Humanitarian wars: a realist approach to a liberal cause
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21

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Humanitarian Wars:

A Realist Approach to a Liberal Cause

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Abstract

*This article argues that the defence of human rights is not only a grand endeavour by itself, but also a matter of national interest and the preservation of stability and the rule of law. Different arguments in favour of such an approach can be found amongst the mainstream paradigms of international relations, and a further legalist review offers more evidence on its validity. The necessity of humanitarian interventions led to their inclusion in the Chapter of the United Nations, and has since been a thorny issue in the international relations agenda. Nonetheless, in a highly interdependent and globalised world, the unequal distribution of peace entails the equal distribution of conflict. Thus, it is imperative for the **inter-national community to consider inter-national security as an inter-national public good.***

Key Words

Humanitarian Intervention, Human Rights, International Relations, Public Good, United Nations, Security.

Resumen

*El presente artículo tiene por propósito demostrar que la defensa de los derechos humanos no es sólo una noble causa **per se**, sino que responde también a intereses nacionales de los estados y a la preservación de la estabilidad y del imperio de la ley. Argumentos en favor de ésta tesis pueden ser fácilmente encontrados en las principales tendencias teóricas en el campo de las relaciones internacionales. Además, una revisión legalista de*

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*la misma refuerza tal aproximación. Desde que la Carta de las Naciones Unidas incluyó la posibilidad de llevar a cabo intervenciones por razones humanitarias, el asunto ha generado polémica en la agenda de comunidad internacional. No obstante, en un mundo globalizado y altamente interdependiente, la distribución inequitativa de la paz no es mas que la equitativa distribución del conflicto, de allí la imperativa necesidad de que la comunidad **inter-nacional** considere la seguridad como un bien público **global**.*
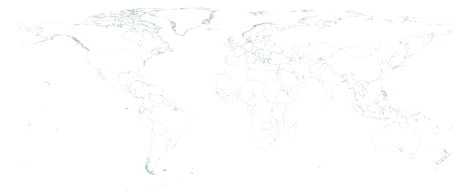
Palabras Clave

Bien Público, Derechos Humanos, Intervención Humanitaria, Organización de las Naciones Unidas, Relaciones Internacionales, Seguridad.

Ever since the United Nations General Assembly proclaimed the Universal Declaration of Human Rights, thus recognising the inherent dignity and the equal and inalienable rights of all human beings, states have pledged themselves to promote and protect them. Nonetheless, the effective recognition and observance –or lack thereof– has been a thorny issue. On a number of occasions acts of abuse against Human Rights have been met with an outcry from the international community calling for expedited action against the perpetrators, with mixed results. But those same acts have also been dealt with a mild-worded press communiqué that cynically bounders the limits of complicity and becomes the alibi for the international community. One can only wonder whether humanitarian interventions, when they do take place, convey a notion of humanitarian war, or whether they are a concoction of far reaching national interests.

This essay argues that the defence of human rights is not only a grand endeavour by itself, but also a matter of national interest and the preservation of stability and the rule of law. The article is divided in five sections: sections I and II offer a theoretical insight into the discussion, whereas section III provides a legalist review and section IV approaches the issue of humanitarian interventions from the Charter of the United Nations. Section V concludes the article by suggesting that international security can be conceived as an international public good.

I. A liberal cause

The utter failure of the appeasement policies in the inter-war period, which were nothing but a vicious geopolitical *laissez-faire*, and the grotesque images of Himmler, Heydrich and Eichmann's Final Solution urged the victors to convene around international co-operation so as to prevent future atrocities. The ill-fated, ill-conceived, and ill-equipped venture of the *Société des Nations* was reassessed given the imperative necessity of institutionalising international affairs. The United Nations system was born out of a harmony of interests -or at least out of the shared interest of defeating a common enemy-. Strong believes in the effective power of

Humanitarian wars: a realist approach to a liberal cause 23
January - June 2011 Colombia | Vol.2, 01.

EAFIT
Journal of International Law

ideas, in the possibility of an international political system based primarily on morality and democracy, and in the feasibility of building international norms of behaviour that foment peace, prosperity, co-operation, and justice lied beneath this new language of global rapport. Anomie would no longer be the rule, but the exception.

The liberalism[2] approach to international relations relies on claims about the impact of interdependence, the benefits of free trade, collective security and the existence of a real harmony of interests between states, as opposed to the timeless principles of the balance of power and national interests advocated by the realist theory. Authoritarian leaders and totalitarian ruling parties, goes the argument, are belligerent and laden with nationalist ideas and thus prone to conflict and war. Conversely, liberal states, founded on such individual rights as equality before the law, free speech and other civil liberties, private property, and elected representation, are fundamentally against war. When citizens who bear the burdens of war elect their governments, a bellicose adventure becomes impossible. Furthermore, in a globalised and highly interdependent world, the citizenry realises that the benefits of trade can only be enjoyed under the conditions of peace. As such, a liberal foreign policy calls for the promotion and expansion of individual liberties and democratic governments across the globe. This would be beneficial to both the state that conducts such policy, insofar as its own security and way of life is enhanced by the presence of a large number of like-minded liberal states, and to the rest of the world, as liberalism is a political ideology that enshrines the rights and liberties of all individuals[3].

Principles notwithstanding, liberalism does find moral reasoning for war and aggression. Due to their nature, liberal states have set themselves apart from the other participants of the international community. They have adopted a particular and excludable set of rules on how they contrive foreign policy amongst them. Hence, how they interact with non-liberal states in the international scene vis-à-vis like-minded states is rather different. Liberal states have transcended the imperatives of power politics and an anarchic international system, establishing a separate peace, and waging a separate war on totalitarian and authoritarian regimes.

Immanuel Kant argued that liberal states would go through a process of pacification of foreign relations amongst themselves, which would eventually lead to the constitution of a *pacific federation*[4], whereupon perpetual, democratic peace ought to occur. The logic behind this liberal-liberal interaction lies on the foundations of these states, but also on the strong interdependence nurtured by international trade, which adds material incentives to moral commitments. States benefit of free trade and of international commerce based

2   Liberal Internationalism.
3   Brian Schmidt, "Theories of US foreign policy", in M. Cox & D. Stokes, eds.,*US Foreign Policy*, Oxford, Oxford University Press, 2008. p. 14.
4   Michael Doyle, "Liberal Internationalism: Peace, War and Democracy", in *The Official Website of the Nobel Prize*. Retrieved from http://nobelprize.org/nobel_prizes/peace/articles/doyle/ [04/20/2011].

on the international division of labour and the competitive advantage of each nation, both characteristics of capitalist societies. There is a strong economic incentive to avoid belligerent policies that would lead to the outbreak of conflict. Furthermore, the survival of the whole system lies on the predictability of future interaction -the rule of law-, thus guaranteeing that the capitalist endeavour will not be preyed upon by monarchical caprices. Insofar as liberal states operate under these parameters, other like-minded states would be willing to socialise with each other in the international scenario. Strong economic interdependence paves the way for stronger political and social interaction.

Non-liberal states behaviour is observed with caution and considered illegitimate by liberal states. The disregard for liberties, the lack of an independent judicial system, and a seemingly illegal political demeanour leaves the door open for mistrust. Liberal states are deeply suspicious of non-liberal governments since they are perceived to be in a state of constant aggression with their own people. In short, fellow liberals benefit from a presumption of amity; non-liberals suffer from a presumption of enmity. Both presumptions may be accurate. Each, however, may also be self-fulfilling[5]. The principle of non-intervention holds its validity only in relation with other liberal states. The term of sovereignty constitutes an anachronism when applied to undemocratic governments.

Conflict, intervention, and eventually war are both proscribed and promoted within the liberal credo. Multilateralism is favoured, but unilateralism is also an option. Liberal wars are only fought for popular, liberal purposes such as the spreading of democratic values, the promotion of freedom, the protection of private property, or to support liberal allies against non-liberal enemies: To put it simply: A *just cause for a just war.*

II. A realist approach

Truth be told, some liberal-inspired achievements, such as the Charter of the United Nations and the Universal Declaration of Human Rights, have largely remained dried ink and diplomatic *fêtes*. Governments have hesitated to intervene in other states to defend freedom, political and civil liberties, and Human Rights. The cost of such interventions might far outweigh the potential *tangible* benefits. Furthermore, some self-styled liberal governments have rapaciously engaged in acts against those very same liberties and rights they so adamantly swore to protect.

States have energetically agreed on the importance and necessity of upholding those prerogatives regardless of political issues; however, they have been rather mediocre at enforcing such commitments, even at a national level. The lack of commitment should not necessarily be understood as negligence, although some actions do reflect disregard and

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5   *Ibid.*

carelessness. In an anarchic world, states will procure to endure, to continue in time and to maintain sovereignty. Only after those conditions are met will states have the wherewithal -and the willingness- to engage and take action in the international system. States are instrumentally rational and think strategically in how to survive, thus any engagement abroad will only be materialised if its directly related to its national interest, *raison d'Etat*; a country's goal and ambitions whether economic, military, or cultural. No wonder that the term has been widely invoked to justify isolationist or pacifist, interventionist or warlike policies.

According to realism6, states are power maximisers, and are continually in search of opportunities to acquire more power relative to other states, and enhance their standing in a conspicuously anarchic and insecure world. In such a scenario, states must manoeuvre carefully to survive, balancing opposing interests whilst aiming at the realisation of the lesser evil rather than of the absolute good[7]. If going to war will be the best way to achieve its national interest, then a state should wage war. If peaceful settlement of disputes is what best suits a state's national interest, then negotiation is the path to follow. War and peace, action and inaction are always constrained by *la raison d'Etat.*

A common misconception about armed conflict is that its ultimate aim is military conquest and subjugation. Realist theory emphasises the importance of history and objective rules of political behaviour based on human nature, as opposed to moral considerations and foreign policy subjected to democratic control. Nations go to war having clear, objective intentions and aims that are compatible with their natural interest. A war of annihilation will be waged when a particular state's existence is threatened by the existence of another state, as exemplified by the conflagration between the Punic and Roman Republics in the Antiquity. The driving force behind a conflict might as well be a trade dispute, such as the Opium Wars, or the necessity to check the spread of alien values; the European Wars of Religion. When wars are fought for royal caprice or autocratic niceties the aims are unclear, the conflict might escalate, and defeat becomes a strong possibility. Napoleon's tit-for-tat adventures are all well documented.

When sovereignty is paramount, intervention becomes a dilemma that could potentially involve the very existence of the state. By intervening in another state's affairs, one opens the door for retaliation. However, inaction might also carry with it a hefty price. States face challenges that have no nationality and that permeate borders -*problems without passport*-: piracy, organised crime, terrorism, counterfeiting, and narcotics to name a few. Whether these should be left unchecked or not depends on each state's interest based on how vulnerable they are. Governments will engage in military interventions when they fall under their national interest. Wars with altruistic aims are few and far between. Most likely, such endeavours are a façade of morality covering other, more vital interests. Such was the case of India's unilateral intervention in East Bengal in 1971.

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6   Offensive Realism.
7   Hans Morgenthau, *Politics Among Nations*, McGraw Hill, 2005. p. 3.
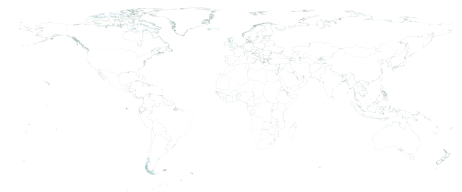
III. A legalist review

Ancient Greek philosophers argued that there is a universal law of nature binding on everybody and applies to all human beings alike, and to which all positive laws had to conform to. This notion laid the foundations for moral and legal principles, and would inspire the idea of Human Rights several centuries later. The Greeks, and later the Romans, also suggested that war is not justifiable unless there is a just cause for waging it. The Christian tradition further advanced this proto idea of humanitarian intervention when St. Augustine would introduce the theory of *bellum justum*, arguing that war is permissible when there is a just cause and a clear intention. St. Thomas Aquinas came to the conclusion that war can only be waged when there is a strong authority -a timid and early definition of sovereignty, external and internal-, a just cause and a right intention. Aquinas left no room for ambiguity in describing a just cause as: self-defence, restoration of peace, assistance of neighbours against a common enemy, and defence of the poor and the oppressed.

Renaissance theorists and jurists such as Francisco de Vitoria, Francisco Suárez and Alberico Gentili worked towards connecting the notions of just cause and the law of nature. Particularly, Father Suárez held *that* the defence of innocent people regardless of nationality is a just cause *per se*. Hereupon, Hugo Grotius would come to detach the law of nature from the law of God: he argued that the individual and his natural rights are at the core of law, thus the fundamental principles of good faith, solidarity and self-defence are applicable to every individual. Grotius was able to bring his conception of natural law into the sphere of international relations. Nation-states take shape out of the necessity of the citizens to improve their security and prosperity, but each citizen has a set of alienable rights that represent the limit of the internal sovereignty and the political power. If the state engages in selective acts of violation of those rights, it transgresses its jurisdiction and other states have a natural right to intervene to restore order; his *Law of Nature* laid the foundations for his *Law of Nations*.

Before Grotius developed his thoughts, a Frenchman, Jean Bodin, wrote passionately about the principle of sovereignty. He argued that the sovereign was the source of the law and thus above it. As such, the sovereignty of the state cannot be violated on the ground of human bonding. This principle was the centrepiece of the Peace of Westphalia and later, the European balance of power. State sovereignty is only constrained by other state's sovereignty. Moral principles were considered propaganda; humanitarian intervention was ruled unlawful. Henceforth, the principle of non-intervention was developed. A customary right to go to war replaced the just cause: the concept of *bellum legale* replaced the concept of *bellum justum*[8].

The principle of sovereignty and the right to wage war shaped the international politics of the nineteenth and eighteenth centuries. Nonetheless, under an ever vigilante and increasingly aware civil society, offensive armed conflict was considered the last of the diplomatic options.

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[8] Patrick Macklem, *Humanitarian Intervention and the Distribution of Sovereignty in International Law* (draft), 2006.

Humanitarian wars: a realist approach to a liberal cause
January - June 2011 Colombia | Vol.2, 01.

27

EAFIT
Journal of International Law

Lesser measures, such as blockade, reprisal, self-defence, and eventually humanitarian grounds were invoked when the situation so required. As such, the international community's rhetoric evidenced some sort of *opinion juris*.

With the images of havoc brought by the Great War, a new order based on collective security was conceived, albeit short lived. Unilateral use of force, even for the sake of humanity, was deemed illegal by the *Société des Nations* and its Covenant. The new sentiment went as far as to ban war as an instrument of national policy under the Kellogg-Briand Pact. This endeavour failed to contain the belligerent policies adopted by the Berlin-Rome-Tokyo Axis. The right of unilateral intervention, humanitarian or not, was thus retained throughout the Second World War.

A breaking point in the realisation and protection of human rights came with the end of the war and the victory of the United Nations. Once and for all unilateral use of force was *theoretically* abandoned. Humanitarian interventions would now rest under conventional law rather than customary right.

IV. A new legal situation

Nowadays the discussion has stirred towards the justifications and the aims of humanitarian interventions. Can the international community, *legally and legitimately*, intervene in the domestic jurisdiction of a state?

A humanitarian intervention is widely 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 citizens, without the permission of the state within whose territory force is applied[9]. A contention is clear within the definition, an apparent divergence between ends and means, between legality and legitimacy. Legality refers to whether and under what conditions international law authorises humanitarian interventions, and legitimacy alludes to the normative status of humanitarian intervention as an instrument of international justice. Legal debates about humanitarian intervention tend to assume that its legitimacy is irrelevant to its legality. The legality of intervention turns not on whether it makes the world a better place, but whether it has been so authorised by the United Nations Security Council. Philosophers and political theorists often assume the inverse, that the legality of humanitarian intervention is second to its legitimacy[10].

The Charter of the United Nations and the International Declaration of Human Rights are the primary sources for international Human Rights law. The Charter states that all Members shall refrain from the threat or use of force against the territorial integrity or political independence

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9   J. L. Holzgrefe& Robert O. Keohane, eds.,*Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*.Cambridge University Press, 2003. p. 1.
10 P. Macklem, Op. cit.

of any state, or in any other manner consistent with the Purposes of the United Nations[11]. It explicitly prohibits the organisation and its constituent Members from intervening in matters which are essentially within the domestic jurisdiction of any state[12]. The primary responsibility for the maintenance of international peace and security is bestowed on the Security Council[13], and it is up to this organ to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and also to make recommendations, or decide on what measures shall be adopted to maintain or restore international peace and security[14]. The measures at the disposal of the Council range from embargoes and sanctions, to the severance of diplomatic relations[15], and ultimately, the use of force[16] as may be necessary to fulfil its objectives. All the decisions adopted on this issue -especially in relation to the use of force- require the affirmative vote of nine of the fifteen members of the Security Council, including the concurring votes of its permanent members[17].

The energetic defence of the principle of non-intervention and of human rights and freedoms leaves a pragmatic solution at a crossroads; the perpetual conflict between sovereignty and human rights. If the violations are matters that fall within the domestic jurisdiction of the state in which they are occurring, then the Charter does not authorise a state or group of states to threaten or use force against the territorial integrity of the state in which they are occurring. Conversely, if the violations pose a threat to international peace and security, the Security Council may authorise a state or group of states to use military force to prevent their occurrence. However, the Charter is emphatic on framing the legality of the abovementioned interventions ultimately on whether Human Rights violations are matters within the domestic jurisdiction of the offending state or amount to threats to international peace and security[18] since they have implications beyond the territory and population of the offending state. Acts of genocide, ethnic cleansing, torture, disproportionate punishment, and war crimes are all considered falling outside a state's domestic jurisdiction, thus humanitarian intervention in those situations is and ought to be possible. Furthermore, those violations are contrary to the United Nations Charter and the Universal Declaration of Human Rights, and offend *ius congens* norms that are binding on all states regardless of particular treaty obligations. Moreover, the argument that an intervention on humanitarian grounds violates the principle of sovereignty is utterly unfounded since its aims are not territorial conquest or regime change.

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11 *Charter of the United Nations*, Article 2.4, 1 UNTS XVI. Retrieved from http://www.un.org/en/documents/charter/index.shtml [04/20/2011]
12 *Ibid.*, Article 2.7.
13 *Ibid.*, Article 24.
14 *Ibid.*, Article 29.
15 *Ibid.*, Article 41.
16 *Ibid.*, Article 42.
17 *Ibid.*, Article 27.3.
18 P. Macklem, Op. cit.

Humanitarian wars: a realist approach to a liberal cause
January - June 2011 Colombia | Vol.2, 01.

29

EAFIT
Journal of International Law

The legal story should end here. Humanitarian interventions not authorised under Chapter VII of the Charter are deemed unlawful under the international horizontal legal order. Pursuing those adventures conveys a message of recklessness and lures back the phantom of unilateral, customary right of war.

V. An international public good

For the sake of humanity, of dignity and of the common bond that links human beings, states must promote Human Rights and defend them when the situation arises. By not intervening in conflicts that threat the core of human understanding they risk being a victim of escalating -spill over of- conflicts that know no boundaries. Governments should adopt a *building partner capacity* approach, which calls for helping other countries strengthen their institutions, promote the rule of law, and improve accountability and transparency. In so doing, states will benefit from greater stability and no-boundaries threats will be checked. Recall that stability is sine qua non to a state's survival.

Moreover, international peace and security can be considered as a public good insofar as it is an outcome highly desired by society, and governments and international organisations have repeatedly acknowledged this situation and have thus committed themselves to provide it. There is a market, a demand and a supply schedule for international peace.

Peace cannot be provided to just a few since it is extremely costly to select *potential consumers*; deciding which national groups within a country would enjoy peace, stability, and prosperity is a complex immoral task, where the benefits enjoyed by the chosen groups would soon be eroded by those who have not got access to it. Inequality sows the seeds for disorder. The cost of instability is high in frustration, not to say in human casualties.

In a highly interdependent and globalised world, the unequal distribution of peace entails the equal distribution of conflict. All states, and to a lesser extent international organisations, have the responsibility to provide for security to all human beings. The role of the United Nations -as evidenced not exclusively by peacekeeping operations- could not be less clear, but the lukewarm initiative shown by the majority of states leaves a bittersweet aftertaste... A world characterised by intra-national problems calls for relevant institutions. An organisation conceived to resolve inter-state problems might not to be the best solution for a truly *inter-national* challenge.

EAFIT
Journal of International Law

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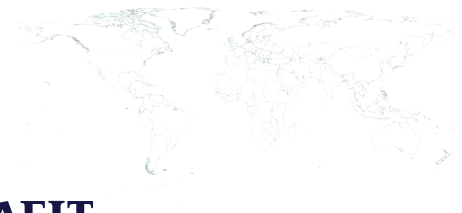
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Humanitarian wars: a realist approach to a liberal cause
January - June 2011 Colombia | Vol.2, 01.

31

EAFIT
Journal of International Law

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