried some authority and convinced at least some members of the international community, especially those who had no better knowledge and no interest in knowing any better, that this was Africa, where civil war was rife, and that there was in this sense nothing exceptional about Rwanda. As the French President Mitterrand wondered: "What can France do when local chiefs decide to settle their problems with machetes – After all it is their country."[357] Thus, France continued to signal that Rwanda ought to be treated as another case of African civil war, which was caused by tribal conflict. Quite clearly, a response to the outbreak of civil war, where already an internationally brokered peace agreement existed, was to be different from a response to an ongoing genocide. In other words, by insisting on the civil war interpretation, France attempted to exclude certain courses of action and the responsibility of the international community. In this, France was by no means the only significant member of the international community, as the following discussion on the United States and her reactions to Rwanda reveals.

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[356] D. Kroslak, "The Responsibility of External Bystanders in Cases of Genocide: The French in Rwanda, 1990-1994" (University of Wales, 2002) 343.

[357] Ibid. 326.

THE UNITED STATES OF AMERICA

In 1992, the United States was one of the key actors who pressured the RPF and the Rwandan government into dialogue, which resulted in the Arusha Accords. The United States seems to have placed much hope on the Arusha Accords and the peace process, perhaps even too much to have been blinded by it.

If putting the American position to Rwanda in 1994 in a wider context, one should remember that Somalia cast a shadow on any "humanitarian" action the United States considered in Africa, or elsewhere. It had been only in October 1993, when eighteen US rangers were killed and many others wounded and captured in Somalia as a result of an ambitious, "humanitarian" mission gone wrong. Not only was Somalia a humiliation to the Americans, because of their quick withdrawal from the country in front of television cameras, but it also shaped the way in which any future humanitarian missions would be considered. For example, the Congress prepared a Peace Powers Act making it difficult for the American president to commit troops to any UN missions. The message could not have been clearer: "No American should be asked to sacrifice his or her life for a purpose not related to the defense, or in the interests of, the United States."[358] Moreover, Presidential Decision Directive (PDD) No. 25 confirmed that President Bill Clinton was equally unwilling to commit troops to UN missions lacking American interests. At the time, the UN was charged with lavish use of funds and with being inefficient, if not even corrupt, and the White House sought to demonstrate to its domestic audience that it could be tough on the United Nations.

To give an example of the timing, Somalia and the deaths of US rangers occurred only two days before the Security Council was due to vote on peace-keeping mission in Rwanda. Quite naturally, the Americans were less than keen on another UN peace-keeping mission in Africa because of their recent experience in Somalia.

The Mogadishu experience, however, was only one reason among many why the United States opposed further UN missions. For one, the UN was already

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[358] Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 77.

overstretched. At the time, there were more peace-keepers than ever in the history of UN peace-keeping, and they were also dealing with more missions than ever before. This naturally denoted a heavy strain on the UN members for troops, materiel, and finances. Second, the United States had large national deficits and the government seemed to face an apparently hostile domestic audience to any future financial liabilities. Another peace-keeping operation would have required the United States to dig deeper in her pockets, something which may have been difficult to justify to her domestic audience, especially when American interests were not directly involved. Moreover, as the records show on American debt to the UN, the United States was hardly willing to pay even her normal UN dues on time, and she was already liable for approximately thirty percent of the costs of twelve peace-keeping missions.[359]

On the other hand, in the fall of 1993, Rwanda appeared to promise an easy peace-keeping mission that could allow the White House to show to its domestic audience how it was putting restraints on UN spending, while at the same time bring the UN much needed positive publicity. After all, there was a cease-fire, a road map for peace, and all the other signs, which indicated that a traditional peace-keeping mission would be enough. Thus, from the American point of view, it made sense to agree to the peace-keeping mission in Rwanda despite Somalia, just as long as Rwanda was not to become expensive or demand the commitment of American troops. Restrictions on spending would not have hurt the mission, if it was an easy mission, but they would give the appearance that the American administration was tough on the UN. Naturally, if the mission proved successful, there would be another democracy in Africa, which could be touted as an American foreign policy success.

On the day before the genocide began, the Security Council met in order to review the peace-keeping mission UNAMIR. The general position of the United States was that the UN forces should be withdrawn, if a broad-based transitional government was not established immediately. It was argued that the UN must be selective in its missions, a general feeling shared by the American Congress, which was quite

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[359] Ibid.

hostile to UN missions at the time.[360] Moreover, if the Rwandan parties were unwilling to commit to the peace process, the international community could not force them. In other words, if there was no peace to keep or a working cease-fire, the UN peace-keepers were not where they should have been.

The position, which the United States took regarding Rwanda, was evidently based on the assumption that the outbreak of violence in Rwanda was due to the renewal of civil war. Yet, it seems odd that the United States, or at least some of the high-ranking members of the administration, was not aware that one of the parties to the peace process was not willing to share power as instructed by the Arusha Accords. Admittedly, despite having been one of the peace brokers, the United States may not have held Rwanda to be on top of her agenda, especially with so many other concerns, such as the Balkan situation in Europe. Nevertheless, the Deputy Assistant Secretary for African Affairs at the Department of Defense, James Woods, claims that America knew not only of the unwillingness to share power by the CDR, but that there was knowledge about a plan by the Hutu extremists.[361] If this was the case, one has to question the United States' insistence on the Arusha Accords.

The United States did not resist, however, when the Security Council extended UNAMIR's mandate until the end of July. Yet, the situation was to be reviewed in six weeks time after the extension. The condition for UNAMIR's extension was the establishment of the transitional institutions as described in the Arusha Accords, and if they were not established, UNAMIR was to withdraw from Rwanda. From the perspective of the planners of the genocide, this was good news. For them, there was clearly no reason to even attempt an appearance of continuing with the peace process, because in the absence of the transitional institutions the UN forces would be withdrawn leaving the perpetrators to execute their plans freely. Furthermore, the Security Council signaled with its decision that the international community would not be willing to risk casualties in Rwanda. Thus,

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[360] Michael N. Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002), 101.

[361] Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 170.

unsurprisingly, President Habyarimana's plane was shot down the next day, and genocide was well underway by nightfall.

One day after the genocide commenced, the United States began to close her embassy in Kigali. The Americans, like the French, had not taken such measures before, despite there having been many occasions of serious unrest in the capital of Rwanda. By April 9, all American citizens had been evacuated from Rwanda.[362] The general feeling in America was perhaps well expressed by the Republican leader in the Senate, Robert Dole: "I don't think we have any national interests here – I hope we don't get involved there. I don't think we will. The Americans are out. As far as I'm concerned in Rwanda, that ought to be the end of it."[363] Apart from such statements, as some have argued, there seems to have been a strange silence in the United States regarding Rwanda.[364]

At the international level, the United States associated Rwanda with other failed states, in which civil war or ethnic conflict explained the events. Somalia had been one such failed state scenario, and America was unwilling to become involved in solving other peoples' conflicts, something which could easily turn into a disaster for the United States. Moreover, having decided to cut UN spending, the United States was equally unwilling to fund any adventurous efforts at peace-keeping. Thus, America began to push for UNAMIR's withdrawal from Rwanda. The American delegation to the Security Council, however, made no demands to remove UNAMIR completely. As a consequence, Resolution 912, which was passed on April 21, reduced UNAMIR to a symbolic presence and authorized a troop of 270 soldiers to remain in Kigali. Naturally, the United States could have insisted on a complete withdrawal with her veto, but for reasons of her own, she agreed to Resolution 912, despite being openly convinced that peace-keeping was untenable in Rwanda.

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[362] Ibid., 140.

[363] Quoted in Ibid., 148.

[364] See e.g. H. J. Burkhalter, "The Question of Genocide - the Clinton Administration and Rwanda," *World Policy Journal* 11, no. 4 (1994): 46-47.

At the domestic level, the end of April witnessed an increase in the details the media had about the situation in Rwanda. As a consequence, the American State Department was put under pressure by journalists about what was now being called genocide in some of the media and by some members of the international community. The State Department's answer, as that of the whole Clinton administration, was unequivocal: Rwanda was not genocide. The American administration denied the genocide and avoided any reference to the term.

For some, American behavior was hypocritical. At this point it started to be somewhat obvious that the situation in Rwanda was an example of a grave humanitarian crisis, even if the reason for it may have been unclear. Comparisons were made with the Balkans or with Somalia, and the conclusion was that America was inconsistent, if not hypocritical, in her foreign policy. The answer to such accusations was that America needed to be selective, as explained on May 5 by Anthony Lake, a national security advisor, because the United States could not solve other nations' problems or build states for them.[365] The Clinton administration had introduced criteria for choosing which kind of crises the United States was willing to address. These criteria were listed in the Presidential Decision Directive No. 25, and Rwanda failed on all the points on the list except for one. From this perspective, the situation was regrettable, but there was nothing that the United States could or should do. In arguing in this manner, the United States did not object to other states taking action; the United States held that any future action in Rwanda should be taken by African states or by the Organisation of African Unity, the contemporary African Union. The United States remained silent, however, when some African states volunteered to contribute troops in exchange for them being outfitted with Western equipment.[366]

On May 13, the Security Council discussed the Secretary-General Boutros-Ghali's proposal to establish UNAMIR II. The United States objected to the proposal. The main reasons behind the American objection were the unclear concept of

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[365] Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 190-91.

[366] The following African states offered troops: Congo, Ethiopia, Ghana, Malawi, Mali, Nigeria, Senegal, Tunisia, Zambia, and Zimbabwe.

operations, vague duration of the mission, and general costs of the operation. Regardless of American objections, she did not use her veto. On May 17, Resolution 918 established UNAMIR II. In practice, however, little had changed. It would take months before UNAMIR II would be on the ground in Rwanda.

During the debate within the Security Council, which eventually led to Resolution 918, the UN field commander in Rwanda, Roméo Dallaire, received a call from Senator Paul Simon. As a consequence of this telephone call, Senators Simon and Jeffords addressed a letter to the White House asking for the United States to approve the UN plan to alleviate the humanitarian crisis in Rwanda. On June 9, or twenty-seven days later, President Clinton officially replied that he agreed with the Senators that there ought to be some action, but that the United States had already done a good deal: America had contributed financially, logistically, and in other material terms. Moreover, America had supported the arms embargo on Rwanda, the negotiated peace settlement, and the UN mission. Furthermore, America was committed with a sum of 50 million dollars to assisting the refugees on the Rwandan border with Tanzania and Zaire, while senior American government officials were in almost daily contact with regional leaders.[367] Evidently, the argument was that America was already doing more than her share. At the same time, however, the United States' regular UN budget arrears were between \$250 and \$530 million,[368] while the UN was owed approximately \$1,286 million by all member states combined for the peace-keeping operations.[369] The United States was one of the largest debtors in this budget. Thus, financially speaking, America was clearly not doing her share. On the ground, America was also not doing much. An important contribution would have been for example ensuring that there was an end to the racist RTLMC broadcasts, which also informed the perpetrators where to find survivors in order to finish the job.

When the time came, the United States supported the French *Operation Turquoise*. From the American perspective, the French operation was somewhat of a

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[367] Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000), 203-04.

[368] See e.g. http://www.globalpolicy.org/finance/tables/tab2a.htm.

[369] See e.g. http://www.globalpolicy.org/finance/tables/pko/expendarrears.htm.

blessing. The Security Council had sanctioned the formation of UNAMIR II, which in practice was a request for the United States to sponsor at least financially the UN operation. *Operation Turquoise*, on the other hand, was completely a French operation, thus incurring no costs on other states, but since it was to begin the work reserved for UNAMIR II, it reflected well on the Security Council. In other words, it appeared that the Security Council, and thus also the United States, was intervening, because it had authorized the French operation.

Things changed rapidly, however, with images of refugees on American television screens. Swiftly, the Clinton administration "found" some $300-400 million for aiding the refugees, and it also authorized up to 4,000 military personnel to reinforce and secure the hundreds of American civilian and independent relief workers on the ground. It is telling, how once the decision was made, it took only three days for the American troops to be on the ground, distributing for example fresh water in Goma. The relief force, however, differed greatly with its mandate from what any intervention force in the genocide would have had; the relief force was to secure primarily themselves and under no circumstances to engage in any activities resembling peace-keeping or peace-enforcing.

Thus, the United States changed her stance quite radically during the crisis. She was unwilling to engage in efforts at state-building or in intervening in a civil war, as Rwanda was described, whether in earnest or for other reasons. When the question was about helping refugees on the borders, however, the United States showed remarkable charity and determination, although some have criticized the efforts, because the perpetrators were able to hide in the refugee camps. Nevertheless, one can only speculate the impact a similar show of determination could have had on the course of events at the beginning of the genocide. Surely, had the international community, or just the United States, acted strongly in the beginning, the unsure planners of genocide would have made other calculations, and perhaps the deaths of hundreds of thousands could have been avoided, as one study has concluded.[370]

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[370] There is some controversy about this counter-factual. The Force Commander Dallaire is quoted estimating that had about 5,000 troops been deployed at the early stages of the genocide, the massacres could have been stopped. See e.g. Boutros Boutros-Ghali, *Unvanquished: A U.S.-U.N. Saga*

THE UNITED NATIONS AND THE SECURITY COUNCIL

The reactions to the Rwandan genocide by the Security Council, and the Council's actions, have been under careful examination by several investigators. For example, the Independent Inquiry chaired by the former Swedish Prime Minister Ingvar Carlsson was sanctioned by Secretary-General Kofi Annan in March 1999.[371] The Inquiry began its work in June 1999 with a primary objective of examining and assessing what had happened, and making recommendations for the future on the basis of the events relating to Rwanda in 1994. Despite being sanctioned by the UN, the Inquiry produced a report, which is one of the most comprehensive and critical reports on Rwanda and the Security Council, despite its diplomatic overtones.

The Security Council's involvement in Rwanda, at least in relation to the events relating to the genocide, began with the Arusha Peace Agreement, which was signed by the government of Rwanda and the Rwandese Patriotic Front (RPF) in August 1993 and became known as the Arusha Accords. The peace agreement included the introduction of a neutral international force to supervise the implementation of the peace process. For the United Nations, this was seen as an opportunity. Rwanda promised to be an easy, traditional peace-keeping operation, where success might be achieved with minimum effort. Since the recent debacle in Somalia, the Security Council was unwilling to forgo such an opportunity, when it convened to discuss Resolution 872 establishing the United Nations Assistance Mission for Rwanda (UNAMIR). The shadow of Somalia and the Mogadishu experience, however, continued to haunt the Security Council and

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(New York: Random House, 1999), 139; Bruce D. Jones, *Peacemaking in Rwanda: The Dynamics of Failure* (Boulder, CO.: Lynne Rienner, 2001), 126-27. This claim is, however, countered by Kuperman: see Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington DC.: Brookings Institution Press, 2000), e.g. 84-87. In any case, it is likely as the Carnegie Commission on Preventing Deadly Conflict concluded in collaboration with the U.S. Army and the Institute for the Study of Diplomacy that "a modern force of 5,000 troops could have significantly altered the outcome of the conflict." Quoted e.g. in University of Pennsylvania, "The 1994 Rwandan Genocide and U.S. Policy: Congressional Testimony of Holly Burkhalter, Physicians for Human Rights Subcommittee on Human Rights and International Operations," (African Studies Center, 1998). Available at <http://www.africa.upenn.edu/Urgent_Action/apic_52698.html>.

[371] United Nations Security Council, *Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, 1999, S/1999/1257.

its influential members, despite Rwanda proving to be a completely different kind of a grave humanitarian crisis.

The Resolution 872 establishing UNAMIR on October 5, 1993 was adopted unanimously by the Security Council. Yet, the UN force lacked both the strength that had been requested by the joint RPF-Rwandan government delegation and the mandate that was suggested by the Secretary-General Boutros-Ghali. Perhaps most notably, UNAMIR's mandate did not cover assisting in the recovery of arms, and instead of the requested force of 4,260 peace-keepers, the total strength of UNAMIR was 2,548 military personnel. Lieutenant General Roméo Dallaire was appointed Force Commander of UNAMIR, and he arrived in Kigali on October 22 in order to lead the advance party. On November 23, Dallaire sent the UN headquarters in New York a draft set of rules of engagement, but apparently he never received a response regarding them, a point which was to result in some confusion later about the activities in which UNAMIR could engage.

It seems that the United Nations, or at least parts of the organization, was aware of some early signs of genocide or of at least an impending grave humanitarian crisis. For example, already in April 1993, the Special Rapporteur of the Commission on Human Rights, Mr. Ndiaye, published a report, in which Mr. Ndiaye "determined that massacres and a plethora of other serious human rights violations were taking place in Rwanda."[372] Yet, despite the report's indication of possible genocide in Rwanda, it seems that Mr. Ndiaye's warnings were ignored by the key actors of the UN system.[373] Moreover, the report has not received much attention even after the genocide, although for example the so-called January 11 Cable by Dallaire has been hailed as an early warning of the looming genocide. Dallaire sent this cable on January 11, 1994 to the Military Adviser to the Secretary-General, Major-General Maurice Baril. In the cable, Dallaire states how he has come into contact with a top-level informant, who has provided a number of disturbing key information. Three most important pieces of information provided by the informant were: one, the strategy to provoke the withdrawal of

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[372] Ibid.

[373] Ibid.

the Belgian battalion by killing Belgian soldiers serving in UNAMIR; two, the Interhamwe had trained 1,700 men, scattered throughout Kigali, with orders to register all Tutsi for extermination; and three, Dallaire received information about a weapons cache, which the informant was willing to show UNAMIR. With hindsight, this cable has been considered as a sure sign of a plan to commit genocide.

Dallaire's cable, however, did not receive the response he had hoped. Despite having been addressed only to Baril, the cable was shared among other senior officials, including Under-Secretary-General Kofi Annan, although it seems that the cable never reached Secretary-General Boutros-Ghali. Kofi Annan's reaction, recorded in a document signed by the Assistant-Secretary-General Riza, was addressed to the Special Representative of the Secretary-General Booh Booh. In this document, Kofi Annan agreed that the information in Dallaire's cable should be handled with caution, but that UNAMIR was to take no action until clear guidance was given by the UN headquarters.[374] The reply to this communication from Kigali described a meeting between Dallaire, Booh Booh's political advisor, and the Rwandan Prime Minister Designate, and how in the meeting Dallaire was prepared to pursue the seizing of the weapons cache, or at least to try such an operation. Again, Kofi Annan's reply, signed by Riza, stressed that the operation described by Dallaire would go beyond UNAMIR's mandate, and that no such action was sanctioned. Thus, instead of taking action directly, Booh Booh and Dallaire were instructed to inform President Habyarimana of the weapons cache, so that he could deal with it. When he was told about the weapons cache, President Habyarimana assured the UN representatives that the matter would be looked into. Yet, it seems that there was no follow-up by UNAMIR or the UN in general, whether President Habyarimana in fact ordered the confiscation of the weapons.[375]

During the early months of 1994, the peace process was delayed. The Arusha Accords had been agreed upon, but their implementation was not proceeding as

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[374] Ibid.

[375] Ibid.

planned. The Secretary-General Boutros-Ghali continued to assure President Habyarimana of the United Nations' support to the peace process, but he also warned the President that the UN would be obliged to withdraw its presence, if there was no progress in the implementation of the Arusha Accords. Evidently, this information was used by the masterminds behind the genocide, but from the perspective of the United Nations, this was standard procedure. After all, UNAMIR was a peace-*keeping* mission, not a peace-*making* operation, requiring thus first of all a peace to keep and depending heavily on the political road map to peace as agreed to at Arusha. It appears that the UN was quite unaware or ignorant of the internal political struggles within the Rwanda government and between it and the opposition, not to mention the radical elements of the Rwandan elites, who were unwilling to share power. Furthermore, relatively speaking Rwanda was still faring well in comparison to other hot spots of the world, and thus the UN's primary attention was focused elsewhere.

In mid-February, however, in a presidential statement, the president of the Security Council expressed deep concern about the security situation in Rwanda.[376] The presidential statement was addressed to the parties to the Arusha Accords and encouraged them to stabilize the country and continue with the peace process. Despite contrasting information from the field, from for example Dallaire or Booh Booh, it appears that the unrest in Rwanda was automatically considered to have been caused by the friction between the signatory parties to the Arusha Accords. Furthermore, it seems that the Security Council's only response to the delays in the peace process was to reiterate the "threat" of withdrawing UN presence from the country, unless progress was made. Such statements were hardly threats from the genocide planners' perspective or incentives to commit to the peace process for those who would be on the losing side in the process. In fact, the UN and the Security Council undermined their own position and played into the hands of those opposing the peace process.

At the end of March 1994, the Security Council extended UNAMIR's mandate reluctantly yet unanimously. The extension was slightly less than four months

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[376] United Nations Security Council, *Presidential Statement*, 1994, S/PRST/1994/34.

with a possible review after six weeks from the extension.[377] The Secretary-General had initially suggested an extension of six months, but this proposal was not favored by the key members of the Security Council. The four-month extension was already generous by the Security Council, because it seems that at that point, the Council was already willing to abandon Rwanda. Yet, it was still hoped that with a little more time the peace process would pick up some wind, progress could be made, and that the UN efforts had not been wasted but that they would result in a success. On the other hand, there appears to have been no contingency plans besides withdrawal. From what has been possible to learn about the events, it seems that the Security Council did not entertain even the idea of the crisis being something other than a slow peace process.

During the evening of April 6, 1994, the Rwandan President Habyarimana's plane was shot down; this signaled the start of the genocide. An hour after the plane had crashed in Kigali, UNAMIR was under full alert.[378] Dallaire and Booh Booh held high-level meetings with Rwandan government officials during that night, while UNAMIR began to receive a number of calls for protection from ministers and other politicians. To give an example, the Rwandan Prime Minister sought refuge at the United Nations Volunteer compound. The acting designated security officer of the compound, Mr. Le Moal, called Riza to inform him that the use of force might be necessary in order to protect the Prime Minister. Riza, however, confirmed that the rules of engagement did not allow UNAMIR to fire unless it was fired upon. As a consequence, within a couple of hours, Rwandan soldiers entered the compound and shot the Prime Minister.[379]

During the early hours of the morning of the first day of genocide, Belgian peace-keepers, who had been stationed outside the Prime Minister's home, were confronted by Rwandan soldiers, who eventually disarmed the Belgian soldiers and transported them to Camp Kigali, where they were brutally killed. Later, the

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[377] United Nations Security Council, *Security Council Resolution 909 of April 5 1994*, 1994, SC/RES/1994/909.

[378] United Nations Security Council, *Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, 1999, S/1999/1257.

[379] Ibid.

bodies of the Belgian soldiers were left at the Kigali hospital morgue. Dallaire had attempted to save the soldiers, but his efforts were frustrated and at 21.00 o'clock of the same evening he was informed of their deaths.[380]

The brutal killing of the ten Belgian peace-keepers sparked the withdrawal of the Belgian contingent, just like the genocide planners had thought. The Secretary-General was informed of the Belgian desire to withdraw on April 12, and he conveyed the information to the Security Council in a letter on April 13. In the letter, the Secretary-General explained that UNAMIR's position would become untenable, if the Belgian contingent was not replaced by another equally well-trained and well-equipped force. On the same day, the Belgian Permanent Representative to the United Nations addressed the Security Council in a letter describing the massacres and chaos in Rwanda arguing for the suspension of the whole UNAMIR operation. The Belgian government used also other means to advocate the withdrawal of the UN forces in Rwanda.[381]

With the Belgian announcement to withdraw, the Department of Peacekeeping Operations (DPKO) outlined two main options how to continue without the Belgian contingent. The first option included maintaining UNAMIR in Rwanda without the Belgian contingent for three weeks, but this option relied heavily on several conditions, which the peace agreement parties were supposed to facilitate. The second option was to withdraw UNAMIR immediately from Rwanda except for a small, symbolic, political presence. The Force Commander Dallaire expressed his support for the first option, while when the Assistant-Secretary-General Riza presented both options to the Security Council on April 14, a combination of the two options was preferred by the Secretary-General.[382] Nigeria had suggested a draft resolution the day before. In the draft, UNAMIR would have been strengthened, but by April 15, Nigeria had changed her mind and favored option number one. The United States opposed prolonging UNAMIR's presence in

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[380] Ibid.

[381] Ibid.

[382] Ibid.

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Rwanda, but later she agreed with the United Kingdom and Russia that the second option was acceptable.

By April 19, the UN Secretariat had changed its proposal for a course of action in relation to UNAMIR. The draft proposal presented to the Security Council included not only the earlier options of complete withdrawal or leaving behind only a small presence, but also the possibility of strengthening UNAMIR's forces and mandate. Two days later, on April 21, the Security Council, however, decided unanimously to reduce UNAMIR to approximately 270 soldiers. In the resolution authorizing the troop reduction the Security Council states that it was "appalled at the ensuing large-scale violence in Rwanda, which has resulted in the death of thousands of innocent civilians."[383] Moreover, Resolution 912 called for a cease-fire, made references to the Arusha Accords, and demanded a cessation of hostilities between the government forces and the RPF. From the official UN perspective at this point, Rwanda experienced the renewal of civil war, not genocide or anything even remotely related to genocide. Thus, the UN's role was to be strictly neutral.

Three weeks or so into the genocide, at the end of April, the Secretary-General Boutros-Ghali recommended the reversal of the earlier decisions. More importantly, Boutros-Ghali suggested abandoning the notion of UN neutrality and seeking ways, including forceful measures, to end the massacres against civilians in Rwanda.[384] Still at this point, using the term "genocide" could not be agreed upon by the Security Council, and the following weeks after Boutros-Ghali's suggestion witnessed discussions and exchanges of letters in the Security Council concerning the future of Rwanda and what the UN should do in order to alleviate the crisis. The main suggestion, which was circulated in the Council, incorporated the establishment of a force of 5,500 troops with a revised mandate. Moreover, the United States suggested creating protective zones along the Rwandan border. On May 13, the Secretary-General made his formal proposal to the Security Council. In his proposal, Boutros-Ghali suggested that the Security Council

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[383] United Nations Security Council, *Security Council Resolution 912 of April 21 1994*, 1994, S/RES/912 (1994).

[384] United Nations Security Council, *Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, 1999, S/1999/1257.

authorize the phased deployment of UNAMIR II, which was to include 5,500 troops. On May 17, the Security Council adopted Boutros-Ghali's suggestion with Resolution 918, which also imposed an arms embargo on Rwanda.[385]

After the Security Council had adopted Resolution 918, the UN Secretariat concentrated its efforts on finding the required troop contributions. The Secretariat held several meetings on the matter, while Booh Booh traveled to key African countries seeking volunteers for UNAMIR II. The Secretary-General contacted personally a number of African heads of state. Some African states showed interest in contributing troops to UNAMIR, but they expected both financial and logistical assistance in return. Despite the Secretariat's efforts, on July 25, over two months after Resolution 918, UNAMIR II had only 550 troops.[386] Evidently, the lack of political will to authorize interventionist measures by the Security Council was reflected in the unwillingness to provide the necessary troops, material, and finances.

By the end of May, however, members of the Security Council were undeniably aware of the situation in Rwanda due to the Secretary-General's report dated May 31. The report provides vivid descriptions of the horrors of genocide, an estimate of casualties somewhere between 200,000 and 500,000, and a statement that the events constitute genocide. Moreover, the report makes references to information, such as the January 11 cable by Dallaire, which earlier may not have been made available to all members of the Security Council. The report also outlines the deployment of UNAMIR II in three phases, and it ends with a call to recognize the failure of the UN and the international community in general in preventing the genocide. The Security Council adopted Resolution 925 on June 8 endorsing the Secretary-General's report.[387]

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[385] United Nations Security Council, *Security Council Resolution Number 918 of May 17, 1994*, S/RES/918/1994.

[386] United Nations Security Council, *Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, 1999, S/1999/1257.

[387] United Nations Security Council, *Security Council Resolution Number 925 of June 8, 1994*, S/RES/925.

As noted above, however, there were few troop contributions made to UNAMIR II. Moreover, the earliest possible deployment date would have been the first week of July, three months after the genocide had begun. On the other hand, together with Senegal, France had approached the President of the Security Council with a letter dated June 20 suggesting the creation of a multinational operation under Chapter VII "to assure the security and protection of displaced persons and civilians at risk in Rwanda."[388] The aim of this multinational operation was to contribute to the security and protection of civilians as it was assigned to UNAMIR II until the UN force arrived in Rwanda. After two days of consultations, the Security Council agreed to accept the French initiative, and on June 22 the Council adopted Resolution 929, which authorized the establishment of a temporary multinational operation for humanitarian purposes.[389] This intervening force was lead by France and became known as *Operation Turquoise*.

Surprisingly, on July 14, in its presidential statement,[390] the Security Council expressed alarm of the continued fighting in Rwanda and demanded an immediate cease-fire. Even more surprisingly, the Council urged a return to the political framework provided by the Arusha Accords, despite the fact that the genocide had basically left only the extremists in Kigali. In spite of these calls, the RPF continued its advance, and by July 18, it controlled Rwanda except for the humanitarian zone controlled by *Operation Turquoise*. On the following day, Mr. Bizimungu was sworn in as the new President of Rwanda: "About one hundred days after it began, the horrific genocide in Rwanda ended, leaving deep and bitter wounds behind."[391]

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[388] United Nations Security Council, *Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, 1999, S/1999/1257.

[389] United Nations Security Council, *Security Council Resolution Number 929 of June 22 1994*, SC/RES/1994/929.

[390] United Nations Security Council, *Presidential Statement*, 1994, S/PRST/1994/34. (S/PRST/1994/34).

[391] United Nations Security Council, *Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, 1999, S/1999/1257.

JUSTIFICATIONS OF INACTION & THE RWANDAN GENOCIDE

The international responses to Rwanda changed dramatically during the Rwandan genocide in the summer of 1994. Yet, although the initial indifference and focus on the renewal of the civil war was transformed into recognizing the genocide, it is clear that the international community could have done more, and faster, had the political will been strong enough. In this last section of the chapter, I examine the French and American justifications of inaction. As was argued earlier, in such cases as the Rwandan genocide, the international community shares a responsibility to act. The justifications of inaction, on the other hand, support the existence of the responsibility, even long before the publication of the R2P report. After all, the justifications of inaction attempt to counter the arguments that something ought to be done.

The French and American arguments for not intervening in Rwanda were to an extent quite similar, although the Americans made use of more varied arguments, while the French emphasized a few key points in their justifications of non-intervention. One argument, which both states made almost throughout the crisis, was the denial of genocide. Both France and the United States denied that the crisis was genocide, or that genocide was part of the civil war. This denial took many forms. On the one hand, France and the United States used silence as their arguments. They simply made no references to genocide, or even refused to discuss the matter in those terms. On the other hand, both the French and the Americans insisted on the interpretation that the crisis was simply due to the renewal of the civil war, and that a cease-fire ought to be established so that the Arusha Accords could be implemented.

The denial of genocide was naturally linked to an argument that because there was no genocide, there was also no obligation or responsibility to intervene. Evidently, if the French and the American administrations could maintain ambiguity about the situation in Rwanda, they could continue to justify their inaction by referring to the uncertainty of the situation, and that dialogue was either sufficient or the best course of action until better understanding of the situation was reached. Naturally, the presence of the Rwandan interim

government in the Security Council helped to maintain this perception of the situation to the other members of the Security Council, especially to those members who had limited independent information about the situation in Rwanda.

The second argument, which both France and the United States used, was that Rwanda represented a so-called failed state, where international military intervention could achieve little. The situation in Rwanda was compared to the recent disaster in Somalia. Allegedly, the lessons to be drawn from Somalia were that the international community's hopes of bringing stability into chaotic circumstances were unrealistic, regardless of the humanitarian imperatives. The analogy was justified by perceiving the Rwandan conflict as having tribal origins, where the people had simply decided to solve their problems with machetes. Perhaps the use of low-technology weapons in executing the genocide eased the further justification that outside powers had no right to intervene in such a situation, and what were they do anyway, when they had already brokered a peace agreement, which was not respected? Again, the Rwandan representative in the Security Council strengthened this image of tribal hatreds boiling over with his references to "spontaneous violence."[392]

In addition to the above justifications, the United States used also other arguments to support her position on non-intervention. One of these arguments was made in reference to Somalia, and how the American government could not justly demand its soldiers to risk their lives in an operation, which was not related to American interests, and which would take place in a faraway country for an unknown duration. Samuel Huntington captured this kind of reasoning well, when he argued that states have no right to risk the lives of their soldiers for possibly saving strangers.[393]

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[392] Arthur Jay Klinghoffer, *The International Dimension of Genocide in Rwanda* (Basingstoke, England: Macmillan, 1998), 46.

[393] Quoted in Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 31.

Another argument by the United States for not intervening in Rwanda did not deny that intervention might be desirable but that the United States could not solve all the world's problems, or build nations or states for other peoples. Thus, if others were ready to act, the United States did not object, but she was unwilling to become involved. The Americans were correct in arguing that the world's problems do not belong to the United States, yet as the most powerful state in the system, it would be naïve to consider that the privileged position of the United States incorporated only rights and privileges and not also responsibilities. Moreover, when some African states expressed their readiness to contribute troops – although poorly equipped – to the UN force, the United States refused to provide material or financial support. In other words, the United States was unwilling to risk the lives of her soldiers as well as to participate in other ways.

A third main argument used by the United States underlined the necessity to be selective in both the American as well as in the UN commitments. The Clinton administration seems to have been determined to draw a line, and that it was only an unfortunate coincidence that the line was drawn in 1994, when genocide ravished Rwanda. For the most part, the necessity of being selective was due to similar reasons as mentioned above about the risks and costs but also due to the domestic pressure which the Clinton administration faced at home.

The domestic pressures, faced by the Clinton administration at the time were partially related to the huge American national deficit and international debt. The same reasons were behind the fourth justification of inaction by the Americans, namely the costs of UN operations and the attempt to cut expenditures. After all, the United States was already the single largest contributor to the UN system and UN peace-keeping operations, and UN operations were hardly famous for their cost-efficiency. Thus, the United States stated her unwillingness to create further expenditures for which she would be liable.

If raising the present discussion on a higher level, the various arguments, which the French and the American used to justify non-intervention in Rwanda, could be grouped together under four general headings. In other words, the four main types of justifications of non-intervention were: 1) Rwanda was not genocide; 2)

there was a high risk to intervening troops; 3) the responsibility to act should not be translated into the responsibility of a single member or a handful of members of the international community; and 4) the costs were simply too high especially within the general context and during the particular time period. I shall examine the plausibility of each type of justification in light of their contexts while keeping the "Varying Degrees of Responsibility" model in the background in this evaluation.

The first type of justification for non-intervention countered claims of genocide. As discussed in the preceding chapters, genocide constitutes the clearest example, where the international community shares a collective responsibility to act on behalf of the victims, and possibly also to punish the perpetrators.[394] For the responsibility to apply, however, there must be evidence and knowledge of an occurring genocide. In the Rwandan circumstances in 1994, the situation was chaotic and reliable information was not available during the first weeks of the genocide. It was possible to interpret the events as part of the renewed of civil war, although perhaps it may have been an extension to describe the events especially in Kigali as typical of a civil war. Yet, after a couple of weeks, when the genocide was in full swing, it is doubtful that the French and Americans were ignorant of what was happening or of the direction which the events had taken. The scale of violence in Rwanda was unprecedented, and both governments received information and signals from their own, independent sources, from the UN mission in Kigali, from the humanitarian organizations, and from the media, all of which were pointing towards genocide or at least towards massacres of innocent people on a massive scale. Given such signals and information, the responsibility model would suggest that both the French and the Americans, as examples of privileged actors in relation to the crisis, should have investigated the matter further and shared their discoveries with the international community, because both governments were involved in the region, in the peace process at Arusha, and moreover, both governments possessed intelligence gathering capabilities unmatched by other actors in the region.

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[394] Unfortunately this thesis cannot focus on punishment in such circumstances.

The second kind of justification of non-intervention was based on the argument that given the situation in Rwanda, the intervening forces would face a mortal risk. It is only correct that governments of states are concerned about the risks they impose on their soldiers, especially in situations where it is uncertain what could be the effect of the use of force. It was especially the American government, which expressed that Rwanda posed a too high risk with little uncertainty of the possible gains. Yet, it is strange how at the same time African governments were ready and willing to volunteer the troops, but the United States refused to assist in their preparations by providing equipment. Certainly, it could be the case that the African governments saw an opportunity to upgrade their equipment. Nevertheless, they were willing to provide the necessary personnel unlike Western governments. Thus, from the perspective of the responsibility model, the offer by the African governments should have been followed better and some compromise reached, given the severity of the crisis and the likely positive impact of an intervention.[395] The last remark might be possible only with hindsight, yet it should have been obvious that the crisis could only worsen, if the international community did nothing.

The third type of justification of inaction argued that the responsibility to intervene was a collective responsibility, and that it could not be interpreted as the sole responsibility of the rich and the powerful. As discussed in relation to responsibility in general in chapter three, this argument has its merits, and it is correct in many ways: collective responsibilities do not translate easily into individual responsibilities. Yet, as the responsibility model attempts to show, collective responsibility does not mean that it would be necessarily wrong to expect the individual members to contribute unevenly towards fulfilling the collective responsibility. Moreover, in the Rwandan case, the Americans were neither the only ones who were expected to act nor expected to bear the burden alone. Instead, the expectation was that for example the United States would have supported and contributed something to the UN force UNAMIR, which was already in Rwanda, or perhaps to the realizing of the African troop contributions willing to strengthen UNAMIR. Alternatively, the United States could have offered

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[395] See ft. 370.

her leadership or assisted the UN Secretariat in its efforts to put together UNAMIR II. In other words, the responsibility model would have distributed some of the expectations on the United States, because of her special and relative competencies, which other actors possessed less or not at all. The United States was not expected to act alone but to work with the international community in order to bring a solution to the crisis in Rwanda. Instead, the United States appeared to oppose most suggestions, which were made in relation to the grave humanitarian crisis.

The fourth and final type of justification of inaction focused on material or economic costs. From a moral perspective, economic arguments may appear banal, when the question is about justifying inaction or standing by to genocide. Nevertheless, in the "real" world costs cannot be neglected, and it might be true that a given actor was unable to contribute financially. Such arguments, however, are less understandable when they are made by rich actors. In the Rwandan case, for example the American administration was arguing over some millions of dollars, when at the same time the United States' GDP was approximately $7,000 billion. To give two other examples, which ought to put the American argument into perspective, one needs only to consider the vast sums the United States spent during the Cold War, or currently in Iraq, or the prize, which was promised for the capture of Saddam Hussein, a single individual. Furthermore, once the genocide was over due to RPF victory, the Clinton administration managed to find some $300-400 million for the humanitarian mission to help the refugees. One can only wonder what those funds might have achieved during the early weeks of the genocide. Thus, the plausibility of costs as the justification of inaction seems doubtful, because the United States was not obliged to pick up the whole bill, at least under the responsibility model, but to contribute towards the costs.

In sum, the French and American justifications of non-intervention in Rwanda fared poorly in light of the "Varying Degrees of Responsibility" model. The arguments and justifications as such might have fared better under different circumstances, or if they had been made by some other actors. On the other hand, had the same actors had at their disposal the responsibility model, they would

have been in a better position to justify their inaction, which they obviously desired, with the help of better suited arguments. Instead of using the arguments they did, such actors as the United States and France could have drawn attention to the contributions they were already making with the help of the way of thinking and arguing as described by the responsibility model. In other words, as the above discussion shows in relation to the Rwandan genocide and the justification of non-intervention, which were used in relation to it, the "Varying Degrees of Responsibility" model offers a tool for not only "distributing" responsibility and determining how to share the burden among the members of the collective, but it also offers a tool for evaluating the justifications for not fulfilling the responsibility or one's share. Finally, the fact that France and the United States engaged in a debate, in which they justified and excused their courses of action, is very telling of the practice of international politics.

CHAPTER SIX:
LESSONS LEARNED

Ἄνθρωπος, φύσει ζῶον πολιτικόν.[396]

INTRODUCTION

It should not be surprising that the social world differs greatly from the world of nature. Not only are the objects of study fundamentally different but human "activity is characterized by an inner psychic dimension that is absent in phenomena studied in the natural sciences."[397] Yet, whether due to "physics envy"[398] or for other reasons, the pursuit of "science," especially in relation to politics, has suffered from the attempt to equate social sciences with the natural sciences, most notably in the way "science" is conducted. For a long time, scientific inquiry was, and to a large extent still is, restricted to a few methodologies that have been deemed "scientific," while alternative approaches have been underappreciated. Moreover, not only is it questionable to mold one's object of study to fit one's methodologies, but it is a greater offense to disparage the complexities involved in the objects of study for the sake of parsimony in both natural and social sciences. Regardless of the understandable desire for parsimony, it should not be an end in itself, perhaps accomplished at the expense of significant details, which "inconveniently" complicate our theories about the world. The world is complex, and the whole might sometimes be more than the

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[396] Ἀριστοτέλης, Πολιτικά Α, 1253 α. For English, see e.g. Aristotle, *Politics*, trans. Trevor J. Saunders (Oxford: Clarendon Press, 1995).

[397] Michael T. Gibbons, "Hermeneutics, Political Inquiry, and Practical Reason: An Evolving Challenge to Political Science," *American Political Science Review* 100, no. 4 (2006): 564.

[398] See e.g. Friedrich Kratochwil, "The Embarrassment of Changes: Neo-Realism as the Science of Realpolitik without Politics," *Review of International Studies* 19, no. 1 (1993); Michael McKinley, "The Co-Option of the University and the Privileging of Annihilation," *International Relations* 18, no. 2 (2004): 167-68.

sum of its parts, thus yielding an added value from systemic or structural perspectives.

Simplification, however, has also its uses. Despite the complexity of the world, or that social interaction is never self-explanatory but interpreted, it serves no purpose to over-complicate matters, especially when short-hands can drive home the message. Sometimes, as for example a good defense lawyer will testify, less is better. Depending on our purposes, it might be irrelevant to focus on the details, especially in cases, which could be described as typical or exemplary. In such cases, we need not spend too much time going over the details, but the "simple" concepts we use do the work for us. Nevertheless, we should not fool ourselves by thinking that the "simple" concepts we use reflect the simplicity of their reference points. Thus, despite the fact that "ball" refers to a spherical object, the players of American football use a "pigskin," which is prolate spheroid, or in other words oval. Yet, despite the obvious mismatch, the players of American football play with a ball, and despite the game being called "football," feet seldom touch the ball. Similarly, "democracy" refers to a particular form of government, but whether a particular form of government is democracy, is another question, which only the particulars of the given case can "answer." Here, by answering I am most certainly not implying that the things speak for themselves, and that all we need to do is to listen carefully. Rather, we are both the questioners and the providers of answers, which we give based on our theories about the world and the objects we study.

The answers we give, or the knowledge we produce in the social sciences may differ greatly from the knowledge that can be produced in the natural sciences. For instance, in the natural sciences, "laws" might be "discoverable" like the law of gravity, but in the political sciences such "laws" as for example the democratic peace will remain as descriptions of tendencies rather than as laws in the previous sense. For one, because in the political science the objects of inquiry are not inanimate but capable of independent thought and decision-making, and because they can thus learn, we can never be sure whether we are "truly" correct, or for how long our conclusions are valid. There have been, however, attempts to rationalize behavior in terms of for example expected utility or by considering

what the "rational person" would do in a given situation.[399] Nevertheless, for example the "rational person" seems more like a political project, which argues for a particular kind of behavior or attitude towards problems rather than a good model of actual human behavior. Moreover, to derive expectations from such models would still remain as educated guesses rather than as precise predictions. To give an obvious example, without strong underlying assumptions one is hard-pressed to justify the rational behavior of tying twenty kilos of explosives to one's person and igniting them in the middle of a crowded place, yet suicide bombings have become more frequent in the past couple of decades. Certainly, it is possible to find *a* rationality which would explain such behavior, but it would seem odd to claim that such concept of rationality is universally valid. The point is, rather, that even if scientific study is imagined to be akin to peeling the layers of an onion,[400] the metaphor deceives us because unlike with an onion which has its last layer, we can innovatively find new ways with which to "go on" with our research and "discover" new layers or even realize that there is no "onion" but something else.

Yet again, the "discovery" of new layers should not be an end in itself in conducting science. We are interested in being able to say something about the social world that we can relate back to it so as to have some practical significance, or at least interesting insights, to what we have learned. In many cases, the practical application of for example political studies or sociology translates into policy recommendations to decision-makers, who need to ground their decisions, whether to a domestic or to an international audience. Here, science can be helpful, because it not only provides highly convincing arguments in order to justify a given decision, but it can also help in choosing among competing options. The trouble is, naturally, that "science" has seldom direct, single answers to given questions, this being especially true in the social sciences. One thinks of for example the standard undergraduate essay answer, in which three different

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[399] See e.g. Peter Abell, ed., *Rational Choice Theory* (Aldershot: Elgar, 1991); James S. Coleman and Thomas J. Fararo, eds., *Rational Choice Theory: Advocacy and Critique* (Newbury Park: Sage, 1992); Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge, MA: Harvard University Press, 1971).

[400] One encounters this metaphor occasionally. See e.g. University of Pennsylvania, "The Importance of Understanding Science: An Interview with David Balamuth," 1997). Available at <http://www.sas.upenn.edu/sasalum/newsltr/winter97/Balamuth.html>.

answers are compared and contrasted. Depending on the student and his or her argumentation, any one of the three answers might be the "best" answer according to the student in question. One should note here, however, that I do not imply relativism, where everything is possible and equally acceptable. Rather, I am merely emphasizing that the way we argue has as much to do with the evaluation of the conclusions as with the "facts."

This thesis has made a number of points and argued in a manner, which is not necessarily typical to the field. This last chapter is dedicated to some stock-taking and to looking back at the previous chapters in order to draw some conclusions in relation to the topic as well as in relation to the way this thesis has been argued. Thus, I shall continue the present discussion by drawing from each previous chapter as a final conclusion.

A POINT OF DEPARTURE

This thesis began with a simple idea of reversing the main traditional assumption in relation to humanitarian intervention, namely that attention to non-intervention in grave humanitarian crisis is required rather than to the right to intervene in such crises. Thus, instead of attempting to build a case proving the existence or the desirability of the right of humanitarian intervention, it was assumed for heuristic purposes that the right exists. Having done so, the examination of the relevant literature took a different perspective than what would have been the case otherwise, and it was possible to move beyond the usual debate surrounding humanitarian intervention,[401] at least from the rights perspective.

One of the most striking features of the humanitarian intervention debate is the silence of the opposing side, especially if it is compared to the advocates of intervention. After the beginning of the debate in the 1970s, it is difficult to find authors who explicitly argue against humanitarian intervention,[402] at least in its ideal form as helping innocent people in dire straits. In contrast, the number of authors advocating for humanitarian intervention is numerous.[403] Publishing or contributing to the humanitarian intervention debate was popular especially during the 1990s, after which interest seems to have waned, and there seems very little one can say about the topic, which has not already been mentioned by several authors. Yet, the whole issue of humanitarian intervention, not to mention the debate surrounding it, is very telling of the shifts that are taking place within international politics. For example, the amount of literature on humanitarian intervention, of which not all is original, shows the assumptions that are made about international politics and also the fears which might allegedly be overcome by repetitive assurances that allowing for humanitarian intervention will not result in chaos.

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[401] See e.g. J. L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003).

[402] A rare defense of non-intervention can be found e.g. in Edward N. Luttwak, "Give War a Chance," *Foreign Affairs* 78, no. 4 (1999).

[403] See chapter two for a discussion of the humanitarian intervention debate.

I would argue that the issues in relation to the humanitarian intervention debate can be compared with the fear of opening Pandora's Box, and that it is the desire to counter this fear to such an extent that it becomes the driving force behind the repetitive efforts to ground the right of humanitarian intervention either in the practice of international politics or in international law. Understandably, humanitarian intervention was seen as a violation of sovereignty and the rule of non-intervention. Any such violation appears to open the door for the unrestricted abuse of the right of humanitarian intervention for selfish purposes or as facades of power politics. Allegedly, there are enough excuses already for violence without the need to legalize another one.[404]

The fear of opening Pandora's Box by recognizing the right of humanitarian intervention is, however, more imagined than "real." For one, it appears that apart from arguing over the definition of "humanitarian intervention" or who the right-holder is or should be, the debate as it was before the R2P report had little to offer.[405] Moreover, it is odd that the discussion did not focus on *rights* despite focusing on establishing *a* right. In other words, the debate sought to allow for the right of humanitarian intervention, but the right itself, if established, was perceived as uncomplicated and as "given" in the sense that a right is a right. Clearly, not all rights are similar and there are many different kinds of rights as was discussed in chapter two. In contrast, to an extent in the discussion there appeared to be a notion that rights are more or less similar, and that it was enough to polish one's definition without asking how this particular right might differ from other kinds of right. Equally confused was the implicit assumption by the opponents of the right of humanitarian intervention that allowing for the right to a particular actor or actors could somehow lead to a general possession of the right by all who so desired. As the discussion in chapter two sought to

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[404] In this context one might reflect with a classic article: Thomas M. Franck, "Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States," *The American Journal of International Law* 64, no. 4 (1970). See also Walden Bello, "Humanitarian Intervention: Evolution of a Dangerous Doctrine," (Focus on the Global South, 2006). Available at <http://www.focusweb.org/humanitarian-intervention-evolution-of-a-dangerous-doctrine.html?Itemid=26>.

[405] The R2P report refers to the following report: International Commission on Intervention and State Sovereignty, "The Responsibility to Protect," (Ottawa: International Development Research Centre, 2001).

demonstrate, rights are not as simple as they are usually considered, even when examining only one right. As was argued, the one right, namely the right of humanitarian intervention, is complex and in fact covers a bundle of rights of various kinds. Thus, while focusing on the idea that the right of humanitarian intervention is somehow set in stone and we can either accept or reject it, it is forgotten that as the creators of rights, we are also able to restrict, modify, and determine their use.

Another aspect of what I have called the fear of opening Pandora's Box is the notion of abuse, namely that the right of humanitarian intervention would be used towards selfish interests. In some respects, such ideas border on schizophrenia. It is as if on the one hand one recognizes that social things can be modified and "used," but at the same time one denies any control over the possible changes or the acceptable uses of the right of humanitarian intervention. Although true that authors have no privileged position regarding their "texts" and that there is no (meaningful) private language, it seems nevertheless remarkable to think that allowing for a right to intervene, by a limited number of actors, under extraordinary circumstances, could result in chaos or relativism, where states would suddenly send their armies across borders in the pursuit of "power" or something similar. This line of thinking is even stranger, because one is left with the impression that there are currently none or very few similar concepts, which could be used to justify selfish ends. Naturally, this is mistaken, as the concept of "self-defense" illustrates: self-defense was the main justification of humanitarian interventions during the Cold War according to Wheeler.[406] In addition, denying the legitimacy or legality of humanitarian interventions would safeguard neither against determined humanitarian interveners nor against other attempted abuses towards self-interested goals. There is much truth to the proverb: where there is will, there is a way; this being true especially regarding political will. One should remember, however, that an attempt to justify one's action with reference to, for example, humanitarian imperatives, or by claiming humanitarian intervention, is dependent on its inter-subjective success with the acceptance of those

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[406] Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

justifications in relation to the circumstances by other actors. In other words, as seen with the operations of Afghanistan and Iraq, simply claiming to be committing a humanitarian intervention does not guarantee that the act is seen as such.[407] If language is inter-subjective, so is politics, and it is no different whether it is domestic or international politics.

A third part of the fear is the perceived threat that other central aspects of international politics and its system or structure are either undermined or compromised. Clearly, admitting for the right of humanitarian intervention would require us to rethink sovereignty and the rules of non-intervention, and especially the acceptable exceptions to these two. Yet, to hold on to concepts as if they could be frozen seems naïve. Despite the best efforts to perpetuate the tale of Westphalia, and how the current state system has been more or less the same since Osnabrück and Münster, sovereignty has a different meaning in the contemporary world than what it had for example in the seventeenth century.[408] Similarly, it would be inappropriate to examine the past by using the contemporary meanings of concepts. Moreover, not only are the meanings of our concepts tied to specific points in time, they can also have different meanings depending on the context. To give a few obvious examples, one could consider for example the differences in the "sovereignty" of the United States, the Order of Malta,[409] and "quasi-states,"[410] not to mention what it means to be sovereign as part of the European Union. Moreover, as the R2P report shows, not only do our concepts evolve "semi-independently" in the sense that the change is the net effect of numerous factors, but there can be conscious projects to change them.[411]

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[407] See e.g. Human Rights Watch and Ken Roth, "War in Iraq: Not a Humanitarian Intervention," (Human Rights Watch, 2004: May 10). Available at <http://hrw.org/wr2k4/3.htm>.

[408] See e.g. Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth," *International Organization* 55, no. 2 (2001).

[409] The Sovereign Military Hospitaller Order of St. John of Jerusalem of Rhodes and Malta, or the Sovereign Order of Malta, has been recognized as an independent subject of international law.

[410] Robert H. Jackson, *Quasi-States: Sovereignty, International Relations, and the Third World* (Cambridge: Cambridge University Press, 1990).

[411] Here one thinks for example reports by international commissions. See e.g. Ramesh Thakur, Andrew F. Cooper, and John English, eds., *International Commissions and the Power of Ideas* (New York: United Nations University Press, 2005).

Hence, to treat for example sovereignty as never-changing would be missing the mark.

In sum, the fear of opening Pandora's Box rests on certain assumptions about the nature of international politics and the social sciences, some of which might be warranted but most of which are mistaken. God did not give physics the easy problems;[412] it is just that what is to be explained and understood in physics, and how it can be done, differs from the questions we can pose and from answers we can give in the social sciences.[413] By simply trying to imitate the natural sciences, it is no wonder that social scientists find themselves frustrated, or that the "laws" they can generate are close to trivial.[414] Similarly, the fears concerning the right of humanitarian intervention should not surprise us, if we persist to neglect the fact that the world continues to move on without the approval of our theories. Lastly, and as I have attempted to show throughout the thesis, allowing, for example, the right of humanitarian intervention may raise new questions but they are not impossible to answer.

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[412] Steven Bernstein et al., "God Gave Physics the Easy Problems: Adapting Social Science to an Unpredictable World," *European Journal of International Relations* 6, no. 1 (2000).

[413] J. M. Ziman, *Reliable Knowledge: An Exploration of the Grounds for Belief in Science* (Cambridge: Canto, 1991).

[414] Steven Bernstein et al., "God Gave Physics the Easy Problems: Adapting Social Science to an Unpredictable World," *European Journal of International Relations* 6, no. 1 (2000).

ON RESPONSIBILITY

The first half of this thesis focused on responsibility. As a first step, the traditional assumptions within the humanitarian intervention debate were scrutinized in order to excavate the link between the right of humanitarian intervention and its possible corresponding responsibility. Clearly, a duty to intervene is not implicated by the right, but as I have argued responsibility is implicitly assumed in the pro-humanitarian intervention arguments. This is especially true the graver a particular humanitarian crisis is and *vice versa*. This conclusion was strengthened with the help of a Hohfeldian typology of rights,[415] which indicated that the right itself merits a focus on responsibility. The difference is, however, that where the pro-humanitarian intervention arguments assume responsibility to arise from the existence of the right, the typology of rights clarified that responsibilities originate from an act of authorization – in other words from passing on the right – or from possessing the right. Thus, it might be a confused argument to claim that the right of humanitarian intervention denoted a correlating responsibility to intervene, but it would be accurate to state that having been invested with the right by for example the international community or by the Security Council the possession of the right implies responsibility at least in the sense of responsibility to exercise the right and possibly also its responsible use. International responsibility, especially international collective responsibility, is however an understudied topic in international politics, and it would deserve more attention.

International law recognizes international responsibility, yet within international law the meaning of international responsibility is usually reserved for references to treaty obligations or similar.[416] As the conceptual discussion on responsibility showed in chapter three, responsibility differs from obligations and duties, and it is a value-laden behavioral description, if not also a prescription. In other words, being responsible denotes certain kind of behavior, and to place responsibility for

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[415] The typology that was used was based on the one outlined in Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, ed. David Campbell and Philip Thomas (Aldershot: Ashgate, 2001).

[416] See e.g. International Law Commission, "State Responsibility," in *The Work of the International Law Commission* (New York: United Nations, 2004).

example on the Security Council regarding grave humanitarian crises is to impose certain expectations on the Council and to prescribe how the Council should behave or act under given circumstances. This kind of positive behavioral prescription with highly normative undertones seems less than familiar to international law and also to the study of international politics, at least on a higher level. Sure enough, there are many studies or arguments for states to "do good" – for example the whole pro-humanitarian arguments are such an attempt – but there is a qualitative difference between seeking to enable particular acts and arguing that international actors ought to behave responsibly by default. By extension, the latter argument refers to a community, of which one can be a member if one behaves in a certain fashion. One imagines a social system, which is structured in a particular fashion, and in which certain behavioral norms are unconsciously perpetuated. Perhaps one might associate such a system to a metaphorical "global village" of states, which would not include all states but those who follow the particular behavioral norms. These, in turn, determine the daily life and interaction among other things.[417] Whether this metaphor of a "village" is a worthy pursuit of further study remains to be seen.

The above addresses also the difference between having a right and something being right. From a mainstream IR theory perspective, questions whether something is right – in the sense of fair, just, or righteous – are usually not asked. On the other hand, the whole discussion about the international community's responsibility vis-à-vis grave humanitarian crises and their victims is directed at establishing a place for morality and "good" behavior at the international level. It is an ambitious project. The earlier project, which tried to settle the right to intervene, was undermined from the start, because even if there was such a right, no guarantees of its use existed or could exist, at least not without the necessary references to an assumed or implied responsibility. Thus, although this newer project jumps straight into the question of responsibility, it is nevertheless

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[417] Martin Shaw's idea of a "global state" might come to mind in this context, but his "global – Western state conglomerate" is simply not global enough for the metaphorical global village used here. See Martin Shaw, *Theory of the Global State: Globality as an Unfinished Revolution* (Cambridge: Cambridge University Press, 2000). By global village I am referring to how perhaps tribal villages may function, and how their internal as well external relationships are maintained. As I said, however, this is a mere idea at the moment and perhaps not worth pursuing any further.

equally troubled. For one, the project requires that the actors themselves recognize their responsibility, and that they share a similar understanding of what it means to be a responsible member of the community. Of course, there are no guarantees that this would happen, and it might not be in the interests of most actors to adopt such a world view. After all, adopting this "global village" world view would certainly entail costs without promising many rewards in return. Second, the specter of borders and locating political accountability raises its ugly head. How is one to draw the boundaries between jurisdictions, whether political, legal, or other kinds of jurisdictions? Some might point to global governance studies[418] and argue that these questions can be answered without global government. On the other hand, loyalties, and especially conflicting loyalties, are most likely to remain central in social organization. Thus, one doubts whether boundaries can be neglected, and it is exactly the division of those boundaries, which deserves our attention.

The boundaries we draw respond to our understanding of who is responsible, for what, and to whom. These are the three core questions of responsibility, and they have received very different answers in history. It seems that at the international level we might be moving towards an understanding where states are becoming answerable not only to themselves and their respective citizens but to the international community, which in turn is also accountable to "humanity." Human rights may have become the new standard of civilization,[419] at least as a "measurement" tool, and they have gained ground as accepted concerns for foreign states and international organizations.[420] It could also very well be that states are finding it increasingly difficult to ignore their human rights commitments.[421] Thus, it seems that we are taking a further step in allocating the

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[418] See e.g. Martin Hewson and Timothy J. Sinclair, eds., *Approaches to Global Governance Theory* (Albany, NY: State University of New York Press, 1999).

[419] See e.g. Jack Donnelly, "Human Rights: A New Standard of Civilization?," *International Affairs* 74, no. 1 (1998).

[420] Ibid.

[421] Andrew Hurrell, "Power, Principles and Prudence: Protecting Human Rights in a Deeply Divided World," in *Human Rights in Global Politics*, ed. Timothy Dunne and Nicholas J. Wheeler (Cambridge: Cambridge University Press, 1999). See also e.g. Human Rights Watch and Sophie Richardson, "Letter to Prime Minister Fukuda Regarding President Hu's Upcoming Trip to Japan," (Human Rights

lack of respect for basic human rights not only to the particular state, within whose territory the violations take place, but also to the wider international community for allowing such violations to continue.[422]

The efforts to make the international community accountable for massive violations of basic human dignity and life, such as the R2P report, might seem unsuitable from the perspective of international law. International law, which could be described in many respects as minimalist, might require quite fundamental changes before the content and meaning of the report could be accommodated within it. The International Commission and the R2P report, however, seem to emphasize a particular reading of international law. The R2P report is neither a legal document nor a legal argument, but there are indicators, which point to a new reading of existing international law. Moreover, this new reading could be perhaps best described as an attitude towards international law and the purpose it serves. It is as if the R2P report advocates for a particular kind of "neighborhood watch" mentality at the international level with respect to grave humanitarian crisis. Whether a reading of international law based on such a mentality is possible without challenging the fundamental aspects of current international law remains to be seen.

The extra-legal aspects, such as behavior or a mentality, lie at the heart of the topic of this thesis. The law, after all, cannot explain by itself why its subjects abide by it or why for example states choose to uphold their treaty commitments. Sure enough, some might point to power or interests as the reasons behind law abidingness but there are certainly occasions, when subjects of law abide by it without there being neither clear interests at stake nor power disparities at play. Moreover, the same extra-legal aspects are also part of politics and how politics is and ought to be conducted, and whose denial through either negligence or by

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Watch, 2008). Available at <http://china.hrw.org/press/news_release/letter_to_prime_minister_fukuda_regarding_president_h us_upcoming_trip_to_japan>.

[422] See e.g. Human Rights Watch and Sophie Richardson, "Letter to Prime Minister Fukuda Regarding President Hu's Upcoming Trip to Japan," (Human Rights Watch, 2008). Available at <http://china.hrw.org/press/news_release/letter_to_prime_minister_fukuda_regarding_president_h us_upcoming_trip_to_japan>.

trying to find technical solutions is missing the mark. To give an example of a theme that has run throughout this thesis: the use of discretion seems to be often overlooked both in law and politics, especially when technical solutions are suggested. For example, best practices might serve as good guidelines but they should certainly not be followed blindly or relied upon without the use of discretion.[423] It is remarkable to what extent for example the study of international politics seems to hold on to ideas that the objects of its study can be examined as inanimate objects. Sometimes states have been described as "billiard balls"[424] or otherwise coherent wholes with an inside/outside,[425] or as determined by structure(s),[426] in the sense that they can be reduced to uncomplicated objects neglecting their subjectivity and authorship. Clearly, states are better described as complex organizations, but understandably it is often necessary to simplify matters. To consider, however, that these simplifications would somehow capture or correspond to the things "out there" would be as mistaken as basing one's default understanding of argumentation on a special case of arguments,[427] as was discussed in chapter one.

In sum, for international responsibility to be meaningful, not only are we faced with new questions about how to conceptualize it, how to "allocate" it in practical terms, and how particular connections and relations within a social structure are shaped by responsibility, but we are also challenged to reconsider what is the purpose of international law and what is the *politics* in international politics and how it is and ought to be conducted.

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[423] For a curious, "proven" solutions, see e.g. UN-Habitat, "Best Practices: Database in Improving the Living Environment," (2006 edition).

[424] Arnold Wolfers, *Discord and Collaboration: Essays on International Politics* (Baltimore: Johns Hopkins University Press, 1962), 19-24.

[425] In this context one should have a look at R. B. J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993).

[426] This could be a neo-realist perspective á la Waltz. See Kenneth Neal Waltz, *Theory of International Politics* (Reading, MA: Addison-Wesley, 1979).

[427] See S. E. Toulmin, *The Uses of Argument* (Cambridge: Cambridge University Press, 2003).

"VARYING DEGREES OF RESPONSIBILITY" AND GENOCIDE

In the latter half of this thesis the conceptualization of "responsibility" was illustrated with the help of a model and a thought experiment. Both the model and the thought experiment served to demonstrate the functioning of international collective responsibility, at least as it has been understood within this thesis.

The developed model of collective responsibility could be described as a dynamic model of graded responsibility. At first, varying degrees of responsibility may seem like an odd concept. After all, we are normally interested in knowing whether a particular actor is responsible for something or not; one is not forty percent guilty but either guilty or innocent. Yet, in attempting to make sense of a universal responsibility – something that could easily translate into nobody's responsibility if everyone is responsible – there is a need to establish some criteria for allocating shares of the responsibility. In a similar vein in a criminal case, despite a group of people committing an armed robbery, not all members of the group receive similar verdicts, if they are caught and tried in a court of law. At the international level, then, if the international community is collectively responsible for protecting the innocent, and if at the end of the day we are the international community through the structures we have created, how are we to make sense of this responsibility? This was the question the "Varying Degrees of Responsibility" model sought to answer.

In the model, a set of criteria was suggested, yet no attempt was made to create an exhaustive list. The reason behind this is a simple one: the whole notion of responsibility implies that matters cannot be predetermined once and for all but one must remain sensitive to the particulars of each case and situation. Thus, what was presented was a collection of criteria, which allowed one to see the logic behind the model without predetermining or limiting its use, and which allowed one to apply the logic in other issues as well. Thus, similar to casuistry,[428] principles rather than clear-cut rules or "laws" do the work in the model.

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[428] See e.g. A. R. Jonsen and S. E. Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (London: University of California Press, 1989).

The principles behind the responsibility model acknowledge that there are significant differences between the actors in question. Thus, for example, states are considered to be "individuals" in the sense that despite being states, they have individual characteristics, which differentiate one state from another.[429] Traditionally, great powers have received most attention and they have been distinguished as the core of the international system. Admittedly, though, on some occasions small states have also received due consideration.[430] Yet on the whole it seems that lumping together certain kinds of states, whether into groups of great, medium, or small powers, or according to wealth based on for example the Gross Domestic Product, might entail costly pay-offs in some cases. Although practical as short-hands, these labels cannot for example predict the future to any reliable extent. More than once in the recent history have the so-called small powers resisted a great power to an unpredictable extent.[431] Thus, instead of labeling actors and then distributing responsibility, the model considers each actor in relation to the other actors on a variety of criteria. By so doing, the model also addresses expectations.

The principles in the responsibility model form a particular type of distributive justice. Instead of distributing wealth or goods, the normative principles distribute a share of expectations towards fulfilling a collective responsibility among the members of that collective. Here one should note that responsibility as such is not divided among the members. Instead, expectations to fulfill the responsibility are divided according to the suggested criteria. These expectations,

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[429] For an interesting debate about the "personhood" of states, see the forum in "Review of International Studies:" Patrick Thaddeus Jackson, "Forum Introduction: Is the State a Person? Why Should We Care?," *Review of International Studies* 30, no. 2 (2004); Patrick Thaddeus Jackson, "Hegel's House, or 'People Are States Too'," *Review of International Studies* 30, no. 2 (2004); Iver B. Neumann, "Beware of Organicism: The Narrative Self of the State," *Review of International Studies* 30, no. 2 (2004); Alexander Wendt, "The State as Person in International Theory," *Review of International Studies* 30, no. 2 (2004); Colin Wight, "State Agency: Social Action without Human Activity?," *Review of International Studies* 30, no. 2 (2004). See also Peter Lomas, "Anthropomorphism, Personification and Ethics: A Reply to Alexander Wendt," *Review of International Studies* 31, no. 2 (2005); Alexander Wendt, "How Not to Argue against State Personhood: A Reply to Lomas," *Review of International Studies* 31, no. 2 (2005).

[430] See for example Robert L. Rothstein, *Alliances and Small Powers* (New York: Columbia University Press, 1968); August Schou and Arne Olav Brundtland, eds., *Small States in International Relations* (New York: Wiley Interscience Division, 1971).

[431] Here one thinks immediately of the Soviet-Finnish wars, the Vietnam War, and the Soviet-Afghanistan conflict.

in turn, reflect what could be expected of each individual member of the collective. Because all members of the collective are different from each other, the division is unequal and takes into consideration a number of criteria with the sum of the criteria representing a given share of a given member in relation to a particular crisis. The thought experiment sought to illustrate this kind of division of expectations.

The division of expectations, on the other hand, structures both the evaluation of actors' actions and the apportioning of praise and blame with regard to those actions. A point which was discussed in the previous chapters was the acceptability of certain kinds of justifications of inaction given that there was a requirement to act. The expectations for action structured and clarified what kind of action was called for, thus allowing for evaluating to what extent the expectations were met. As a second step, one could then apportion praise and blame based on the (dis)parity between the individual expectations and actions. Moreover, justifications or excuses for inaction can be evaluated on the same basis, a point to which I will return in the next subsection.

The method used to bring out these aspects was the thought experiment. It was argued that constructing a thought experiment would be preferable to choosing for example a historical case of genocide. There is little need to repeat here the reasons for this choice but suffice it to say that unlike with a historical case, one is in a better position to abstract in a thought experiment. Clearly, objections may be raised that the thought experiment was designed to show a particular outcome or to support a particular argument. Nevertheless, the thought experiment was not only designed to highlight certain aspects of such grave humanitarian crises as genocide and of international responses to such crises but also to highlight the possible uses of the method itself in other cases.

Thought experiments might belong more to the realm of philosophy and they are rarely used in international politics. Hopefully, this thesis has demonstrated that thought experiments could be of use also in the study of international politics, not the least because many of the problems in international politics have philosophical roots. Also, the thought experiment in this thesis shows how one

thinks of international politics and its practice, thus challenging one to be more reflective. Moreover, in the self-reflection one confronts the assumptions and presumptions one makes of the "world" one studies, thus allowing for an evaluation of one's world view, especially in comparison with others. Furthermore, the thought experiment of this thesis was not a speculative exercise but an attempt to capture processes, which are likely in the contemporary world. It is thus also a description of the world, as one sees it. Clearly, this view could and most likely will be challenged. Nevertheless, such challenges would surely prove fruitful and yield interesting insights to the practice of international politics. After all, such a debate would take the discussion focusing on what is international politics to another level, namely how we think about what is international politics.

Lastly, the thought experiment highlighted also the fragile path(s) to humanitarian intervention and how politics is about decision-making. Procedural rules inform us how decisions can be made, while normative considerations determine which decisions ought to be made, but neither procedural rules nor normative considerations tell us which decisions will be taken. At any given point, there are several possible decisions, which could be taken, despite many imaginable possibilities having been excluded by being outside the acceptable boundaries. Here, political will plays an important role, especially when unpopular decisions are made. If political will is a renewable resource as Al Gore has put it,[432] the question is how to harness and study it.

To summarize, the responsibility model and the thought experiment serve many purposes in this thesis, and perhaps most interestingly they describe international politics. The description is not a theory or an attempt at theory but a map of one part of international politics, a map which might describe certain things and reveal possible paths without determining them. It might also prove to be a map, which could be used as a starting position in attempting to describe other parts of international politics. This map is hardly a three-dimensional, topographical, satellite image corresponding to what international politics *really*

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[432] Al Gore, "Transcript of Al Gore's Speech at the Sierra Summit, September 9, 2005," (Sierra Club, 2005). Available at <http://www.sierraclub.org/pressroom/speeches/2005-09-09algore.asp>.

is but rather a sketch highlighting certain aspects, thus allowing one to choose different routes or paths and to "explore" new areas. In this exploration and in choosing one's routes – in other words in practicing international politics – it seems that "lenses of discretion" could be a prudential choice.

RWANDA IN 1994 & JUSTIFICATIONS OF NON-INTERVENTION

In chapter five, the Rwandan genocide was discussed from the perspective of non-intervention. Moreover, the main focus was on the justifications of inaction by some key members of the international community, namely the Security Council, the United States, and France. To summarize the argument, chapter five argued that these key members of the international community used various arguments to justify their inaction, and that the plausibility or acceptability of those justifications depended on the argument in question and by whom it was invoked.

The mere fact that states and other international actors justified and argued over possible courses of action is quite telling of the practice of international politics.[433] Naturally, power disparities, policy linkages, and other factors played a role in determining the outcome of those debates, yet the discussions were clearly not simply rhetorical for the sake of rhetoric. The positions, which the actors took, changed during the crisis, as well as the arguments they invoked to back up their positions on the issues. It could well be that the political pressure put on the key actors does most of the explaining of this change, and that in this sense the best arguments did not win the day.[434] Nevertheless, the arguments that were used were hardly nonsensical, rhetoric in the sense of lacking content, or being beside the point. The actors seem to have engaged in meaningful interaction. This interaction was most likely not so much about convincing the other parties with the power of their argument as it was about explaining one's own position in an intelligible fashion and about finding support for one's political projects.

At the level of arguments, though, the justifications that were used by the actors, one noticed a mismatch between what could have been acceptable justifications and the justifications which were used. The criteria used in the responsibility model served to suggest what kind of arguments could have been acceptable from a particular actor, and according to these criteria France and the United States could have fared better had they used different kinds of arguments than what

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[433] One thinks of e.g. Thomas Risse, ""Let's Argue!": Communicative Action in World Politics," *International Organization* 54, no. 1 (2000).

[434] Here one thinks critically of e.g. Jürgen Habermas, *The Theory of Communicative Action*, 2 vols. (Boston, MA: Beacon Press, 1984).

they did. In other words, seeking to address the expectations, which other actors had of France and of the United States, and why they could not be met, or were already being met, would have enabled both actors to maintain if not increase their credibility at the international and also at the domestic level.

As discussed in chapter one and following Toulmin,[435] arguments are complex. In making their cases for non-intervention, France and the United States made use of arguments, which were formed of several components. These components seemed to support each other, thus creating a coherent argument. The problems of credibility, however, were not due to the internal structure of those arguments as much as it was due to France and the United States being the advocates of those particular arguments. In other words, one might take note that the "validity" of arguments is not simply a matter of their internal structure or their correspondence with the "world out there" but it has as much to do with who is making those arguments and to whom. The French and American arguments may have fared better had they been made by some other actor or to another audience, but the combination of France and the United States being the actors making those specific arguments to an audience highly biased towards a responsibility to intervene ensured the lack of credibility of those arguments.

How is one to determine which arguments are "good" if it is not enough to examine their internal structure and their reference points? Let us consider an example. In chapter five it was suggested that the American argument about costs was unconvincing, because of her large national budget, because she later found money to help the refugees, and because she had promised large amounts of money in return for capturing a single person, to name only three reasons. Certainly, it could have been the case that at the time, when the United States made this argument, her national budget was already spent, the money came in only later, and that the reward money had been reserved a long time ago and perhaps already spent several times for other things. On the other hand, had a poor country, such as Bangladesh, made the same argument to the same audience, it might have been more convincing. Is this difference due to the potential that the

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[435] S. E. Toulmin, *The Uses of Argument* (Cambridge: Cambridge University Press, 2003), ch. 3.

United States ought to have had the necessary financial or material capability? This could be a naïve conclusion to draw and we would benefit more by looking at the roles we assign to particular actors.

The fifth chapter examined implicitly the roles we assign to international actors, namely specific states, in relation to grave humanitarian crises through the expectations we have of those actors. The expectations we have for example of France and of the United States in such crises as the Rwandan genocide in 1994 are indirect descriptions of the roles that are assigned to them, the roles they have taken, or the roles that one would anticipate from them. Thus, by examining the expectations we learn much about the roles of actors. Moreover, these expectations tell us much about ourselves as well. We would do well by asking why we have these expectations, on what basis we hold them, and why we assign particular roles to particular actors. In the context of chapter five, it is evident that for example the centrality of France in relation to Rwanda and the general position of France and of the United States within the international system lie behind those expectations. Here one should note, however, that although power might be important in such role-assigning, it is not the only factor to be considered. For example France might be compared to the United Kingdom or Germany in being relatively similarly powerful, but neither the United Kingdom nor Germany would be assigned a similar expectation to act in Rwanda than France.

The role-assigning could be another point of further research and self-reflexivity. The thought experiment and the study of justifications of inaction in relation to grave humanitarian crises have underlined the importance of roles, which different international actors possess or have been assigned either through claiming them, interaction, or by those who study international politics. Thus, one might ask what kind of roles do international actors have and what is the evolution of such roles, but one might also ask on what basis and to what extent do we, the students of international politics, impose those roles through our research.

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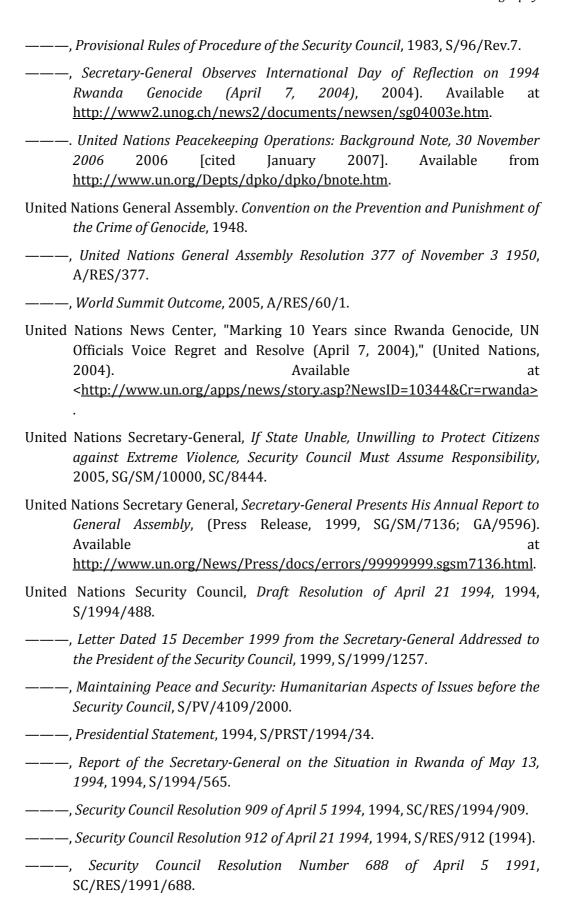———. *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*. Cambridge: Cambrige University Press, 1991.

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