

- International law -  
- Human rights -  
and the politics of humanitarian intervention.

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The order and stability of the international community of nation states relies on a delicate and precarious balance between a vast number of legal, moral and political forces - a vast framework of loosely-binding, explicit and implicit rules and norms that, because of their complex and constantly evolving nature, are a perpetual source of heated political and academic debates. With the new dynamics and direction of the international system since the end of the Cold War, some of the most polarizing and consequential arguments in recent decades have revolved around the issue of humanitarian intervention. A relatively recent topic of contention in debates about international laws and ethics, a humanitarian intervention can be defined as "the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own, without the permission of the state within whose territory force is applied."<sup>1</sup> While there are various different areas of controversy surrounding humanitarian interventions, this paper will discuss the critical influence that strictly political considerations have on the instigation and development of conflicts justified by the protection of fundamental human rights. More precisely, we will focus on two recent cases, the Rwandan genocide in 1994 and invasion of Iraq in 2003, in order to examine how the political agendas of powerful states often determine the interplay and the balance between two clashing sets of principles, those of international law on one hand and of human rights on another.

First and foremost, it is necessary to address some of the complexities that arise when attempting to analyze and evaluate issues surrounding humanitarian interventions. In their article entitled *Humanitarian Intervention and Just War* Mona Fixdal and Dan Smith describe a legal and moral discursive framework that will allow us to identify the various different factors and metrics that can be used to assess the legitimacy of a humanitarian action.

Concerned with the limits and constraints of predominant contemporary debates based solely on ideological (idealism/realism) or ethical (deontological/consequentialist/virtue ethics) terms, Fixdal and

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<sup>1</sup> Barsa, 6.

Smith resort to the Just War tradition as a way of establishing a comprehensive framework that strives for "a balance between moral and political arguments as well as between the care for motives and for consequences."<sup>2</sup> Rather than try to establish fixed and rigid boundaries to delimit the scope of their analytical outlook, the authors attempt to develop a more nuanced and flexible cognitive mindset that will be better "suited to the complex challenges of intervention in current conflicts."<sup>3</sup> As they introduce and describe their suggested methodology, Fixdal and Smith begin by briefly touching on the major existing debates and exposing the limitations of each, before then turning to a succession of criteria from the Just War tradition and explaining how each element of this age-old tradition can serve as one facet of a complex analysis. This approach offers a way to build a consensus between the principles of legalism and moralism (a binary opposition that much resembles two of Jack Donnelly's models related to sovereignty, *statism* and *cosmopolitanism*<sup>4</sup>). Legalism relies on a strictly judicial framework, justifies actions by reference to existing precedents, statutes, institutions and codes of behavior (e.g. UN Charter arts. 2(4), 2(7), 51), and "as a whole gives precedence to the territorial and political sovereignty of states over human rights of individuals,"<sup>5</sup> while moralism on the other hand focuses on ethical considerations and refers to the human rights established by documents such as the UN Declaration of Human Rights of 1948 or the Convention on the Prevention and Punishment of Crime and Genocide of 1948. However, striking a balance between legal and moral considerations is not enough, and many of the other factors that come into play are all interwoven in the various criteria of the Just War tradition.

Another critical idea raised by Fixdal and Smith is that of adopting a perspective that follows along the lines of *casuistry*, thus combining a set of well-defined moral and ethical guidelines with a keen attention to the peculiarities of individual cases. Such an approach allows to reach a balance between "preconceived notions about justice in war (or intervention) [and] sensitivity to the reality of a particular

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<sup>2</sup> Fixdal & Smith, 288.

<sup>3</sup> Fixdal & Smith, 288

<sup>4</sup> Fixdal & Smith, 292-294.

<sup>5</sup> Barsa, 8.

war (or intervention)."<sup>6</sup> Thus the flexibility of this approach is necessary to cope, not only with the vast number of political, legal and moral variables, but also with the complications related to unintended consequences and strategic political calculations and ulterior motives often masked by lies and rhetoric.

In fact, the issues discussed above, and Mona Fixdal and Dan Smith's framework, are especially useful to address our current problem. Accusations of inconsistency and hypocrisy have been directed towards specific political or ideological groups that, from one humanitarian intervention to another, adopt contradictory stances on the predominance of state-centric principles of international law over concerns for human rights. More precisely, the basic question is whether those liberal thinkers who pressured the international community to ignore "unjustified legalistic barriers to humanitarian rescue operations" in reaction to the conflicts in Rwanda, Bosnia and Sudan in the 1990's, had the right to then resort these same legal norms as a basis for opposing the Bush administration's wars against Afghanistan in 2001 and Iraq in 2003. The idea driving this criticism seems to be that liberals need to adopt a fixed and consistent criteria for humanitarian interventions, and that they must eventually decide between a legalistic (statist) or moralistic (cosmopolitan) model.

However, from the perspective of our previously established framework, it rapidly becomes clear that there are several problematic underlying assumptions behind this criticism. One cannot afford to limit the debate to a simple binary opposition divided along the lines of state-centric legal principles versus the morals and ethics of individual human rights. Moreover, demanding that people adopt a consistent stance on humanitarian actions grossly fails to acknowledge the vast differences that can exist from one situation to another, and thus goes against our framework's adoption of casuistry as a means of maintaining the flexibility necessary to examine and evaluate drastically different cases using the same guidelines and principles.

As it turns out, looking more specifically at two specific conflicts, Rwanda in 1994 and Iraq in 2003, we realize that each context was fundamentally different from the other, and thus that each situation

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<sup>6</sup> Fixdal & Smith, 288.

warranted different reactions from the international community and different interpretations of the role that principles of international law should play in the debate.

In April 1994, the assassination of Rwandan President Juvenal Habyarimana (and multiple other political leaders) led to the sudden eruption of an extremely violent and deadly internecine conflict between the small country's two major ethnic groups, the Tutsis and the Hutus. Dating back to the corruptive influence of Belgium colonialist rule over the country between 1916 and 1962, the Tutsi-Hutu divide had been exacerbated by decades of continual social, economic and political competition. Violence and low-intensity conflicts had already occurred at several occasions, but none had come close to the frightening scale and the ruthless efficiency of the extermination that left approximately 800,000 people dead less in less than 100 days<sup>7</sup>. While the majority of the killings were mass executions of Tutsis committed by organized but unofficial Hutu militia groups, at the same time a Tutsi rebel group, the Rwandan Patriotic Front (RPF), launched an attack on Hutu government forces from Uganda and fought until they captured the country's capital Kigali several months later in July, marking the end of the immediate crisis.<sup>8</sup>

This widespread ethnic cleansing was far from being a discreet affair. Within days of the breakout of the violence, the entire international community (including the United Nations, states and international NGOs) was immediately informed of the scale and the horror of the acts that were being perpetrated – and yet not a single unilateral or multilateral effort was made to try to protect the hundreds of thousands of Rwandans whose fundamental human rights were being directly threatened. As explained in an extensive report compiled by *The International Panel of Eminent Personalities to Investigate the 1994 Genocide of Rwanda and the Surrounding Events*:

On April 12<sup>th</sup>, 10 days into the genocide, the Security Council passed a resolution stating that it was 'appalled at the ensuing large-scale violence in Rwanda, which has resulted in the deaths of

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<sup>7</sup> BBC News.

<sup>8</sup> BBC News.

thousands of innocent civilians, including women and children.' It then voted unanimously to reduce UNAMIR to a token force of about 270 personnel and to limit its mandate accordingly.<sup>9</sup>

Following in this trend, throughout the entire Rwandan genocide, despite full disclosure concerning the nature and the extent of the conflict, the international community failed to react and to intervene effectively to stop the widespread extermination of Tutsis. Only two months after the beginning of the conflict (May 17<sup>th</sup>) did the U.N Secretary-General Boutros Boutros-Ghali and the Security Council finally react by passing the UNAMIR II resolution meant to mobilize a multilateral force to intervene in the urgent humanitarian crisis<sup>10</sup>. However numerous obstacles resulting from bureaucratic procedures and political opposition (mainly from the U.S, who continued to refuse to acknowledge the crisis as a genocide) would prevent any soldier representing UNAMIR II from ever reaching Rwanda before the end of the genocide in July.<sup>11</sup>

The factors that led to the international community's lack of intervention into what constituted one of the 20<sup>th</sup> century's gravest acts of mass extermination are a complex combination of legal, political and bureaucratic factors. Some might focus on strictly legal principles and declare that in 1994 the U.N Security Council's Chapter VII right to resort to coercive action was limited to cases that threatened or breached regional peace, and that in those first few months the conflict was strictly limited to Rwandan territory. Others might point to the U.N's dramatic bureaucratic problems to explain why the UNAMIR II resolution was not passed until May 17<sup>th</sup>, and why even after that the troop deployment was so slow. However the most convincing argument refers to the political factors that came into play. Many people, including the UNAMIR General Romeo Dallaire, refer to the absence of any sufficient political will and incentives from world powers (and especially permanent members of the Security Council) as the principal reason for the lack of any proper intervention<sup>12</sup>.

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<sup>9</sup> International Panel Report, 15.14.

<sup>10</sup> International Panel Report, 15.23.

<sup>11</sup> International Panel Report, 15.32.

<sup>12</sup> International Panel Report, 15.33.

A brief analysis from the standpoint of Fixdal and Smith's framework rapidly shows that humanitarian intervention would have been perfectly legitimate. A hypothetical multilateral intervention under the banner of the U.N would have been supported, not only by the Convention on the Prevention and Punishment of Crime and Genocide of 1948, but also by almost all the criteria put forward by the Just War tradition (Right Authority, Just Cause, Reasonable Hope). It seems safe to say that, had there been any real political will to intervene in Rwanda's 1994 genocide, it would have been very difficult for anyone to put together any convincing, balanced and comprehensive legal and moral objections to such an intervention.

Now let us turn to the case of the United State's invasion of Iraq in 2003. We have just shown that critics of the use of legal barriers to support non-intervention in Rwanda in 1994 were in some respects justified. But was it then justified to rely international law as a tool to oppose the Bush administration's invasion of Iraq? To examine the legitimacy of the invasion per se would go beyond the scope of this paper, but the focus here will be the legitimacy of this conflict as a humanitarian intervention.

Between March 19<sup>th</sup> and May 1<sup>st</sup> 2003, a deeply divided international community looked on as the United States conducted major combat operations against the Arab Republic of Iraq, eventually overthrowing the repressive Baathist regime and effectively ending the country's close to 25 years under the autocratic rule of Saddam Hussein. While the United States did execute the invasion with a loose coalition of allies, the armed conflict did not have the consent of the United Nations or even some of the leading world powers (including France, Germany, and Russia) and it thus remained to a large extent a unilateral transgression against Iraq's territorial and political sovereignty. Following the initial invasion, the Iraqi population suddenly faced an urgent security crisis. A lack of proper pre-war anticipation and logistical planning by U.S officials led to a definitive breakdown of the country's already crumbling economic system and public infrastructure, and the abrupt disintegration of the Baathist regime created a dangerous political vacuum, re-igniting old sectarian conflicts and initiating a protracted period of violent crime and guerilla/insurgent warfare. While different methodologies have yielded varying estimates of the

number of Iraqi civilian casualties resulting from the increased levels of violence, by 2006 numbers ranged everywhere from 150,000 according to the Iraqi Minister of Health Ali al-Shemari, to roughly 650,000 according to a scientific study conducted by John Hopkins University.

The United State's invasion into Iraq does not qualify as a legitimate humanitarian intervention for multiple reasons. First and foremost, the conflict should not be considered a humanitarian intervention in the first place. Not only were the overall objectives and motivations of the invasion very unclear and dubious, but very the justifications provided by the Bush administration made few efforts to even mention human rights considerations. The idea of invading Iraq to save innocent lives was generally reserved for use in political rhetoric aimed at the general public. Thus, the Bush administration only exploited the repressive and violent nature of Saddam Hussein's regime as a political tool, brandished when necessary to mobilize popular domestic support for the war, but rarely used in more serious and demanding settings. This lack of real concern for humanitarian implications of the invasion is reflected by a 2003 article published by John Yoo, then Assistant Attorney General in the Office of the Legal Counsel for the U.S Department of Justice, in which he explains why international law did in fact justify the U.S government's war in Iraq. John Yoo discusses extensively two main factors, the first being based on "existing Security Council resolutions authorizing the use of force"<sup>13</sup> and the second being the "basic notions of customary international law [according to which] (...) toppling Saddam Hussein's regime was justified as an exercise of anticipatory self-defense."<sup>14</sup> But interestingly, in entire article supposedly dedicated to justifying the invasion, in the midst of long-winded arguments concerning Iraq's compliance to U.N Resolutions 1441, 678 and 687, Yoo only makes a single reference to the regime's "repression of the civilian population."<sup>15</sup> It thus becomes very clear that, while the Bush administration might have been pleased to liberate a population from an oppressive and dangerous dictator, their decision to invade Iraq was simply not driven by a desire to solve a humanitarian crisis, or even to save innocent lives.

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<sup>13</sup> Yoo, 563.

<sup>14</sup> Ibid.

<sup>15</sup> Yoo, 567.



Moreover, given the context of this paper, it is important to contradict the idea that liberal critics were being hypocritical by using international law to oppose the Iraq war. Even though the Iraq invasion was not entirely framed as a humanitarian intervention, it was publicly portrayed as such enough so that this conflict reflects one of the fundamental purposes of both international law – "to institutionalize constraints on big states' power so as to keep them from exploiting intervention opportunities for reasons of self-interest."<sup>16</sup> As a matter of fact, analyzing the invasion along the lines of Mona Fixdal and Dan Smith's discursive framework would rapidly expose its illegitimacy. The United State's decision to act almost unilaterally, the highly questionable nature of the invasion's motives, the poor and inadequate post-conflict reconstruction planning, and the extremely high level of death, destruction and suffering that the operation has imposed on the Iraqi population, are all factors that would seriously contravene most Just War criteria, including Right Authority, Just Cause, Right Intention, Last Resort, Proportionality, and Reasonable Hope.

In conclusion, with so much debate and controversy surrounding the legitimacy of humanitarian interventions, the framework put forward by Mona Fixdal and Dan Smith is extremely useful as a tool to structure one's analysis of the legitimacy of a humanitarian interventions. As explained by these two authors, the big advantage of referring to the criteria established by the Just War tradition is that it provides us with the flexibility necessary to adapt to the complexities of contemporary conflicts, and to contradict those whose rhetoric tries to misrepresent international law and human rights as static, fixed and narrow principles. As it turns out, our analyses of the Rwanda genocide in 1994 and the US invasion of Iraq in 2003 have highlighted the extent to which, despite their crucial role in governing the international community, the explicit and implicit rules and norms of international law and human rights continue to leave much to be desired, as they remain easily exploited and manipulated by world powers in order to support or justify their political agendas.

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<sup>16</sup> Fixdal & Smith, 295.

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