PONTIFÍCIA UNIVERSIDADE CATÓLICA
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Murielle Stéphanie Pereira Lorenz

The solidarist challenge to international society and humanitarian intervention:
The cases of Kosovo and Darfur

Dissertação de Mestrado

Thesis presented to the Programa de Pós-graduação em Relações Internacionais do Instituto de Relações Internacionais, PUC-Rio as partial fulfilment of the requirements for the degree of Mestre em Relações Internacionais.

Advisor: Prof. Kai Michael Kenkel

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Prof. Kai Michael Kenkel
Advisor
Instituto de Relações Internacionais – PUC-Rio

Profa. Marta Fernández y Garcia Moreno
Instituto de Relações Internacionais – PUC-Rio

Profa. Maíra Siman Gomes
Instituto de Relações Internacionais – PUC-Rio

Profa. Monica Herz
Coordinator of the Centro de Ciências Sociais – PUC-Rio

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Murielle Stéphanie Pereira Lorenz

The author graduated in International Relations from the University of Geneva, Switzerland, in 2012.

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Abstract

Lorenz, Murielle Stéphanie Pereira; Kenkel, Kai Michael (Advisor). **The solidarist challenge to international society and humanitarian intervention: the cases of Kosovo and Darfur.** Rio de Janeiro, 2015. 193p. MSc. Dissertation – Instituto de Relações Internacionais, Pontifícia Universidade Católica do Rio de Janeiro.

This thesis studies the rise of intra-state conflicts following the end of the Cold War and how these often unpredictable and intractable conflicts became the source of international concern in the 1990s. Human rights violations in other states were increasingly portrayed as a threat to international order, leading to an increase in calls from human rights advocates and political actors for greater involvement from foreign powers and increased optimism concerning states' capacity to act within the international realm. In particular, there were hopes that the United Nations would take on more responsibility as a norm enforcer. Against this background, the present study explores how humanitarian claims in the 1990s challenged the understanding of sovereignty and non-intervention as the foundational principles of international relations, and the very basis of a statist international system. It questions whether the gap between states' normative commitments towards human rights, and their respect in practice, has been addressed, and whether states are capable of acting as moral agents. This research has carried out two case studies of post-Cold War humanitarian interventions, which generate very different responses from international community: Kosovo in 1999, and Darfur from 2004 to the present. The present thesis suggests that two principal factors help explain states' willingness or reluctance to intervene in each case: the perception of the conflict as (or not) a threat to international order and the existence of strategic interests that dictated different responses. The main argument developed here is that while morality plays an important role in motivating states to intervene, they are predominantly rational actors and humanitarian concerns are not sufficient when interests dictate a different response. It concludes that unless a determinate crisis is interpreted as a serious threat to states' security interests, probably no intervention will occur. Consequently, human rights advocates did not succeed in dislocating the primacy of order over justice.

Keywords

The English School; Solidarism; Humanitarian intervention; Order; Justice; Morality; Rationality; Kosovo; Darfur

Resumo

Lorenz, Murielle Stéphanie Pereira; Kenkel, Kai Michael. **O desafio solidarista para a sociedade internacional e intervenção humanitária: os casos de Kosovo e Darfur.** Rio de Janeiro, 2015. 193p. Dissertação de Mestrado – Instituto de Relações Internacionais, Pontifícia Universidade Católica do Rio de Janeiro.

Esta dissertação é fruto de um estudo sobre o surgimento de conflitos intraestatais após o fim da Guerra Fria e como estes conflitos, muitas vezes imprevisíveis e difíceis, tornaram-se fonte de preocupação internacional na década de 1990. Violações de direitos humanos em outros estados passaram a ser cada vez mais retratadas como ameaças à ordem internacional, levando a um aumento na mobilização de defensores de direitos humanos e atores políticos que pedem um maior envolvimento de potências estrangeiras, e a um aumento do otimismo relativo à capacidade dos Estados em agir dentro da esfera internacional. Em particular, identifica-se uma maior esperança de que as Nações Unidas iriam assumir mais responsabilidades como aplicadora de normas internacionais. Neste contexto, a presente pesquisa procura entender como reivindicações humanitárias na década de 1990 desafiaram a compreensão de soberania e não-intervenção como princípios fundamentais das relações internacionais, e a própria base de um sistema internacional estatista. Também, questiona se a lacuna entre os compromissos normativos dos Estados para com os direitos humanos, e seu respeito na prática, foi abordado, e se os estados são capazes de agir como agentes morais. Foi conduzida uma pesquisa composta de dois estudos de caso de intervenções humanitárias pós-Guerra Fria que trouxeram respostas muito diferentes da comunidade internacional: o caso do Kosovo, em 1999, e o de Darfur, desde 2004. Esse trabalho sugere que dois fatores principais ajudam a explicar a vontade ou relutância dos Estados de intervir em cada caso: a percepção do conflito como uma ameaça ou não para a ordem internacional e a existência de interesses estratégicos que ditam diferentes respostas. O principal argumento desenvolvido aqui é que, enquanto a moral desempenha um papel importante na motivação de Estados para intervir, estes são atores predominantemente racionais

e o altruísmo não consegue compensar quando interesses ditam uma resposta diferente. Conclui-se que, a menos que uma crise determinada seja interpretada como grave ameaça para os interesses de segurança dos estados, provavelmente não ocorrerá intervenção. Consequentemente, os defensores de direitos humanos não conseguiram deslocar a primazia da ordem sobre a justiça.

Palavras-chave

Escola Inglesa; Solidarismo; Intervenção humanitária; Ordem; Justiça; Moralidade; Racionalidade; Kosovo; Darfur

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In the contemporary world there is very little that happens far away, out of sight, or behind the scenes [...]. We are instant spectators of every atrocity; we sit in our living rooms and see the murdered children, the desperate refugees. [...] And so a question is posed that has never been posed before-at least never with such immediacy, never so inescapably: What is our responsibility? What should we do? [...] Non-intervention in the face of mass murder or ethnic cleansing is not the same as neutrality in time of war. The moral urgencies are different; we are usually unsure of the consequences of a war, but we know very well the consequences of a massacre.

Michael Walzer. The Argument about Humanitarian Intervention. **Dissent**, Winter 2002, pp. 29; 33.

Introduction

Following the end of the Cold War, intra-state conflicts emerged as a major source of concern for the members of international community. Characterized by intensive uses of violence and "[having] their roots in a globalized diversity of grievances" (Munro, 1999), these often unpredictable and intractable conflicts, where it is civilians that are the most at risk (Munro, 1999), became the source of important concern for states in the early 1990s. As a matter of fact, the increased publicity and media coverage of conflicts abroad not only served to reveal "the magnitude of the problem [of human suffering]" (Hehir, 2008, p.37). It also highlighted the gap between states' normative commitments towards human rights and its respect in practice – a gap that needed to be addressed –, and questioned the United Nations' ability to take its responsibility as a norm-enforcer.

Moreover, the realization that in such an interconnected world, instability and injustice in other countries could have an impact on other states, made state leaders increasingly interpret these civil conflicts as threats to international peace and stability, given their capacity to easily spread into neighbouring countries (Hehir, 2008, p.34). These concerns, both about the necessity to avoid international disorder and of finding ways to counter injustice, led to an increase in calls from human rights advocates and political actors for greater involvement from foreign powers in the world. Soon, as Hehir (2008, p.37) writes,

> [the] human rights discourse permeated to the centre of international political agenda and became an essential component in the manifestos of political parties, the foreign policy agendas of states and the expressed goals of international organizations, both political and financial.

The more favorable international political context also "enabled humanitarian groups from across the globe to link up and coordinate agendas as never before" (Hehir, 2008, p.37). Together, these different groups formed a global civil society, whose aim was to alter existing state behavior, traditionally attached to the respect of the non-intervention and sovereignty principle, towards an understanding of "sovereignty as responsibility". More specifically, they sought to impact on states' considerations on whether to intervene, by for instance pressuring them to "do something" against human rights violations that go

unaddressed (or inefficiently addressed). Tactics such as "naming and shaming" would also be employed to "reorient states' behaviour […] towards more ethical and altruistic dispensations" (Hehir, 2008, p.37). With their different methods, their objective was to induce change and create cognitive dissonance – that is, feelings of discomfort – which would lead to an interrogation of "humanity's moral values […] and [question] the responsibilities and duties of major international actors" (Hehir, 2008, p.1).

The convergence of the different discourses in favor of a more interventionist international society ultimately "facilitated [the] ascendency [of humanitarian intervention]", as a way to enforce human rights and counter disorder (Hehir, 2008, p.37). Pro-intervention movements started to form, and questions about whether and how the international community should intervene to prevent and avert human suffering within sovereign states soon came to dominate international relations.

Although "human rights advocacy is not a post-1991 phenomenon" (Hehir, 2008, p.36), the end of the Cold War nevertheless represented new possibilities to act within the international system, now that the United Nations Security Council was freed from the Cold War blockade. It is only then, as a matter of fact, that the "discrepancy between words and deeds" (Hehir, 2008, p.36), when it comes to the respect of human rights obligations, seemed to become finally addressed. The Security Council for instance, increasingly upheld its role of norm-enforcer, "[reinterpreting] the Charter to more frequently favour human rights over the protection of state sovereignty and non-intervention" (Brahm, 2004). Progressively, it redefined the concept of sovereignty as entailing responsibilities – not impunity –, and "expanded the definition of international threats to peace and security", including massive human rights violations (genocide, ethnic cleansing), "to justify intervention in circumstances that would have been inconceivable in the past" (Brahm, 2004).

Growing optimism and progress in the field of human rights in the 1990s, then, led their advocates to "[hail] the age of enforcement" (Robertson, 2002, p.xvi, apud Hehir, 2008, p.36), proclaiming the dawn of a more progressive and humanitarian era (Hehir, 2008, p.2), where states would finally address injustice and human suffering abroad. All of this challenged existing state practice and international law, which had been until then mainly preoccupied with (and mainly

served) the preservation of states' rights "and did only little to defend the rights of individuals" (Krieg, 2013, p.133).

While the concept of humanitarian intervention did not generate universal consensus among the members of international community, there were nevertheless increased hopes as to the possibility of a more solidarist international society that would take responsibility-based action and address human rights violations not only at home but internationally. More specifically, there were hopes that states and the United Nations Security Council would not stand by and "do nothing" when a humanitarian crisis is unfolding. Rather, it was expected that they would act according to what is morally required from them in such cases. This implied an understanding and redefining of sovereignty as responsibility – not impunity, or immunity.

The challenge was "to persuade state leaders that they [had a duty,] a moral responsibility" to address human rights violations in other countries and "[pay the costs of] intervention in cases of genocide, mass murder, and ethnic cleansing" (Wheeler, 2000, p.300). The real test case of states' and international society's improvement towards justice then, would be to witness them taking a stand for civilians victims of massive human rights abuse and intervene, even when a determinate conflict does not directly threaten the potential interveners or their strategic interests. This would be the sign that international community is heading towards its more solidarist version, and is capable of prioritizing justice over considerations of order or interests, when morality precisely demands to do so.

Objectives and research questions

The present study discusses the emergence of this "human rights concern" in international society following the rise of intra-state conflicts and how it has challenged the accepted understanding of "sovereignty [and non-intervention] as the bedrock principles of international relations" (Prantl; Nakano, 2011, p.206), and the very basis of a statist international system. From a broad perspective, this dissertation's objective is to investigate whether the optimism in the early 1990s, concerning a new era where states would address human suffering instead of turning a blind eye to it, and where the gaps between words and deeds, when it

comes to the respect of human rights, would diminish, leading to the prioritization of justice over order, manifested itself.

The issue with justice, however, is that it is a subjective value. Consequently, its value and (desired) form might differ from one place to another, being affected by our different cultures, religions, or societies. Justice refers to "appropriate" conduct; what is the moral thing to do. However, what is just in a determinate place or for a certain group of nations or persons might not be in other places or for other societies. Consequently, because of its more intrusive nature, the term justice has often been an object of suspicion. The difficulties of arriving at a consensus within the United Nations (UN) Security Council when it comes to questions relative to justice, for instance humanitarian intervention, are a clear proof. Some states have traditionally privileged the respect of sovereignty and non-intervention, fearing that the authorization of humanitarian intervention as a legal practice might lead to abuses by powerful states, which would carry out their own version of "justice".

From a narrower perspective, the present thesis aims to investigate the extent to which solidarism and elements of morality have penetrated into the contemporary society of states. An important aspect of this research lies in determining whether states are sensitive to global civil society pressures and the extent to which they are able to change a passive behaviour in face of "supreme humanitarian emergencies" (Wheeler, 2000, p.50). It questions states' ability to place human rights over state rights, and justice before order. That is, states' capacity to act as moral agents. If we look at the history of humanitarian crises in the 1990s, it seems that while there have been many normative signs of progress with the question of human rights enforcement, there haven't been any systematic interventions. The horrendous tragedies in Rwanda or Bosnia attest to that. Indeed, it seems that "despite its positive rhetorical connotation, [humanitarian intervention has remained the source of heated debate] and controversy" (Hehir, 2008, p.1). This is so, mainly because the solidarist nature of human rights conflicts with the statist nature of the international system.

Humanitarian intervention demands the reinterpretation of well-established and accepted rules that protect states against external interference in their internal affairs, such as the sovereignty and non-intervention principles, in order to secure human rights. Therefore, there has been a strong questioning among states about

whether such a disruptive practice should be allowed within the international realm. Furthermore, it is also highly contested that states can ever, realistically, place individual rights above states' rights and national interests. The "righteous intention" criterion for instance raises important issues as to the real motivation behind intervention. Moreover, many states –in particular Southern countries that have obtained their independence only recently– have questioned why "humanitarian intervention" should be about intervening militarily to protect individuals from having their human rights violated when many more are dying from hunger and disease every day. Opponents to this doctrine have often argued that humanitarian intervention might just be another way for powerful states to interfere in other states' internal affairs, with the pretext of saving lives.

Another objective of the present work is also to determine whether states are truly capable of committing themselves to more than the preservation of international order, that is, taking responsibility-based action in favour of individuals suffering from massive human rights violations. Are states capable of acting as moral agents, even when their interests dictate the contrary? What are the underlying motives and reasons states have in deciding whether to intervene (or not) in determinate humanitarian crises? Do states choose to intervene (or not) because it represents the "moral thing to do", or are such decisions in fact, as many claim, dependent on material and interest-related considerations? That is, on a perception of good expected consequences/outcomes?

These questions raise important debates in the field of International Relations, and are at the centre of the present work. By asking such questions, the ultimate objective of the present thesis is to determine if international society has gone any better at addressing human rights violations. Answering these questions in light of the humanitarian intervention debate is particularly interesting since, as Wheeler writes (2000, p.11), "humanitarian intervention exposes the tension between order and justice at its starkest". Indeed, it depicts a tension between the desire to help those in distress (justice), but its simultaneous reluctance due to the potential abuses (disorder) that authorizing such a practice could lead to, and the risks and costs that it would entail.

In order to answer our research questions and witness whether the hopes in a more solidarist international society have concretized, it is necessary to have empirical cases, as it is easy to argue that there has been progress and that

behaviors have changed, in theory, when they, in fact, haven't in practice. As a matter of fact, new rules, just as promises, don't necessarily guarantee changed actions (Buzan, 2004; Acharya, 2004). In this context, the present research chose to focus in two important post-Cold War humanitarian tragedies, Kosovo in 1999 and Darfur, from 2004 to the present. These case studies are particularly interesting since they ask why similar cases of massive human rights violations do not receive the same response and attention from the international community, and why a sense of "humanitarianness" or solidarism towards others is more visible in certain places of the world than in others.

In the first case, the international community was quickly mobilized and obtained a huge support among states and public opinion for military intervention, despite the fact that it lacked a UN Security Council authorization. In the latter, however, the same international actors seemed reluctant or unwilling to act, although Darfur represented the worst humanitarian crisis at the time, and despite professed commitments towards the *Responsibility to Protect* (R2P) principle. Consequently, the comparative analysis between Kosovo and Darfur confronts us with an important question: what enabled intervention in the first case and what impeded it in the second? Such questioning is central to this thesis, as it asks whether states are genuinely capable of prioritizing justice over other considerations and if they're capable of acting as moral agents at all, when interests dictate precisely the opposite.

Structure of the dissertation

This dissertation is divided into six substantive chapters and a final concluding section. Chapter 1 is aimed at providing the theoretical tools for the conduct of the present research. Different traditions of thoughts have addressed our research questions and more specifically, the place of justice and the possibilities of acting morally in the international society. The objective of this first section in this context will be to study the nature of international relations, and in particular the relationship between order and justice, their respective place in international society, in order to determine whether they are necessarily "mutually exclusive" (Bull, 1977, p.75), or can, on the contrary, be reconciled, as would solidarists argue.

This thesis will draw principally from the work of scholars from the English School, which maintains that there is a "society of states" at the international level despite the condition of anarchy, and that states share common interests and values that are institutionalized into common rules (Bull, 1977, p.13). As a middle ground between Realism and Cosmopolitanism (Buzan, 2004, p.10), English School Theory provides great insights, notably about how states' actions have to be understood as being in a constant tension between the requirements of order and justice, and how in this context concurrent obligations can easily conflict. One of the main objectives of this first chapter is to explain the place of morality in international relations and how it conflicts with rationality. It seeks to explain how both elements work as "push and pulls" and are in a constant tension. The theory of international society also bears interesting conclusions on how (new) rules, principles, and practices actually depend upon states having a stake or an interest in sustaining them, and how this has been made more difficult in a world composed of such a diversity of states.

Chapter 1 presents the specificities of a solidarist and pluralist international society, what distinguishes them, and the difficulties of establishing clear boundaries between them. The ultimate objective of this chapter is to provide answers as to what happens in situations where there are conflicting or competing claims, and how does it end: with the privileging of one rule/value over the other or normative change? This latter questioning will be addressed in more details in Chapter 3, which will develop the problematic about how (and whether) tensions can be solved, how and when change occurs, and who are the actors of change.

Chapter 2 will take the discussion between order and justice, and rationality and morality onto another level, focusing on the humanitarian intervention problematic. The latter is a pertinent example of the continuous tension between order and justice, between states' rights and human rights. Against the background of end of Cold War, this second chapter seeks to explain how the rise of human rights in the 1990s and the concern about human suffering has challenged previous existing state practice, and how it has challenged the understanding and relative balance between order and justice itself.

This section provides a definition of the modern concept of humanitarian intervention, described here as a practice that disturbs international order, yet which might nonetheless be a *mal nécessaire*, as it is sometimes the only way to

avoid and avert large-scale atrocities against innocent individuals. It tries to determine the moral and legal status of humanitarian intervention and addresses its dilemma, which puts states in front of a crucial decision: "doing something" and being accused of interference in other states' affairs, or "doing nothing", and being accused of "moral indifference" (Wheeler, 2000, p.1) – a tension, which seems difficult to be solved.

More specifically, this second chapter attempts to show how increased advocacy for human rights protection since the end of the Cold War has reflected a desire for change in the society of states, which demanded the redefinition of well-accepted rules of the society of states: sovereignty and non-intervention. In particular, it portrays the various attempts to reform international law, such as Boutros Boutros Ghali's *Agenda for Peace* or later, the *Responsibility to Protect*; and the tentative to make the protection of human compulsory, and how it nevertheless "remains a legal exception in an otherwise statist international law" (Krieg, 2013, p.133).

Chapter 3 discusses how tensions between values and norms sometimes lead to normative change. It studies the process of change and more precisely, how "norm entrepreneurs" are able, through different means, to provoke the desired (normative) change. In the context of the humanitarian intervention debate, it depicts how the emergence of a global civil society composed of different humanitarian actors and groups are able to mobilize public opinion and pressurize states towards more responsibility-based action when it comes to addressing human rights violations. By doing so, this third chapter seeks to explain the how conflicting rules may be a sign of change or of a necessity to reinterpret existing rules and practices. However, it warns that it can take a long time before new practices and rules are internalized.

Chapter 4 introduces and develops the argument and hypotheses, and presents the methodology of discourse analysis to be employed for the empirical part of the research, in the two following chapters. Analysing the discourses of international actors, and in particular, the justifications employed to justify action or inaction in each of our case studies, is important in order to try to explain what were the motives involved in the decision whether to intervene, that is, what combination of factors influenced the decision. While it might seem straightforward in some cases, in others, hidden motives are responsible for action

or inaction in determinate places. The case studies, then, will ultimately serve to explain whether it is humanitarian motives that have predominantly guided states' decisions or if other motives (national, security interests) were determinant. They will enable us to see how the tension between order and justice is solved (if ever) in reality, and answer to questions such as whether states have the capacity to act as moral agents on situations that transcend their national interests.

Chapter 5 depicts the solidarist momentum that was Kosovo, and how Western states managed to intervene, despite the illegality of their action, without the legitimacy of the enterprise being too much questioned. Kosovo is interesting in the sense that it constituted a rupture with previous interventions. It was considered "illegal but legitimate", meaning that while it did not satisfy international society's legal rules, it was "sanctioned by its compelling moral purpose", as it was aimed to avert an ethnic cleansing (Bellamy, 2005, pp.31-54). In this sense, Kosovo appeared to confirm the hopes in a more solidarist international society while also establishing a new normative framework of humanitarian intervention, "the new interventionism"[1].

Some authors, for instance Nicholas Wheeler (2000) have argued that the international reaction to "the Kosovo case marked a watershed in the international community, that we should expect to see it exhibiting a new solidarity in response to any future where states intervene to end atrocities" (Wheeler, 2000, p.297). In order to determine whether such belief was correct and manifested itself, a deeper understanding of the reasons behind the intervention in Kosovo is necessary. Chapter five starts by providing a historical background of the conflict, and goes on, analyzing the international reaction to the conflict, and in particular, the justifications employed by intervener states to legitimize NATO's intervention. It interprets the discourses employed by members of the coalition and those of its opponents, to determine what were the predominant themes in states' decision whether to intervene in Kosovo.

The discourse analysis will demonstrate that while humanitarian motives were present and indeed, necessary for the intervention, they were not sufficient. Other reasons commingled with humanitarian considerations and made the intervention possible. Nevertheless, the fact that normative developments after

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[1] Many scholars in the field of International Relations have referred to this « new interventionism ». It is therefore difficult to attribute this expression to a particular author.

Kosovo resulted in the creation and adoption of the *Responsibility to Protect* (R2P) by a majority of states served to reinforce the "constructed" belief that the international community was willing and ready to intervene whenever a state was incapable or unwilling to take its responsibilities towards its citizens. After the Kosovo intervention, as a matter of fact, it seemed that there was a growing idea that states could perceive humanitarian intervention as a moral duty to protect common humanity, and that trying to prevent and impede the suffering and death of civilians should be of outstanding importance to them.

The Darfur case presented in Chapter 6 is particularly interesting to compare with Kosovo in this context, as it seems to refute the development of this "new interventionism" and puts down talks about a more solidarist international society. States were reluctant to intervene five years only after Kosovo, in what constituted the biggest humanitarian tragedy since then, and despite the well-publicized large-scale human rights violations. The chapter provides an understanding of the origins of the conflict and depicts how, "the situation in Darfur was repeatedly described as representing a "supreme humanitarian emergency", that is, a situation where "the only hope of saving lives depends on outsiders coming to the rescue" (Wheeler, 2000, p.34, apud Bellamy; Williams, 2005, p.28).

It then looks at the international reaction to the conflict, and how the UN Security Council, European states and a variety of NGOs (Amnesty International, Human Rights Watch and the International Crisis Group) all acknowledged that the government of Sudan was complicit in large-scale crimes against humanity and ethnic cleansing in Darfur, others (NGOs and governments) going further, calling the crisis genocide. Inaction in Darfur inevitably invited to comparisons with the slaughter in Rwanda during 1994 and highlighting the need "to avoid a repeat of international society's feeble response there" (Bellamy; Williams, 2005, p.29). However, despite this recognition, governments showed "little inclination to protect civilians suffering at the hands of their own government in the Sudanese province of Darfur" (Bellamy; Williams, 2005, p.27).

Against this background, discourse analysis enables us to understand what was at stake for government leaders. It ultimately shows that there was unwillingness from the international community to take "responsibility-based" action in Darfur (Bellamy; Williams, 2005, p.29). Inaction there put in doubt the

promise that if tragedies such as Rwanda happen again, "[the international community] will not walk away as the outside has done many times before[2]", because it has a "moral duty" to provide military and humanitarian assistance to Africa whenever it is needed (Bellamy, 2005, pp.31-54). The Darfur case seems to demonstrate that despite the increased optimism in the 1990s concerning states' capacity to address human rights violations, and the normative developments in the field, there remains a persistent gap between states' commitments towards human rights, and their engagement in practice. In fact, "there is no guarantee that humanitarian intervention will take place in cases where it is desperately needed" (Wheeler, 2000, p.299).

Finally, a concluding section whose aim is to join both the theoretical and empirical parts of the present work, discuss if international society has got any better at addressing human rights violations in light of both case studies, and if the tension between order and justice can ever be solved, leading to optimized results.

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[2] Tony Blair, speech given to the Labour Party Conference, Brighton, U.K., October 2, 2001.

1. International Society and the conflict between order and justice

The end of the Cold War represented for many new possibilities to act within the international system. The liberating structural changes with the end of the bipolar order "offered new opportunities for proactive international engagement for both the United Nations and Western states" (Hehir, 2008, p.2), whose actions had been limited. Indeed, during this period, international politics had been mainly preoccupied with the preservation of a fragile international order between the different members of the society of states, in an era characterized by strong ideological conflicts and difficulties in reaching consensus.

The optimistic pronouncements about the United Nations in the immediate aftermath of the Cold War then suggested that the coming era would see the organization's power and capacity grow. With the more permissive global circumstances, some heralded the dawn of a more progressive and humanitarian era (Hehir, 2008, p.2). In its famous speech about a "New World Order", President George H. W. Bush illustrated this belief that "[…] the United Nations, freed from [the] Cold War stalemate, was poised to fulfil the historic vision of its founders." (Mayall, 1991, p.427) That is, a world:

> […] freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace. An era in which the nations of the world, East and West, North and South, can prosper and live in harmony […] A world in which nations recognize the shared responsibility for freedom and justice. A world where the strong respect the rights of the weak […] (Krieg, 2013, p.14)

The primary purpose of the United Nations consists in the maintenance of international peace and security, by avoiding the presence of war and conflict in the international realm (United Nations, 1945, Art. 1). Rules aimed at ensuring international order serve this objective and are associated with states' rights, that is, sovereignty, non-intervention, and non-use of force. Such rules confer protection to states in the absence of a supreme international authority to guarantee international order and provide them with the keys for peaceful interaction and coexistence. For these reasons, they are well accepted and internalized by states. Indeed, even at the height of the Cold War, respect for these

rules enabled states to cooperate and interact with one another without fearing the threat of ungrounded interventions into their territories.

Another UN primary purpose consists "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinctions" (United Nations, 1945, Art. 1, §3), as portrayed in the preamble of the UN Charter and in the Universal Declaration of Human Rights. That is, the Organization's purpose lies in promoting justice everywhere. The latter, however, has often been depicted as more difficult to guarantee than order, due to states' occasionally conflicting understandings of justice. Justice, indeed, is about how states "should" act: it is about morality, and is a social construct that has to do with human needs and interests (not states'). Rules about justice are meant to protect individuals, by conferring them rights, mostly against their own governments.

Yet since every society has its own conceptions of justice, these can differ greatly from one to another. Thus, what is appropriate and just in a particular place or for a certain group of individuals isn't necessarily in another or for others. That is why the promotion of international justice, which comprises a "universalist" dimension (that is, a single understanding of justice for all (that is universality of human rights)), has proved to be a difficult task and is often interpreted as a threat to international order. Indeed, by contrast with order, which can be defined more objectively and enables states to pursue their own varieties within their borders, justice is a term that entails a subjective dimension, and necessarily asks: whose conception of justice is it? Who benefits from it, and who doesn't? The universalism of justice thus confronts cultural relativism, which recognizes that the world comprises a variety of cultures, peoples, religions, and traditions. Consequently, when applied on a global level, the pursuit of justice can easily lead to tensions and frictions between states, and thus disorder, unless states share a common vision and understanding of precisely what "justice" entails.

The hope in the aftermath of the Cold War was that states, forming a global community, would increasingly act together in order to promote justice and address those unjust situations – such as supreme humanitarian emergencies and large-scale human rights violations – which had been allowed to continue without any decisive action being taken either by states or the UN Security Council. The absence of an agreement between states about "the right thing to do" in many such

situations had, as a matter of fact, led them to worsen. Yet with the more favourable conditions of the early 1990s, it was believed that consensus among states was now more achievable – in particular within the UN Security Council –, given the removal of the Cold War blockade, and that injustice – in the form of human rights violations – could finally be addressed.

Many believed that this new era presented "significant opportunities for the creation of a more equitable order where the rights of the individuals would trump those of the states and interstate relations would move beyond military confrontation and economic competition" (Hehir, 2008, p.33). Whether this increased optimism concerning states' capacity to act beyond their national interests and develop agreement on matters that go beyond coexistence, that is addressing human rights violations (injustice), and acting for the sake of common humanity manifested itself, is the subject of the following chapters.

Yet before getting there, some steps need to be taken first. It is necessary to arrive at a previous understanding of the relationship between order and justice, their relative place and balance within the society of states, and how these "sometimes conflicting and sometimes interdependent imperatives" are met in international society (Buzan, 2014, p.9). Questions about order and justice, and in particular about the place of morality in international society have traditionally been the source of much debate in the International Relations field (Gilligan, 2009). As a matter of fact, the history of international society has demonstrated that many times, those claiming to act morally and "in the name of justice", or seeking to convey moral values, happened to be motivated in fact by self-interest and/or by a desire to impose their values on others (that is the "white man's burden", colonization, and other such manifestations). Too often, this has occasioned more harm than good. Explaining the logic behind states' actions, then, might help determine whether states are capable of cooperating for the "common good", for what is believed to be "just", or whether their actions are necessarily dependent upon a concern for order (that is security) or a perception of expected positive consequences (a positive cost-benefit analysis). The aim of this first chapter, in this context, is to provide the theoretical basis for the argument that will be developed.

In the field of International Relations, three broad historical traditions of thought have addressed in different manners the questions of how international

relations operate, what is the nature of international politics, what are the logics behind states' actions, and whether justice and morality have a place in international relations. These traditions are: Realism, Rationalism/Grotianism, and Cosmopolitanism. [3] The realist perspective depicts states as rational and calculating agents, and "rejects morality as a guiding principle in foreign affairs, [considering] moral actors as invariably hypocritical and certainly a menace to order" (Hehir, 2008, p.4). At the opposite extreme, cosmopolitanism presupposes that all individuals share the same interests and values (a universal morality), thus implying that international politics are not a zero sum game (as maintained by realists), but "a purely cooperative exercise, whose final sum is greater than zero" (Bull, 1977, p.24).

Believing that international relations cannot reasonably be explained either in terms of states as entirely calculating and amoral agents, or in terms of individuals sharing universal interests and values, the present work follows the view of the Rationalist or Grotian tradition of thought, which has become more widely known today as the "English School". The English School's perspective is interesting in that it constitutes a *via media* between the two extremes of Realism and Cosmopolitanism (Buzan, 2004, p.10). It argues that states are both rational and moral actors and that in their interactions with each other, they form a "society of states" that is bound by common rules and institutions (Bull, 1977). While declaring that the member states of this society have rights and duties, it also presupposes that this does not entail that they necessarily agree on everything. The reality of international society being that of a society composed of a diversity of state members, with different cultures, religions and civilizations; this implies that a consensus is not always reachable between them, and that there are limits on the possibilities of acting within the international realm.

Within the English School, the debate about order and justice renders explicit the tension that exists between the different requirements of the society of states. This debate has opposed pluralists and solidarists, who express "differing judgements about the extent of solidarity or potential solidarity […] in international society" (Suganami, 2002, p.13). As such, Pluralism and Solidarism

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[3] These three names can differ according to the author speaking about them. Sometimes Cosmopolitanism will be called Idealism or Revolutionism, while Rationalism will be called Grotianism, Internationalism or the English School, and Realism, Hobbesian. In the present work, these different variations and distinctions won't be addressed for questions of time and space.

respectively lean towards Realism and Cosmopolitanism (Buzan, 2004, p.8). Understanding the logics that influence states' actions (or inactions) enable us to understand the source of their disagreements. March and Olsen's (1998) competing logics approach is particularly interesting in this context. According to it, states' action can be explained either in terms of rationalist motivations, – that is, within a "logic of anticipated consequences and prior preferences" (a positive cost-benefit analysis), or in terms of a "logic of appropriateness" and senses of identity – denoting commitment to certain moral rules (March; Olsen, 1998). Which logic "leads to a better society" and which one is "more likely than the other to be observed as the basis for actual behaviour" are questions that pluralists and solidarists would answer rather differently (March; Olsen, 1998).

This chapter will proceed as follows: first, it will present the conception and specificities of international society as defined by the English School. This will be done within a historical perspective that will allow understand how the institutions of the society of states that evolved in Europe were imposed on the rest of the world and how, in this context, "their strength depended upon new members having a stake in sustaining them" (Bull, 1977, apud Griffiths, 1999, p.149). Such a perspective will enable us to understand the tension that exists between the different institutions of international society, why it is that order has been a less contested goal of the society of states than justice, and more specifically, why the latter is more difficult to guarantee on a global level. The chapter will then define the concepts of order and justice and discuss their relative place and balance in international society. The solidarist-pluralist divide will be addressed there, reflecting a conflict about the moral possibilities in international society.

1.1 The English School: a *via media* between Realism and Cosmopolitanism

The English School originally describes a cluster of scholars writing from the 1960s onwards, such as Martin Wight, Hedley Bull, John Vincent, Tim Dunne, Nicholas Wheeler, Andrew Linklater, Robert Jackson, Barry Buzan and many others, who have conceived of international relations based on a societal approach (Jiangli; Buzan, 2014; Suganami, 2010, p.15-16). According to Hidemi Suganami (2010, p.27), "the achievement of the English School is to have

inaugurated a distinctive style of enquiry into a distinctive set of issues, combining empirical and normative dimensions". Robert Jackson (1992, p.271) depicts the English School conversation as

> a variety of theoretical inquiries which conceive of international relations as a world not merely of power or prudence or wealth or capability or domination but also one of recognition, association, membership, equality, equity, legitimate interests, rights, reciprocity, customs and conventions, agreements and disagreements, disputes, offenses, injures, damages, reparations and the rest: the normative vocabulary of human conduct.

As such, the moniker "English School"

> is a poor fit with what it represents. Some of its founding figures were not English […] and its focus has always been on history and theory for the global level of international relations. It never had any particular interest in British foreign policy. More arguably, there is nothing particularly English about its ideas, which might better be understood as a European amalgam of history, law, sociology and political theory (Buzan, 2014, p.5).

The particularity of the English School, as Martin Wight (1991) argues, is to have "offered, [with its idea of international society,] a kind of middle ground, or what later became labelled the *via media*, between the extremes of […] [cosmopolitanist] and realist views of international relations" (Buzan, 2014, p.6). Wight nevertheless regarded these "as very loose "traditions", [declaring that] no single great writer on international relations could be classified safely within one of them […] different elements of the traditions coexisted not only within himself, but others as well" (Wight, 1991, apud Griffiths, 1999, p.170). Similarly, Hedley Bull (1977, p.39) conceded that

> the modern international system […] reflected all three elements singled out, respectively, by the Hobbesian, the Kantian and the Grotian traditions: […] war and struggle for power among states, […] transnational solidarity and conflict, [overcoming the boundaries of states] […], and […] cooperation and regulated intercourses among states. […] In different historical phases of the states system, in different geographical theatres of its operation, and in the policies of different states and statesmen, "one of these three elements may predominate over others.

Therefore, establishing a frontier from one tradition to the other is not an easy task. Nevertheless, it might prove useful to start by presenting both visions of international relations offered by Realism and Cosmopolitanism, in order to better understand how the theory of international society developed by English School theorists has been built around, and against them.

1.1.1 The Realist Tradition

The Realist (or Hobbesian) tradition postulates that international relations operate in a context of anarchy. As "there is no overarching authority with the power to impose the order that prevails internally in functioning states, the state is […] the sole guarantor of its security and cannot rely on any other organization to ensure its survival" (Hehir, 2008, p.7). It is in a condition of self-help. Realists affirm that there is no international society; states don't associate with each other. And "in the absence of a contract between states, they are [said to be] in a pre-societal state of nature", which amounts to a state of "war of all against all" (Wight, 1991, apud Griffiths, 1999, p.169; Hobbes, 1953, p.64). That is, international politics occur within the "perpetual realm of violence, survival and strategic necessity" (Griffiths, 1999, p.169). As a consequence, "foreign policy must be concerned only with the national interest" (Hehir, 2008, p.8) – be it with the acquirement of more power, wealth, or with acting in prudent, self-preserving ways. "The state is the highest form of political authority, and its interests preclude embodying any consideration for those of other states, apart from that dictated by prudence and the rational pursuit of egoistic self-interest in a hostile environment" (Griffiths, 1999, p.169).

In this perspective then, states are depicted as rational and calculating agents. Morality, as a guiding principle in the conduct with other states, is rejected on the grounds that states cannot act as moral agents, because they might then constitute a menace to international order (Hehir, 2008, p.4). Moreover, realists affirm that "state leaders and citizens do not have moral responsibilities or obligations towards those beyond their borders" (Wheeler, 1997, p.10). In fact, they sustain that the presence of moral arguments in international relations amounts to leaving the door open for abuses, since states would use language strategically in order to advance their interests (Habermas, 1984, p.285).

While Realism acknowledges the presence of rules in the international realm, it argues that these do not determine and govern states' actions. In fact, "the state is free to pursue its goals in relation to other states without moral or legal restrictions of any kind" (Bull, 1977, p.24). As Wheeler puts it: states "pursue their interests while only paying lip service to the rules" (Wheeler, 2000,

p.23). While governments "recognize that they have to justify their actions in terms of the rules, […] this owes nothing to a normative commitment to the rules and everything to being seen to play the game so as to avoid moral censure and sanctions" (Wheeler 2000, p.23). This entails then that treaties are respected only if they seem convenient to states.

1.1.2 Cosmopolitanism

At the other extreme from Realism lies Cosmopolitanism,

> a tradition [of thought] […] [which] teleologically posits an international society of humankind, prevented from its full realization by the […] states system, whose pathological dynamics are contrary to the real interests of the true members of that society (Griffiths, 1999, p.169).

Cosmopolitanism "[proclaims] a world society of individuals which overrides nations or states […] rejects the idea of a society of states and says that the only true international society is one of individuals" (Wight, 1991, p.45). This idealist view presupposes that all individuals share the same interests and values, thus implying that international politics are not a zero-sum game (as maintained by realists), "but a purely cooperative exercise", whose final sum is greater than zero (Bull, 1977, p.24). By opposition with Realism, it assume that "the essential nature of international politics" does not lay in a perpetual conflict between states, "but in the transnational social bonds that link the individual human beings who are the subjects or citizens of states" (Bull, 1977, p.24).

Cosmopolitanism is thus "wedded to a perfectionist view of humankind in a historically contingent process of struggle towards the *civitas maximum*" (Griffiths, 1999, p.169). It admits the existence of moral imperatives, which limit the actions of states; however, "these imperatives enjoin not coexistence and cooperation among states but rather the overthrow of the existing state system and its replacement by a cosmopolitan society" (Bull, 1977, p.25). In this context, they believe "the rules that sustain coexistence and social intercourse among states [for instance, the reciprocity of sovereignty] should be ignored if the imperatives of […] higher morality require it" (Bull, 1977, p.25), thus entailing that moral imperatives should be placed above the law, if necessary.

1.2 The Theory of International Society

If we had to describe briefly what these three traditions of thought are about, we might say Realism can be understood "as giving priority to national responsibilities", Cosmopolitanism "as giving priority to humanitarian responsibilities", and finally, the English School "as giving priority to international responsibilities" (Jackson, 2000, p.169-78, apud Buzan, 2004, p.8).

The starting point of English School theorists is the assumption that, "despite the absence of a centralized authority in the world" – that is, in a condition of anarchy, which they acknowledge to the realists – "there is a considerable degree of order, and some degree of justice in the relationship between sovereign states" (Suganami, 2010, p.15). They sustain that "the pre-contractual state of nature of which realists speak is neither substantively chaotic nor blissful […]. Rather, human beings must be understood as social animals, in continual interaction with others" (Griffiths, 1999, p.170). "The absence of a world state and the coexistence of a plurality of sovereign states [then,] do not necessarily condemn international politics to a state of war and render meaningless the notion of an international society" (Wight, 1991, apud Griffiths, 1999, p.170). Against the Hobbesian tradition, English School thinkers believe "that states are not engaged in simple struggle" but "are limited in their conflicts with one another by [the] common rules and institutions […] of the society they form" (Bull, 1977, p.25).

> [They] encourage us to think about international relations as a social arena whose members [– primarily sovereign states, but also non-state actors –] relate to each other not only as competitors for power and wealth, but also as holders of particular rights, entitlements and obligations (Griffiths, 1999, p.145).

A society of states exists because the latter are "conscious of certain common interests and common values" and believe themselves to be "bound by a common set of rules and institutions" (Wheeler; Dunne, 1996, p.93). These rules, institutions and principles provide states with a line of conduct, and membership of this society brings with it an obligation to accept the binding character of these, and to define interests in ways that reinforce those obligations (Wheeler, 2000, p.24). International politics, then, "express neither complete conflict of interest between states nor complete identity of interest; it resembles a game that is partly distributive but also partly productive" (Bull, 1977, p.25).

[States] are bound not only by rules of prudence or expediency [as would realists argue], but also by imperatives of morality and law. But as against the view of [cosmopolitanists], what these imperatives enjoin is not the overthrow of the system of states and its replacement by a universal community of mankind, but rather, acceptance of the requirements of coexistence and cooperation in a society of states (Bull, 1977, p.25).

1.3 The origins of International Society

According to Edward Keene (2002, p.13), the theory of international society "that scholars use today is a combination of these two strands of thought: the political-historical concept of a states-system and the legal concept of a *societas gentium*". To grasp how the English School and its theory of international society came about, it is necessary to adopt a historical approach. It is generally argued that the rules and institutions of the modern society of states emerged first "in Europe in the context of a particular Western Christian culture, […] [and were] reproduced over time as international society expanded outside Europe" to other countries (Griffiths, 1999, p.145). While today international society is no longer considered as consisting only of Christian or European cultures or civilizations – as the great majority of non-European members of the United Nations attests –, the rules and institutions of the present society of states were nevertheless derived from principles and values that were first developed in this part of the world, and which were exported, through the centuries, to the rest of the world.

1.3.1 From a Christian to a worldwide international society

We can trace back the origins of international society to the 15-17th century when thinkers such as Grotius, Victoria, and Suarez founded the premises of international society. In their idea of international society, natural law was defined as "the source of the rules by which Christian princes and communities were bound" (Bull, 1977, p.28). While "the values, which they held to underlay society were Christian", these thinkers nevertheless believed that natural law – not divine law – had the capacity to determine "the rights and duties of all men everywhere" (Bull, 1977, p.27). More specifically, they affirmed that there existed "a natural law connection among all nations […] [which implied] a system of mutual social rights and duties" that was not limited to Christians, but also applied to non-

Christians (Bull, 1977, p.27). Grotius (1625) portrayed natural law as "divorced from theology and religion and grounded solely in the "social nature" and natural reason of man" (Jeffery, 2006, p.66). His contribution and influence on future international law was therefore fundamental, and his conception of international society greatly influenced the English School tradition of thought, which maintains that, "states […] are bound not only by rules of prudence and expediency, but also by imperatives of morality and law" (Bull, 1977, p.25).

These early internationalists sought to limit war within the international realm, by "[formulating] basic rules that limit violence between the members of international society. […] [They] [insisted] […] that war should be fought only by those with proper authority, for a just cause and by just means" (Bull, 1977, p.29). This was the basic idea of Just War theory. However, despite the attempts to formulate common rules, the reality was that there existed "a strong sense of differentiation" with non-Christian societies at that time (Bull, 1977, p.27-28). And it impeded the formulation of rules of coexistence for anything else than a Christian international society.

Ironically, the idea of an international society "preceded the idea of a state system by over one hundred years" (Keener, 2002, p.13). It is indeed in the 19th century that the state – defined as the political authority – became fully articulated and international society assumed a different form (Bull, 1977, p.31). The 19th century conception of international society "was seen to have visible expression in certain institutions that reflected the cooperation of its member states" (Bull, 1977, p.35). International law was one of such institutions. More importantly, the 19th century international society "turned away from natural law and towards positive international law" (Bull, 1977, p.33-34). This implied that states' conduct guidelines were not based anymore on abstract theories and moral principles on how states should act (natural law), but rather, on the observance of the "body of custom and treaty law that was accumulating as to what they did do" (Bull, 1977, pp.33-34) – what will come to be known as the "law of nations".

> The term "law of nations" […] not only drove out the term "law of nature", with which it had previously always been coupled [Grotius]; it came quite clearly to mean not law common to all nations, but law between nations. The transition was completed when the term "law of nations" itself gave way to "international law" (Bull, 1977, p.34).

Sovereignty was defined "as an attribute of all states, and the exchange of recognition of sovereignty a basic rule of coexistence within the states system" (Bull, 1977, p.35). There was also the idea that

> the obligations they [undertook] [were] reciprocal, that the rules and institutions of international society [derived] from their consent, and the idea that political entities such as Oriental kingdoms, Islamic Emirates or African chieftaincies should be excluded from membership (Bull, 1977, p.33).

In its culture and values, international society was indeed "identified as European rather than as Christian" (Bull, 1977, p.32). In fact, the 19th century international society was understood as an exclusively European association. Thus, similarly to the era of Christian International Society, there was a "sense of cultural differentiation from what lay outside: […] European powers, in their dealings with one another, were bound by a code of conduct that did not apply to them in their dealings with other and lesser societies" (Bull, 1977, p.32).

1.3.2 Modern international politics and the expansion of international law

Progressively, international society became more inclusive and came to be interpreted as a global association, rather than a European one. The sense of differentiation and the discriminatory practices that had until then lessened and stopped to make sense. As a matter of fact, they couldn't reflect the reality of international politics anymore, which, in a globalized world, saw states increasingly interacting with each other, sharing reciprocal rights and duties, common interests, and institutionalizing them. Modern international politics now take place within an international society, which is not restricted to Christians or Europeans only, but open to every state in the international system.

According to Keene (2002, p.12), "the distinguishing characteristic of modern international society is that it acknowledges the existence of different political systems and cultures in the world and attempts to facilitate their peaceful coexistence with one another by promoting toleration". This goal is seemingly achieved "through the normative principle of the reciprocal recognition of sovereignty", which entails that each state "recognizes the independent sovereignty of the others within their territorially defined spheres of domestic jurisdiction" (Keene, 2002, p.12).

With the phenomenon of globalization, the scope of international law also progressively expanded. The cooperation between states took on another level, leading them to develop and extend the parts of international law that regulate for instance economic, social, communication and environmental matters. If we look at international relations today, states have formulated common rules on domains as diverse as trade, commerce, security, culture, environment, human rights, or health. According to Bull (1977, p.141), "this expansion of the scope of international law has led [some] to speak of a transition that is taking place from a traditional international law of liberty towards a contemporary international law of welfare". Similarly, Wolfgang Friedmann (1964) wrote about

> a transition from the international law of coexistence to the international law of cooperation, reflecting both the horizontal expansion of international law to incorporate new states outside the European tradition, and its vertical expansion to regulate new fields of international activity (Bull, 1977, p.141).

Ironically, it seems that with the expansion of international society, there has also been a return to natural law principles, which determine how states should act. As Bull puts it (1977, p.38), "the emphasis of the twentieth century, seems to have been upon ideas of a reformed or improved international society as distinct from the elements of society in actual practice". The tentative (re-) insertion of natural law as a complementary source of international law attest of the fact that the latter may need some adjustments in order to be interpreted as more "just" or "adequate" (Bull, 1977). Modern international politics then reflect a desire to preserve international society as it is, but at the same time, a wish to improve it. In other words, it reflects both a concern for order and for justice.

Surprisingly, the idea of a society of states went in less than four centuries from an ambiguous Christian international society, devoid of any institutions and clear instructions about membership, to a worldwide international society, ruled by positive international law and composed not only of sovereign states but of other entities, such as international organizations and non-state groups, which "conceive themselves to be bound by common rules and institutions" (Bull, 1977, p.37). States' practices, values, and interests have changed many times; some of the institutions of international society left the scenario or became obsolete, others have remained strong through the centuries (International Law), and new ones have arisen and occupied great importance. This has demonstrated that the society

of states is not immune to change and adaptation – a topic that we will discuss in more details in the following chapters.

1.4 A rule-governed international society

One important feature of modern international society is that the practices of states are rule-governed (Suganami, 2010, p.19). As Bull explains (1971, p.271), the existence of rules and their respect by states is a necessary condition of an international society. Indeed,

> it is difficult to conceive [for instance] that sustained military or commercial intercourse could be carried on between independent political communities, without some degree of expectation of conformity to general imperative principles of conduct, however crudely and tentatively formulated (Bull, 1971, p.271).

Moreover, "the sense of common interests in elementary goals of social life does not in itself provide […] guidance as to what behaviour is consistent with these goals; to do this is the function of rules" (Bull, 1977, p.64). According to Martin Wight, the rules and principles of international society provide the principles of conduct ("the rules of the game") "through which societies are regulated by the reciprocal rights and obligations of their constituent members" (Griffiths, 1999, p.170). Rules have thus to be understood as "guidance devices that tell us how to act in particular circumstances and proscribe certain forms of conduct as unacceptable" (Wheeler, 2000, p.4). They are strengthened if they are embodied in institutions, that is international law. The latter for instance

> provides a means by which states can advertise their intentions concerning the matter in question; provide one another with reassurance about their future policies in relation to it; specify precisely what the nature of the agreement is, including its boundaries and limiting conditions; and solemnise the agreement in such a way as to create an expectation of permanence (Bull, 1977, p.136).

The non-respect of the rules entails sanctions, such as coercion or the threat of it (the enforcement of law). For instance, when a state has its right of independence placed in jeopardy, International Law authorizes the taking of countermeasures, that is sanctions or reprisals, and even the resort to force in self-defence against an aggressor state. Therefore, as Wheeler puts it (2000, p.5), "norms that acquire the status of law take the costs of violation to another level carrying with it the threat of legal sanctions". However, the constraining power of

rules and institutions also "derives from the social [and moral disapproval] that breaking them entails" (Wheeler, 2000, p.5). For instance, a state that does not respect its promises and engagements towards other states might be impeded from collaborating with other states in the future. In this sense, institutions such as International Law are crucial in maintaining international order and "by strengthening the institutions of international society, the logic of anarchy can be mitigated" (Wheeler; Dunne, 1996, p.94).

Thus, while states are a sovereign "body", this does not entail that they are above the law or that the latter does not bind them, as would realists suggest. In fact, "there is nothing in the meaning of the expression constitutionally independent" that makes us say that [sovereign states] cannot be bound by international law" (Suganami, 2000, p.22). International relations operate within an international society constituted by rules and institutions, and "as states evolve legal relations among themselves, […], they begin increasingly to be bound by legal obligations and therefore their legal freedom (or sovereignty) begins to diminish" (Suganami, 2000, p.21). Thus, contrarily to the realist belief, sovereignty does not imply that states have the right to do whatever they want. In their interactions with each other, states are constrained by the rules and institutions of international society, and are not free to follow their interests to the detriments of others.

1.4.1 The binding character of rules and institutions

We have to understand here the term "constraint" as "derived from constructivist understandings of how actors are embedded within a normative context structured by rules" (Wheeler, 2000, p.4). When we live in a particular environment or society, and we adhere to its specific rules and institutions, we might be constrained from doing certain actions (and conversely, enabled to do certain others). As Pierre Bourdieu (1987, p.63) claims, "nothing is simultaneously freer and more constrained than the action of states". He criticizes here the realist belief that "makes rule following the product of rational calculation"; according to him, this vision denies "accounts of the social world that take agents out the picture by relying on structural causes that exist independently of the practices of actors" (Wheeler, 2000, p.23).

Because states interact with one another, they are prevented from making actions that cannot be legitimated. While these constraints to action are not physical ones, but normative ones, that are socially constructed, they are not less real. According to English School theorists,

> [Realists] ignore how states are socialized into a set of predispositions that are not questioned. States follow their interests, but the way they define these is shaped by the rules prevailing in the society of states. […]. The major fault-line that divides Realism from the English School is […] that, even if a state decides to break the rules, it recognizes that it owes other states an explanation of its conduct, in terms of rules that they accept (Bull, 1977, p.45; Wheeler, 2000, p.24).

Independent states agree to restrict their freedom by obeying to rules and institutions that sometimes may not even be for their own advantage because "they so often judge it in their interests to conform to it" (Bull, 1977, p.134). As Aidan Hehir (2008, p.32) affirms, states "do not obey the law simply because they are compelled to do so but because they are persuaded of its necessity, utility or moral value" and have an interest in reciprocal action by other states, that is "the mutual respect for sovereignty, the keeping of promises, and the laws of war" (Bull, 1977, p.134). Additionally, actors who invoke rules and norms "to defend their actions can find themselves entrapped by their own justifications in ways that serve to constrain their subsequent actions" (Wheeler, 2000, p.26). For instance, a state that invokes an intervention in humanitarian terms is subsequently constrained to act in ways that are humanitarian, that is the respect of humanitarian law, etc. Otherwise, his justification would soon be interpreted as a pretext for illegitimate war. As Bull (1977, p.136) puts it: "governments have a degree of respect for legal obligations; they are reluctant to acquire a reputation for disregarding them, and, in relation to most of the agreements into which they enter, they calculate that their interests tie in fulfilling them".

1.5 Order versus justice

Obviously, we cannot expect from a society of states with such diversity, that its member states agree on everything. There are agreements as well as disagreements within the international realm. States' "opinion as to the interpretation of the rules and their application to concrete situations" may for instance differ (Bull, 1977, p.43). Similarly, there are differences in the degree of

desired cooperation between states. In a society of states characterized by a lack of consensus, we ask whether states' normative commitments are limited to rules about mere coexistence or if they go beyond it? Or in Buzan's words (2004, p.21),

> Is international society just a system for preserving the distinctiveness and independence of states within a limited framework of shared rules, or does it develop, as the practices of regimes and regional cooperation seems to suggest, into increasing degrees of harmonisation and integration? (Buzan, 2004, p.21)

This questioning echoes an important debate that exists within the English School, and has been known as the pluralist-solidarist conflict. It essentially "hinges on the question of the type and extent of norms, rules and institutions that an international society can form without departing from the foundational rules of sovereignty and non-intervention that define it as a system of states" (Buzan, 2004, p.8). As such, the pluralist-solidarist conflict is a debate about the boundaries of international society. It opposes two different conceptions of international society: one, which sees the cooperation between states restricted to the rules that enable coexistence between them and tends to privilege the maintenance of international order. And the other, which argues that the cooperation between states goes beyond coexistence matters and can incorporate elements of justice, which are actually interpreted also as a way of reinforcing international order.

According to the English School, "order and justice are the two key standards […] by which we can measure the workings of the society of states" (Suganami, 2010, p.24). Bull (1971, p.270) described it in the following terms:

> By order in social life, I mean a pattern or structure of human relationships that sustains not the special purposes of this or that sort of society but the primary or elementary goals of social coexistence; goals that are common to social life at all times and in all places. Social life in any form requires, for example, some restriction on the liberty of members of the society to resort to violence, a presumption that promises will be kept; and a means of securing stability of possession. International order is a pattern or structure of human relations such as to sustain the elementary or primary goals of social coexistence among states.

Order has to be understood "as a quality that may or may not obtain in international politics at any one time or place, or that may be present to a greater or lesser degree: order as opposed to disorder" (Bull, 1977, p. xxxii). According to Bull (1917, p.272), order is regarded as valuable because of states' "desire to be able to predict the behaviour of other states, to avoid the anxiety into which they

would be plunged if they could not count on others to follow certain guidelines or signposts". Yet although it is the desirable state of affairs in international politics, "it is not [regarded as] the only value in relation to which international conduct can be shaped, nor is it necessarily an overriding one" (Bull, 1977, p.74). The achievement of justice – the desire of an "improved" society, is the other element.

> […] ideas about justice belong to the class of moral ideas; ideas which treat actions as right in themselves and not merely as a means to an end, as categorically and not merely hypothetically imperative. Considerations of justice are to be distinguished from considerations of law, and from considerations of the dictates of prudence, interest or necessity. […] They have especially to do with equality in the enjoyment of rights and privileges, perhaps also to do with fairness, redistribution or reciprocity (Bull, 1977, pp.75-76).

While order has to do more with questions about peaceful coexistence between states and states' rights, justice, by contrast, concerns individuals', humans' rights. It has to do with how international society can be improved.

> Demands for justice in world politics are often of this form; they are demands for the removal of privilege or discrimination, for equality in the distribution or in the application of rights as between the strong and the weak, the large and the small, the rich and the poor, […] demands that legal rules be applied in a fair or equal manner to like persons or classes of persons (Bull, 1977, p.76).

Considerations about justice are however not only about applying rules fairly or equally since injustice can arise "when equals are treated unequally and [also] when unequals are treated equally" (Aristotle, apud Bull, 1977, p.77). Justice can therefore take different forms, for instance proportionate justice or distributive justice. By contrast with order, it is "a term that can ultimately be given only some kind of private or subjective definition" (Bull, 1977, p.75). That is, justice can be interpreted in different manners; it depends on the context, and unless there is the same sense of the common good from the part of states, the pursuit of justice can lead to conflict or disorder. In this context, it is interesting to see how these supposedly contradictory goals of the society of states are pursued within an international realm characterized by the diversity of its composing members.

1.6 The pluralist and solidarist divide

Questions about order and justice and their respective place and balance in

international society framed what became known as the pluralist–solidarist debate within the English School. In order to better understand this divide, it is important to recall Bull's definition of international society:

> A society of states […] exists when a group of states, conscious of certain **common interests and common values**, form a society in the sense that they conceive themselves to be bound by **a common set of rules** in their relations with one another, and share in the working of common institutions (Bull, 1977, p.13).

The terms "common interests and values" and "common set of rules" are here the two elements, which enable us understanding the concepts of pluralism and solidarism. More specifically, pluralists and solidarists differ in their appreciation of what these shared interests and values of the society of states are, and the extent to which they can be institutionalized into common rules. Consequently, they offer different visions of international society. Barry Buzan illustrates the pluralist-solidarist debate as "[being] about the nature and potentiality of international society, and particularly about the actual and potential extent of shared norms, rules and institutions within systems of states" (Buzan, 2004, p.45). Simplifying, it is a debate about the extent to which states are able to cooperate and interact together on more than coexistence questions.

1.6.1 Pluralist conceptions of international society

In the pluralist conception of international society, "the common interests and values [are] said to be the Westphalian ones", which, expressed in a set of common rules, are what we generally call the "rules of coexistence" (Buranelli, 2015). We can resume them as such: sovereignty, non-intervention and non-use of force. These rules are said to enable peaceful coexistence between states and international order is generally described in terms of these. According to the pluralists, which represent the more conservative side of English School thinking, states' main concern lie in preserving international order. The importance assigned to the respect of these rules is therefore a central point of their discourse. Pluralism, "like realism, is about the preservation and/or cultivation of the political and cultural difference and distinctness that are the legacy of human history" (Buzan, 2004, p.46). It assumes that the major differences that exists among states and people, "which are ideologically and culturally unlike in a

system, are best contained within an international society that allows for the greatest possible independence for states, which can, in their forms of government, express […] differing conceptions of the "good life" (Buzan, 2004, p.46; Wight, 1966). Pluralists recognize "that states […], can and do have differing interests and values, and consequently that international society [should be] limited to the creation of a framework that will allow them to coexist in relative harmony" (Mayall, 2000, p.14, apud Buzan, 2004, p.46). Against this background, they postulate that

> the society of sovereign states is better off focusing on the minimum goal of the orderly coexistence of sovereign states and that straining this society with too high an ideal, such as, in particular, the universal enjoyment of human rights through their international guarantee and protection, is destined to have negative side-effects (Suganami, 2010, pp.25-26).

Adding moral values to the international society then, could put international order in peril, since it risks being "based on the cultural predilection of those with the power to carry it out" (Brown, 1992, p.113, apud Wheeler, 2000, p.29). The pluralist vision is thus mostly state-centric and "makes the scope for international society pretty minimal, restricted to shared concerns about the degree of international order under anarchy necessary for orderly coexistence" (Buzan, 2004, p.46) and competition between states. A pluralist society then,

> does not require moving much beyond the raw self-centeredness and self-interest of egoistic sovereign actors [as depicted by realists] – only that they recognize that their own survival and self-interest can be enhanced by agreeing to some basic rules with the other actors in the system (Buzan, 2004, p.143).

1.6.2 Solidarist conceptions of international society

By contrast with pluralists, solidarists affirm that the society of states "can develop quite wide-ranging norms, rules, and institutions, covering both coexistence issues and cooperation in pursuit of shared interests, including some scope for collective enforcement" (Buzan, 2004, p.8). Solidarism is an approach that works for commonality (universality of morality; a universal standard of justice) instead of diversity. It is "about thick […] societies, in which a wider range of values is shared, and where the rules will be not only about coexistence but also about the pursuit of joint gains and the management of collective problems in a range of issues-areas" (Buzan, 2004, p.59). Indeed,

> in a solidarist international society the common interests and values […] [go] beyond the mere coexistence among states [and] instead [creates] a framework for elevating the individual to a position of subject in respect to international law and for sustained cooperation in a larger field of issues, such as the preservation and the implementation of human rights, the protection of the environment, the establishment of a single market and so on (Buranelli, 2015).

Solidarism addresses the moral dimension of international relations and the question of how states "ought to act" (Hehir, 2008, p.38). It is not interested in promoting a minimal international order, as pluralists do, but an *optimum* order (Bull, 1977), which is only achievable through more justice. According to them, "an unjust world would be a disorderly one" (Wheeler, 2000, p.301). Consequently, they seek to promote a more "responsible" international society, which would pave the way to international progress and enlightenment.

According to their logic, states should feel responsible because there is no world authority to guarantee a world order that is more just. Indeed, "since international order does not provide any general protection of human rights, but only a selective protection" (Bull, 1977, p.86), solidarists believe international society "should do more to promote the causes of human rights as opposed to the rights of states to political independence and non-intervention in their internal affairs" (Brown, 2009, pp.48-52). In a solidarist conception of international society then, sovereignty and non-intervention are defined in a looser, less strict way. Sovereignty must not be reduced to its territorial and political understanding, but as entailing responsibilities. "Solidarism focuses on the possibility of shared moral norms necessarily underpinning a more expansive, and almost inevitably more interventionist, understanding of international order" (Buzan, 2014, p.114).

1.6.3 A debate about the moral possibilities in international society

According to Suganami (2002, p.13), the pluralist-solidarist debate has to be interpreted as "differing judgements about the extent of solidarity or potential solidarity" in international society.

> one way of cutting through the complexities of the pluralist-solidarist debate is to say that "pluralism is what happens when pessimists/realists/conservatives think about international society, and solidarism is what happens when optimist/idealists/liberals do so (Buzan, 2004, p.140).

As such, pluralists and solidarists oppose those concerned to preserve international order with the minimum set of rules of coexistence, and those who "give priority to the achievement of just change, if necessary at the expense of order" (Bull, 1977, p.83), by bringing in elements of morality. "The essence of the matter is whether individual rights society necessarily conflicts with states' rights […] or can be in harmony with them" (Buzan, 2004, p.21). As mentioned earlier, we can see pluralists as the defenders of states' rights on the one hand, and solidarists as the defenders of individuals' rights on the other hand. The questions this debate raises are whether order and justice are mutually exclusive or can be reconciled, – a question that pluralists would answer by the first proposition and solidarists by the second. Nevertheless, an important point to raise in this context is that "justice […] is realisable only in a context of order, it is only if there is a pattern of social activity in which elementary or primary goals of social life are in some degree provided for, that advanced or secondary goals can be secured" (Bull, 1977, p.83). This means that a solidarist international society can only emerge from a pluralist one, thus entailing that order and justice aren't necessarily mutually exclusive, but on the contrary, mutually dependent[4].

1.7 The reality of international society

Determining whether an international society is pluralist or solidarist in its nature is not an easy task since "pluralism and solidarism simply link positions on a spectrum and have no necessary contradiction" (Buzan, 2004, p.58). A society may have for instance strong solidarist linkages while preserving a strong pluralism on certain issues, as for example "China and other states are showing nowadays, refusing any forms of cooperation on human rights issues but playing a significant role in the global economy and international trade" (Buranelli, 2015).

Pluralism and solidarism describe international society, as "varying in degree and depth of cooperation" (Buranelli, 2015). In this context, the difficulty resides in defining at what point does the society of states move from being pluralist to solidarist. Looking at how international politics occur today, we might concede that states cooperate in a wide range of areas where they share common

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[4] For instance, Wheeler (2000) argues that solidarism serves sometimes as a restrain from pluralism becoming realism.

interests and values, which they institutionalize. These seem to go beyond the "elementary goals of social life" (Bull, 1977, pp.67-68). The cooperation between states, on a global level, seems, indeed not limited to coexistence matters - that is, restricted to rules about sovereignty, non-intervention, non-use of force, and respect of agreements. It encompasses areas as diverse as trade, commerce, environment, human rights, health, and consequently, denotes a clear desire for an "improved" society. The post-Cold War era in particular witnessed a growth in areas where states cooperate and in rules and institutions that

> prescribe behaviour that is appropriate not only to the elementary or primary goals of international life, but rather to those more advanced or secondary goals that are a feature of an international society in which a consensus has been reached about a wider range of objectives than mere coexistence (Bull, 1977, p.67).

If we argue that international society moves from being pluralist to solidarist when we observe an increase in the number of issues on which there is strong cooperation between states on "secondary goals", then we might say that the present society of states is solidarist. This entails that a pluralist international society would be defined as one where there is only a low degree of cooperation between states when it comes to rules other than coexistence, and conversely, a solidarist one might be observable when there is a high degree of cooperation between them. Yet this approach is somehow problematic, since the principle of coexistence can also push states to make "rules about dealing with shared dangers and common fates" (Buzan, 2004, p.145). The creation of the NATO for instance, and its claim "that an attack on one shall be treated as an attack on all has a solidarist ring" (Jackson, 2000, p.351-355, apud Buzan, 2004, p.149). It was however created for survival purposes. Determining whether the society of states is pluralist or solidarist can thus be quite tricky since a shared interest in survival can lead states to cooperate and take measures for instance about environment, to preserve the ozone or to avoid the dangers of pollution and global warming. These might be common solutions for universal problems, yet it also falls "within a logic of coexistence, where the emphasis is on measures necessary to maintain the conditions of existence for the members of [international] society" (Buzan, 2004, p.145). It is thus "compatible with a pluralist international society committed to preserving its differences and taking a hard view on sovereignty and non-intervention" (Buzan, 2004, p.145). Thus, as Milner (1997, apud Buzan, 2004,

p.145) argues, there can be "international cooperation from the calculations of egoistic actors in the pursuit of their own self-interest".

A better approach in this context might be to view a pluralist international society as made up of a "low, narrow degree of shared norms", whereas a solidarist one consists of a "high degree of shared norms" (Buzan, 2004, p.49). The emphasis here is on the word "shared" - that is, in a pluralist society of states, there are only a few norms where there is a consensus, whereas in a solidarist one, the degree of consensus about shared norms and values is much higher (that is a universal understanding of human rights; a universal standard of justice). Thus, cooperation between states on a large range of issues does not necessarily entail that there is consensus on a wider range of issues too. This is particularly true when it comes to rules telling states how they should act internally or what "appropriate conduct" is. Indeed, the norms and institutions that are the most contested at the global level are those which have this more "interventionist ring" and go beyond survival and coexistence matters. That is, rules, which seek to promote justice (for example human rights, equality, redistribution, etc.). Since they often enjoin governments to act in determinate ways towards their own citizens, such rules are far from obtaining global consensus.

> If one focuses on the interstate society, then many of the institutions appear to be held in place by belief. At the level of states, sovereignty, territoriality, non-intervention, diplomacy, international law, […] are all pretty deeply internalised and not contested as principles. […] the basic institutions of pluralist interstate society have wide support among states […] Although these institutions were originally imposed coercively by the West, it is far from clear that they are now held in place primarily by Western power and influence. Even if western power declined, it does not seem unreasonable to think that most of these pluralist institutions would remain in place […]. The same cannot be said for the more solidarist elements of contemporary international society (Buzan, 2004, p.234).

It has to be acknowledged that the institutions of a pluralist society are more internalised than the institutions from a solidarist society, and have wide support among states. The sovereignty rule, in particular, is considered as one of the master institutions of interstate society[5]. However, the same doesn't apply to the

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[5] "At its core, sovereignty means the possession of absolute authority within a bounded territorial space. There is essentially an internal and external dimension of sovereignty" (Brahm, 2004). Internally, sovereignty means the authority to rule over a delimited territory and the population residing in it (Ayoob, 2002, apud Krieg, 2013, p.5). "Externally, sovereignty is the entry ticket into the society of states. Recognition on the part of other states helps to ensure territorial integrity

more "solidarist" rules. One of the main reasons for this might be cultural relativism. Moreover, rules aimed at promoting justice challenge the sacrosanctity of the rules of coexistence, by often questioning them. The penetration of elements of justice and morality in the society of states by actors eager to improve international society has indeed increasingly challenged the exercise of states' sovereign prerogatives.

The post-Cold War world, in particular, has been a world of increased interference on states' internal affairs. More specifically, "the emergence of human rights as a subject of concern in international law" has "affected sovereignty because these agreed upon principles place clear limits on the authority of governments to act within their [own] borders" (Brahm, 2004). Against this background, states that had gained their independence or access to membership to the society of states only tardily have been (rightly, often) suspicious of what they see as a new form of dominance; as what might be the expression of a new imperialism of rules and values. According to them, rules and institutions that aim to promote justice, by telling governments how they should act, can serve as a pretext for dominant and powerful nations to justify intervention in other states' affairs for questions of self-interests. As a result, those states very attached to their independence and autonomy have been evermore worried about the coming of new rules, principles, or institutions that might limit their sovereign privileges, and respect for these more solidarist rules, seems to be achievable only with difficulty.

Conclusion

This first theoretical chapter focused on English School's theory of international society, a theory "about the institutionalisation of shared interest and identity [values] amongst states, and [which] puts the creation and maintenance of shared norms, rules and institutions at the centre of IR theory" (Buzan, 2004, p.7). An international society exists because states accept its principles, institutions and rules, and because they feel constrained by them. "Just as human beings as individuals live in societies which they both shape and are shaped by, so also

and is the entree into participating in diplomacy and international organizations on an equal footing with other states" (Brahm, 2004).

states live in an international society, which they shape and are shaped by" (Buzan, 2004, p.8). As international society expanded through the centuries, including new countries, these became more and more interdependent, and cooperation between states extended to domains going beyond simple coexistence matters. Yet at the same time, this society of states increasingly had to deal with the differing, and sometimes conflicting, interests and values of its composing members. As a consequence, the formulation of common rules and institutions has not always been an easy task. We saw that while the rules of international society were originally imposed from the West, in the aftermath, "their strength depended upon new members having a stake in sustaining them" (Bull, 1977, apud Griffiths, 1999, p.149).

The present chapter thus sought to demonstrate that a predominant feature of contemporary international society is the lack of consensus on a global level, especially when it comes to questions that go beyond simple coexistence matters. While there are many areas of agreements between states and extended cooperation on many issues where they share common values and interests, the difficulty that arises, especially when it comes to notions about justice, is that they often prone/advocate a "universalism" that conflicts with existent cultural relativism. Advocates of solidarism for instance declare that there exist universal moral values that apply to every human being – that is universal human rights. However, this belief necessarily enters in conflict with cultural relativists who object this universalism and affirm that notions about justice "are culturally dependent, and that no moral principles can be made to apply to all cultures" (Global Policy Forum, [s.d]). Therefore, rules that dictate states how they should act internally and what is "appropriate" behaviour are often opposed.

Apart from the rules of coexistence designed to maintain international order, most of the other agreements between states are generally the result of long negotiations, bargaining or compromise (Bull 1977, p.83). Some of them are held in place more by coercion or by a desire of being seen as legitimate actors (calculation), than by actual belief (Buzan, 2004, p.157). This is particularly true when it comes to rules that dictate how a government should treat its own citizen, or how it should rule its country, since it diminishes its sovereign prerogatives. Although justice is recognized as a necessary element for the improvement of international society, the fact that many consider it as a subjective value makes it

also prone to suspicions by actors who fear that moral values could be invoked as a pretext to advance other states' interests.

At the same time, there exist societies at the sub-global or regional level that develop more or less solidarism. Some of them, that is the European Union, have been abler than others to formulate ideas about how to improve life and the relations between states, although this idea might have limited their sovereign prerogatives. This shows that the pursuit of order can be compatible with that of justice; and that a higher degree of consensus in some societies is not only possible, but can in fact procure states increased stability. International society is not amoral, as realists would suggest; moral values affect and constrain states' actions, too. The only difficulty, on a global level, lies in the fact that elements of justice are less internalized by states than elements of order.

The English School perspective is particularly interesting in the context of the present work, affirming that there is a constant tension between pluralism and solidarism, between the rational and moral elements composing the society of states, and that states' actions have to be understood somewhere in between the two extremes of realism and cosmopolitanism. That is, international relations occur somewhere within this spectrum. The present research nevertheless emphasizes that the pluralist-solidarist dichotomy has to be nuanced. Indeed, we cannot reasonably characterize international society by saying that it is either something or either something else (Buzan, 2004, pp.231-232). There are times where it will show more or less solidarism.

Concluding, the present chapter sought to demonstrate that there is a gap between how states act (or are expected to act) in reality – that is, in a world without an international government and where respect for agreements have limits – and how they should act ideally (appropriate behaviour). The absence of certitude within the international realm leads states to seek stability, and their concern for order in this context often precludes the advancement of international justice. In fact, it seems that states are limited in their possibilities to act morally because of their fear/concern that the prioritizing of justice over order – and the consequent diminishing of their sovereign prerogatives – might be a pretext to advance other states' values or to interfere in their internal affairs. This makes us affirm that international society seems to be at a pluralistic stage; a stage "where decisions are often settled by bargaining and coercive moves rather than by

persuasion and by appeals to common standards, shared values and accepted solutions" (Kratochwill, 1989, p.254).

The next chapters will continue the discussion about order and justice by focusing on how situations where states greatly disagree (that is no consensus on the right thing to do) and where different elements are at stake are settled. More specifically, it will question states' ability to overcome their concerns about international disorder and place justice before order – before interests too –, when morality demands it. The order versus justice divide will be studied in the light of the humanitarian intervention debate that arose in the aftermath of the Cold War, and which is precisely a scenario where we see these kinds of tensions at work. The case for humanitarian intervention is particularly interesting since it exposes, in Wheeler's terms (2000, p.11), "the conflict between order and justice at its starkest". Humanitarian intervention, indeed, demands the violation of the rules of coexistence in order to promote justice (the ending of human suffering).

Against the background of the end of the Cold war, there has been a growing questioning about the moral legitimacy of certain rules and actions of the society of states. States have repeatedly manifested their desire to improve international society, as visible in the growth of cooperation between them on secondary goals of social life and normative developments in the area of human rights. This showed that there was place for more solidarism. The respect of human rights obligations and the question of its enforcement have nevertheless caused important worries among some members of the international community. As a matter of fact, the emphasis is put not on state justice, but on human justice, thus letting others have a say in how governments should threat their citizens. The humanitarian intervention debate in the 1990s thus depicts an international society eager to improve its humanitarian standards, yet at the same time it illustrates a complex situation where differing rules, claims, but also values, compete: sovereignty and intervention, states' rights and human rights. It demands which should have the priority and questions states' capacity of acting as moral actors and agents of change. And we ask: is this tension ever solved?

2. Competing claims and new practices: the possibility of humanitarian intervention in the 1990s

In the old days, "humanitarian intervention" was a lawyer's doctrine, a way of justifying a very limited set of exceptions to the principles of national sovereignty and territorial integrity. It is a good doctrine, because exceptions are always necessary, principles are never absolute. But we need to rethink it today, as the exceptions become less and less exceptional (Michael Walzer. The Argument about Humanitarian Intervention. **Dissent**, Winter 2002, p. 29)

In the previous chapter, we discussed the difficulty of obtaining consensus among states on a global level, due to the cultural relativism that characterizes international society. This is particularly true when it comes to secondary goals of international life, such as international justice, as they often advocate universal standards of conduct and of "appropriate" behaviour, which conflict with existing social patterns (Bull, 1977, p.89). The reality of international society is one where situations arise, in which different values, norms, and principles conflict and clash with each other. In such cases, the final decision is often more the fruit of a bargaining than that of a consensus. In this context, it seems much easier to formulate rules or make agreements between states that share a common culture, religion or civilization, than when all the different opinions and origins that compose a global international society must be taken into account.

While states share common interests and values, which they institutionalize, and cooperate on extended domains, the reality is that the normative elements that characterize a pluralist society of states (the rules of coexistence, that is, respect of sovereignty and property rights, limits to violence and respect of agreements) are much more accepted and internalized than those that characterize a solidarist society. This means that the rules, principles, and institutions of the society of states do not have equal weight within the international realm; we can arrange them in a hierarchy (Mayall 2000, pp.149-150, apud Buzan, 2004, p.170). For instance, we observe a higher degree of consensus and compliance towards the institutions and rules that characterize a pluralist international society, and less necessity for "collective enforcement". The principles of "sovereignty, territorial integrity, […] non-intervention, [and non-use of force,] have been around since the beginning of the modern states-system" (Mayall 2000, pp.149-150). They

"still feature strongly as master institutions, […] although no longer as absolute as they once were" (Buzan, 2004, p.232). Yet other institutions, such as "self-determination, non-discrimination, and respect for fundamental human rights – [institutions that] have been added only more recently" (Mayall, 2000, pp.149-150) and that are centred on the equality of peoples – "remain contested on a global level. [And] it is still controversial to count them as global level institutions or not" (Buzan, 2004, p.233).

The rules of a pluralist and solidarist society, therefore, do not have the same equal weight. Pluralist institutions are stronger; there is, as a matter of fact, far more compliance towards rules aimed at protecting states' rights than towards rules aimed at promoting justice (that is human rights). Nevertheless, this doesn't preclude progress. International society has witnessed in the post-Cold War period a growing desire for an "enlightened" or "improved" international society, where injustice is properly addressed. Some states have acknowledged that justice, while diminishing their sovereign prerogatives, can bring them with more security and stability. This has to be understood in the sense that a world that is more just is a world that is more orderly (Wheeler, 2000). Indeed, when there are fewer reasons for people to be unhappy, there are also fewer reasons for them to complain, thus provoking potential tensions that can spread into and cause disorder.

This second chapter continues the previous discussion about order and justice and the possibilities of a more solidarist international society by addressing a central component of the pluralist-solidarist divide: the issue of humanitarian intervention. Humanitarian intervention, as Wheeler (2000, p.11) points out, "exposes the conflict between order and justice at its starkest". It depicts a tension between human rights on the one hand, and states' rights (that is sovereignty, non-intervention, non-use of force) on the other hand; a tension between the desire to end human suffering, with the use of force, and the dangers of authorizing such a practice within the international realm. The debate around humanitarian intervention is probably the more representative and well-developed theme in the English School literature. It arose in the 1990s, and challenged well-established rules and institutions of international society, by questioning whether intervention should be accepted as a legitimate response to massive violations of human rights.

The objective of the present chapter lies in understanding how situations where there is a moral dilemma and where states greatly disagree about the "right

thing to do"; how situations where there are competing claims –for instance humanitarian intervention, with sovereignty versus intervention–, are settled (Bull, 1977). To do so, the present work will start by studying the evolution of the humanitarian discourse in the 1990s and the normative developments that followed. It will then address the legal and moral status of humanitarian intervention, and more precisely, the question of its legitimacy.

Understanding the relationship between law and morality, and the debates around this thin line, is important. It enables us to grasp the idea that when something is necessary legally, for instance a humanitarian intervention norm, it is often because there is also a moral necessity for such norm. Indeed, the moral necessity of something is often what antedates and leads to a change of practices, of rules. Institutions and rules are neither permanent nor fixed, but susceptible of change, as the history of international society has shown[6]. The fact that there has been a re-emergence of natural law principles in the 1990s attests of a desire to fill in the gaps left by International Law. More specifically, it portrayed the incapacity of international law to respond in a "timely and decisive manner" (United Nations, 2005, Article 139) to human rights violations and situations of humanitarian emergencies. Thus, the present chapter also seeks to demonstrate that concerns about justice are often responsible in motivating changes in the law, for a more just international society. However, another purpose of this chapter, and work, will be to show that justice in the society of states has its limits, and turning (or trying to turn) a pluralist international society into a solidarist one can be quite a difficult task.

2.1 The tension between states' rights and human rights: sovereignty versus intervention

The tension between states' rights and human's rights capture and illustrate the pressure that exists between the requirements of international order and universal justice. In a pluralist international society, primacy is given to states over people, and sovereignty has to be understood as "the prime organizing principle of interstate relations" (Buzan, 2014, p.90). Sovereignty is what guarantees international order by facilitating peaceful coexistence between states,

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[6] This topic will be addressed in more details in Chapter three.

which are able to pursue their own varieties (cultural, religion, etc.) within their territories. At its core, sovereignty means "the possession of absolute authority within a bounded territorial space and there is essentially an internal and external dimension of sovereignty " (Brahm, 2004). Internally, it means "the authority to rule over a delimited territory and the population residing in it" (Ayoob, 2002 apud Krieg, 2013, p.5). "Externally, [it] is the entry ticket into the society of states. Recognition on the part of other states helps to ensure territorial integrity and is the entree into participating in diplomacy and international organizations on an equal footing with other states" (Brahm, 2004). The non-intervention principle is its corollary, acting as a bulwark against external interference and is "that unit which affords protection and security to human beings" (Buzan, 2004, p.181).

In such a context,

> the solidarist promotion of cosmopolitan human rights [is perceived] as a danger to the stability of international society because, if human rights are given independent of the state, then the principles of sovereignty and non-intervention are challenged in a fundamental way (Buzan, 2014, p.90).

Human rights are rights inherent to all human beings, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (United Nations, 1948, Art.2)[7]. All human beings are (theoretically) equally entitled to their human rights, without discrimination; the right to life, liberty, security of person, equal treatment before the law, and freedom of thought, opinion and expression, are some of them (United Nations, 1948, Art.3, 7, 18, 19). Human rights also describe certain standards of human behavior, often guaranteed by law:

> States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that states must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires states to protect individuals and groups against human rights abuses. The obligation to fulfill means that states must take positive action to facilitate the enjoyment of basic human rights (OHCHR, [s.d.]).

"Underlying [human rights] laws is the principle of non-discrimination, the notion that rights apply universally" (Hubert; Weiss, 2001, p.144, apud Maiese, 2004). The fact that most states have ratified at least one "of the core human

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[7]The "Universal Declaration of Human Rights".

rights treaties [reflects] [their consent], which creates legal obligations for them and gives concrete expression to universality" (OHCHR, [s.d.]).

Against this background, the tension between sovereignty and human rights resides in the fact that it opposes the cultural relativism inherent to sovereignty with the universality of human rights. The "universality" of human rights law is somehow problematic because it necessarily entails restrictions in states' sovereign prerogatives. Indeed, it imposes a code of conduct and obligations to states that go beyond territoriality, "providing individuals rights vis-à-vis the state", restraining states' freedom in governing their own people, and allowing other international actors to have a say on how governments should rule in their territory and over their citizens (Brahm, 2004). The principle of sovereignty, however, implies that states are free to pursue their own variations at the internal level, without interference from other states. Consequently, both human rights and states' rights appear as obstacles to the full realization of each other's objectives.

For instance, thinkers such as Jarat Chopra and Thomas Weiss (1992, p. 95, apud Hehir, 2008, p.3), affirm that "one word explains why the international community has difficulty countering human rights violations: sovereignty". States' rights have "increasingly come to be considered the paramount barrier to universal human rights enforcement and champions of human rights have singled out sovereign inviolability as a concept that needs to be reconstituted, if not abandoned" (Hehir, 2008, p.3). As Hehir (2008, pp.3-4) puts out,

> the principle of non-interference is an anathema to the universalism inherent in the humanitarian perspective and to advocate respect for sovereign inviolability and the privileging of states interests over human rights is, according to some, "to be complicit in human rights violations (Linklater, 2000, apud Hehir, 2008, pp.3-4).

Yet on the other hand, defenders of sovereignty affirm that, "while human rights are in theory universal, ideas about which basic needs should be guaranteed vary according to cultural, political, economic and religious circumstances" (Maiese, 2004). Some states for instance privilege collective rights over individual rights, and vice versa. They must be free to decide which "human rights package" suits them the best, according to their own cultural, political, economical or religious background. Therefore, "policies to promote and protect human rights [should] be culturally adapted to avoid distrust and perceptions of intrusion into internal affairs" (Maiese, 2004).

2.2 The issue about enforcing human rights

We stated earlier that there is more compliance towards rules aimed at preserving states' rights than rules aimed at protecting human rights. A good way to see this gap would be to look at a case scenario where a state is victim of an attack on its territory and has its right of independence threathened. This state is usually authorized to take counter-measures, sanctions, or reprisals, and even to resort to force in self-defence against the aggressor state. As Bull puts it,

> in the absence of a central authority with preponderant power, some rules of International Law are in fact upheld by measures of self-help, including the threat and use of force by individual states […] [by resorting] to force in self-defense, the state is not only enforcing its rights under the law, but also these rights cannot in fact be upheld in any other way (Bull, 1977, p.126).

While the use of force is prohibited, International Law makes an exception when it comes to situations where states are victims of aggression, authorizing them to resort to force as a legitimate mean of self-defence, as stated under Article 51 of the UN Charter. According to Bull (1977, p.126), "it is [indeed] only if power, and the will to use it, are distributed in international society in such a way that states can uphold at least certain rights when they're infringed, that respect for rules of International Law can be maintained". Thus, while the use of force as a means of enforcing the law violates well-established rules, it is sometimes necessary, and even authorized, to do so.

The same cannot however be said when it comes to human rights. Indeed,

> Despite what resembles a widespread consensus on the importance of human rights, the protection of human rights still often leaves much to be desired, […] and there is little to enforce the commitments states have made towards human rights. Military intervention is a rare occurrence. Sanctions have a spotty track record of effectiveness. Although not to be dismissed as insignificant, often the only consequence for failing to protect human rights is "naming and shaming" (Maiese, 2004).

International law does not authorize the use of force to uphold humanitarian values; there is no such mechanism (Maiese, 2004). Consequently, we ask: how can human rights be respected when there is no equivalent mechanism to that of sovereignty (that is self-defense), which allows the upholding of human rights, and makes states comply with their obligations? "What can be done to safeguard

human rights law when those in power are responsible for human rights violations" – sometimes against their own citizens (Maiese, 2004)?

Robertson (2002, p.220, apud Hehir, 2008, p.3) observes that:

> The plethora of legislation outlawing certain human rights violations, such as torture, detention, etc., though indicative of the capacity of the human rights lobby to affect legal change, have not eradicated these. While states may sign human rights treaties, compliance is another matter, and a state's assent certainly does not constitute the assent of all clandestine factions within that state.

Thus, there are normative commitments but a gap between them and instruments (enforcement), and it "allows governments to abuse human rights with virtual impunity" (Wheeler, 2000, p.1).

2.2.1 Support and objections to a right of humanitarian intervention

Central to the pluralism/solidarism divide is the issue about human rights enforcement, that is, "whether the society of sovereign states should accept the practice of unilateral military intervention as a legitimate response to massive violations of human rights by a regime against the people it governs" (Suganami, 2010, p.25). While international law does not authorize such a use of force, solidarists argue "that humanitarian intervention ought to be made legal or ought at any rate to be accepted under certain strict conditions, or that it has already become plausible to suggest that it is legally permissible under certain exceptional circumstances" (Suganami, 2010, p.25), like supreme humanitarian emergencies.

Wheeler (2000, p.50) define these as "extraordinary situations where civilians in another state are in imminent danger of losing their life […] and where indigenous forces cannot be relied upon to end these human rights violations". Humanitarian emergencies expose the tension between the rights of the individual and those of the state. They question which one should have the priority: the norms that protect states from external intervention or the norms that protect people against violations of their human rights?

There are conflicting imperatives of international law and morality, and yet no consensus between states about the right thing to do. While "state leaders find themselves confronted with these situations only on rare occasions, […] when they do, they are confronted with the ultimate choice between [pluralist] and solidarist conceptions of moral responsibility in statecraft" (Walzer, 1978, p.61,

apud Wheeler, 2000, pp.50-51). In such situations, the desire to help others clashes with existing principles of international law, about the prohibition of interference in other states affairs' and the use of force against sovereign states. The difficulty resides in having to decide "between doing something to rescue non-citizens facing the extreme, which is likely to provoke the charge of interference in the internal affairs of another state, and doing nothing, which can lead to accusations of moral indifference" (Wheeler, 2000, p.1). Neither answer completely satisfies and thus, further divides the members of international society.

Within the English School, solidarists argue in favor of intervention. As defenders of justice, they declare "states should restrain from certain actions and satisfy certain basic requirements of decency before they qualify for the protection that the principle of non-intervention provides" (Vincent; Watson, 1993, p.126, apud Wheeler, 2000, p.28). That is, sovereignty entails responsibilities of the state towards its citizens, not only privileges. As Krieg (2013, p.17) explains,

> [While] states have a right of sovereignty, they also have a duty that arises from this right, namely the moral duty of every state to provide for the wellbeing of its citizens, [that is] ''[…] the duty to protect communities from mass killing, women from systematic rape, and children from starvation […]'' (Evans; Sahnoun, 2002, p.101, apud Krieg, 2013, p.17).

A primary purpose of states being to "secure [the] human rights [of their citizens], […] governments and others in power who seriously violate those rights undermine the one reason that justifies their political power, and thus, should not be protected by international law" (Tesón, 1997, apud Holzgrefe; Keohane, 2003, p.93). Proponents of intervention argue that states must be held accountable for their human rights records, and in this context, "those who grossly assault them should not be allowed to shield themselves behind the sovereignty principle" (Tesón, apud Holzgrefe; Keohane, 2003, p.93). It is a question of principle, of morality. Indeed, as Wheeler (2000, p.27) puts it, "what moral values attaches to the rules of sovereignty and non-intervention if they provide a license for governments to violate global humanitarian standards?" If governments are incapable or unwilling to protect the lives and liberties of their citizens, the "never intervene in another state's affair" imperative –so cherished by pluralists and realists– appears less and less meaningful. Yet we ask: who should take over the duty to protect and enforce human rights, when the concerned state fails to do so?

Proponents of intervention argue that, "only the vigilant eye of the international community can ensure the proper observance of international standards, in the interest not of one state or another but of the individuals themselves" (Cassese, 1990, p. 55-56, apud Maiese, 2004). According to solidarist thinking, "outside governments […] have a positive duty to take steps to protect human rights and preserve lives" (Cassese, 1990, p.58, apud Maiese, 2004).

On the other hand, opponents to a right of humanitarian intervention emphasize the dangers that allowing such a practice could pose to international order, given that states have conflicting claims of justice (Bull, 1977, apud Wheeler, 2000, p.29). According to them, the collective (or individual) enforcement of human rights can lead to abuses, which would undermine the order provided by international society's primary institutions. They believe that "international coexistence depends on a pluralist ethic, whereby each state can uphold its own conception of the good" (Hubert; Weiss, 2002, p.132, apud Maiese, 2004). Pluralists are committed to ethical diversity, and "concerned with avoiding conflict promoted by the intolerant pursuit of universal ideologies, such as the liberal pursuit of universal human rights" (Buzan, 2014, p.91). Among them, there is a "profound skepticism about the possibilities of realizing notions of universal justice" (Hubert; Weiss, 2002, p.133). As a matter of fact, universal justice doesn't take into account the cultural relativism that characterizes international society, and in this sense, "requiring some country to respect human rights is liable to cause friction and can lead to far-reaching disagreements" (Cassese, 1990, p.58, apud Maiese, 2004). Moreover, allowing outside governments to intervene might lead to interstate disorder and further conflict, from which even greater human suffering might result (Hubert; Weiss, 2002, p.133, apud Maiese, 2004).

For pluralists, rival universalist ideological visions can generate competing claims, and thus, disorder; we just have to look at the Cold War, or more recently, the ideological ideals of terrorist organizations. Their critiques about humanitarian intervention are not unfounded. They are, in fact, even moral, because they view the provision of international order – through the respect of state sovereignty and non-intervention – "as a necessary condition for the protection and promotion of individual well-being" (Bull, 1977, apud Wheeler, 2000, p.29) – which is according to them "better served by a legal rule that prohibits humanitarian

intervention than by allowing it in the absence of agreement over what principles should govern such a right" (Wheeler, 2000, p.29). Yet the pluralist answer can also be interpreted as devoid of any morality, since it entails that states should never interfere in situations where people from another state are suffering gross human rights violations, even if this means letting them die. Solidarists might reply indeed that, "if diversity entails that states have the right to mistreat their populations, then it is difficult to see why such diversity is to be valued" (Brown, 1992, p.125, apud Wheeler, 2000, p.27).

Thus, "sovereignty and intervention mean different things at the pluralist and solidarist ends of interstate society" (Buzan, 2004, p.218). The realists have also raised objections to a right of humanitarian intervention, which deserve to be stated here, as they are part of the humanitarian debate. One of them is the belief that "humanitarian intervention always cloaks the pursuit of national interest and that legalizing it would lead to states abusing it" (Wheeler, 2000, p.29). A view that, solidarists and pluralists both acknowledge and share. Realists state that, "humanitarian concerns will be manipulated by intervening states, […] [becoming] a weapon that the strong will use against the weak" (Wheeler, 2000, pp.29-30). They believe language is rhetorical, a "public disguise" that masks the real reasons why states act. These reasons behind intervention are self-interests, and in this context, realists affirm that, "unless vital interests are at stake, states will not intervene if this risks soldier's lives or incurs significant economic costs" (Wheeler, 2000, p.30). That is, "states will not intervene for primarily humanitarian reasons because they are always motivated by considerations of national interest […] [and thus] legitimating […] intervention would increase the risks that states apply rules selectively" (Wheeler, 2000, p.30).

2.3 The rise of human rights in the 1990s

While the dominant view in international relations had been that military intervention for humanitarian purposes should not be authorized within the international realm, the 1990s represented a turning point in the humanitarian intervention debate. Indeed, the "burst of solidarism" that the society of states witnessed in the 1990s, led to the rise of human rights as a key issue in international relations and the emergence of increased advocacy for intervention.

This optimism concerning the possibilities of intervening in order to avert humanitarian tragedies yet conflicted with existing state behavior. More specifically, it challenged the accepted understanding of sovereignty and non-intervention as the basic principles of international relations.

We can trace the origins of this "solidarist impulse" in three phenomena: the end of the Cold War, globalization, and the increased visibility of transnational actors (Hutchings, 1999, pp.154-155). The end of the bipolar order led to the emergence of intra-state conflicts, characterized by intensive uses of violence, human rights violations, and mass displacement. While they were not so common before the end of the Cold War, they replaced inter-state wars as the new form of political conflict in the 1990s, representing a major challenge to the international community (Hehir, 2008, p.34). The Cold War equilibrium had contained them, but "just as the balance exerted a restraint on local combat, it also acted paradoxically as an inhibitor of solutions" (Munro, 1999). Consequently,

> [with] the removal of the equilibrium […], a political vacuum was left, opening the way to the resurgence of other pressures and antagonisms, which had lain masked or latent beneath the artificial stability […]. Fresh causes for dispute were now being unleashed and represented a new challenge to the authority, and even the existence, of States. They have their roots in a globalized diversity of grievances, deriving from ethnic and tribal rivalries, irredentism, economic pressure, religious sectarianism, […]. [They are difficult] to control, […] with forms typical of guerrilla warfare and warlordism, where it is the civilian community that is most at risk (Munro, 1999).

2.3.1 Indignation from the international community

The massive human rights violations in the 1990s caused by these intra-state conflicts generated indignation from the public opinion, which increasingly called for the respect and enforcement of human rights. With the growing interconnectedness generated by global communications, such as television, the members of the society of states were as a matter of fact increasingly forced to participate in other people's torment. What happened on one side of the world was visible everywhere. As Walzer (2002, p.1) explains it, "in the contemporary world there is little that happens far away, out of sight, or behind the scenes"; nowadays, the omnipresent medias make sure to show everything that happens around the world, making us "instant spectators of every atrocity". As he portrays in "The Argument about Humanitarian Intervention" (Walzer, 2002, p.1),

> We sit in our living rooms and see the murdered children, the desperate refugees. And so a question is posed that has never been posed before-at least never with such immediacy, never so inescapably: What is our responsibility? What should we do?

While "the acts that shock the conscience of humankind" are "probably no more frequent these days than they were in the past, they are more shocking, because we are more intimately engaged by them and with them" (Walzer, 2002, p.1). We confront on daily base images of governments, or rebel groups, that perpetrate atrocities against people, and it is hard to turn a blind eye to them. The international community, thus, standing there, as the witness of human suffering, was increasingly asked to "do something" about it. Many of the conflicts that we observe originated from "a failure to protect human rights, and the trauma [resulting from it] often leads to new human rights violations. As conflict intensifies, hatred accumulates and makes the restoration of peace more difficult" (Maiese, 2004). It is not rare, for instance, to see ongoing, never-ending conflicts on our screens. While the responsibility for the protection of human rights resides first and foremost with states themselves, in many cases it is government leaders and public authorities that institute policies that violate their citizens' human rights (Maiese, 2004). Therefore, sovereignty became increasingly portrayed negatively, charged with enabling states to oppress, torture and murder their citizens (Hehir, 2008, p.43). For many human rights advocates, it could "no longer constitute a protective wall against interference […] [;] governments [must be] held accountable […] over the extent to which they fulfill their commitments towards their citizens' welfare" (Prantl; Nakano, 2011, p.206).

2.3.2 Human rights violation as an international concern

The violence of these intra-state conflicts was the source of great concern among the members of the society of states. As Hehir (2008, p.34) puts it, not only did they "posed clear dangers to citizens within the affected states, but this trend was also increasingly cited as a threat to international peace and stability, due to the potential for these conflicts to spread". Thus,

> [t]he increased economic interdependence caused by globalization mean that intra-state conflicts, with their potential to provoke regional crises, impacted on Western

foreign investment and domestic markets and risked causing "epidemics of regional disorders, thereby generating international economic instability in addition to political and social disruption (Hehir, 2008, p.34).

Moreover, it was also widely acknowledged that:

[w]hen a population is suffering serious harm as a result of insurgency, internal war, repression or state failure and the state in power is either unwilling or unable to halt or avert these atrocities from happening, the protection of every individual state's sovereignty can be compromised (Evans; Sahnoun, 2002, p.102).

The realization that instability in other countries could have an impact on other states led to an increase in calls from human rights advocates and political actors for greater Western involvement in other countries (Hehir, 2008, p.35). Injustice was increasingly interpreted as leading to disorder, and in the absence of a global authority and welfare state to guarantee international order, the responsibility to avert it went to states. Soon, the emphasis in states' discourses was put on the importance of promoting greater human security –not only national security. Human security, as an emerging concept, challenged the traditional notion of security –which was usually linked with the state–, by putting the emphasis on the individual (and its particular needs). The basic argument from its proponents was that insuring "freedom from fear" and "freedom from want" for all individuals was the best way to tackle the problem of global insecurity (UNDP, 1994), and thus disorder.

This perspective echoed "the solidarist claim that a foreign policy that places the defence of human rights at the centre of its ethical code will make an important contribution both to protecting national interests, and to strengthening the pillars of international order" (Wheeler, 2000, p.302). The promotion of human rights, then, could be more than a moral value to spread: it could be in states' national interest, in the sense that justice would enable a world that is more orderly and thus, more secure.). Progressively, the idea that intervening militarily in other states' territory might be the only way of enforcing global humanitarian norms installed itself, fundamentally challenging the established principles of sovereignty, non-intervention and non-use of force (Wheeler, 2000, p.1). By promoting humane treatment of individuals, and with its capacity to restore the rule of law, humanitarian intervention could have innumerous advantages in the long term (Kindiki, 2001, apud Maiese, 2004). As a consequence, states came to

assume greater international responsibility and increased proactive humanitarian internationalism (Cassese, 1990, p.58).

2.4 The UN response

While "human rights advocacy is not a post-1991 phenomenon" (Hehir, 2008, p.36), it is however only after the Cold War that the gap between commitment and practice when it comes to the respect of human rights became addressed. As a matter of fact, there were "more permissive global circumstances, [which] have allowed a closer correspondence between universal humanitarian regimes and the enforcement of such regimes in cases of genocide and massive breaches of humanitarian law" (Hehir, 2008, p.36).

The end of the Cold War "constituted an opportunity to invoke and act upon the various human rights treaties, as consensus at the Security Council now seemed more achievable given the removal of the Soviet veto" (Hehir, 2008, p.36). Indeed, as Munro (1999) reveals, "in the brief span of nine years between the ending of the Cold War and June 1999, 584 resolutions were passed by the Security Council, almost equal to the total of 659 recorded during the whole forty-five years which preceded them". It seemed then, that there were "new opportunities for proactive international engagement for both the United Nations and Western States" (Hehir, 2008, p.2)[8].

Concretely, it is in 1992 that the question of human rights' enforcement was first addressed by the United Nations in "An Agenda for Peace" (1992), whereby the Secretary General, "Boutros Ghali, addressed the threats that were posed by civil conflicts, humanitarian disasters and state collapse" (Krieg, 2013, p.15). At that time, the UN involvement in crisis was mainly characterized by traditional peacekeeping operations, posing ''[…] little threat to norms of international sovereignty and territorial integrity because they serve with the consent of all parties and play a non-coercive role […]'' (Ottaway; Lacina, 2003, apud Krieg, 2013, p.15). Yet

> Boutros Ghali knew that with the growing complexity of intra-state conflicts, peacekeeping operations in the traditional sense would not be sufficient anymore to meet the requirements. Traditional peacekeeping, […] had to be gradually

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[8] See Pérez de Cuellar, "Report of the Secretary General ", UN Yearbook, 1991, paragraph 11.

reformed to become peace enforcement missions, which were to be deployed in crisis regions prior to a de facto peace agreement, and equipped with a mandate allowing for coercive action if necessary (Krieg, 2013, p.15).

In *An Agenda for Peace*, the Secretary General referred to "the changing nature of conflict through the erosion of national boundaries by new communication technology and global commercial links" (Krieg, 2013, p.15). He described "the current times as times of global transition, [creating] an image of a globalized world in which poverty, disease and famine produce refugee flows that pose a destabilizing threat to international peace and security" (The United Nations Secretary General, 1992, p.3, apud Krieg, 2013, p.15). The Secretary General thus recognized that human suffering caused by civil conflicts was not only an important issue *per se*, but that the instabilities caused by it could easily spread into neighboring countries, destabilizing them as well.

Against this background, peace-enforcement was introduced as a "new instrument of conflict resolution, which may be used as a means of last resort to solve a conflict. [Its aim was to] increase the efficiency and responsiveness of the UN system in addressing the new threats" (Krieg, 2013, p.15). By doing so,

> Boutros Ghali compromised the notion of exclusive and absolute sovereignty behind which leaders can hide from persecution. Under point 17, [he] declared that […] the time of absolute and exclusive sovereignty has passed; its theory was never matched by reality (Krieg, 2013, p.16).

According to Wheeler (2000, p.289),

> The key normative change in the 1990s was that the UN Security Council, under pressure from Western governments – who were themselves responding to the demands of public opinion at home – increasingly interpreted its responsibilities under Chapter VII of the Charter as including the enforcement of global humanitarian norms.

"There was a significant shift of attitudes during the 1990s, especially among liberal democratic states, which led the way in pressing new humanitarian claims within international society" (Bellamy; Wheeler, 2005). The United Nations Security Council started inclunding Protection of Civilians' (POC) mandates during peacekeeping operations, which often entailed the permission to use "all necessary means", including the use of force, to uphold human rights.

> The ending of the Cold War [thus] saw the introduction of a new dimension to the responsibility of the global community to take a direct hand in the resolution of

disputes involving gross violations of human rights and which threaten to generate wider instability or unacceptable human suffering (Munro, 1999).

This change was facilitated also by the actions and the pressure exercised on states by humanitarian groups – or civil society groups – from across the globe. The more favourable environment enabled human rights advocates groups "to link up and coordinate agendas as never before" (Kaldor, 2003, p.2, apud Hehir, 2008, p.37). As such, global civil society's project centred on finding ways to "integrate morality into international politics" (Hehir, 2008, p.38). They sought to provoke a change, stressing "the importance of respecting human rights and the need to develop mechanisms for the alleviation of human suffering and the punishment of human rights violators" (Hehir, 2008, p.38). Using technics such as naming and shaming to pressurize states, they managed "to influence the evolution of debate regarding humanitarian intervention", and sought to reorient state behaviour "towards a more ethical and altruistic dispensation" (Hehir, 2008, p.38). Progressively, the military enforcement of human rights began to be seen as an acceptable, and common, practice, by a large number of major powers, giving the *opinio juris* more credibility (Krieg, 2013, p.13). Human rights were now being acknowledged as an important institution of the society of states as well, capable of challenging national sovereignty and non-intervention.

The rise of human rights in the 1990s thus saw the reinterpretation of sovereignty, as not being simply about states privileges, but as entailing responsibilities. UN Secretary-General Kofi Annan wrote that, "the implications of human rights abuses and refugee (...) flows for international peace and security are forcing us to take a fresh look at sovereignty from a different perspective: sovereignty as a matter of responsibility, not just power" (Annan, 1998, p.57, apud Munro, 1999). The need to redefine the sovereignty norm, as including obligations from the state towards its citizens, led to several normative developments, such as the "Responsibility to Protect" (R2P) principle, created by the International Commission on Intervention and State Sovereignty (ICISS) in 2000. The ICISS's mission was to address the question of how humanitarian interventions were supposed to proceed in order to protect civilian populations at risk. The R2P principle resulted from their work, and one of its significant aspect

is the idea of "sovereignty as responsibility"[9] (elaborated by Sudanese policy academic Francis Deng), which means that "sovereignty carries with it certain obligations for which governments must be held accountable […] – not only to their national constituencies but ultimately to the international community" (Bellamy; Williams, 2005, p.28).

> Adopted unanimously by heads of state and government at the 2005 UN World Summit and reaffirmed twice since by the UN Security Council, the principle of R2P rests on three equally weighted and nonsequential pillars: (1) the primary responsibility of states to protect their own populations from the four crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity, as well as from their incitement; (2) the international community's responsibility to assist a state to fulfill its R2P; and (3) the international community's responsibility to take timely and decisive action, in accordance with the UN Charter, in cases where the state has manifestly failed to protect its population from one or more of the four crimes (Bellamy, 2010 p.143).

2.4.1 Towards a more solidarist international society?

In the 1990s, the enjoyment of sovereignty rights by states became increasingly associated with the solidarist belief that it should be conditioned to the respect of citizens' human rights. It was argued for instance that, "rather than the focus on the territorially limited rights of the citizen at the level of the nation state, more emphasis should be placed on extending democracy and human rights to the global sphere" (Chandler, 2003, p.332 apud Hehir, 2008, pp. 35-36). The pursuit of justice was also no longer seen as incompatible with international order; it could in fact help preserve international order.

"The remarkable surge in rhetorical support for human rights, boosted by global communications, and the issue's new centrality in international politics led unsurprisingly to increased optimism as to the coming era" (Hehir, 2008, p.37): an era characterized both, as Tom Farer (apud Hehir, 2008, p.41) declares, by the

> relative absence of those constraints on intervention action previously immanent in the polarised environment of intense superpower competition, and the maturation of a global human rights network with unprecedented influence over public and elite opinion, particularly in Western nations.

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[9] R2P interprets the sovereignty principle as described in Article 2 (1) of the UN Charter primarily as a responsibility for the protection of its own people. That is, this responsibility to protect creates conditionality for the sovereignty principle.

This new era was introduced by President George W. H. Bush (Bush, 1990, apud Krieg, 2013, p.14) in a speech in 1990 as a "New World Order" that would create a world

> freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace. An era in which the nations of the world, East and West, North and South, can prosper and live in harmony […] A world in which nations recognize the shared responsibility for freedom and justice. A world where the strong respect the rights of the weak.

According to Hehir (2008, p.37),

> [the] union of both the endorsement of the humanitarian cause and the more favourable international systemic conditions suggested that this "New World Order"–involving a new role for the United Nations in enforcing human rights-was within reach.

However, this increased optimism did not prevent horrendous tragedies to happen, such as the Srebrenica massacre or the slaughter in Rwanda. Although the UN was present in many humanitarian crises in the 1990s, it did not always act effectively to avert those human rights violations. As a consequence, the failure to avert these tragedies diminished the optimism formulated in the beginning of the 1990s, as to the coming of a new era. Nevertheless, this failure also "redoubled the underlying conviction, and the pro-intervention lobby articulated calls for humanitarian action with increasing voracity and frequency throughout the 1990s" (Hehir, 2008, p.2). The post-Cold war era could, then, be heading towards a more solidarist version of international society, implying a world that is more just.

2.5 The case for humanitarian intervention

While the 1990s experienced a rise in concern over human rights, the idea of providing assistance to people who are suffering is not something new. Most religions and civilizations, for instance, argue that people should help others whenever it is possible and needed. It is this same concern that motivated Henry Dunant's idea of the Red Cross (ICRC) – (self-described as) "the largest humanitarian network in the world, [whose] mission is to alleviate human suffering, protect life and health, and uphold human dignity, especially during armed conflicts and other emergencies" (ICRC, 2013). It is this concern that also

led to the creation of rules limiting the barbarity of war, as enshrined in the Geneva Conventions and their Additional Protocols.

There are many ways to supply humanitarian assistance to people and ensure the protection of their human rights. This assistance can take many forms: cooperating with national societies, protecting civilians, ensuring to the victims of conflict basic health care etc. The protection of individuals

> is aimed at ensuring that authorities and other constituted groups comply with their obligations under International Humanitarian Law and International Human Rights Law. Most of the time, ICRC delegates, having documented abuses which they learned about in the field, inform the authorities of the existence of protection problems and ask them to take action to end these abuses and/or provide assistance to the victims (ICRC, 2010).

Humanitarian intervention, in the sense that will be employed in the present work, differs from the ICRC's idea of crossing borders to provide humanitarian aid to conflict zones. Indeed, it provides a particular form of assistance, since it tries to solve humanitarian problems with non-humanitarian means. Though not without controversy, the use of force appears as a way to provide an immediate assistance to people, and ensure that those who are in danger are protected. While providing humanitarian assistance (in the Red Cross "sense") is valuable and necessary, it doesn't always prevent individuals from beings the target of attacks or massive human rights violations, nor does it protect them against direct threats. Humanitarian intervention – or human rights enforcement – then, might be the only mean to prevent the imminent death and permanent impairment of "people whose government is egregiously abusing them, either directly, or by aiding and permitting extreme mistreatment" (Heinze, 2009, p.2).

Yet the "use of violence to end human rights violations poses a moral dilemma insofar as such interventions may lead to further loss of innocent lives" (Maiese, 2004). That is, although military intervention might save a lot of lives, it might not necessarily be "ethically" done. Those who follow a deontologist ethic (that is the ICRC) for instance will not regard the consequences of an act as determinant of its moral worth or permissibility. Rather, they will sustain that "war is a crime, the most hideous form of destruction of human life, so it cannot be right to support war, even for the benign purpose of saving people's lives" (Tesón, apud Holzgrefe; Keohane, 2003, p.95). Violence cannot be the answer or solution to violence. Besides, from Kantian ethics we also get the idea that each

human life has equal moral value; thus putting the lives of others in peril in order to save others is inherently morally wrong.

Humanitarian intervention is best identified with another school of moral thought: consequentialism, which argues that "an act is right or wrong in the context of what it achieves rather than the act itself being judged in isolation" (Whetham, 2010, p.12-13). Consequentialism considers an act as morally permissible when it produces a good outcome or consequence. That is, the moral worth of an action is determined by its resulting consequences. In this context, the means employed may be viewed as moral or immoral. In its more extreme form, consequentialism signifies "the ends justify the means". This is the approach that characterizes humanitarian intervention. In this moral perspective, humanitarian intervention, which employs deadly means, is judged morally worth when it saves more lives than it takes, while reducing the risks and costs of intervention. While it is acknowledged that intervening military will bring death and disorder, it is believed that it might at the end bring order back, impede a situation to worsen, and save much more lives than it takes. Nevertheless, it is important to keep in mind that there is no guarantee that intervention will bring positive outcomes; sometimes it does more harm than good.

Being committed to human rights does not imply being committed to humanitarian military intervention; many human rights advocates oppose it (Tesón, apud Holzgrefe; Keohane, 2003, p.95). Both of these ethical views raise issues in the context of a humanitarian crisis: always following the same moral principles implies that we are ready to see people die in front of us without acting, and thus, we can be accused of moral indifference (Wheeler, 2000, p.1). While accepting the murder of non-combatants in order to save some other combatants and non-combatants is also problematic (Whetham, 2010, p.13).

2.5.1 Defining military humanitarian intervention

Humanitarian intervention has to be understood as an "extraordinary military remedy that temporarily sets aside norms of state sovereignty" (Pape, 2012, p.44), in order to provide security and protection to individuals at risk. International Relations scholars usually define humanitarian intervention 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 (Holzgrefe, 2003, p.18).

Sylvia Lechner (2010, p.437) defines it as a "paradigm that permits a state to intervene into the territory of another state, by employing military force, for humanitarian reasons: to stop large-scale atrocities committed against innocent human beings –the citizens of the target state".

As such, and from a legal point of view, humanitarian military intervention is considered as an international armed conflict. Similarly to traditional warfare, it employs military means such as guns and bombs, which generates violence and death. Thus, putting a "humanitarian" before military intervention does not change the essence of the action. However, unlike conventional military operations – usually understood as armed conflict between two states with the purpose of defending the nation, the state or its citizens (defensive action), or with the purpose of expanding state territory and/or controlling resources (offensive action) – humanitarian intervention is widely understood as an armed intervention in another state's territory "for the purpose of saving lives of strangers" and ensuring the respect of their human rights (Krieg, 2012, p.8).

While the use of the term "humanitarian" may appear to be unfit – "it is a contradiction in terms to speak of humanitarian intervention […], as the term "humanitarian" should be reserved to describe action intended to alleviate the suffering of the victims" (Ryniker, 2001, p.529) and in this context, it is difficult to conceive how violence might be the solution – it is humanitarian because military intervention is sometimes "the only way to rescue innocent people from gross mistreatment by abusive authorities" (Heinze, 2009, p.15). The main difference from other forms of military interventions, then, lies in the purpose of the intervention; "the term "humanitarian" designates the primary purpose of the intervention, namely, averting or holding human rights violations of fundamental human rights that "shock the conscience of humankind" (Krieg, 2012, p.8). However, it is worth emphasizing that the commitment to justice, here, is not only philanthropic; it is necessary. The society of states is bound to do it in the absence of a global welfare state.

2.6 The legitimacy of humanitarian intervention

Despite increased advocacy for human rights enforcement since the 1990s, it is important to acknowledge that there is "no unanimous acceptance of humanitarian intervention" (Ryniker, 2001, p.529). It remains a controverted means of ensuring the protection of human rights, since it implies the violation of the basic rules of coexistence: sovereignty, non-intervention, and non-use of force, in order to uphold humanitarian values. Intervening militarily in other states' affairs always has consequences: the use of force inevitably will cause deaths, and thus, disorder. In addition, many question the motivation behind humanitarian intervention: is the intention to intervene entirely altruistic, as the common understanding of "humanitarian" would suggest, or are states motivated by other rationales?

There have been different answers to the debates about the legitimacy and lawfulness of using military means to protect people's human rights:

> The principles of [sovereignty,] non-intervention and the non-use of force enshrined in the UN Charter speak to international's society basic moral convictions about the dangers of reckless military crusades and the undesirability of war in general. Likewise, the human rights principles in the Universal Declaration of Human Rights […] peak to the position we are willing to accord individual well-being in international relations. In the tradition of legal positivism, […] these norms serve mainly to prohibit humanitarian intervention, irrespective of persuasive moral arguments that endorse it in specific cases (Heinze, 2009, p.5).

The question of overriding sovereignty, or making it conditional on the adherence to certain basic human rights legislation thus poses a clear challenge to the prevailing state-based system (Pangle; Ahrensdorf, 1999, p.3). And so does the question of the use of force in situations other than authorized self-defence. While certain societies at the sub-global level have deeply internalised human rights and regard humanitarian intervention as a possibility and necessity under certain circumstances, at the global level, there is no such consensus. At the global level, "there is much disagreement among states about when and to what extent outside countries can engage in humanitarian interventions, especially because authorizing such a practice could in fact lead to even more disorder, when applied for the wrong reasons" (Maiese, 2004)[10].

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[10] See Pattison (2012).

Nevertheless, there seems to be a growing recognition among states that the pursuit of justice can also lead to a world that is more orderly and just. For instance, intervention might put an end to human suffering and prevent conflicts to spread to neighboring countries, provoking further suffering and chaos. However, it is important to also emphasize that military intervention cannot "be expected to solve all the underlying social, political or economic problems that manifest themselves in the form of gross human suffering" (Heinze, 2009, p.145). As a matter of fact, military coercion remains a strategy; therefore, it is not appropriate to every situation where people are suffering. The questions we ask then are "whether and in what circumstances armed military intervention in support of humanitarian ends can be justified?" (Munro, 1999). What conditions should a decision to use force meet in order to be reckoned as legitimate in international relations?

As argued in the first chapter, states and other international actors interact with each other not within an international system devoid of any normative content, but within an international society that bounds them by a set of rules, shared interests, values and common institutions (Bull, 1995; Kratochwill, 1989 apud Bjola, 2009, p.1-5). Because states believe in their value or utility, they generally feel that whenever they act, they have to justify their actions in terms of the agreed rules, so that it appears legitimate to other members. That is, states seek legitimacy in their actions. They not only act instrumentally in international politics, they often follow a logic of "appropriateness" "that associates particular identities with particular situations" (March; Olsen, 1998). This implies then, that "ethical principles and international institutions are not epiphenomenal to state interests, [as argued by realists], but actually have an important constitutive role in their definition" (Bjola, 2009, p.1-5).

The importance of legitimacy is immense. As Wheeler (2000, p.4) puts it: "legitimacy is constitutive of international action". It affects the behavior of international actors, both enabling and constraining their actions. Indeed, if an action "cannot be justified in terms of a plausible legitimating reason", it might not be well-accepted by international society and be constrained (Wheeler, 2000, p.4). By contrast, if an action seems legitimate, it might encourage the members of international society to accept it, or even to take a part in it. Legitimacy in this sense, by providing a legitimate context for the action, "empower" some actions.

Moreover, legitimacy exerts a "pull towards compliance" on states, "making them act in accordance with the generally accepted principles of right process" (Franck, 1990, p.24). Once states have justified an action in terms of the rules, they don't want to be seen as hypocrites. In this sense, even if a state invokes a rule as a pretext to pursue its self-interests, it is subsequently constrained in its actions and has to act or provide results that are in conformity with the rules it employed for legitimating its action (Wheeler, 2000). Thus, legitimacy matters in international politics. Otherwise, as Daalder (2002, p.4) puts it, "if everyone does as he pleases, the world will be a jungle in which life would truly be nasty, brutish, and short".

> Without legitimacy, the unconstrained use of force promises to create even more opportunities for war and violence in the international system. To prevent this, the use of force needs to be legitimized. That is, it has to be circumscribed by a set of rules acknowledged by the international community, and which states must necessarily observe when deciding (*jus ad bellum*) and exercising (*jus in bello*) the use of force (Bjola, 2009, pp. 6-7).

The question we have to answer now is what are the rules, norms, and principles actors follow, and how they use them, when they regard humanitarian intervention as legitimate? According to Bjola (2009, p.4) "the answer is not easy to pin down since what actors have traditionally deemed to be legitimate grounds for military action have varied significantly, both historically and geographically". Consequently, the legitimacy of humanitarian intervention has remained contested. Against this background, "international ethics and international law are the two main approaches that aim to address this problem" (Bjola, 2009, p.7). The former discusses the concept "as a problem of moral justification", while the latter examines the legitimacy of intervention by reference to the existing international legal standards in the field (Bjola, 2009, p.7). In this sense, International Relations scholars usually refer to two principal conceptions of legitimacy: legal legitimacy on one hand, and moral legitimacy on the other hand.

2.7 The moral legitimacy of humanitarian intervention

According to Lechner (2010, p.437) humanitarian intervention differs from mere intervention, as "its ground is neither international law nor *realpolitik* but ethics". Humanitarian intervention, as Hehir (2008, p.14) argues, occupies "a

different position in legal terms and its status is conditioned by ethics as well as legal doctrine". Since humanitarian intervention is about justice, it necessarily relies on moral principles. These moral principles are important in providing humanitarian intervention its legitimation, because a legal right of humanitarian intervention doesn't exist at the moment in positive law. Yet the fact that it is not legal does not necessarily mean that it is illegitimate. As a matter of fact, before a practice is legally recognized in positive law and has the effect of binding states, it is usually referred to as a customary practice. In this context, it is important to understand how moral principles matter when invoking humanitarian intervention.

The moral principles underlying humanitarian intervention and the idea of a moral obligation to protect civilians from human rights abuses aren't a special feature of a more civilized world or a "post-cold war" era more concerned about people's fates. They are principles that have been known for centuries, derived from the tradition of natural law, and express an existing concern about justice.

Indeed, natural law evokes the sense of justice common to all humans and derived from nature rather than from positive law (Nardin, 2002). The altruistic desire to help and protect others was for instance classed by Rousseau among the "natural" feelings of men and by Adam Smith as something "inherent to human nature" (Schweizer, 2004, p.547). In fact, many of the universal values we know, that is human rights, derive from natural law. Terry Nardin (2002, p.64) argues in this sense that "we may speak of a "common morality", binding on all human beings". "The principles of common morality, like those that prohibit murder and deliberate harm to innocents and teach friendship, cooperation and fairness– are basic to civilized life and are in fact recognized in most communities and traditions" (Nardin, 2002, p.64). For instance, "the idea that the strong and the rich have a moral obligation to assist the weak and those in need has always is normative in all major world [cultures and] religions" (Schweizer, 2004, p.547). Religion has in fact always played an important part in the formulation of laws, offering guidelines of adequate and moral conduct, and restraining inadequate or immoral actions. The requirement to assist the poor and the weak for instance was originally expressed in religious principles, like the parable of the Good Samaritan (Luke 10:29-37) (Nardin, 2002, p.66). Although these principles leave us "free to decide how to promote the well-being of others, […] if we are able to provide immediate assistance to someone who needs it, we should provide that

assistance. And this implies that we must not allow anyone to be harmed by violence if we can reasonably prevent it" (Nardin, 2002, p.66).

Natural law, similarly to religion, provides moral principles about how we should act. It is about what is right and just, and in this sense, differs from positive law, which is about how we ought to act. Whether the actions dictated by positive law are moral or fair to all does not import when it is applied. Yet by contrast, natural law proponents believe that there is no sense in sustaining laws that offend what we believe is right or just. Besides, "law can be the servant of particular interests rather than the expression of the general will" (Wheeler, 2000, p.3).

Although natural law principles differ from positive law and are not part of the legal body of rules of the society of states, they nevertheless play a part in the creation of (new) norms, and are sometimes referred to – as customary principles –, especially in cases where rules are contested. Indeed, natural law principles are often invoked, for instance when there is a sense of inadequacy with existing positive law. If we take the case of humanitarian intervention: international laws forbid the use of force and interference in another state's territory. Since positive law forbids what appears sometimes as the "moral thing" to do, humanitarian intervention usually refers to natural law instead, in order to get its legitimacy. For instance, the right to life, which provides the foundation of the justification for humanitarian intervention, is an important concept of natural law (Matthewman, 2012). However, it is not only a moral principle, it is also a universally accepted norm; "all cultures [and religions], be they Islamic, Hindu, Buddhist, secular or Christian, value the sanctity of human life" (Caney, 1997, p.34, apud Matthewman, 2012). According to Nardin (2002, p.64),

> This broad recognition [of moral principles and the power it has on the behavior of human beings] is of immense practical importance, for it means that in appealing to common morality, the moralist is appealing to principles whose authority has already been granted, implicitly if not explicitly, by a great many people.

It is not difficult to imagine then the importance that "common morality" may have in giving humanitarian intervention its moral legitimacy. In appealing to reason, to common humanity and moral principles, humanitarian intervention enjoins states to act in the name of universal values, and thereby, tries to acquire a legitimacy that is otherwise not given. Natural law, then, is often invoked to contest or criticize rules or judicial decisions that appear "unjust". As a matter of

fact, what is "just by nature" is not always the same as what is "just by law". Positive laws are written by men and thus, can be felt by many as unjust – be it in general or in relation to a particular group or situation (for example the Jews in Germany during Nazi rule). For instance, the extermination of the Jews during the Second World War was government-planed; it was not the expression of the general will, but rather, the expression of hatred. Had other states not cared and intervened, Hitler would have realized his plan. If they had intervened sooner, even more lives would have been spared. Only a few centuries ago, slavery was authorized in many countries, while it went against natural law principles that considered human beings as having equal moral value. Sometimes then, violating the frontiers or condemning a practice that seems unjust, is better than let a massacre continue. Indeed, up to a certain point, the respect of sovereignty and non-intervention principles seems irrelevant. Against this background, Thomas M. Franck highlights the importance of natural law to counter unjust laws:

> While most modern lawyers may not be quite willing to see the law of nature reinstated […] there is no doubt that rulers, judges, and administrators, […] accept that the power of positive law is diminished if the gap between it and the common sense of values – justice, morality, good sense – is allowed to become too wide. [Such] dissonance […] could undermine law […] [and] the capacity of the law to pull towards compliance […] depends first and foremost on the public perception of its fairness [...]. When law permits or even requires behavior that is widely held to be unfair, immoral, or unjust, it is not only persons but also the law that suffers. So, too, if law prohibits that which is widely believed to be just and moral (Franck, apud Holzgrefe; Keohane, 2003, pp.210-1).

2.7.1 Humanitarian intervention and just war theory

Proponents of intervention argue that in some instances, it is morally permissible, and even recommended, to fight, "while agreeing that war is generally a bad thing" (Tesón, apud Holzgrefe; Keohane, 2003, p.96). "Non-intervention in the face of mass murder or ethnic cleansing is not the same as neutrality in time of war. The moral urgencies are different; we are usually unsure of the consequences of a war, but we know very well the consequences of a massacre" (Walzer, 2002, p.5). In this context, humanitarian intervention may be morally desirable insofar "as it is sometimes the only way to rescue innocent people" from gross mistreatment by abusive authorities (Heinze, 2009, p.15), and put an end to atrocities. As highlighted by Lechner (2010, p.437-443) "in an

imperfect world, war is sometimes necessary to secure and foster basic human rights and the just peace that only their observance can bring". Yet

> If humanitarian intervention is to be justified at all, […] it must be done primarily with reference to the well-being of those on whose behalf it is allegedly undertaken. Yet it must also be done with reference to the well-being of the broader community of humankind (Heinze, 2009, p.4).

From the perspective of international ethics, Bjola (2009, p.7) sustains that "the legitimacy of humanitarian intervention is generally defined by the latter's compliance with a set of moral criteria". The ethical tradition addressing the "moral" use of force is Just War theory, "which contends that certain uses of force are morally legitimate as long as they follow, as closely as possible, the norms subsumed by the *jus ad bellum* and *jus in bello* principle" (Bjola, 2009, p.19). When determining whether a humanitarian intervention is deemed morally permissible, states usually make reference to a "just cause", which finds its origin in just war theory[11]. Just war theorists have traditionally been concerned with the grounds for going to war in the first place (*jus ad bellum* principles) and with the standards of ethical conduct that soldiers are expected to uphold in the course of fighting wars (*jus in bello* principles)[12]. They sought to distinguish between what is just and unjust, between ethically justifiable and unjustifiable uses of force, in order to help restrict war.

2.7.2 Just War theory criterions

Just War theory authorizes states to resort to war in two principal cases:

> (i) legitimate self-defense, and (ii) to protect the innocent (non-combatants) residing in another state. […] Humanitarian intervention falls under the second category because its object is the moral standing of human beings (right to life): we ought to intervene to protect the victims of aggression – attacked or abandoned by their own government – who are individuals and not states (Lechner, 2010, p.439).

In order for a war to be deemed just, it has to satisfy a certain number of threshold conditions (*jus ad bellum*). First of all, there must be a just cause.

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[11] It is important to note that since there is no « right » of humanitarian intervention in positive law, just war theory provides the ethical guidelines for states' conduct when the UN Security Council authorizes such interventions.

[12] See JustWarTheory.com. Available at: <http://www.justwartheory.com>. (Accessed 12 Oct. 2015).

Amongst just war theorists, this is unanimously considered to be a resistance against aggression, aggression being defined here as the use of force in violation of someone else's basic rights (Walzer, 2006, p.54). These human rights violations must be of an exceptional nature. Indeed, military means can be chosen only in response to grave human rights abuses like genocide and ethnic cleansing because as such, "those crimes affect the lives of many people and the fate of entire communities that cannot be ended by diplomatic means alone" (Nardin, 2002, p.64). Georg Meggle (2003, p.22) affirms that "massive crimes must have been carried out against humanity on the scale we have been made to believe caused NATO to intervene in the Kosovo crisis, that is, involving all the massacres, systematic rapes, mass expulsion, etc.".

The Responsibility to Protect principle (R2P) – appealing to just war theory – redefined in the 2001 ICISS report the just cause threshold as:

> a) large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or failed state situation; or b) large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape (ICISS, 2001).

Secondly, a just war must have the right intention. The intention, the motive to intervene must be humanitarian, for instance, to avert human suffering, to seek peace and advance the common good; "to punish wrongs and protect the innocent" (Nardin, 2002, p.58). States must seek the restoration and guarantee of human rights, since the purpose of the intervention constitutes the justification for the offensive action. According to the R2P principle, the right intention must not be to alter borders or to overthrow regimes. As a guarantee of that, the intervention must always take place on a multilateral basis, and be supported by the people for whose benefit the intervention is intended, and seek the consent of the countries in the region (ICISS 2001, p.36; Bjola, 2009, p.31).

Thirdly, there must be a proper authority to declare the war. Nowadays, this points to the internationally recognized authority that is the UN Security Council –despite its various shortcomings–, which can authorize humanitarian intervention if it believes that there exists a serious threat to international peace and security. Just war theory nevertheless adds that "if such an authority doesn't exist or is substantially unjust or ineffective, either in general or in a given situation, states

may act without its approval" – a practice that the R2P principle conflicts with (Lang, 2003, p.23).

Fourth, waging a war must be the last resort, after other means have been exhausted or have proven ineffective. States should engage in a humanitarian military intervention only on the rarest of occasions, when there is no other possible way of preventing serious human rights abuses. The R2P principle yet adds that at the same time, this condition should not prevent an intervention from taking place when there is no time for a mediation attempt and the "just cause" circumstances are clear (ICISS, 2001, p.36).

Fifth, the probability of success must be high. "There must be a high probability that force will achieve a positive humanitarian outcome" (Wheeler, 2000, p.37). No military intervention can be justified if it does not have reasonable prospects of success.

Finally, the use of force must be proportional to the universal good intervention would serve. This means that intervening parties must do everything to ensure that threats to external parties to a conflict (civilians) are minimized.

If states follow these criterions, intervention is said to be morally legitimate.

2.8 The legal status of humanitarian intervention

We just saw that the principles of common morality (natural law) judge humanitarian intervention as morally permissible and legitimate provided that the required conditions and criterions of the just war theory to invoke intervention are fulfilled. However, from the perspective of international law,

> the decision to intervene military in the affairs of a different country is considered legitimate when it complies as rigorously as possible with the legal provisions laid down in various international treaties and conventions agreed upon by the international society of states (Bjola, 2009, pp.1-5).

Contemporary international law acknowledges that human rights violations and injustice are "matters of international concern. Impressive networks of rules and institutions, both at the universal and regional levels, have come into being as a result of this international concern" (Simma, 1999, p.1). For instance,

> various "basic" rights violated under any circumstances are set forth in international human rights documents such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and

the International Covenant on Civil and Political Rights. […] These laws aim to preserve humanity and protect against anything that challenges people's health, economic well-being, social stability and political peace (Maiese, 2004).

According to Maiese (2004),

having human rights norms in place imposes certain requirements on governments and legitimizes the complaints of individuals in those cases where fundamental rights and freedoms are not respected. Such norms constitute a standard for the conduct of government and the administration of force; they can be used as universal, non-discriminatory standards for formulating or criticizing law and act as guidelines for proper conduct.

In the context of massive human rights violations, "international law allows states, acting individually, collectively or through international organizations, to make use of a broad range of peaceful responses" (Simma, 1999, p.1). Indeed,

[a]ccording to the dominant doctrine in the law of state responsibility […], the obligation on states to respect and protect the basic rights of all human persons is the concern of all states, that is, they are owed *erga omnes*. Consequently, in the event of material breaches of such obligations, every other state may lawfully consider itself legally "injured" and is thus entitled to resort to countermeasures (formerly referred to as reprisals) against the perpetrator (Simma, 1999, p.2).

Thus, the norms and institutions of the society of states impose obligations on states and there are sanctions when those aren't respected. In the absence of a global authority to enforce those laws, states have to take the responsibility to make others comply with the law. And in this context, governments that massively violate their citizens' human rights are accountable to the international society. It is not difficult to make a link between Grotius' statements then, that

those who possess rights equal to […] kings, have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard of any person whatsoever (Grotius, 1925, p.584).

and what international law says about state responsibility. However, – and by contrast with the tradition of natural law – "under international law in force since 1945 […] countermeasures **must not** involve the threat or use of armed force" (Simma, 1999, p.2). This raises, then, the question as whether there is a legal exception for the use of force when it comes to the practice of humanitarian intervention, or if it is condemned to be an illegal practice, as it employs the use of military means to enforce the respect of human rights. As a matter of fact,

while some legal instruments, such as the Genocide Convention, affirm that states should take a stand against large-scale human rights abuses, it remains contested whether those obligations give states, indeed, a legal right to humanitarian intervention.

2.8.1 The law on the use of force and the humanitarian exception

Historically, the main concern of International law has been to "[regulate] war between states, and well-developed bodies of law exist on state conduct in war and the decision to use force" (Hurd, 2011, p.295). The United Nations Charter represents today the most important legal instrument when it comes to "the legality of the recourse to war by states [and] it makes two contributions that are central to today's legal regime on war" (Hurd, 2011, p.295):

> it outlaws the use of force on the part of individual states, and it empowers the Security Council to make all decisions on collective measures that involve military force. […] Article 2(4) establishes the first element by requiring that states not use or threaten force against other states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". This is a general prohibition, […] [which] is often cited as the primary contribution of the UN system to international order. It goes along with Article 2(3), which insists that UN members settle their […] disputes by "peaceful means." (Hurd, 2011, p.295).

Articles 53 of the 1969 Vienna Convention on the Law of Treaties state that the prohibition of Article 2(4) of the Charter is part of *jus cogens*, meaning that it is "a peremptory norm […] from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" (Article 53 VCLT). Besides, "the Charter prohibition of the threat or use of […] force is binding on states both individually and as members of international organizations such as NATO, as well as on those organizations themselves" (Simma, 1999, p.3). The only entity having the power to use force is the UN Security Council. As stated in the UN Charter:

> Article 2(4) takes away from states the legal right to use force, and Articles 24, 39, 42 and others then deliver this power to the Security Council […] [which] has the "primary responsibility for the maintenance of international peace and security" […] [It] can take what measures it deems necessary in that pursuit, including military action against states or other threats (Article 42) (Hurd, 2011, p.295).

Thus, "the use of force by states, regardless of the motivation, is explicitly proscribed" (Hehir, 2008, p.16). The Charter nevertheless offers two exceptions from this prohibition. The first exception, embodied in Article 51, states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations". This exception is for states that are victims of aggression and it authorizes them to use force in self-defense. The latter, however, is only permissible "until the Security Council has taken measures necessary to maintain international peace and security", and "[should] not in any way affect the authority and responsibility of the Security Council" (United Nations, 1945. The other circumstance under which the use of force is permissible can be found on the provisions of Chapter VII of the Charter (Articles 39, 41, 42 and 2(7)). According to these, "the Security Council, after having determined that a threat to the peace, breach of the peace, or act of aggression has occurred, may, if necessary" (that is if non-military measures taken under Article 41 have proven inadequate), "take military enforcement action involving the armed forces of the Member States" (Simma, 1999, p.4).

The use of force is thus legitimate only when authorized by the Security Council under certain circumstances or when a particular event represents a threat to international peace and security. In other words, the UN judges intervention permissible only when there is a threat to order and stability; and not when human rights, morality or justice are violated and are the source of great moral concern. There is no such thing as a legal right of humanitarian intervention; the only exception would be if the Security Council interprets human rights violations in a determinate place as a threat to international peace and security. "Articles 2(7), 39, and 42 of the Charter [then] allow the Security Council to undertake humanitarian intervention […] [only] if it deems that doing so is necessary to maintain or restore international peace and security" (Labergé, 1995, pp.16-17).

> [If] the Security Council determines that massive violations of human rights occurring within a country constitute a threat to the peace, and then calls for or authorizes an enforcement action to put an end to these violations, a "humanitarian intervention" by military means is permissible (Simma, 1999, p.5).

Lacking such an "authorization, military coercion employed to have the target state return to a respect for human rights constitutes a breach of Article 2(4)

of the Charter" (Simma, 1999, p.5), is illegal, and thus, illegitimate. This exposé makes one thing clear then: the Security Council "cannot authorize military intervention on humanitarian grounds alone" (Wheeler, 2000, p.41), but only if it constitutes a threat to international peace and security. Unilateral, unauthorized humanitarian intervention is forbidden (Simma, 1999, p.4). In this sense, "any threat or use of force that is neither justified as self-defense against an armed attack nor authorized by the Security Council [is] regarded as a violation of the UN Charter" (Simma, 1999, p.4) and international law. This demonstrates that the defence of human rights appears only to be second in the priorities of the UN Charter; it is concerned first with maintaining order, and then, justice. According to Bull (1977, p.92),

> if […] there were a consensus for instance within the United Nations, including all the great powers, in favour of military intervention [for humanitarian purposes] […], it might be possible to regard such intervention as implying no threat to international order, or even as strengthening international order by confirming a new degree of moral solidarity in international society. In the absence of such a consensus, demands for external military intervention imply the subordination of order to considerations of international and human justice.

While it might be morally necessary to intervene to save the lives of innocent people victims of wrongdoings, "it does not always follow that it is legally permissible or politically possible" (Heinze, 2009, p.137). Now, the question is, as Nardin (2002, p.69) writes, "whether the UN is a just and effective international authority is a judgment that those contemplating intervention will have to make – and defend". As a matter of fact, "the Cold War has taught us that paralysis occurs in the Security Council, and that the only possible form of humanitarian intervention is often that mounted by a single state rather than that mounted by the United Nations" (Labergé, 1995, p.17). By experience, we know that observing the letter of the law is not always a guarantee of doing the right thing (Rwanda), just as breaking it is not always the wrong thing to do (Kosovo). According to Georg Meggle (1999, p.26), pure respect of International Law may mean, "to watch Auschwitz and do nothing" (respect for the law whatever the consequences); "but morality demands precisely the opposite".

Thus, in contrast with the tradition of natural law, international positive law provides scant support for humanitarian intervention (Nardin, 2002, p.57). In this context, the capacity of dominant nations and of global civil society to frame

humanitarian intervention in terms of a threat to international peace and security might be the only possibility to warrant humanitarian intervention in a legally legitimate manner.

Conclusion: humanitarian intervention, an emerging norm?

This second chapter addressed a central component of the pluralist-solidarist divide: "the issue of humanitarian intervention, [that is], whether the society of sovereign states should accept the practice of military intervention as a legitimate response to massive violations of human rights by a regime against the people it governs" (Suganami, 2010, p.25). This debate illustrated the tension that exists between the requirements of justice and order, between the norms of human rights on the one hand, and the norms of sovereignty, non-intervention and non-use of force on the other hand. The present section also sought to explain that there are two principal contrasting traditions of thought when it comes to intervention:

> One, embedded in modern international law and the United Nations Charter, [which] sees intervention as inherently problematic, given the importance the practice of international law attaches to preserving the political independence and territorial integrity of states. The other, which belongs to the tradition of natural law or common morality, [and] sees humanitarian intervention as an expression of the basic moral duty to protect the innocent from violence (Lang, 2003, p.24).

As such, we saw that the question of human rights enforcement did not really posed itself to states before the end of the twentieth century. An important enabling factor for the emergence of humanitarian claims in this context was the role played by global media. Indeed, the advancements made by global communication in the 20th century forced states to participate in other people's torment, thus raising public opinion's awareness about human rights violations abroad. As Buzan (2004, p.235) writes, "many more people [did] know at least something about what [went] on elsewhere, and up to a certain point, [cared] about it, even if very unevenly and in ways heavily shaped by patterns of media attention." The emergence of this "human rights concern" in the 1990s denoted that somehow, something was wrong in the way the rules of international society were formulated. Something needed to be done to improve the human rights record in international society – something that international law seemed to be

unable to provide, but that natural law nevertheless recognized (and allowed under certain circumstances): the "right" to enforce human rights.

For many human rights advocates, sovereignty could "no longer constitute a protective wall against foreign interference"; "governments [had to be] held accountable over the extent to which they [fulfilled] their commitments towards their citizens' welfare" (Prantl; Nakano, 2011, p.206). It was increasingly believed that states could pressurize their governments towards more responsibility-based action, and that global civil society[13] had "the capacity to influence the evolution of debate regarding humanitarian intervention" (Hehir, 2008, p.37), This led to high expectations and an increased optimism to the new coming era; an era where states would take their responsibilities towards human security. Yet increased advocacy for human rights protection and intervention in the 1990s –in contrast with the precedent practices of a statist system – also revealed the existent tension among primary institutions of international society. That is, the developing practice of human rights enforcement could only be done at the price of violating other states' right of independence –something that many opposed. This entailed for instance that, when confronted with supreme humanitarian emergencies, states would have to decide between "doing something to rescue non-citizens facing the extreme, […] [and consequently] being accused of interference in the internal affairs of another state [; or] "doing nothing", [which] can lead to accusations of moral indifference (Wheeler, 2000, p.1).

According to Buzan (2004, p.250), when there are "contradictions within a set of values all held to be central" –here, states' rights and human rights–, "then one must expect that tension to be a pressure for change both of and in institutions". As he puts it, the tension between human rights on one hand, and sovereignty, non-intervention, and non-use of force on the other, "creates pressure for adaptation and reinterpretation in both directions" (Buzan, 2004, p.251). The fact that the UN Security Council "increasingly interpreted its responsibilities under chapter VII of the Charter as including the enforcement of global humanitarian norms" (Wheeler, 2000, p.289) shows that, as Hurrel (2002, p.143-144, apud Buzan, 2004, p.195) observes, "contradictions/tensions […] [may well be a] dynamic in the evolution (or decay) of any given interstate society". Indeed,

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[13] According to John Keane (2003, p.3), "talk of global civil society is a response to rising concerns about the need for a new social and economic and political deal at the global level".

changes in the practices of institutions are "a sign of vigour and adaptation, or decline" (Buzan, 2004, p.182). Institutions or norms are neither permanent nor fixed, but susceptible of change, as the history of international society has shown through the centuries. For Vincent (apud Griffiths, 1999, p.155-161),

> change may be driven by changes in the domestic societies of the member states, or as Hurrel (2002, p.146-7) argues […], by promotion by [transnational actors], by the discursive tendency of norms to expand by filling in gaps, by analogy, by responses to new problems and /or by debate in IGOs. If a large amount of international actors condemn a practice, that they believe to be unjust, or obsolete, and support a new one instead, the latter can progressively become the new standard of action in international society.

A redefining or change of rules (for instance sovereignty as responsibility) can allow new practices that were previously impossible, thus challenging the established normative context. However, before a norm is legally adopted or a practice legally forbidden, it usually undergoes a process of contestation. For instance, before slavery was rendered illegal, it was very much contested, with on the one hand many humanitarians claiming for its abolition, and on the other hand slave-owners opposing it. Slavery was seen as immoral before it was made illegal. If there was a law needed to abolish it, it was because it was increasingly perceived as inherently and morally wrong by international society. Yet abolition was a process that took time – time to transform society and the minds of people.

Norms involve standards of "appropriate" or "proper" behaviour, but "we only know what is appropriate by referring to the judgements of a community or society" (Finnemore; Sikkink, 1998, p.892).

> Norms that most of us would consider as "bad", [for instance] racial superiority were once powerful because some groups believed in the appropriateness (that is, the "goodness") of the norm, and others either accepted it as obvious or inevitable or had no choice but to accept it. Slaveholders and many non-slaveholders believed that slavery was appropriate behaviour; without that belief, the institution of slavery would not have been possible (Finnemore; Sikkink, 1998, p.892).

As such, the use of force in defense of human rights remains largely perceived as carrying risks of severe abuses by states, which are too high compared to the possible benefits that authorizing such a practice could provide. Moreover, humanitarian intervention is not only considered illegal – unless authorized by the Security Council –, but it also faces the charges of being a new form of Western imperialism, a way to impose values on others or another

tentative in "civilizing" the world. Against this background, many argue that authorizing it might lead to dominant nations using the humanitarian rhetoric to intervene in other states' affairs, for their own self-interests. The tradition of common morality also acknowledges that humanitarian intervention remains an uncertain remedy, but nevertheless authorizes it if it is the moral thing to do, because exceptions are always necessary for justice to happen.

Thus, while the Security Council increasingly "[reinterpreted] the Charter to more frequently favour human rights over the protection of state sovereignty" (Brahm, 2004), humanitarian intervention nevertheless remains a very contested practice, especially when it comes to the question of its legitimacy. The fact that the Charter establishes sovereignty and human rights as institutions of international society, promoting order and justice at the same time is problematic. As a matter of fact, "these institutions aren't necessarily in harmony with each other" (Buzan, 2004, p.250). They can conflict on certain instances, for instance when it comes to the question of human rights enforcement, and the problem is that the Charter doesn't provide a solution to this tension. It is in fact itself an illustration of this tension, with on the one hand, "clear defense of the territorial integrity of states, […] [and] at the same time, […] commitments to individual human rights and the rights of groups to self-determination" (Brahm, 2004).

While humanitarian intervention is progressively becoming a widely acknowledged practice, a clear reading and interpretation of the Charter nevertheless enable us to understand that at the moment, justice has still to be subordinated to order. Human rights are second in priorities of the United Nations; peace and international stability being first. Although conventions on genocide, torture, and other treaties aimed at protecting human rights all "lay down obligations of governments to act in certain ways or to refrain from certain acts in order to promote and protect human rights and fundamental freedoms of individuals or groups" (OHCHR, [n.d.]), if these obligations are massively violated, apart from possible countermeasures and sanctions and shaming, there is no way to enforce these. Humanitarian intervention is not yet accepted as an "appropriate" practice, and as a consequence, it remains highly contested. Yet as we saw, contestation is part of the process when a new norm arises (Finnemore; Sikkink, 1998). There is necessarily a clash between proponents of the new norm and the supporters of existing ones. However, "once established, [a new] norm

can serve to constrain even the most powerful states in the international system (Wheeler, 2000, p.7). As Wheeler (2000, p.5) puts it, "if a large enough group of supporters are prepared to adopt the new norm as the standard of appropriate behaviour, it will then replace the previously accepted practice".

The aim of the next chapters will be to demonstrate how and whether human rights promoters, states, and other entities – understood as global civil society, are able to call attention to issues such as human suffering and have the capacity to influence effectively the international society towards more responsibility-based action (intervention) in cases of supreme humanitarian emergencies. There have been several attempts since the 1990s to intervene in order to enforce human rights. Some have proved successful, others not. One of the key aspects of the next chapters then, will be to determine the extent to which solidarism has penetrated into the existing society of states and whether the elements of law and morality, present in the international society, have the capacity to create obligations that are binding on states (for instance, the respect of human rights). In order to do so, the present work will bring empirical elements to illustrate the reflection developed so far, and focus on the analysis of states' responses in regard to two humanitarian crisis that have triggered different answers from the international community: Kosovo and Darfur. This will enable us to determine if the humanitarian discourse has had an impact on states' decisions whether to intervene, and whether common morality is capable of constraining states' actions – in the absence of a legal right of humanitarian intervention. And secondly, such analysis will enable understand whether intervention occurs only when states are concerned about international order and have interests to protect, as would pluralists and realists argue, or whether humanitarian rationales are sufficient to trigger action. Ultimately, by doing this, the present work seeks to determine whether a change of norms and/or discourse necessarily leads to changed actions; and whether the conflict between order and justice can be reconciled, or if it leads to the privileging of one over the other.

3. Global civil society and normative change

In the previous chapter, we stated that the rise of intra-state conflicts after the end of the Cold War – characterized by massive human rights violations and refugee flaws – created a great concern among the different members of the society of states, and called for increased human rights advocacy and intervention. This solidarist impulse, calling for states to assume greater protection and respect not only of their citizens' human rights, but also of those of the global community, conflicted with precedent international practices, which were primarily concerned with the maintenance of international order, through the respect of the basic rules of coexistence which implied the non-interference in the internal affairs of other states.

As a matter of fact, prior to the rise of this human rights concern in the early 1990s, states generally tended to ignore whether outside governments were treating their citizens adequately, and when they knew about human rights violations, they often turned a blind-eye on them. Yet the growing tension between international society's institutions of sovereignty, non-intervention and non use-of force, on the one hand, and human rights, on the other hand – a tension which had not yet really been addressed by the society of states before – revealed the necessity to redefine and/or adapt the institutions and rules of the society of states to the new international political and social realities of a globalized world. That is, to an international context, where what happens in other countries can have repercussions on other states, and where states can't anymore pretend to know nothing about the suffering of others.

Increasing pressures were put on states and on the United Nations, in particular, by a diversity of non-governmental actors, such as individuals, prominent intellectuals, humanitarian groups, global human rights network, NGOs, independent media etc., which together formed a global civil society, bargaining and calling for states and the UN to "do something" about the massive human rights violations, which not only threatened to degenerate, causing instabilities in other states –and thus, disorder in general– but which were, as such, an affront to "common humanity and morality". According to John Keane (2003, p.2), "there is general agreement that the emergence of norm promoters

and talk of global civil society is usually a response to rising concerns about the need for a new social and economic and political deal at the global level". As such, global civil society's aim is to create ethical foreign policies, bringing morality into international relations. It seeks to highlight the fact that there exists a profound gap between states' normative commitments towards human rights, which lay down obligations for states to respect and promote them, and facts, which attest that these obligations are often disregarded in practice.

In an era where it appears wrong to remain inactive in face of human rights violations and where there are no legal mechanisms authorizing intervention, international law is necessarily challenged in a fundamental way. As argued in the previous chapter, when well-established rules and institutions are contested, it is often a sign that there needs to be a redefinition of norms. It might also be a sign that a new practice is emerging. And when new norms are established in positive law, they are abler – depending on whether states believe in its fairness – to constrain states' actions.

Against this background, the present chapter continues the previous discussion, putting emphasis on the capacity of global civil society to *influence* and *promote* change towards more ethical actions. This is particularly interesting to study, since in the absence of a legal right to humanitarian intervention, it is often the recourse to moral principles and the pressure exercised by human rights supporters that enable intervention to take place. This chapter seeks to understand then, how global civil society operates in order to influence international society towards more responsibility-based action. What strategies, methods, and means it uses in order to diffuse norms, values and affect states' actions, and what obstacles it faces. How does it proceed to make states and international organizations such as the UN address their shortcomings in terms of human rights protection and comply with their obligations?

This section looks at the capacity of norm entrepreneurs to push towards the redefinition of norms, or practices, that seem inappropriate, and highlights the difficulties of reaching a consensus on a global level, especially when states have differing conceptions of justice, and priorities other than human rights protection. According to the English School view, norms, institutions, and values have the capacity both to enable and constrain states' actions. It is important to keep in mind in this context that rules and institutions are neither fixed nor permanent, but

susceptible of change, thus bringing to the surface new practices. In the context of the post-Cold War era, it is particularly interesting to see how solidarist "ideas about what is good and what should be […] become translated into political reality" (Finnemore; Sikkink, 1998, p.916). As we shall see later in our upcoming case studies, the way determinate humanitarian crises are presented is of great importance, when trying to understand state action or inaction in face of supreme humanitarian emergencies. The objective here is thus not simply to understand how elements of justice and morality penetrate a pluralist international society and challenge it, but to grasp if elements of law and morality have indeed the capacity to create obligations that are binding, and whether increased advocacy for human rights protection and enforcement, as visible in the aftermath of the Cold War, leads to a more responsible, solidarist, and interventionist society.

3.1 Tensions and norm contestation: a sign of normative change?

The reality of international society is one where different values, norms, and principles conflict and clash with each other. As a matter of fact, international society is composed of a diversity of states with different cultures, religions, ethnic groups, etc. This necessarily implies that consensus is not always reachable between them, and that different ideas, values and (understanding of) norms might confront one another. As Hurrell (2002, p.143-4, apud Buzan, 2004, p.195) puts it, "the set of institutions constituting any given interstate society may well contain contradictions/tensions among themselves. These contradictions/tensions may well be a dynamic in the evolution (or decay) of any given interstate society". Disagreement and conflict about existing norms or their understanding often precedes normative change. These tensions can lead or push towards change, and "changes in the practices within an institution may be a sign of vigour and adaptation […] or of decline" (Buzan, 2004, p.182).

> This change may be driven by changes in the domestic societies of the member states, or […] about contemporary international society, by promotion by transnational actors, by the discursive tendency of norms to expand by filling in gaps, by analogy, by responses to new problems and /or by debate in IGOs (Buzan, 2004, p.195).

One of the English School thinkers' main interests is addressing the question of change. They generally argue that once established, a new norm "will

serve to constrain even the more powerful states in the international society"
(Wheeler, 2000, p.7). A change of rules then "enables new actions that were
previously inhibited" (Wheeler, 2000, p.8). However, before a determined rule or
practice becomes law – that is, before it is incorporated into a legal convention
and has the capacity to bind states – "it is not uncommon for it to emerge first as
an operational rule, then to become an established practice, then to attain the
status of a moral principle and finally, [to become law]" (Bull, 1977, p.64).

Eventually, international society adapts to its environment. If a large amount
of international actors condemn a practice that they believe to be unjust (for
instance non-intervention in the face of massive crimes) or obsolete, and support a
new one instead, the latter can progressively become the new standard of action.
As Vincent (Griffiths, 1999, p.158) writes, "the widespread condemnation of a
form of behaviour in international society usually attests to at least some
normative force in the principle that is being broken". Yet changing norms and
practices is never an easy task. If we take non-intervention and sovereignty for
instance, there are well-accepted and internalized laws. Although they have been
highly criticized for enabling states to commit massive human rights violations
with impunity, it will probably be difficult to reach a global consensus on the
redefinition of these rules in a way that diminish their "sanctity". Some society at
the sub-global level might more easily agree on redefining sovereignty, while
others might vocally oppose it. As Finnemore and Sikkink (1998, apud Wheeler,
2000, p.5) argue, "when new norms and practices are raised, there always follows
a process of contestation as supporters of the old norm seek to resist the advocates
of the new norm". As a matter of fact, what is appropriate for some is not always
for others. Consensus on a global level is much more difficult to obtain than on
national level. "This struggle is rarely resolved quickly and the result is either the
defeat of the new norm, or its acceptance as a legitimate practice" (Finnemore;
Sikkink, 1998, apud Wheeler, 2000, p.5).

3.2 The role of norm entrepreneurs in the emergence of norms

Of particular interest in the present section is the capacity of norm
entrepreneurs and global civil society to produce normative change. What
motivates them, what are the methods and means they use for promoting and

diffusing new norms and values at a global level, and what kind of obstacles they face. Norm entrepreneurs, according to Finnemore and Sikkink (1998, p.897), "are critical for norm emergence because they call attention to issues or even create issues by using language that names, interprets, and dramatizes them". For instance, the "never again" word was employed after the genocide of Jews during the Second World War to evoke that genocide could not be tolerated anymore in the society of states. This renaming process is better known as "framing" and is "an essential component of norm entrepreneurs' political strategies, since, when they are successful, the new frames resonate with broader public understandings and are adopted as new ways of talking about and understanding issues" (Finnemore; Sikkink, 1998, p.897).

As Finnemore and Sikkink (1998, p.896) argue, "norms do not appear out of thin air; they are actively built by agents having strong notions about appropriate or desirable behaviour in their community". For instance, the "prevailing norms that medical personnel and those wounded in war be treated as neutrals and non-combatants are clearly traceable to the efforts of one man, […] Henry Dunant." (Finnemore; Sikkink, 1998, p.896-897).

> People with principled commitments have made significant changes in the political landscape: slavery as a legal institution of property rights has been abolished everywhere on the planet […]; women, […] have full formal political participation in most states of the world; and though war continues to be a horrible human practice, […] it is less horrible as a result of efforts by humanitarians to curb the most awful weapons and practices (Finnemore; Sikkink, 1998, p.916).

It is however not always an easy task to transform the society of states into its desired version, as "in constructing their frames, norm entrepreneurs face firmly embedded alternative norms and frames that create alternative perceptions of both appropriateness and interest" (Finnemore; Sikkink, 1998, p.897). They must then try to promote a new understanding of what is appropriate behaviour.

3.2.1 Motivation in promoting new norms

Explaining what motivates norm promoters can be quite difficult, since "the answer varies with the norm and the entrepreneur" (Finnemore; Sikkink, 1998, p.898). Nevertheless, it is generally conceded that altruism, empathy, or ideational commitment, are the factors that motivate the formulation of new norms

(Finnemore; Sikkink, 1998, p.898). For instance, it is after seeing the suffering of wounded soldiers in the Solferino Battle that Henry Dunant developed the idea that the suffering of wounded soldiers should be prevented and reduced, which then led to the creation of the Red Cross and the elaboration of the Geneva Conventions. While these feelings may (or may not) be present in the norm entrepreneur's head, it is also important to keep in mind that "norm entrepreneurs do not so much act against their interests as they act in accordance with a redefined understanding of their interests" (Finnemore; Sikkink, 1998, p.898). They must subsequently convince others that it is in their interest too. If we take again the example of the Red Cross, "Henry Dunant had to persuade military leaders that protecting the wounded was compatible with their war aims" (Finnemore; Sikkink, 1998, p.899). Similarly, while human rights promoters believe that states that endorse their responsibility to protect citizens against human rights violations will promote a world that is more just, they still have to persuade state leaders that the pursuit of justice is compatible with order. That the protection of human rights and its enforcement will bring them positive outcomes, for instance by impeding conflicts to spread into neighboring countries, causing further human suffering and instabilities. According to Bull (1977), the strength of solidarist institutions depends on states identifying it as in their interest. By analogy, we can say the same about norms diffusion: their acceptance, and internalization, depends on societies believing that it is not only the moral thing to do but that it is in their interest too.

3.2.2 Obstacles and resistance to norm diffusion: whose ideas matter?

New, emerging norms, necessarily clash with well-established, and equally compelling, older norms. Indeed, "new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest" (Finnemore; Sikkink, 1998, p.897). It is much more complicated to promote the adoption of a norm on a global level than on a national, as there are many more actors involved, with different interests, different perceptions and values. In addition, "efforts to promote a new norm take place within the standards of "appropriateness" defined by prior

norms" (Finnemore; Sikkink, 1998, p.897). Therefore, those pushing for new norms may encounter obstacles on their way.

For instance, the promoters of a redefinition of "sovereignty as responsibility" and of human rights enforcement may encounter difficulties convincing the states attached to the sovereignty, non-intervention and non-use of force laws. As a matter of fact, these norms are seen as valuable by states. They are considered essential at maintaining international order, protecting states against aggression and interference in their internal affairs. Consequently, redefining or reinterpreting them could easily cause anxiety among states worried about their right to self-determination and autonomy. Moreover, "principled commitments and notions of what should be" have [historically caused a lot of suffering, for instance] [fueling] xenophobic nationalism, fascism and ethnic cleansing" (Finnemore; Sikkink, 1998, p.916). The extermination of Jews during the Second World War was government-planned; similarly, slavery was a legal practice not so long ago. Thus, what is moral for some may not be for others, and precisely because of these kind of historical examples, the society of states is naturally prone to skepticism, at least initially, when it comes to the formulation of new norms or the redefinition of well-established ones.

Acharya (2004) addresses the issue of resistance to norm diffusion, and argues that one of the main obstacles to norm acceptance on a global level is that often, norm entrepreneurs promoting universal norms and values don't actually take into account the particularities of others at the sub-global, regional or domestic level. That is, norm promoters or social movements trying to propagate norms often believe to be representing a "universal morality", as was the case with the "campaign against landmines, ban on chemical weapons, […] intervention against genocide and promotion of human rights, and so on" (Acharya, 2004, p.242). Too often, in this context, they rely not simply on persuasion of others, but on their conversion, "regarding resistance to cosmopolitan norms as illegitimate or immoral" (Acharya, 2004, p.242).

This can be problematic since there is no ground for taking the morality of norm promoters as superior to other realities. For instance, a major criticism of the promotion of humanitarian intervention by appealing to "common morality" is the questioning of *whose* morality it is? Acharya (2004, p.261) illustrates well this tension in his text, taking the example of Southeast Asian countries reluctant to

accept a humanitarian intervention norm. He explains that in this region, "the humanitarian intervention norm has attracted no insider advocacy, only suspicion and rejection, […] [because states feared] it would compromise [their] sovereignty" (Acharya, 2004, p.261). That is, historically, these countries had no tradition of human rights. Therefore, the humanitarian discourse did not function because it has roots in democracy, and there were countries that were governed by illiberal regimes (Acharya, 2004, p.268). Fukushima and Tow (2009, p.170), discussing about the emergence of a humanitarian intervention norm in Asia, have inferred that:

> The idea that sovereign governments have an inherent "responsibility to protect" their citizens in ways that conform to norms defined by an "international community" has been distinctly alien to many Asian nationalists. They view […] intervention by outside powers […] as nothing less than a direct challenge to their own authority to exercise national sovereignty under the pretext of "correcting" perceived atrocities and aggression [...]. The idea that outside forces could protect their citizens more effectively through reconstituting national institutions after invasion, and then immediately withdraw, seems incredible […].

With this example, this section seeks to demonstrate "that shifts in the global normative environment alone do not necessarily produce normative and institutional change at the regional level at the expense of preexisting normative framework and social arrangements" (Acharya, 2004, p.270). When norm promoters come with new norms, they systematically have to face opponents and defenders of other, well-established norms. This will most of the times provoke a tension, a norms clash, which might ultimately end, as said earlier, with the rejection or internalization of the norm as a legitimate practice. Thus, while the defense of human rights may appear as a priority in the foreign and domestic policies of certain regions of the world, it is not necessarily the case everywhere. Moreover, the fear that humanitarian intervention might be employed as a pretext for states to intervene in others' internal affairs is never far. This could justify why Russia and China often oppose and threaten to veto interventions. As a matter of fact, as Prantl and Nakano (2011, p.212) suggest, "traditionally, Chinese behavioural norms and patterns in foreign policy have been characterized by an extremely rigid understanding of state sovereignty and non-intervention".

These kinds of reactions against universal norms or "common morality" are common and denote that "local actors do not remain passive targets and learners as transnational agents, acting out of a universal moral script to produce and direct

norm diffusion in world politics" (Acharya, 2004, p.269). Promoters of universal ideas should thus take into account "the expansive appeal of norms that are deeply rooted in other types of social entities – regional, national and subnational groups" and stop "setting up implicit dichotomies between good global or universal norms and bad regional or local norms" (Acharya, 2004, p.242). As a matter of fact, the reality is that there is not necessarily a fit "between emerging transnational norms and pre-existing regional normative and social order" (Acharya, 2004, p.241). Some parts of the world will for instance develop more solidarism than others. Some parts of the world will share a higher or a thinner degree of shared norms. Those who share a higher degree (for example Western countries) might want to "act […] as vanguards, using their power to project contested values on a global scale" (Buzan, 2004, p.240). Yet, they might hit on their way others who seek to defend cultural distinctiveness. The challenge for "moral entrepreneurs", then, is to succeed in influencing states or in softening their opposition. In this context, they might prove more successful if the responsibility for the creation and diffusion of new norms is attributed to the international community at large or seen as broadly shared, than being credited to any particular group, especially Western countries.

3.2.3 Methods and means employed for norm diffusion

For global norms to be accepted, there must be a fit between the proposed international norm and domestic norms, known as "congruence" (Acharya, 2004, p.243). That is, there must be a "cultural match" between proposed and existing norms, as "norm diffusion is more rapid when a systemic norm resonates with historically constructed domestic norms" (Acharya, 2004, p.244). Yet we have seen that such fit does not necessarily exist. Against this background, one way to make congruence happen is through framing, as Finnemore and Sikkink (1998) suggest. Framing are acts of reinterpretation that can make a global norm appear local. Challenging existing logics of "appropriateness" is however not an easy task. Finnemore and Sikkink (1998, p.897) argue that activists may need to be sometimes explicitly "inappropriate". That is, in order to raise awareness about world issues, unjust situations, or the inadequacy of certain norms, activists may have to show "inadequate" images. For instance, human rights movements will

often report situations of untenable human suffering by displaying them on a global level through the use of media and global campaigns. The aim is to shock, to provoke an impact (as with images of refugee flaws, violence). They have to do so in order to make others question what is appropriate behavior. In the present thesis: to let massive human rights violations continue, in the name of defending sovereignty and non-intervention, or to intervene?

Yet the difficulty lies in "the fact that standards of appropriateness are precisely what is being contested" (Finnemore; Sikkink, 1998, p.898). For instance, sovereignty and non-intervention are rules that are regarded as valuable by international society since they provide protection against random interventions. In this context, the challenge for norm entrepreneurs might be to demonstrate that the new norm is not only the moral thing to do, but also that it is in conformity with their interests, that is has an utility. For instance, framing justice as necessary to order, as compatible with it, as something positive rather than negative; that allowing human rights enforcement on certain rare instances and redefining sovereignty as responsibility is the best way to tackle insecurity and instability generated by intra-state conflicts which threaten to spread across other countries, causing further human suffering and instability.

Another strategy is naming and shaming. Norm entrepreneurs "provide information and publicity that provoke cognitive dissonance among norm violators" (Finnemore; Sikkink, 1998, p.900). In this situation, states opposing a new norm might be identified negatively, for instance as amoral actors or human rights violators. "In the area of human rights, a body of empirical research […] suggests that some state leaders care deeply about their international image as human rights violators and make significant policy changes in order to change that image" (Finnemore; Sikkink, 1998, p.904). Through pressure, their position might thus be softened. As a matter of fact, states prefer to be associated as proponents of human rights than the contrary. Being seen as legitimate is important for them; "there are costs that come with being labeled a "rogue state" in international interactions" (Finnemore; Sikkink, 1998, p.903). States care for their reputation.

In short, in order to persuade others of the value of the proposed norm or towards change, promoters usually resort to different techniques and tools:

- The strategical use of discourse and framing, for instance "never again", "not another Rwanda", "sovereignty as responsibility" etc.;

- The use of medias and global campaigns to convey ideas on a global level and provoke "awareness";

- Naming and shaming (that is, naming and shaming human rights violators, denouncing inaction, silence)

- The resort to talk of universal values, like "common morality" and "common humanity"

- The combining of moral principles with questions of interest and order (for instance, talk of the new moral norm as being in conformity with states interests, as favoring international security, stability, and order)

3.2.4 The use of platforms for norms diffusion

While the tools mentioned above may or may not have the capacity to influence states towards change and new attitudes, norm entrepreneurs are generally more successful if they act from organizational platforms that convey their values and promote their norms.

> These platforms constructed specifically for the purpose of promoting the norm, as are many NGOs ([like] The Red Cross, Greenpeace […]), and the larger transnational advocacy networks of which these NGOs become a part (such as those promoting human rights). […] [Other times, entrepreneurs] work from standing international organizations that have purposes and agendas other than simply promoting one specific norm (the UN). […] Whatever their platform, [they] usually need to secure the support of state actors to endorse their norms and make norm socialization […] as part of their agenda (Finnemore; Sikkink, 1998, pp. 899-900).

Prantl and Nakano (2011, p.210) highlight the importance of those advocacy networks for norm diffusion that act "as transmission belts between the global, regional and domestic levels […] hold governments accountable and help by naming and shaming norm violators". They also highlight two important issues affecting the capacity of these networks to diffuse norms: 1) First, "[they] are unevenly distributed across states and regions" (Prantl; Nakano, 2011, p.210). For instance, many of the NGOs in the humanitarian field and the pro-intervention lobbies originate and have their seats in Europe or Switzerland. There aren't necessarily equivalent organizations on a regional level, and this might make it

difficult for some countries to see the claims of such entities as representing the values of the society of states. 2) Second, the openness of domestic societies obviously varies, "impacting on the effectiveness of networks in diffusing norms" (Prantl; Nakano, 2011, p.210). This entails that

> [different] degrees of norm penetration are likely to be the rule rather than the exception[14], […] the probability of norm diffusion increases with the openness of a domestic society. And, third, in consequence, state strategies and interests will significantly differ in implementing a given norm (Prantl; Nakano, 2011, p.210).

Nevertheless, if advocacy groups succeed in influencing and socializing, and a sufficient number of critical states (like those that have the capacity to push others to follow and conform) "endorse the new norm to redefine appropriate behavior", the new norm reaches the tipping point, and the new practice spreads by an effect of "contagion" (Finnemore; Sikkink, 1998, p.902).

3.3 Global civil society as a catalyst for ethical state behaviour

The debate in the 1990s "over the right or responsibility to enforce humanitarian objectives by using coercive means […] illustrated both the widening and deepening normative scope of international society" and questioned the capacity of states to act as moral agents (Prantl; Nakano, 2011, p.217). Of particular interest here is the capacity of human rights promoters and of the pro-intervention lobby – understood together as forming global civil society – to achieve change towards more ethical action. Although this work's focus is not especially on whether a new norm of humanitarian intervention emerged *per se*, it nevertheless indirectly addresses it by interesting itself in the processes which actually lead states to redefine notions of "appropriate" behavior and conduct, of what "should be", and make them change their attitudes and actions.

3.3.1 Global civil society

The concept of global civil society is not always easy to grasp. It can mean everything and nothing. If we look for it in the dictionary, we find that

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[14] That is, some values and norms might resonate better in some determinate places than others (for instance human rights in democratic countries).

> [t]he part of (international) society that consists of organizations and institutions that help and look after people, their health, and their rights. It does not include the government or the family. (Macmillan, 2015)

Another definition speaks of

> [a] collection of persons who associate together to explore or promote their interests or goals. While civil society is not necessarily political or economic, it provides a sphere outside of the state or private sector in which people are motivated by their own goals, apart from profit or the good of the state. For that reason, civil society can exercise significant political influence. (The Free Dictionary, 2015)

According to John Keane (2003, p.2), "there is general agreement that talk of global civil society is a response to rising concerns about the need for a new social and economic and political deal at the global level." It is a recent phenomenon, which appeared in the 1990s with the end of the Cold War and the phenomenon of globalization that generated increasing interconnectedness between states and peoples. With the growing interdependence between states, "there were increased demands for the provision of global public goods, […] [of which] peace and security [were part]" (Prantl; Nakano, 2011, p.206). The society of states witnessed the emergence of all these non-governmental organizations (NGOs) and institutions, advocacy groups and networks, and global social movements, which together represent what we now call the third sector: the voluntary or community sector – a sector distinct from the public (government) and private sector and aimed at manifesting the interests and will of citizens on a global level. Previous to that, such movements had been mainly restricted to the territorial boundaries of states or to regional levels.

According to Keane (2003, p.17), the particularity of global civil society is that it is a "civil society", which is *global. Civil*, meaning that it is composed of non-governmental actors; and *society*, meaning that these different actors/activities together form a "society", with its own traditions and rules that enable and constrain their actions. Thus,

> [t]o speak of a global civil society is to refer to politically framed and circumscribed social relations that stretch across and underneath states boundaries and other governmental forms. It draws upon and is sustained by many different actually existing societies, whose members regularly interact and/or feel the effect of others' actions across political boundaries (Keane, 2003, p.17).

From a descriptive perspective

> [t]he term global civil society refers to *non-governmental* structures and activities. It comprises individuals, households, profit-seeking businesses, not-for-profit non-governmental organisations, coalitions, social movements [...]. It feeds upon the work of media celebrities and past or present public personalities – from Gandhi, […] and Martin Luther King to […] Aung San Suu Kyi […]. It includes charities, thinks-tanks, prominent intellectuals […] lobby groups, citizens' protests […], independent media […] international commissions […]. It comprises bodies like Amnesty International, […] The International Red Cross" (Keane, 2003, pp. 8-9).

3.3.2 Creating foreign ethical societies

As such, the existence of a global civil society represents the desire of an alternative social and world order that is more fair and just. Individuals such as Ghandi and Martin Luther King for instance, tried to transform society at the domestic level, its way of thinking and its understanding of appropriate behavior. With the globalization of communications, and the increasing permeability of boundaries, global civil society is abler to reach people and affect change on a global level. Its project is to highlight world issues and promote a society that is more just. "While it is not seen as wielding actual power, through its capacity to influence states it will make sure that policy makers act […] in the interests of the human community" (Kaldor, 2003, p.102, apud Hehir, 2008, p.41). It is thus a "catalyst for state behaviour" (Hehir, 2008, p.41). In the present study, global civil society has to be understood as a *means* by which achieving a *normative ideal* – an ethical international society – is possible (Keane, 2003, pp.3-4). This ideal is one where sovereignty is not used as a shield against outside military intervention when a government brutalises its own people (Chandler, 2004, p.82). It is one where sovereignty means responsibility, and is subordinated to human rights.

3.4 Global civil society and humanitarian intervention

As Hehir (2008, p.37) explains, "the end of the Cold War enabled humanitarian groups from across the globe to link up and coordinate agendas as never before". Soon, a well-organised human rights movement emerged, promoting humanitarian intervention with increasing voracity and frequency, and calling for the international community to "do something" against massive human rights violations and human suffering (Hehir, 2008, p.2). This "do something" appeal "shaped much of the political debate of the 1990s" and challenged the very

base of the international system (Hehir, 2008, pp.2-3). Sovereignty became increasingly challenged and contested; it could "no longer [constitute] a protective wall against foreign interference, with governments being held accountable […] over the extent to which they fulfil their commitments towards their citizens' welfare "(Prantl; Nakano, 2011, p.206).

Global civil society sought to promote responsible and ethical state conduct, and influence the debate regarding humanitarian intervention. Perceiving the limitations of international law when it comes to the respect of human rights, "the impotence of international organizations" (for instance, the UN), "and the naturally self-interested nature of states", it increasingly advised humanitarian activists to mobilize in order to affect change towards a "more humanitarian world order" (Hehir, 2008, p.6). It was believed in this context that "state behaviour […] [was] malleable and [could], through [moral] […] pressure, be reoriented towards a more ethical and altruistic dispensation" (Hehir, 2008, p.38). That is, humanitarian groups could push states towards an understanding of "sovereignty as responsibility".

3.4.1 Persuasion in a glimpse

The particularity of global civil society is its capacity to convey ideas, to contest practices and to issue warnings that resonate on a global level. According to Keane, when there are global social movements such as the pro-intervention lobby visible in the 1990s, the term global civil society can "serve as a campaigning criterion – to establish what must be done (or what must be avoided) in order to reach goals, like [the respect of human rights] and justice, whose desirability is more or less presumed" (Keane, 2003, p.3). Global civil society thus has an advocacy function, but it serves also "as a monitoring and signalling platform" to promote such values; a platform "from which both local and worldwide matters […] can assume global importance, and global-level problems (like nuclear weapons, terrorism, the environment [or massive human rights violations]) are named, defined, and problematized" (Keane, 2003, p.15).

The challenge in situations of supreme humanitarian emergencies is to *persuade* states that intervention is the moral thing to do. However, the latter are known for acting according to their interests and these can work to significantly

impede interventions. Consequently, how does global civil society proceeds in order to make states endorse their "responsibilities"? How can it influence states towards new understandings of responsible and ethical action? Can it really challenge states, making them *alter* what is inadequate or redefine it, and how?

Global civil society usually proceeds as described in the second section of the present chapter: with the use of different techniques and tools such as naming, framing or shaming, to *influence* and *persuade* states towards change, stimulate awareness and convey new ideas of "appropriateness". The use of global media is of particular importance in this context. As a matter of fact, "contests typically become visible through media coverage, which attracts witnesses to both local and worldwide disputes" (Keane, 2003, p.15). Most situations of humanitarian emergencies are generally covered by the medias, and denounced by human rights movements, NGOs and many others members of global civil society. The medias help shed light on global-level problems, naming, defining and problematizing them (Keane, 2003, p.15). Shocking images of human slaughter appear on screens, sometimes causing worldwide protests. No one can turn a blind-eye on them; no one can justify inaction by saying "I did not know about this". Rwanda, Bosnia, Somalia, Kosovo; in the 1990s, everyone knew about the mass atrocities.

Stimulating awareness among the world's inhabitants about global problems and the consequences of unaddressed issues in a globalized world is thus essential for global civil society, since in turn, domestic claims can pressure state leaders and the UN in particular, to "do something" (Keane, 2003, p.17). According to Wheeler (1997, p.22) "domestic publics and the media have the potential to hold states leader accountable for greater humanitarian responsibility".

3.4.2 Conflicting beliefs and cognitive dissonance

Global civil society seeks to provoke a "cognitive dissonance" within states and international society. This term, employed generally in the field of psychology[15], signifies the *feelings of discomfort* which occur, for instance, when two beliefs or values conflict with each other. In the case of humanitarian

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[15] See Festinger (1957). Dissonance is used for individuals in Leon Festinger's Theory of Cognitive Dissonance, but here we're transposing it to states. Yet as it is individuals (state leaders, advisers etc.) who take the decision, then it should be ok.

intervention, the well-known conflicting values are the respect of sovereignty and human rights enforcement (intervention). According to Festinger (1957, p.3), "when there is a discrepancy between beliefs ["we should do something"] and behaviors [non-intervention and respect of sovereignty], something must change in order to eliminate or reduce the dissonance".

According to Festinger (1957), several factors can influence the strength of the dissonance. The pro-intervention lobby, by pressurizing states to act, the media, by showing the atrocious reality of human suffering, all those entities composing global civil society (individuals, intellectuals, NGOs etc.) by naming and shaming human rights violators and bystanders, have the capacity to increase the feelings of discomfort, which in turn can make states question what is the right path to follow and the legitimacy of their own decisions. The efficiency of global civil society lies in its capacity to expose states, that is, condemning states' inaction, pressurizing the UN to take a stance. While states initially did not intervene in Rwanda or Bosnia, they felt profoundly ashamed about that and eventually felt compelled to go there – though it was a bit late and with contestable results. Thus, while non-intervention is a well-established norm, which shouldn't ask for justification, states felt increasingly pressured to explain and justify non-intervention. This signals that states also seek moral legitimacy (doing what is moral and just) in the eyes of the other members of the society of states. They don't want to be seen as immoral actors that are insensitive to human suffering.

Against this background, human rights promoters might try to *persuade or reorient* states towards the "good choice", the "legitimate action" – prioritizing of human rights over sovereignty in cases of supreme humanitarian emergencies. They might facilitate the change towards appropriate behaviour, by arguing that by ensuring that human rights are protected everywhere, states contribute not only to a world that is more just for everyone but to a world that is more orderly and that secures their interests. When human rights are guaranteed, there is less instability threatening to spread. It is important, as mentioned earlier, that states perceive a utility in the norm that is being promoted. In doing so, human rights promoters seek to reduce or minimize the cognitive dissonance or to change the conflicting belief so that it is consistent with others belief. They can push states to reinterpret the conflicting beliefs as not necessarily going against each other.

3.5 The limits of global civil society

Through pressure, and by bringing awareness about supreme humanitarian emergencies that go unaddressed, global civil society seeks to alter, or at least influence, states' behaviour towards more responsibility and a more ethical conduct. It seeks to address the gap in international law revealed by the tension between sovereignty and intervention, in order to promote a world order that is more just for all, everywhere. The difficulty on a global level, however, is that the amount of dissonance states experience depends on several elements. For instance, states accord different degrees of importance to particular beliefs. Sovereignty, for example, might be more highly valued in Southern countries, while human rights take precedence in Western societies.

The value attached to sovereignty or human rights differs on a domestic level. In addition, the strength of the feelings of discomfort will depend on the degree to which different values, for instance human rights and sovereignty, conflict with each other. Depending on the countries or regions, it will vary greatly. For instance, we argued earlier that in some societies at the sub-global level, the tradition of human rights is not as well developed as in other places, neither seen as compatible with sovereignty and non-intervention. The idea of a "common morality" and that all share the same universal rights are also contested on a global level. If we take the United Nations' Universal Declaration of Human Rights: as such, it claims to be "universal". However, the reality is that, although it has been widely adopted, many have contested it, expressing concerns with the Declaration's alleged Western bias. The Arab World, for instance, has argued that it was not in harmony with Islam. This led them to support an alternative document: the Cairo Declaration on Human Rights in Islam. Similarly, Asian states adopted the Bangkok Declaration on Human Rights in 1993.

Conceptions of justice differ at the sub-global level; the sense of justice in Africa, in Asia, in the Arab world or in the West is not necessarily the same, contrarily to what cosmopolitanists would argue. Consequently, the tentative imposition of "universal" values, which aren't in fact shared by all, can generate conflict and resistance, or fail to motivate adequately. Yet despite some tensions about the "universality" of the rights declared in the UN's Declaration and in

other treaties about human rights, their alternative versions guarantee many of the same rights. Of particular importance to the present work, they all protect the right to life. Thus, we can still argue that there exists a "common morality", at least when it comes to the right of individuals to life. And it is precisely lives which humanitarian intervention seeks to preserve. The fact that some states are less receptive to humanitarian claims doesn't necessarily mean that they are insensitive to human suffering or that there are not solidarist elements in these societies. Only, that priority is probably put on the respect of sovereignty, non-intervention and non-use of force – states thus sharing the pluralist point of view that states' interests are best preserved in the absence of a right that authorizes states to intervene forcibly in the affairs of others to dictate them how to behave with their own citizens. According to Hehir (2008, p.42):

> [t]he receptiveness of states to the pressure exercised by humanitarian organizations [is] seen as dependent on the nature of the regimes, with democracies evidencing a clearer relationship between normative pressure and foreign policy.

According to Wheeler (1997, p.22, apud Hehir, 2008), "domestic publics and the media have the potential to hold Western states leader accountable for greater humanitarian responsibility". The hope then, was that Western states, acting as vanguards, would lead other states, by *contagion*, to reorient their own beliefs, seeing intervention as legitimate and non-intervention as morally wrong. Yet we have to keep in mind that global civil society's idea of a "common humanity" is a normative ideal. While civil society and actors are represented in many places in the world – for instance there are many human rights networks in North America, Europe, parts of the Muslim world and so on –, whether global civil society is indeed *global* (in its representation and perception) remains contested. Keane (2003, p.18) argues that

> global civil society is subject to geographic limits. [There are] whole zones of the earth, parts of the contemporary world [he cites Afghanistan, Burma, Chechnya and Sierra Leone for instance at the time of his writing, but we might add others today] for instance, that are "no-go areas" for civil society actors and institutions, which can survive only by going underground[16].

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[16] What we mean here is that in these countries, for instance, there is no well-developed human rights movement or network. Or maybe there are some, but they surely don't have the capacity of influencing state leaders and may be restrained in their actions.

In this context, can we talk about a "common humanity"? And can global civil society express what the world, in its entire globality, desires? The answer will depend on whether the values and norms diffused are shared, and on whether or not they resonate. Since global civil society isn't geographically represented everywhere, can its strategies and tactics have any influence on countries, which don't regard human rights as a priority? Many countries in the South – in Africa especially – don't grasp why it should be made a priority to intervene to save people that are victims of massive human rights violations, when many more are dying every day of diseases and famine, which could be settled with much less costs and risks for interveners. Why should it be made a priority of military humanitarian intervention for the sake of averting human rights violations? Why shouldn't it be instead about saving those strangers, nevertheless members of this so-called "common humanity", which are massively dying and whose claims go underground? These are questions, which deserve to be addressed.

The capacity to influence on a global level is thus severely limited by the fact that a predominant view may not be a global view. Claims to "do something" will not have the same impact everywhere in the world. In addition, while states may be willing to act, they are responsible firstly to the protection of their own citizens and have no legal obligations towards others. Intervention is based, indeed, firstly, on volition. Consequently, decisions whether to intervene will not only be about how much pressurized states feel or the need to act in a morally legitimate way. Such decisions will also depend on the capacity of states to act effectively, on domestic support, on the costs and risks involved, and so on.

Therefore, norm promoters are not always capable of *altering effectively* or *lastingly* established patterns of the society of states; sometimes they fail doing so. However, their ability to exercise a pressure and an influence on states' behaviour, for instance by highlighting the plight of civilians, cannot be ignored or minimized. As a matter of fact, norms, institutions, practices and even values are not immutable and can change. They adapt to the new international normative context, to the new definitions of "appropriate", and often emerge from an existing concern. Yet changing them can take a long time, especially on a global level, and it might be even more complicated when questions of justice are involved.

Conclusion

States generally try to act in ways they judge is the "appropriate" conduct, in a determinate moment, and seek to legitimate their actions (or inactions) in terms of existing rules. Yet what is "appropriate" on a domestic level might not be the same on a global level. The challenge then, for norm promoters, is to *persuade* or *influence* states towards the "appropriate conduct", often by reference to moral principles that are said to be universal, such as human rights.

The fact that in the 1990s the UN Security Council "increasingly interpreted its responsibilities under chapter VII as including the enforcement of global humanitarian norms" (POC mandates; ICC; R2P) (Wheeler, 2000, p.289), and that state leaders increasingly assumed to have duties towards common humanity showed that "global civil society, through the mobilization of non-state groups and the creation of an international forum […] [could] constitute the means by which morality and the normative turn could be realized in international relations" (Hehir, 2008, p.41). Richard Falk described the 1990s as a period characterized by a "global justice movement", which "provided grounds for hopes that normative constraints would impinge on the practice of realist geopolitics" (Hehir, 2008, p.42). The more permissive conditions to promote human rights and invoke its enforcement, indeed, have given hope concerning the capacity of states to endorse their responsibilities to protect not only their citizens, but also to act as "international rescuers". The purpose of the case studies in the following chapters, then, is to see whether these hopes have concretized.

4. Argument, hypothesis and methodology

The second part of the present dissertation consists in applying the reflection developed in the precedent chapters in order to verify it empirically. With a comparative analysis of two supreme humanitarian emergencies which triggered different responses from the international community, Kosovo in 1999 and Darfur from 2004 to the present, the aim of the present study is to understand what made intervention possible in the first case, and impossible in the second. More specifically, the objective with these case studies is to determine what were the underlying reasons/motivations of states' decisions whether to intervene and if they reflected rather a concern for order or for justice. What were the determining factors in the decision to intervene – or not – in each place?

This section is intended to help understand why it is that similar human rights abuses bring different responses. It develops in this context the argument and hypotheses that will enable us to provide an answer to these questions and to whether the increased optimism in the 1990s concerning states' capacity to prioritize human rights – at least, in supreme humanitarian emergencies – has crystallized. In particular, the present study seeks to understand how the tension that exists between rationalist and moral motivations pushes states towards action or inaction. The theory of competing logics provided by March and Olsen (1998), in this context, offers two logics by which states' behaviour can be interpreted – the first being that states' decisions can be understood according to a "logic of anticipated consequences and prior preferences" and the second according to a "logic of appropriateness and senses of identity" (March; Olsen, 1998, p.949).

Before addressing the case studies, there needs to be a previous discussion about how we are going to proceed. Therefore, this chapter also intends to provide the methodology for the conduct of a discourse analysis that will allow us to shed light on the motivations behind states' decision whether to intervene. As the present study's aim is to "develop an appreciation of the underlying motivations that [actors] have in doing what they do" (Henn et al 2006, p.149), discourse analysis will be used as a tool to interpret the discourse and the justifications used by international actors in regard to their decisions in each of the cases.

4.1 Specificities of the case studies

The Kosovo and Darfur cases were chosen because they constituted supreme humanitarian emergencies, which raised questions about the morality and legitimacy of the decision taken on whether to intervene. In each of the cases, global civil society highlighted the plight of civilians, denouncing an instance of ethnic cleansing (Kosovo) and genocide (Darfur). Yet they brought different responses from the international community. The hopes, in comparing these two cases that obtained different responses is to develop useful insights, which will then help us question the motivations behind states' action and if they have gone any better at addressing human rights violations.

Both cases are relatively recent; Darfur being the biggest humanitarian emergency after Kosovo, only five years after, it serves as a test case to observe whether the hopes after Kosovo, of a more solidarist society were realized. What seems to have happened with Darfur, *a priori,* is that the optimism prevalent in the aftermath of the Kosovo intervention did not result in concrete action. Indeed, states were reluctant to intervene, despite intense pressure by global civil society towards action and description of the situation as genocide, where the only hope for civilians was that of a rescue by others. This made some argue that, the progresses made in the 1990's were inflated (for example R2P) and that there was an overestimation of the capacity of an ideal (justice) to influence and constrain states' actions (Hehir, 2008, p.95).

Another reason for this choice is that both crises are well documented and there is sufficient knowledge and data available in order to do the research. As Henn, Weinstein and Foard (2006, p.174) argue: "the researcher will often find several possibilities, and the decision should be driven largely by the anticipated richness of data that particular sites offer". Yet there isn't extended research and documentation that compares precisely Kosovo with Darfur. Therefore, we can still hope to make a contribution to the growing body of literature on the subject.

4.2 Objectives

In a very broad sense, the present study explores the possibilities for states to act within the international realm in the post-Cold War era, and the capacity of the United Nations to take its responsibility as a norm-enforcer, when it comes to

human rights violations. It seeks to understand whether the increased optimism in the 1990s concerning states capacity to act as moral agents and placing human rights before states' rights – that is, justice before order – manifested itself. Since history has demonstrated that humanitarian emergencies are addressed only selectively – that is, some trigger intervention, while others not – it is particularly interesting to understand in this context the logics behind states' actions and the decision-making process that led to it. Thus, investigating what made intervention possible in Kosovo in 1999, and impeded it in Darfur five years later, is of particular interest as it helps in understanding whether a more solidarist international society is on its way, and if it is a realistic goal or possibility.

4.3 The "righteous intention" issue: altruism versus interests

Situations of supreme emergencies are interesting in the context of the present study as they confront states with their international responsibilities and towards a difficult decision in face of massive atrocities occurring elsewhere: "what should be done?"; "what can we do?". As such, states are not – legally speaking – obliged to intervene for the well being of other states' citizens. Yet morally speaking, inaction is wrong. While states' engagement remains the one they have towards their own citizens, the way other governments treat their citizens can sometimes "shock the moral conscience of humankind", as Walzer (1977) declares. The question of human rights enforcement, in the absence of a central authority, then poses itself. We argued in the second chapter that the status of humanitarian intervention remains a contested one, in part due to the lack of consensus about authorizing such practice within the international realm. Nevertheless, there were increased hopes in the 1990s as to its possibility, and as to understanding sovereignty as entailing responsibilities not only towards governments' own citizens, but internationally.

An important issue that arises with authorizing humanitarian intervention as a legitimate practice emanates from the fact that it raises suspicions as to its "righteous intention". That is, what motivates interveners? As such, humanitarian intervention represents "an exceptional form of intervention for the purpose of the protection of human rights. The protection […] of strangers abroad, is the internationally accepted justification of humanitarian intervention" (Krieg, 2013,

p.54). Just War theory, which confers moral legitimacy to humanitarian intervention, depicts

> humanitarian intervention […] as a disinterested, rather altruistic form of intervention with the sole purpose of saving or rescuing individuals, which are the victims of massive human rights violations. […] [The use of] force for the sake of saving individuals must be detached from any ulterior interests of the intervener as not to confuse humanitarian intervention with a conventional interference into the domestic affairs of another state motivated by power considerations. […] Justifying humanitarian intervention in the international arena today requires the intervener to explicitly show his human rights concerned motivation (Krieg, 2013, p.54).

States' decision whether to intervene, then, should be based on the altruistic desire of saving strangers that are the victims of massive human rights violations. Intervention for the sake of "common humanity", as cosmopolitanists suggest. While this altruistic concern to protect human rights exists, and is part of the identity of many states that, which identify themselves as human rights defenders (especially Western states),

> Realistically, however, as humanitarian intervention remains a state and thereby a political decision, the inevitable merger of politics and humanitarianism will predictably lead to a situation where the fate of suffering individuals is subject to a political and therefore possibly amoral decision (Macfarlane; Weiss, 2000, p. 112, apud Krieg, 2013, p.55).

States, as political entities, are both rational and moral actors. They are neither amoral, as realists would suggest, nor are they uniquely preoccupied with world justice, as idealized by cosmopolitanists. This means that their actions and decisions comprise both rational aspects such as cost-benefit calculations and preoccupation with international order or security, and moral aspects, that is altruism and the promotion of justice. What differs is the relative balance between them, and this demands a case-by-case analysis. It is not surprising, therefore, that there have been many opponents to a right of humanitarian intervention, especially when it risks being invoked for the "wrong" reasons.

The (inevitable) presence of interests in states' decision whether to intervene should not however be a reason to forbid humanitarian intervention. As argued in the previous chapter, when states adopt new norms or practices, it is not only because they see it as the new appropriate, ethical behavior, but also because it has a utility for them. Some authors, for instance Wheeler (2000) insist in this context that what matters most is the final outcome from the intervention. When

states justify intervention on humanitarian grounds, whether it is really interests or altruism that has motivated the action does not matter in itself. What matters is that it brings positive outcomes. It is that which makes an intervention "humanitarian" – the fact that it saves lives, and does more good than harm. Besides, according to English School theory, when states invoke a justification in terms of the rules (for instance, just war criteria), they are subsequently constrained by them, thus entailing that intervention would have to be conducted in respect with humanitarian laws (Wheeler, 2000, pp.39-40).

4.4 Argument and hypothesis

If states are capable of acting rationally as well as morally, this entails that they are capable of altruistic actions such as intervening for the sake of saving individuals, victims of massive abuses. However, humanitarian crises seem to be addressed by states only selectively, as inaction in Darfur depicts. We wonder, then, **what leads** states to address certain humanitarian crises, and not others? In the present study, what explains states' willingness to intervene in Kosovo and not in Darfur? The pressure exercised by humanitarian activists towards states to do "something" was equivalent, both conflicts were well publicized, and states acknowledged that ethnic cleansing and genocide were going on. Yet, the response differed. The task of this section is then to provide the tools in order to answer the "why" question.

To the question of what determines that intervention will take place – what is predominant in states' decisions whether to intervene – we suggest that besides a humanitarian concern, two principal factors help explain the willingness or reluctance of states to intervene: **the interpretation/perception of a determinate conflict as a threat (or not) to international order**; and **the existence of strategic interests that can dictate different responses**. In other words, we presuppose that states will only intervene if massive human rights violations in a determinate place threaten to affect in a serious manner the international order in which intervener states are part, or that important strategic interests (material or security) of the latter are threatened in a direct way – either by intervention or non-intervention. We suggest that these factors represent the "rational" part of the

equation, opposing altruism in the balance, and help us understand what rendered possible intervention in Kosovo and impeded it, five years later, in Darfur.

The argument developed here is that, while states are able to act as moral agents, "altruism, describing a selfless and other-oriented behavior, has a difficult standing in international relations" (Krieg, 2013, p.48). As a matter of fact, since intervention entails risks and costs, human and financial, it seems that unless there appears to be a serious threat to order and states' interests the latter won't intervene. Apolitical and disinterested reasons are rare. Our hypothesis then is that **justice is not enough,** on its own, to trigger intervention. Intervention must also have a utility for interveners. Importantly, we are not affirming that humanitarian motives do not matter; they are necessary, but not sufficient. As Krieg (2013, p.135) writes, "despite the existence of altruism in the decision-making process surrounding humanitarian intervention, national/self-interest is a constant that cannot be disregarded". In fact, both elements are in a constant tension. Although the word "humanitarian" in humanitarian intervention suggests that humanitarian motives guide states' actions, it is evident that states do not intervene for humanitarian motives alone. While they can be pressurized towards action, the determinant factor will be the utility of intervention. The realist claim that "if intervention does neither serve the political interests of the decision maker nor economic or geo-strategic national interests, altruism cannot compensate" is thus not entirely devoid of sense (Krieg, 2013, p.135).

Against this background, we suggest that while Kosovo was certainly an important step towards a more solidarist international society, it was probably rendered possible only because humanitarian claims commingled with security interests. It is the pursuit of both moral and rational objectives, justice and order, which enabled military intervention. "Doing justice" in Kosovo meant preserving international order – that is, avoiding refugee flaws that might have destabilized neighbouring countries in Europe. Indeed, in the present globalized world, many state issues become rapidly international issues; what happens somewhere in the planet has repercussions in many other places. Yet while order and justice are not necessarily mutually exclusive, they are not always compatible either. Indeed, do massive human rights violations in faraway countries in the African continent (for instance in Darfur) represent the same threat to international order than if it was

happening in Europe? We do not believe so. Therefore, as Wheeler (2000, p.302) writes,

> The solidarist argument that order and justice can be reconciled if states define their interests in enlightened ways is a very attractive one. However, there is a problem with this resolution of this order/justice conundrum, which is that it makes the pursuit of justice dependent upon considerations of order. […] [and] the extent to which order is dependent upon justice will vary from case to case.

Indeed, states will probably not be willing to invest and risk their soldiers and citizens' lives in order to save others, unless instabilities and violations of human rights elsewhere happen to threaten the international order in which they are part, or that their interests are better preserved with intervention than with non-intervention. As a matter of fact, humanitarian intervention demands a high degree of commitment from states and despite the progress made in the field of human rights, they are not ready to take responsibility-based action, at least in an efficient and non-selective manner, as insufficient action in Darfur denotes.

4.5 Discourse analysis

The methodological approach that will be employed in this research is a qualitative one, where we will connect the research questions to the data collected. "The logic of the research is not so much to test out given theories about what drives human behaviour [in a causal manner], but instead, to develop an appreciation of the underlying motivations that [states] have in doing what they do" (Henn et al 2006, p.149). We are here interested in those supreme humanitarian emergencies that reach the threshold of ethnic cleansing or genocide. They are not frequent phenomenon; not every intra-state conflict reaches this threshold, but when it does, it deserves to be addressed, and the international society has to justify its position: intervention, as well as non-intervention.

The present study seeks to understand why actors acted the way they acted; what influenced their decisions and actions, what were the motivations, and how they justified it in front of the public. In this context, this work falls within an interpretive perspective. The objective is to understand how states decide whether or not to intervene in determinate humanitarian crises, looking at the language employed by head of states, governmental entities and international organizations.

The choice of discourse analysis as a method is interesting in this context because it enable us to develop new insights, to understand and determine – while looking at the language employed – the reasons why intervention occurred in the first case, despite the absence of a UN Security Council authorization, and why it failed in the second, despite its categorization as a genocide. It seems indeed to be the best tool to "interpret" what has been said, for instance in the negotiations around intervention. What were the dominant themes, what was at stake, are all elements that we need to sort out in order to understand states' actions.

4.5.1 Discourse analysis in International Relations

As such, "the term *discourse analysis* stems etymologically from the Greek verb *analuein* "to deconstruct" and the Latin verb *discurere* "to run back and forth" (Wodak, 2008, p.4). In order to understand the meaning of the language used in a discourse, we have to deconstruct its composing parts in order to grasp its entire meaning. The question is: how do we proceed? Jennifer Milliken (1999), in her article "The Study of Discourse in International Relations: A Critique of Research and Methods" describes discourse analysis as a way to explain international practices. She identifies in the Discourse Analysis field "three analytically distinguishable bundles of theoretical claims", which she describes as "the most important commitments" in discourse analysis (Milliken, 1999, p.228).

Firstly, she argues that discourses have to be understood as *systems of signification* – that is, "[discourses] as structures of signification which construct social realities" (Milliken, 1999, p.229). Milliken looks at how things are discursively constructed (by people, states) as systems of signification. In this perspective, "discourses are expected to be structured largely in terms of *binary oppositions*" – Western/Third World, human rights/states' rights, order/justice – "that, far from being neutral, establish a relation of power such that one element in the binary is privileged" (Derrida, 1981, apud Milliken, 1999, p.229).

Secondly, she claims that discourses are "productive (or reproductive) of things defined by the discourse"; that is, discourses can work to define, produce and legitimate new practices, "while excluding other possible modes of identity and action" (Milliken, 1999, p.229). The increased redefinition of "sovereignty as responsibility" for instance, could be cited as one reason why inaction in the face

of human suffering increasingly became pointed as wrong and immoral in the 1990s. That is, not taking a stance was morally wrong for sovereign entities. International actors can thus use discourse as a "strategy" to pursue their objectives, or to push others to act in determinate ways. For instance, actors wanting to bring normative change (for instance, global civil society), or wanting to make states act in certain ways, can pressurize them towards action, push others to follow the same logic (that is, intervention or not).

> [D]iscourses produce as subjects *publics (audiences) for authorized actors*, and their *common sense* of the existence and qualities of different phenomena and of how public officials should act for them and in their name ([for instance] to secure the state, to aid others). Throughout, discourses are understood to work to define and to enable, and also to silence and to exclude, for example, by limiting and restricting authorities and experts to some groups, but not others, endorsing a certain common sense, but making other modes of categorizing and judging meaningless, impracticable, inadequate or otherwise disqualified (Milliken, 1999, p.229).

Foreign policy studies, in this context, are particularly interesting, since

> [they] address discursive productivity by analyzing how an elite's regime of truth made possible certain courses of action by a state ([for example] intervening militarily [...]) while excluding other policies as unintelligible or unworkable or improper ([like] doing nothing, seeking a diplomatic settlement) (Campbell, 1993; Weldes; Saco, 1996, apud Milliken, 1999, p.236).

The *processes of production* and how people come to understand and accept certain discourses as reality is of particular interest here. The articulation and interpellation concepts that Weldes developed for foreign policy study help understanding how this "assimilation" is done (Milliken, 1999, p.238). *Articulation* signifies "the construction of discursive objects and relationships out of "cultural raw materials" and "linguistic resources" that already make sense within a particular society" (Weldes, 1999, p.154, apud Milliken, 1999, p.239).

> In combining and recombining extant cultural materials, and in repeating successful combinations, "contingent and contextually specific representations of the world" can be forged that "come to seem as though they are inherently or necessarily connected and the meanings they produce come to seem natural, to be an accurate description of reality (Weldes, 1999, pp. 154–155) (Milliken, 1999, p.239).

Articulation redefines and transforms discourses, by establishing or excluding existing ones. An example would be that of continually representing the United States as the defenders of democracy and human rights, thus establishing

this discourse as a "regime of truth". *Interpellation* then "refers to how these representations work to "hail" individuals so that they come to accept the representations as natural and accurate" (Milliken, 1999, p.239). That is, how these foreign policy representations "create subject positions or identities for individuals to identify with and to "speak from" (Weldes, 1999, p.163, apud Milliken, 1999, p.239). With the example just mentioned: how some – people or states – come to believe that the US will systematically act to "save" others.

The third commitment is *the play of* practice and hinges on how dominating or hegemonic discourses become fixed or stabilized, and structure meanings so that new practices become intelligible and legitimate to the audience (Milliken, 1999, p.230). Roxanne Doty (1996, apud Milliken, 1999, p.239) nevertheless emphasizes that dominant discourses are always susceptible to change and variation; regime of truths are never fixed, and often historically contingent. For instance, the hegemonic discourse of sovereignty as non-intervention became increasingly challenged with "sovereignty as responsibility" or the "responsibility to protect". This means, as Doty (1996, p.6) reveals, that

> [a discourse's] exterior limits are constituted by other discourses that are themselves also open, inherently unstable, and always in the process of being articulated. This understanding of discourse implies an overlapping quality to different discourses. Any fixing of a discourse and the identities that are constructed by it can only be of a partial nature. [The] overflowing and incomplete nature of discourses opens up spaces for change, discontinuity, and variation.

If we look at how political decisions are taken and discourses formulated, we observe that at first, several discourses confront themselves; then, progressively, a kind of pattern develops – between those in favor and opposed to intervention. It is particularly interesting to see "the efforts made [(by governments, states or other international actors)] to stabilize and fix dominant meanings" and ideas, but also, to exclude or silence "subjugated knowledges, alternatives ideas and discourses" (Ashley, 1989; Doty, 1997; Milliken, 1999, p.230). While it is often the view of powerful states that matter in decisions whether to intervene, these face resistance from others. It is thus interesting seeing how "alternative discourses worked or work, perhaps in resistance to the dominant knowledge/power" (Ashley, 1989; Doty, 1997; Milliken, 1999, p.230).

4.5.2 Predicate analysis

The method of *predicate analysis* is cited by Milliken (1999, p.231) as the best approach for the analysis of systems of significations, that is, "for the study of language practices in texts ([for example] diplomatic documents, […] transcripts of interviews)" – what we are going to do in the present research.

> Predicate analysis focuses on the language practices of predication — the verbs, adverbs and adjectives that attach to nouns. Predications of a noun construct the thing(s) named as a particular sort of thing, with particular features and capacities. Among the objects so constituted may be subjects, defined through being assigned capacities for and modes of acting and interacting (Milliken, 1999, p.232).

Language practice of predications construct things; for instance, labeling Western countries as nations that respect human rights, inaction as immoral, intervention as a threat to sovereignty, non-intervention as being complicit with mass murder etc.). Generally, this image is constructed against or in opposition with something else, for example Southern countries as insensitive to injustice. By shedding light on certain linguistic elements and their combination, predicate analysis enables us to understand the meaning of discourses (Milliken, 1999, p.235).

4.6 Indicators

We are trying to determine if states' decisions whether to intervene in humanitarian crises are influenced rather by rational or moral elements. In other words, do states intervene for the defence of human rights abroad only when massive human rights violations are perceived as leading to disorder and as threatening states' interests; or on the contrary, is it a concern for justice, that is, doing what is appropriate and just, which guides their decision? The question that poses itself in this context is how do we separate order from justice, and rational motivations from moral ones? How do we distinguish them, and what is the dominant discourse? As discussed earlier, states generally justify intervention and non-intervention in humanitarian terms. To what extent is it really humanitarian motives that guide states decisions and push them towards intervention or not is what matters here. That is, how far does the justification equate with the motives?

Since similar humanitarian tragedies do not necessarily obtain similar responses, it makes us question what is at stake.

Obviously, it can be quite a difficult task to separate what is rational from what is moral (and vice-versa), or what appears as a concern for order or justice, as both rationales are present in states' discourses. In this context, it is important to develop indicators in order to understand how things are discursively constructed and produced. As a matter of fact, "a text never constructs only one thing. Instead, in implicit or explicit parallels and contrasts, other things (other subjects) will also be labelled and given meaningful attributes by their predicates" (Milliken, 1999, p.232). The *bases of actions* (or the theory of competing logics) developed by March and Olsen (1998, pp.949-954) will be useful in this context to help determine according to which logic states' action can be understood.

When actions are identified within a *logic of expected consequences and prior preferences*, political actors are said to "choose among alternatives by evaluating their likely consequences for personal or collective objectives" (March; Olsen, 1998, p.949). This logic has to do with *consequentialism*; "it is related to expectations of […] consequences and […] interests (preferences) and resources of the actors" (March; Olsen, 1998, p.950). By contrast, when states' actions or decisions are identified within a *logic of appropriateness and senses of identity,* factors other than the expectation of positive outcomes are taken into consideration. It "involves evoking an identity or role and matching the obligations of that identity or role to a specific situation" (March; Olsen, 1998, p.951). The identity of the US as "defenders of democracy", for instance, implies that a certain behaviour is expected or required from them:

> The pursuit of purpose is associated with identities more than with interests, and with the selection of rules more than with individual rational expectations. Appropriateness need not attend to consequences, but it involves cognitive and ethical dimensions, targets, and aspirations. As a cognitive matter, appropriate action is action that is essential to a particular conception of self. As an ethical matter, appropriate action is action that is virtuous (March; Olsen, 1998, p.951).

Within a *logic of appropriateness*, political actors (seek to) act "in accordance with rules and practices that are socially constructed, publicly known, anticipated and accepted" (March; Olsen, 1998, p.951–2). We can extend these rules to "moral" ones. Moreover, states often justify their actions in terms of these, which makes a decision taken within a *logic of appropriateness and senses*

of identity generally more easily identifiable than one taken with a *logic of expected consequences*. We can identify it as being about ethical conduct – about justice, and the second as being about rationality – about expected favourable outcomes, such as the maintenance of international order and stability, or the preservation of interests.

Determining which logic is predominant in a decision and influenced states' actions requires looking at the relative balance between them. It is important in this context to note that "although there is some tendency for society to be divided into separate spheres, each based primarily on either consequential calculation or rules, these two logics are not mutually exclusive" (March; Olsen, 1998, p.952). Indeed, similarly to the order and justice divide, we cannot reasonably explain states' actions "exclusively in terms of a logic of either consequences or appropriateness. Any particular action probably involves elements of each [...] and the relationship between the two is [...] subtle" (March; Olsen, 1998, p.952).

For instance, President Clinton and Prime Minister Blair's discourses the day before the launch of NATO's intervention in Kosovo, about the "**moral responsibility of the West** to stop the terrible atrocities taking place in Kosovo" (Wheeler, 2000, p.266) denote that they identified their governments as defenders of human rights and that there was a moral concern for human suffering in Kosovo. Phrases like "**genocide in the heart of Europe**" or "it's about **our values**"[17] have an emotive dimension; they are about *interpellation*. Such terms fall within a logic of appropriateness. Yet the expression "**in the heart of Europe**" can also be interpreted as showing a concern to unaddressed human rights violations that are happening within the boundaries of Europe, threatening to spread, and which might thus cause instabilities there and disorder. It would then fall within a logic of anticipated consequences.

It is thus sometimes difficult to determine what was determinant in states' decision. Yet other times, we can clearly see which logic is "à l'oeuvre". For instance, in the US president's speech before the launching of Operation Allied Force, "action was justified to the American people [...] [by declaring] that a failure to act in defence of European security would jeopardize US national

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[17] President Clinton's remarks to the American Federation of State, County and Municipal Employees (AFSCME) Convention, 23 Mar. 1999. Available at: <http://www.presidency.ucsb.edu/ws/?pid=57294 > (Accessed 15 Oct. 2015)

interests" (Wheeler, 2000, p.266). He claimed, "that if the USA do not act now, **it would have to act later** when **"more people will die, and it will cost more money"**, since the US government had a long-term strategic interests in a stable and democratically ordered Europe"[18] (Wheeler, 2000, p.266). Therefore, the desire to **act now** reflects an analysis of the negatives consequences that intervening later would entail. The concern about international order and the preservation of states' interests is easily identifiable here. Similarly, the often-used term to justify non-intervention in Darfur – an "**African solution to African problems**"– is a way of constructing a discourse that takes out states' responsibilities towards human suffering happening in (far away) Darfur. As we will see later, the Darfur conflict was identified as entailing multiple risks and costs for interveners, but feeble threat to international order.

4.7 Sources/Data

The sources and data used in the first part of this research project came from existing body of literature on the English School, humanitarian intervention, ethics and international law, as the subject is located at the intersection of these different fields. It was based mostly on a literature review and qualitative analysis of the texts and articles available and relevant for the subject. In this second, more empirical part of the thesis, we will also look at other kinds of qualitative data, for instance newspapers articles, transcripts and textual recordings such as speeches and official statements from state leaders. Miliken (1999, p.233) suggests selecting "texts by whether they take different positions on a relevant issue ([like] whether or not NATO should intervene in Kosovo), [to] provide evidence of a discourse as a social background for meaningful disputes among speakers of the discourse". We will use here discourses formulated within the UN, NATO, or AU by different actors, and the subsequent resolutions adopted (and the negotiations around it). We will look at the discourses of dominant nations as well as the alternative discourses from opponents. The objective then, is to understand what were the dominant themes, and the motives invoked in states' decisions. What was in the relative balance, and what, at the end, was determinant.

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[18]Id.

5. Intervention in Kosovo, a turning point?

Questions about whether to intervene in supreme humanitarian emergencies became a dominant theme in foreign politics in the 1990s. As Falk (2003, p.31) writes, "numerous humanitarian catastrophes […] occurred in this period since 1989, partly as a result of weak structures of governance, producing the phenomenon of "failed states", especially in sub-Saharan Africa". Civil conflicts also emerged from the claims for independence or autonomy of internal entities and groups (especially in the Balkans), or simply as the fruit of accumulated hatred between peoples, among many other reasons. Although international society was not anymore paralyzed by ideological stalemates as it was during the Cold War, disagreements nevertheless persisted among states, and in particular among the permanent members of the UN Security Council about when is it legitimate to use force for humanitarian reasons (Falk, 2003, p.31).

Indeed, humanitarian intervention remained the source of heated debate in the 1990s (Hehir, 2008, p.1), opposing on the one hand, claims in favor of a more responsible, ethical and humanitarian international society, and on the other hand, actors worried about the potential abuses that authorizing such practices – putting human rights over sovereign rights, justice over order – could lead to. Because of the difficulty of reaching consensus on such matters, humanitarian intervention remained illegal, unless authorized by the UN Security Council. Yet since the Security Council is a political organ, disagreements between its permanent members about what is the "right thing to do" led many times to inefficient policies and inaction precisely where action was needed the most, like Rwanda in 1994 or in Bosnia in 1995 (Wheeler, 2008, p.6). Such failures questioned states' capacity to effectively prioritize human rights over states' rights, as expected with the solidarist impulse of the early 1990s, and states' ability to address injustice.

While supreme humanitarian emergencies are not frequent phenomenon – not every intra-state conflict reaches the threshold of genocide or ethnic cleansing, when it does, such crimes deserve to be addressed. Yet nothing – legally speaking – obliges states to intervene and risk their own "assets" for the sake of others. As a matter of fact, in addition to derogating from sovereignty, non-intervention and non-use of force principles, it also carries risks for interveners as well as costs,

human and financial. While states can be pressurized to act, humanitarian intervention ultimately depends on the volition of states.

Against this background, the Kosovo case is particularly interesting since it constituted a rupture with previous interventions. NATO's Operation Allied Force was considered "illegal but legitimate, meaning that while it did not satisfy international society's legal rules, it was sanctioned by its compelling moral purpose", as it was aimed to avert an ethnic cleansing (Bellamy, 2005, pp.31-54). Since consensus within the United Nations Security Council was not achievable, Western states decided to intervene with NATO instead. "The need to halt horrendous crimes against humanity, massive expulsions and war crimes, was widely recognized [and in this context,] NATO intervention by military force was widely welcomed" (Henkin, 1999, p.824). Indeed, the organization obtained extensive support among states and public opinion for military intervention, despite the lack of a UN Security Council authorization and strong oppositions from many states, such as Russia and China.

> NATO's intervention in Kosovo constituted [then] a major vindication for supporters of pro-active humanitarianism who believed in the capacity of global civil society to pressurize states […] towards acting ethically […] The extensive humanitarian rationale espoused by the intervening states suggested that the pressure exerted by these proponents of human security had effected change (Hehir, 2008, pp.47-48).

Nevertheless, NATO's intervention was also sharply criticized, and source of great controversy – as the absence of agreement between the Security Council members denoted. Critics and opponents to the intervention declared that not only was it illegal, and thus, risked to settle a bad precedent, but it did not even satisfy the moral criteria from Just War Theory in order to claim its moral legitimacy.

> Perhaps, more fundamentally than any recent international occurrence, the NATO initiative on behalf of the Kosovars provoked extreme divergent interpretations of what was truly at stake, about the prudence of what was undertaken, and about the bearing of law and morality on this course of event (Falk, apud Jokic, 2003, p.32).

Nevertheless, despite the controversy, the Kosovo intervention seemed to have established a new normative framework of humanitarian intervention – "the new interventionism" (Hehir, 2008). As Wheeler (2000, p.297) writes, "the international reaction to the Kosovo case [marked] a watershed in [the international community,] that we should expect to see it exhibiting a new

solidarity in response to any future where states intervene to end atrocities". Kosovo was interpreted as the sign that the society of states was heading towards its more solidarist version, and that any obstacles towards human rights enforcement would ultimately be overcome. In particular, it was believed that Kosovo had opened the path to the development of a new solidarist norm that would "enable actions that were previously inhibited" (Wheeler, 2001, p.125). Normative developments after Kosovo, as a matter of fact, resulted in the creation and adoption of the Responsibility to Protect (R2P) doctrine, understood as a new thinking on the issue of humanitarian intervention and as a way of addressing the tension between sovereignty and human rights (Hehir, 2008, p.48).

Against this background, the present chapter looks at whether Kosovo reflects changed attitudes from Western states (and further international society) and more specifically, a new moral concern – as claimed by the supporters of Operation Allied Force? It seeks to understand what influenced states towards intervention, despite the lack of a Security Council authorization? Can we say that states acted within a logic of "appropriateness", or rather within a logic of "expected consequences"? Finally, it seeks to determine whether NATO's intervention can be interpreted as a sign that international society was "entering the third age of the human rights revolution: the era of enforcement" (Robertson, 2002, p.451). That is, an era where order and justice could be reconciled.

The argument developed in the present thesis is that despite the increased presence of moral concerns in states' decisions, what ultimately determines whether intervention is going to happen is if states see a utility in doing so. The perception by states of the conflict as a threat to international order, or/and the necessity to secure strategic interests, can push states towards intervention, whereas altruism alone cannot. In the case of Kosovo, we suggest that intervention happened because of a "happy coincidence where the promotion of national security also [defended] human rights" (Wheeler, 2000, p.30). That is, a lucky coincidence between moral and rational calculations.

In order to answer our research questions, and grasp what led states to intervene in Kosovo, the present chapter will proceed as follows. First, it will situate the Kosovo case within its historical context, in order to understand the origins of the conflict, and the issues it raised. Secondly, it will look at the international reaction to the humanitarian crisis occurring in the Balkans, and the

steps taken by international society to settle the conflict. Then, it will examine NATO's controverted initiative on behalf of the Kosovars: Operation Allied Force. It will look at the reasons invoked for intervention and its public justification, as well as at the critics it raised and the debate it generated. Discourse analysis will then enable us to determine what were the motives underlying the intervention, what influenced and guided states' decision; if it was predominantly humanitarian reasons or if it was something else – for instance, the perception of instability in the Balkans as a serious threat to their own interests, and finally, if Kosovo can be interpreted as a turning point towards a more solidarist and responsible international society, as hoped in the 1990s.

5.1 The historical context: origins of the conflict

The circumstances that led to NATO's Operation Allied Force in Kosovo, a southern Serbia province, are well known. It is a story that begun with the oppression of the ethnic Albanians majority living there.

> Kosovo gained autonomy within the state of Serbia in 1946, and this special status was confirmed in the 1974 Yugoslav Constitution. In 1989, however, Belgrade revoked the province's autonomy, following the assertion by Serbian President Slobodan Milosevic that the Serb minority in Kosovo was at risk (Henkin, 1999, p.828).

This assertion was not without follow-up. Soon, Kosovo Albanians were denied their constitutional rights, leading to a further rise of tensions in the province (Wheeler, 2000, p.257). "The Serbian minority dismissed Albanians from their posts, excluded them from the state school system, and treated them as a virtual colonial population" (Biberaj, 1993, pp. 5-9, apud Wheeler, 2000, p.257). According to Biberaj (1993, p.13, apud Wheeler, 2000, p.257), "the strict segregation policies imposed by the Serbs on the Albanians amounted to the creation of "an apartheid system in Kosovo". Yet this system of oppression reached its limits when, "facing discrimination in public and private employment and in the exercise of civil rights", the Kosovo Albanians decided to "resort to the development of parallel national institutions" (Henkin, 1999, p.828).

At first, Kosovo Albanians tried to fight back with peaceful means. Their first "response to this campaign of repression was to form the Democratic League of Kosovo (LDK), under the leadership of Ibrahim Rugova" (Wheeler, 2000,

p.257). Although the majority of Kosovars were in favour of independence from Serbia, leader Rugova advocated prudence and caution, since any military attack on the Serbians would inevitably produce "a terrible […] backlash against the Albanians"[19] (Vickers, 1998). Therefore, he sought to "persuade Albanians that they should pursue a "Ghandian-style" politics of non-violence that centred around the creation of parallel state institutions" (Wheeler, 2000, p.258). Yet this strategy soon proved unsuccessful, in particular after the Dayton agreements, as they did not include Kosovo in the discussions of the peace settlement in the Balkans, nor mentioned the human rights situation there.

The feeling of "betrayal at Dayton led to Rugova being marginalized in favour of more radical approaches to the national question", most notably the Ushtria Clirimarte e Kosoves (UCK) (Wheeler, 2000, p.258). Committed to armed resistance, the UCK started a campaign of attacking and bombing Serb targets (Wheeler, 2000, p.258). The Serbian government responded by deploying large number of troops, increasingly killing civilians. "With the use of heavy weapons and air power, they drove the movement out of the urban areas in central and western Kosovo" (Franck, 2002, pp.163-64; Wheeler, 2000, p.258). This led many Kosovars to flee from their homes, but this was only an *avant-goût* of what was going "to happen on a much greater scale in 1999" (Wheeler, 2000, p.258).

5.2 International Reaction to the conflict and adopted measures

It is the view of Kosovar refugees that seems to have triggered international attention to the conflict. "The international community became gravely concerned about the escalating conflict, its humanitarian consequences, and the risk of it spreading to other countries"[20] and "took steps to involve itself quickly and strongly – at least compared with earlier sad instances" (Simma, 1999, p.6). International pressures on the Belgrade Government started in March 1998, with the Clinton administration condemning the systematic repression and denial of constitutional rights of Kosovo Albanians by the Serbian government, as well as

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[19] Miranda Vickers quotes Rugova as saying in 1992: "we have nothing to set against the tanks and modern weaponry in Serbian hands. We would have no chance of successfully resisting the army. In fact the Serbs only wait for a pretext to attack the Albanian population and wipe it out. We believe it is better to do nothing and stay alive than to be massacred" (Vickers, 1998, p.264).
[20] See NATO 1999. NATO's role in relation to the conflict in Kosovo. 15 Jul. 1999. Available at: <http://www.nato.int/kosovo/history.htm> (Accessed 15 Sept. 2015)

the forced expulsions from their homes. Secretary of State Madeleine Albright, recalling the failure to act effectively in Bosnia, continued, stating that "in 1991 the international community stood by and watched ethnic cleansing [in Bosnia] […] We don't want that to happen again this time" (Steele, 1998, p.19). This statement necessarily implied that the US government had to defend, and enforce, "the human rights of Kosovars, but, […] the furthest the Contact Group[21] would go in its statement on the 9th of March was to condemn both the Serbs and the UCK for the violence and to demand a cessation of hostilities" (Wheeler, 2000, p.258).

With Resolution 1160, adopted on the 31th of March 1998, the Security Council determined that the Kosovo conflict constituted a threat to "international peace and security" and "demanded an end to violence on both sides whilst openly supporting the path of non-violence followed by Rugova and the LDK" (Wheeler, 2000, p.259). The majority of the UN Security Council members acknowledged that human rights violations there represented a clear threat to peace and security in the Balkans, which needed to be addressed. Russia and China however abstained from the vote, expressing "their reservations about Security Council intervention in what they viewed as matters within the "domestic jurisdiction" of the Federal Republic of Yugoslavia (FRY)" (Wheeler, 2000, p.259). They maintained that other states shouldn't have a say on how Yugoslavia responds to ethnic issues within its own country. More specifically, China declared that no intervention should occur "without a request from the country concerned, [otherwise] it might set a bad precedent and have wider negative implications" (United Nations, 1998a, pp.11-12).

Due to the lack of any decisive action from the Security Council as to what measures to apply or which path to follow, the situation in Kosovo quickly deteriorated. While there had been intense international pressures on the Belgrade Government to take its responsibilities and do something against the current situation, "Serbs began a new offensive in May against Albanian villages in the area around Decani" (Wheeler, 2000, p.259). The well-publicized images of

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[21] The Contact Group represented "an informal grouping of influential countries that [had] a significant interest in policy developments in the Balkans". At the time of the Kosovo crisis, it was composed of the United States, United Kingdom, Russia, Germany, France, and Italy, thus including "four of the five Permanent Members of the UN Security Council, and the countries that contribute the most in troops and assistance to peacebuilding efforts in the Balkans".
Source available at: <http://politics.kosmix.com/topic/Contact_Group> (Acessed the 15 Oct. 2015)

hundreds of thousand Kosovar Albanians fleeing their villages shocked public opinion. Against this background, the British Government

> began to prepare public opinion for a tougher response. […]. Prime Minister Tony Blair and Foreign Minister Robin Cook took the lead in arguing that Britain and the Alliance [(NATO)] had to be prepared to use force to stop Serbian ethnic cleansing in Kosovo, if necessary (Steele, 1998, p.20, apud Wheeler, 2000, p.259).

But decisive action would have to wait, as several factors worked initially as restraints against any NATO military action. Members of the organization were for instance divided on the wisdom of threatening to use force against the Serbs (Wheeler, 2000, p. 260). There was also an important concern as to whether they should act without an explicit Security Council authorization. This last questioning was the source of great controversy among members of the Alliance, worried about the legitimacy that such an enterprise would have. In this context, Britain and the USA's "mission" became to *persuade* other NATO members that intervention was the right path to follow. At first, the Alliance sought to obtain a UN Security Council mandate authorizing the use of force. However, it soon became clear that there would be no support from the part of the Security Council for such initiative. The Security Council adopted resolution 1199 on the 23th of September in response to the growing civilian casualties in Kosovo (Wheeler, 2000, p.260). Once more, the resolution was passed under Chapter VII of the UN Charter, with the Security Council determining that "the threat to peace and security in the region" stemmed from "deterioration of the situation in Kosovo" (United Nations, 1998b, p.1). The resolution expressed grave concern

> at the recent intense fighting in Kosovo and in particular the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav army, which have resulted in numerous civilian casualties and the displacement of over 230,000 people from their homes (United Nations, 1998b, p.1).

The Council demanded that all parties cease hostilities, maintain a ceasefire, and take immediate steps to improve the humanitarian situation in order "to avert the impending humanitarian catastrophe" (United Nations, 1998b, p.1). However, it did not mention any threat of military action in the event of non-compliance; only that the Security Council would "consider further action and additional measures to maintain or restore peace and stability in the region" (United Nations, 1998b, p.5). Such measures were clearly insufficient for those that had hoped for

a stronger resolution. Yet members of the Security Council "reaffirmed their previous commitment to the sovereignty and territorial integrity of Yugoslavia, making clear that the situation to the Kosovo problem had to be found within the context of greater autonomy within the Yugoslav state" (Wheeler, 2000, p.260).

More specifically, the Chinese and Russians insisted that they would oppose (and veto) any resolution that legitimated the use of force against the Serbs (Wheeler, 2000, p.260). Speaking before the vote, the Russian ambassador reaffirmed that "the use of unilateral measures of force in order to settle the conflict [was] fraught with the risk of destabilizing the Balkan region and all of Europe and would have long term adverse consequences" (United Nations, 1998c, p.3). Similarly, the Chinese, who had abstained from the vote, declared that they would not support a resolution that spoke of a conflict internal to states as a threat to international peace and security. According to them, "the question of Kosovo [had to] be solved by the Yugoslav peoples themselves and in their own way" (United Nations, 1998c, p.3), unless there was a request from their part for help.

Following Resolution 1199 and the threat of veto by at least one of the permanent members of the Security Council to any intervention that included the use of force, US officials and the British government began to consider using NATO to stage an intervention. While some of NATO members were initially reluctant to intervene without authorization from the Security Council, primarily concerned about the legitimacy of the enterprise,

> Whatever reservations […] members of NATO had about the legality of relying on resolutions 1160 and 1199 had been overcome by 13 October, when NATO issued an activation order for air strikes against Serbian targets and justified it in terms of existing Security Council resolutions (Wheeler, 2000, p.262).

Germany nevertheless emphasized that, "the legal position taken by the Alliance in the specific instance of Kosovo was not to be regarded as a "green light" for similar NATO interventions in general"(Simma, 1999, p.13). As stated by their Foreign Minister Kinkel before the Bundestag: "NATO's decision must not become a precedent" (Kinkel, 1998, p.23129). Kosovo would have thus to be understood, from the beginning, as a unique "case, from which no conclusion on a general rule or policy is to be drawn" (Simma, 1999, p.13).

In a last minute effort to avoid the use of force, the Contact Group sought to achieve a diplomatic settlement, sending US Special Envoy Holbrooke to

Belgrade (Wheeler, 2000, p.262). While such initiative initially proved successful, leading Milosevic to accept the so-called "October Agreement", it ultimately proved to be a failure. Indeed, a few months later, "in retaliation for the deaths of two policemen, Serb forces massacred forty-five civilians in the village of Racak" (Wheeler, 2000, p.264). The massacre of Kosovo Albanians, happening in the boundaries of Europe, profoundly shocked world public opinion. Global civil society became ever more mobilized, pressurizing states to "do something" to halt the on-going ethnic cleansing. A last tentative at a political settlement was nevertheless sought by the Contact Group, who invited Serbs and Kosovo Albanians to peace talks at the French château at Rambouillet on the 6th of February 1999 (Wheeler, 2000, p.264). However, a few days later, negotiation attempts failed, with neither sides being satisfied with the accords, and especially Milosevic, who perceived the demanded concessions as an unacceptable violation of Yugoslavia's sovereignty. Finally, after Alliance members envisaged that all attempts at a diplomatic solution had failed, NATO Secretary-General, Dr Javier Solana, on the night of the 23th of March 1999, announced that he had given authority to launch air strikes against the FRY (Greenwood, 2002, p.151).

5.3 NATO initiative on behalf of the Kosovars: Operation Allied Force

On the 24th of March 1999, NATO initiated the "seventy-eight-day bombing campaign in Yugoslavia – the first large-scale military action by the Alliance in its history" (Wedgwood, 1999), and most specifically, NATO's first "humanitarian war". Almost all NATO members were involved in the military operations. The intervention also had the support of many other nations, such as Slovenia, Gambia, Malaysia, Bahrain or Argentina.

The main objective of Operation Allied Force was to force Milosevic to make peace in Kosovo. The intervention's goals can be resumed as such: "Serbs out, peacekeepers in, and refugees back" (Ramberg, 2011). To do so, NATO chose to rely mainly on air strategy – a controverted means. There were two key reasons for this choice. The first reason was that it "[avoided] the costs and risks of committing ground troops", thus lessening the fear that soldiers might return

home in "body bags"[22] – which would rapidly erode domestic support for the intervention (Wheeler, 2000, p.268). The second reason was that "Alliance leaders were convinced that a serious show of force would compel Milosevic to back down after only a few days of bombing" (Wheeler, 2000, p.268). However, the choice of such strategy ultimately proved unable to avert the ethnic cleansing that was going on. Not only was the choice of the means highly questioned, but also it seems that it served to exacerbate the conflict, accelerating the campaign of ethnic cleansing by Serb forces. As Wheeler (2000, p.269) describes,

> Within weeks of the start of the bombing, thousands of Kosovar Albanians were killed, over half a million were driven from their homes to become refugees in neighbouring countries, and hundreds of thousands more found themselves internally displaced within Kosovo itself.

Nevertheless, on the 3rd of June 1999, after an intense air-bombing campaign, Milosevic finally accepted the terms of a joint EU-Russian peace plan for Kosovo. Thus, while being contested, air power strategy nevertheless

> played an important […] role in persuading Belgrade […] to accept the […] peace plan that provided for the withdrawal of all Serb forces from Kosovo and the deployment of a NATO-led multinational force [(KFOR)] that made possible the return of refugees to their homes […] (Wheeler, 2000, p.273).

Other factors were also decisive in the decision to accept NATO's terms:

> The first was that NATO signaled […] that it was increasingly serious about a ground intervention. Having promised the refugees that they would return home before winter, Blair was in the forefronts of the efforts to create a credible ground option […]. The second factor that critically influenced the Belgrade Governments' calculations was its recognition that Russia would not actively support it against the West. […] [While] having been very hostile to NATO's position, Russia did come […] to accept NATO's demands for a full Serb withdrawal of Kosovo[23]. Finally, the changing balance of military forces in Kosovo [which enabled NATO to attack Yugoslav forces] influenced Milosevic (Wheeler, 2000, pp.273-274).

These different strategies led to a military agreement on the 9th of June, which facilitated the withdrawal of Serb forces, and led to the adoption of Security Council Resolution 1244 on the following day authorizing the international presence (KFOR) in Kosovo (Roberts, 1999, p.116-117)[24]. Secretary

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[22] This was a term frequently used after the Somalia intervention.

[23] See Z. Brezinski, *Why Milosevic Capitulated in Kosovo*, Balkan Action Council, 14 June 1999, and Roberts (1999), *NATO's Humanitarian War,* p.118.

[24] See also NATO. NATO's role in relation to the conflict in Kosovo. 15 Jul. 1999. Available at: <http://www.nato.int/kosovo/history.htm> (Accessed the 15 Sept. 2015)

General Javier Solana then stated that, "NATO was now ready to undertake its new mission to bring the people back to their homes and to build a lasting and just peace in Kosovo" (NATO, 1999).

5.4 Reactions to NATO's intervention

As Hehir (2008, p.48) describes,

> The crisis in Kosovo […] dominated the international political agenda [in the end of the 1990s] becoming a major source of contestation and debate. The situation highlighted in dramatic fashion the tension between existing international law, UN procedures and the increasingly vociferous and powerful human rights movement demanding radical, pro-active humanitarianism.

Indeed, there was in Kosovo an important clash between moral values and international law, between the moral imperative to intervene to save Kosovars Albanians from an impending ethnic cleansing, and the necessity of respecting the laws of non-intervention and sovereignty. When there is a tension between laws and moral values, as was the case with Kosovo, it is often left to politics to decide which precept is to prevail – states' rights or human rights. The UN Security Council – the international political entity *par excellence* – decided to follow the "traditional path", prioritizing the respect of Yugoslavia's territoriality over the demands to intervene militarily to avert human rights violations. However, this decision did not reflect the majority's will, –at least the one expressed by global civil society and in Western countries. Rather, it demonstrated the limits of international law and the UN to act where massive human rights violations were happening. Against this background, the main source of controversy with NATO's intervention lied in the question about its legitimacy.

5.4.1 Legitimacy of Operation Allied Force

"When the Western allies launched air strikes, the move was largely popular" and Kosovars jubilantly received those they saw as their "liberators" (Glennon, 1999, p.2; Tesón, 2009). Intervention was not, however, "technically legal", since Kosovo remained a province of Yugoslavia and the Security Council had not authorized NATO military measures (Glennon, 1999, p.2). NATO's action therefore "highlighted the gulf between permissible action under

international law and the new dispensation to act morally" (Hehir, 2008, p.47). Here, as argued by Hehir (2008, p.47), "was an archetypal case where the restrictions imposed by positive law, and the Security Council veto in particular, clashed with a moral duty to intervene."

In responses to claims of illegality, most intervening states and their supporters denied the accusations that their actions were not in conformity with the UN Charter. "The United States for instance, considered that the Council had provided the necessary authorization by implication, in the earlier resolutions on Kosovo, Resolutions 1160 (Mar. 31, 1998), 1199 (Sept. 23, 1998), and 1203 (Oct. 24, 1998)" (Henkin, 1999, p.3). The United Kingdom Government went further, arguing that while the Security Council had the primary responsibility for the maintenance of international peace and security, it was no exclusive responsibility, and that states did not need explicit Security Council authorization. It "took the position that NATO's action was justified on the ground that international law recognizes an [exceptional] right to take military action in a case of overwhelming humanitarian necessity" (Greenwood, 2002, p.157). That is, Britain "apparently" thought that authorization by the Security Council was not necessary. Others were more precautious. Slovenia, for its part, justified the action by claiming that Russia and China had abused the power of veto (Wheeler, 2000, p.278). In a similar manner, the Netherlands acknowledged that states should always seek to obtain a Security Council authorization,

> [but] if, owing to one or two permanent members' rigid interpretation of the concept of domestic jurisdiction, such a resolution is not attainable, we cannot sit back and simply let the humanitarian catastrophe occur. […] we will act on the legal basis we have available, and what we have available in this case is more than adequate (Wheeler, 2000, p.276).

Germany, which had been at first reluctant to resort to the use of force, also affirmed that the threat of veto "should not block states from intervening in cases where the level of killing offends against basic standards of common humanity" (Wheeler, 2000, p.277). The primacy of averting a massacre must be placed above formal respect of international law, and where the right of the veto is abused, unilateral intervention should be justified on moral grounds (Wheeler, 2000, p.277)[25]. Canadian representatives, sharing the same view, stated that they could

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[25] Quoted in "Germany will Send Jets to Kosovo", *Electronic Telegraph,* 1 Oct. 1998.

not "simply stand by while innocents are murdered, an entire population is displaced, villages are burned and looted and a population is denied its basic rights merely because the people concerned do not belong to the right ethnic group" (United Nations, 1999a, p.6). Such statements thus demonstrated that the law was inadequate or obsolete, as it was incapable of addressing the situation in Kosovo. It needed to be bypassed, or at least reformed, in order to address the new humanitarian challenges. Now can we say that NATO's action was illegal?

> The UN Charter prohibition on intervention, even for humanitarian ends, is addressed to individual states, but what the Charter prohibits to a single state does not become permissible to several states acting together [as NATO did in Kosovo]. Intervention by several states is "unilateral," [that is], "on their own authority," if not authorized by the Security Council" (Henkin, 1999, p.826).

NATO's action was thus illegal. However, this doesn't mean that the action was illegitimate. It is generally recognized that if something is legally necessary (humanitarian intervention), it is because it is also morally necessary too. Indeed, pure respect of international law may mean, "to watch Auschwitz and do nothing"; but morality demands precisely the opposite (Meggle, 2003, p.26). Thus, "isolated cases are conceivable in which it is not merely morally permissible but even morally necessary to violate existing laws" (Meggle, 2003, p.27). Yet, while it is clear that the Security Council did not authorize NATO's intervention, can we say that it was at least a morally justifiable exception? We might defend the moral legitimacy of the enterprise, arguing that:

> Human rights violations in Kosovo were horrendous; something had to be done. The Security Council was not […] "available" to authorize intervention because of the veto. Faced with a grave threat to international peace and security within its region, and […] genocide, NATO had to act. […] [intervention] was not "unilateral"; it was "collective," […]. NATO did not pursue narrow parochial interests, […]; it pursued recognized, clearly compelling humanitarian purposes. Intervention by NATO […] was a "collective" humanitarian intervention "in the common interest," carrying out the responsibility of the world community to address threats to international peace and security resulting from genocide and other crimes against humanity. (Henkin, 1999, p.826).

It might also be said that,

> [the] reason why NATO did not seek explicit authorization from the Security Council is not difficult to fathom. Even after the Cold War, geography and politics rendered unanimity by the permanent members in support of military action (especially in the Balkans) highly unlikely. […] NATO decided that not asking for authorization was preferable to having it frustrated by veto, which might have

complicated diplomatic efforts to address the crisis, and would have rendered consequent military action politically more difficult (Henkin, 1999, p.825).

The decision taken by NATO to act without explicit Security Council authorization was based on the assumption that on certain extraordinary instances, such as supreme humanitarian emergencies, moral legitimacy is sufficient to justify intervention. Facing a political "impasse", they justified action in the name of a common humanity. That is, intervention would have to be understood as NATO acting without a Security Council authorization and out of humanitarian necessity (Simma, 1999, p.14). This posture meant that "international justice [could] in fact be pursued *ad hoc*, without a fully functioning legal system" (Glennon, 1999, p.5). The action would be portrayed as "illegal but legitimate".

Now, the question of whether NATO fulfilled the conditions for a morally legitimate intervention was another source of intense debate. While there was no doubt that there was a humanitarian emergency in which large-scale loss of life was threatened, and that (to a lesser extent) "military action offered the only practicable option for dealing with that emergency" (Greenwood, 2002, p.157) (last resort) – as the reaction of the majority of the non-NATO states in the Security Council suggested – there were serious doubts concerning the motives of such intervention, and in particular, concerning the requirements of proportionality.

5.4.2 The controversy

Until the 1990s and the rise of intra-state conflicts, the idea "that states could invade the sovereign territory of other states to stop massive bloodshed was inconceivable" (Gelb, 2003, p.5). The rise of human rights and the increased calls for humanitarian intervention by global civil society during this period also did not lead automatically to more intervention. For instance, the international community was many times unable to decide whether to intervene and stood by while atrocities were being committed in Rwanda and Bosnia. The prioritizing of justice, and the placing of human rights over states' rights, remained a highly divisive issue, especially between permanent members of the Security Council. It is not difficult to understand then, why the humanitarian rationale in Kosovo failed to convince everyone. For many, it was not conceivable that states invade

another states' territory and intervene to uphold humanitarian values. This would be inherently wrong. As a result, the pressure exercised by global civil society was not felt everywhere in the same manner, for instance in China or in Western States. In their conception of international society (and probably of ethical state conduct too), many governments remain statist, attached to the sovereignty and non-intervention principles. Knowing that the application of ethical imperatives to justify political action has historically been widely abused, many states are indeed reticent to allow practices like humanitarian intervention within the international realm.

Following the launch of Operation Allied Force, the Security Council met on 24 March, at the request of the Russian Federation, to debate NATO's action[26]. Many states, such as Namibia, India, Belarus, Russia and China, denounced what they saw as an illegal, unilateral use of force. During the discussions, India expressed her position, stating that, "no country, group of countries or regional arrangement, no matter how powerful, can arrogate itself the right to take arbitrary and unilateral military action against others" (United Nations, 1999a, p.15). It continued: "NATO believes itself to be above the law. We find this deeply uncomfortable" (United Nations, 1999b, p.16). Along with others, the Indian representative challenged the legitimacy of NATO's action, affirming that the "international community can hardly be said to have endorsed their actions when already representatives of half of humanity have said that they do not agree with what they have done" (United Nations, 1999b, p.16). Indeed, the intervention was perceived by many as an imposition of the values of powerful Western actors to the detriment of international law. Within the Security Council, governments opposed to the intervention (Russia and China) "either denied the validity of the humanitarian intervention under international law or questioned NATO's motives – and they did not hesitate to call the intervention an act of aggression" (Tesón, 2009). For many, it was not only illegal, but also illegitimate. In a speech few months before the intervention, the Brazilian ambassador stated that

> non-universal organisms [such as NATO] may resort to force only on the basis either of the right to legitimate self-defence […] or through the procedures of Chapter VIII, in particular Article 53, which imposes on them the obligation of

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[26] See S/PV.3988, 24 Mar. 1999, p.3

seeking Security Council authorization beforehand and abiding by the Council's decision… There is no third way (United Nations, 1998d, pp.10-11).

Another source of controversy was the strategy employed by NATO – bombing. Some were quick to argue that the use of air power served to worsen things and that it precipitated "the very disaster it was aimed at averting" (Wheeler, 2000, p.284). Western states' reluctance to place their service personnel in harms' way, by deploying ground forces, in defence of the values they claimed to be fighting for (Wheeler, 2000, p.272), plus the importance made of the intervention being "casualty-free", raised many voices, who questioned the humanitarian dimension and the proportionality of the intervention. Robert Fisk, a renowned journalist from the British newspaper The Independent, expressed the belief that

> NATO failed in everything it set out to do. It failed to protect the Kosovo Albanians from Serbian war crimes […] It broke international law in attacking a sovereign state without seeking a UN mandate. It killed hundreds of innocent Serb civilians, while being too cowardly to risk a single NATO life in defence of the poor and weak for whom it claimed to be fighting (Falk, 2003, p.32).

The legitimacy of NATO's action should not only be balanced with the motives of intervention but also with its outcomes – if it did "more good than harm". This is however difficult to evaluate, especially since criticism of NATO's action "relies on the assumption that, in the absence of NATO bombing, the Serbs would have ended their killings and forced expulsion of ethnic Albanians" (Wheeler, 2000, p.269). While many were killed by the bombing, it is difficult to determine how many more would have been killed had NATO not intervened. In all likelihood, it is very probable that the ethnic cleansing campaign would have continued. While the legitimacy of NATO's action is questionable, it nevertheless "was successful in restoring to the Albanians the civil and political rights that Milosevic's policy of repression had stripped away (Wheeler, 2000, p.274), and it probably avoided what might have otherwise been far worse.

The fact that on the 26th of March, the Russian draft resolution condemning NATO's bombing to the vote was defeated by twelve votes to three demonstrated that the intervention, while being contested, had much support (United Nations, 1999c). The fact that "six non-western states came to vote with Slovenia in comprehensively defeating a Russian draft resolution" (Wheeler, 2000, p.280)

denoted that NATO's action did not only reflect Western states moral values or interests, but that many others states implicitly endorsed the intervention. Indeed, "on the whole, the intervention was not overtly condemned by any international organisation or human rights NGO, although many deplored that NATO had been unable to secure Security Council authorisation"[27] (Tesón, 2009). Moreover, the Security Council could have ordered NATO's action to be terminated – yet this did not happen. Consequently, many argued that NATO's intervention in Kosovo had the support of the Security Council. When "on June 10, the Security Council, in Resolution 1244 approving the Kosovo settlement, effectively ratified the NATO action and gave it the Council's support" (Henkin, 1999, p.826), it legitimated the action.

5.5 Reasons and motives invoked by Alliance leaders to justify the intervention

In *The Anarchical Society*, Hedley Bull (1977, p.43) argues that when states decide to break the rules, they generally recognize that they "[owe] other states an explanation of [their] conduct, in terms of the rules that they accept". Indeed, because they conceive themselves as "bound by a common set of rules in their relations with one another" (Bull, 1977, p.13), states feel the need to justify themselves in terms of the rules that constrain state actions.

In the Kosovo case, "state […] [recognized] the need to justify their actions to both domestic and international audiences in the public sphere" (Head, 2013). European countries justified intervention with four key rationales:

> First, that their action was aimed at averting an impending humanitarian catastrophe; secondly, that NATO's credibility was at stake[28]; thirdly, ethnic cleansing in Kosovo could not be allowed to stand in a civilized Europe and posed a long-term threat to European security; and finally, that NATO's use of force was in conformity with existing Security Council resolutions (Wheeler, 2000, p.265).

It is important to note here that within NATO itself, not all members adopted this rationale. For instance, Germany declared that while intervention

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[27] See *Open Letter to Members of the Security Council* from Pierre Sané, Secretary-General of Amnesty International, AI Index: EUR 70/70/99. Amnesty International neither supported nor opposed intervention, but challenged the view that one had to choose between it and inaction.

[28] As a matter of fact, the Alliance had publicly, on several instances, threatened to use force if Milosevic did not comply with the terms of the October Agreement. Since the agreement failed, and further diplomatic solutions as well, NATO members had to execute their threat.

wasn't properly legal, it was nevertheless justified on moral grounds. British Britain' Foreign Secretary, when justifying the action domestically, emphasized the three first reasons (Wheeler, 2000, p.265). He declared that, after failures with negotiations, they were left

> with no other way of preventing the present humanitarian crisis from becoming a catastrophe than by taking military action. […]. Not to have acted, when we knew the atrocities that were being committed, would have been to make ourselves complicit in their repression. […] Our confidence in our peace and security depends on the credibility of NATO. Last October [it was [NATO [that] guaranteed the cease-fire that President Milosevic signed […] What possible credibility would NATO […] if we did not honour that guarantee? […] In the mid '90s, […] Milosevic was the prime player in the war in Bosnia, which gave our language the hideous phrase "ethnic cleansing". […]We cannot allow the same tragedy to be repeated before us again in Kosovo (Cook, 1999).

What appears from this discourse is that states seems to have been moved both by humanitarian and security motives. That is, NATO leaders and supporters of the intervention demonstrated both a concern for justice and for order, which seems to have enabled the operations. From the beginning, both rational calculations and moral considerations were part of the equation. The representation of the conflict as a threat to international order – more precisely, to the peace and stability of Europe – and to Western security interests is clearly present in both NATO, Cook and Clinton's discourses.

> The argument is not that national interests were not involved […]. Rather, […] there was no conflict between upholding humanitarian values and protecting national interests. The Prime Minister [Blair] pressed the solidarist claim that there is a mutual compatibility between order and justice, declaring that "our actions are guided by…a subtle blend of mutual self-interest and moral purpose in defending the values we cherish…values and interests merge"[29] (Wheeler, 2000, p.267).

Supporters of intervention and NATO leaders repeatedly offered a humanitarian rationale to justify the use of force (Tesón, 2009). We can observe it for instance in Britain's decision to intervene where they failed a few years ago or in their will to prevent and stop an impending massacre. The recall of the failure to act in Bosnia appears like a lesson that should be learned, and not repeated.

> Clinton and his advisers argued […] that the West had a "moral responsibility" to stop the terrible atrocities taking place in Kosovo. […]. Speaking on the day before Operation Allied Force was launched […], the President argued that the world had

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[29] See speech by the British Prime Minister, Tony Blair, to the Economic Club of Chicago, Thursday, 22 Apr. 1999, p.8. (Quoted in Wheeler, 2000, p.267)

stood aside as Milosevic had committed "genocide in the heart of Europe" against the Bosnian Muslims and that this could not be allowed to happen in Kosovo, since "it's about our values" (Wheeler, 2000, p.266).

The defence of human rights has to be identified as an integral part of Western states' national interest, and as a constituting part of their identity. The war in Kosovo was in fact largely perceived by its supporters as an ethical war, a "Just War". Tony Blair declared that the war against Yugoslavia was "based not on any territorial ambitions, but on values" (Wheeler, 2000, p.267). Similarly, Václav Havel, then President of the Czech Republic, articulated the sentiment of humanitarian intervention supporters, when declaring that, "[if] one can say of any war that it is ethical, or that it is being waged for ethical reasons, then it is true of this war" (Falk, 1999, p.848). He sustained that

> [Kosovo] [was] probably the first war that was not waged in the name of "national interests" but rather in the name of principles and values. […] Kosovo had no oil fields to be coveted; no member nation in the Alliance had any territorial demands on Kosovo; [and] Milosevic did not threaten the territorial integrity of any member of the Alliance (Havel, 1999, pp.4-6).

What was at stake then, was the identity of Europe and the United States as the defenders of human rights and democracy. The interest in an orderly and stable Europe was the other motivating factor for intervention. Already in March 1998, Western states demonstrated that they were deeply concerned about the possible consequences that the Kosovo conflict could have on neighbouring and European countries (massive refugees flow). It is the view of the refugees on screens that first triggered international attention and reaction to the Kosovo conflict. As US President Bill Clinton, on a statement the 9 June 1998, declared:

> [The] actions and policies of the Governments of the Federal Republic of Yugoslavia […] and the Republic of Serbia with respect to Kosovo, by promoting ethnic conflict and human suffering, threaten to destabilize countries of the region and to disrupt progress in Bosnia and Herzegovina in implementing the Dayton peace agreement, and therefore constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and hereby declare a national emergency to deal with that threat (United States of America, 1998).

The action was justified to the American people on the grounds "that a failure by the USA to act in defence of European security would jeopardize US national interests" (Wheeler, 2000, p.266). President Clinton stressed that "Europe's and America's security were indivisible and that, if the USA did not act

now, it would have to act later when more people will die, and it will cost more money", since the USA "had a long-term strategic interest in a stable and democratically ordered Europe" (United States of America, 1998, apud Wheeler, 2000, p.266). The conflict was thus not simply identified as a humanitarian catastrophe, but also as a threat to international order, and intervening was in this context in states' "best interest". Action aimed at helping Albanians return to their homes was thus motivated by both considerations of order (avoiding disorder) and justice. States were at the same time concerned about human suffering in Kosovo, but afraid of welcoming a flow of refugees in their territories. Intervention was thus not devoid of rational calculus. It was for instance argued that an early, preventive intervention would cost less (in financial and human terms) than a late intervention. It was also widely believed that the conflict would stop rapidly – however, this last point proved to be wrong.

Conclusion

The Kosovo conflict, and in particular, international society's reaction to it, is interesting to analyse since it represented for many the triumph of solidarism, and it was interpreted as happening within an international normative context that increasingly privileged human rights. The Kosovo crisis, as such, "represented a moral and political dilemma for states that were caught between the normative power of human rights and the legal principles and norms of state sovereignty and non-intervention" (Head, 2013). Yet states decided to break the then well-established rules of non-intervention, sovereignty, and non-use of force in order to protect the human rights of Kosovar Albanians. NATO members and supporters of the intervention considered that it was not only a moral imperative, but that inaction was not an option. And this was extraordinary.

In Kosovo, as Glennon (1999, p.2) puts it, "justice and the UN Charter seemed to collide". "Here, supporters claimed, was an archetypical case where the restrictions imposed by positive law, and the Security Council veto in particular, clashed with a moral duty to intervene" (Hehir, 2008, p.47). The intervention showed that deviation from the Charter and International Law could be legitimate in this and other "exceptional circumstances" (Stromseth, 2003, p.243). It also

demonstrated the limits of International Law and the incapacity of the UN to act where there are massive human rights violations.

Against this background, human rights promoters and humanitarian organizations such as Human Rights Watch (HRW) were quick to hail "the beginning of a new era for the human rights movement", due to "an evolution in public morality" (Human Rights Watch, 2000). That is, "an era, in which the defence of human rights [would] move from a paradigm of pressure based on international human rights law to one of law enforcement" (Human Rights Watch, 2000). The growing optimism in the aftermath of the Cold War thus seemed to realize itself with Kosovo, with states taking their responsibilities and promoting justice. In its 2000 World Report, HRW acclaimed "the trumping of state sovereignty by human rights because courts are willing to indict leaders, and organizations, such as NATO, are willing to intervene militarily against regimes that commit crimes against humanity" (Human Rights Watch, 2000). We may in this sense argue that Kosovo "marked a watershed in the international community, that we should expect to see it exhibiting a new solidarity in response to any future where states intervene to end atrocities" (Wheeler, 2002, p.297).

> [The intervention reinforced] the message that an oppressive government can no longer violate the most basic tenets of human rights and international humanitarian law, inflict loss of life and misery on a huge scale upon part of its population and expect to hide behind the concept of State sovereignty in order to escape the consequences of its actions (Greenwood, 2002, p.174).

With the Kosovo intervention, there was now increased faith in the capacity of states to prioritize human rights over states' rights, if it is the necessary and appropriate behaviour, and this demonstrated an evolution towards a more solidarist international society, which takes its responsibilities and promotes international justice. Subsequent normative developments led to the adoption of the Responsibility to Protect (R2P) principle, aimed at addressing the tension between existing international law and the powerful human rights movement. R2P was, in the words of Kofi Annan, a "new thinking on the issue [of humanitarian intervention" (Hehir, 2008, p.238). In place of humanitarian intervention or the notion of a right to intervene, the phrase "Responsibility to Protect" was employed to signify that states not only had a responsibility to protect their own citizens, but an international responsibility towards others, when a government is

failing its own citizens (ICISS, 2001). Thus, sovereignty was not anymore to be understood as a bulwark against external interference, as it had been until then.

Nevertheless, while many saw in Kosovo the "triumph of human rights", there weren't only humanitarian rationales in states' decision to intervene. Indeed, what appeared from the analysis above is that the decision to intervene in Kosovo reflected both a concern for order and security, and a moral concern for Kosovar Albanians. Interestingly, the international community reacted to the conflict only after it interpreted human rights violations there as a threat to international peace and security, and most specifically, to the stability of Europe. While Kosovar Albanians were the victims of oppression for years, it is, as a matter of fact, the images of massive refugee flows in 1998 that first triggered international attention. Human rights violations in Kosovo and the capacity of the conflict to spread to other (neighboring) countries were widely perceived as threatening Europe's security and stability. That is, injustice was considered as a threat to order, thus confirming our argument that intervention happens only when determinate conflicts are represent as threat to international order, and/or when important interests are best preserved with action.

Therefore, it is important to be cautious when arguing that there weren't other motives for NATO's action than pure altruism, as for instance Vaclav Havel argued. As a matter of fact, intervention did not take place on a blank canvas (Head, 2013). Some states did not hide that their incentives were not humanitarian only; the United States, for instance, justified intervention affirming that there were both humanitarian and security reasons. In fact, it might have been difficult for them to obtain domestic support without invoking security rationales. Moral impulses were thus balanced with other factors, like the desire to avoid a mass flow of refugees in Europe, the desire to deflect attention from inaction in Bosnia, and a risk-free and short-term intervention. Operation Allied Force then, resulted also from rational decision; it was a decision based on a calculus. While it was saluted, it was also a very controverted intervention. That is, although it was justifiable to act, it was maybe not in the manner undertaken.

We can argue then, that Kosovo was an enabling context, with the right combination of "principledness" and interests that made intervention possible. Humanitarian reasons commingled with security interests in Kosovo, and the pursuit of both objectives enabled military intervention. This demonstrates then,

as March and Olsen (1998, p.952) develop, that "political action […] cannot be explained exclusively in terms of a logic of either consequences or appropriateness. Any […] action probably involves elements of each […] and the relationship between the two is often subtle". Indeed, we suppose here that Kosovo probably obtained the necessary support to sanction a military intervention due to its unique configuration, which made it possible to combine security and strategic interests with humanitarian purposes.

It thus showed that order and justice were not mutually exclusive, but on the contrary, mutually compatible. Yet we ask, would there have been no threat to international order – that is, no risk of massive flows of refugees – would NATO have intervened anyway? In other words, were humanitarian motives alone able to trigger the intervention? If we look at the history of the conflict, we can easily perceive that it is not until there were images of refugees in television screens that Western states decided to do something. This makes us wonder, then, whether states are willing to risks their citizens lives in order to save others, unless the violations of human rights happen to threaten the international order, the peace and security in which they are part. This will have to be mitigated of course with the fact that intervention is not an easy decision to make. Even if intervening states act out of humanitarian rationales, human rights violations must reach a certain threshold for intervention to be sanctioned. As a matter of fact, it is not realistically *envisageable* to act everywhere where there are human rights violations. However, the fact that NATO members emphasized that Kosovo should be understood as a unique case, from which no future action could be derived, makes us question whether we can interpret Kosovo as a precedent for future action, or whether it is flawed.

In order to answer such questions, it is necessary to have a test case. As Glennon puts it (1999, p.7), "the real test of a new system [a new interventionist regime] will be whether succeeding generations throughout the community of nations […] believe the system and the actions it prescribes to be just". That is, in order to see whether Kosovo reflected indeed a change towards a more solidarist international society and a new moral concern, it is worth looking at whether similar cases in the aftermath of Kosovo triggered similar international reactions. The choice of Darfur in this context – the largest humanitarian crisis after Kosovo – is particularly interesting, because with the optimism for the new millennium,

the conduct that was expected of states when there is a possible genocide as was the case in Darfur, would be to put the situation on the top of the agenda and seek ways to avert or to prevent a humanitarian catastrophe.

However, this is not what happened. "The situation in Darfur was repeatedly described as representing a "supreme humanitarian emergency", that is, a situation where "the only hope of saving lives depends on outsiders coming to the rescue" (Wheeler, 2000, p.34, apud Bellamy; Williams, 2005, p.28); no one intervened. "The Security Council, the EU and a variety of NGOs […] all acknowledged that the government of Sudan was complicit in large-scale crimes against humanity and ethnic cleansing in Darfur" (Bellamy; Williams, 2005, p.31). But it was only rhetorical condemnation; no one was willing to intervene" in a timely and decisive manner" (ICISS, 2001), thus, letting the crisis further deteriorate. The international feeble answer there make us wonder, then, if humanitarian motives are sufficient to trigger an intervention, where there seems to be no threat to international order and where the costs and risks of intervening are high. The next chapter will help us determine what impeded states to intervene in Darfur, five years only after such a high enthusiasm for the protection of human rights in Kosovo.

6. Non-intervention in Darfur

Following NATO's intervention in Kosovo, there were increased hopes in the possibilities of a more solidarist and interventionist international society, which would put the pursuit of justice and the defence of human rights as priorities. While being contested by many due to its illegality – and for some, its illegitimacy as well – Kosovo was interpreted by the more enthusiasts as a sign that the members of the international community would take more responsibility-based actions. The publication of *The Responsibility to Protect* (R2P) by the ICISS in 2001 seemed to confirm this belief. Consequently, as Hehir writes (2008, p.53), "optimism abounded regarding the capacity of human rights advocates, and global civil society […], to influence the behaviour of Western states, and more ambitiously, alter the norms governing international relations". Whether these optimistic predictions manifested is what is of interest in the present study.

The choice of the crisis in Darfur (2004–) as a test case to determine whether the optimism prevalent in the aftermath of NATO's intervention in Kosovo manifested itself was based on several reasons. First, the civil war in Darfur represented the biggest humanitarian tragedy since Kosovo, reaching the threshold of "genocide". It is a conflict that has been well publicized and decried by global civil society, thus entailing that states were completely aware of the situation. Secondly, Darfur constituted "an important test case of international society's commitment [towards the] emerging norm of [R2P]" (Williams; Bellamy, 2005, p.30), that is, if the theoretical commitment matched with the practice. Thirdly, by contrast with Kosovo, which was located at the boundaries of European countries, the conflict there was occurring in "far away" Africa, and since the beginning, it was understood as very complex and necessarily demanding a long-term engagement.

Against this background, the aim of this chapter is to determine and explain why international responses to the crisis in Darfur have been so disappointing. While it was since the beginning described as "the most serious humanitarian emergency in the world today" (Washington Post, 2004); while it was acknowledged by many actors "that the government of Sudan was complicit in large-scale crimes against humanity and ethnic cleansing in Darfur" – some going

further, "calling the crisis genocide [and thus] inevitably […] [inviting] comparisons with […] Rwanda […] and the need to avoid a repeat of international society's feeble response there" (Bellamy; Williams, 2005, p.31); that is, despite this recognition and all the calls to "do something", the international community's response remained insufficient, limited to the old scheme of traditional peacekeeping and the sending of humanitarian aid.

The international's feeble reaction to the crisis in Darfur, as Hehir (2008, p.147) writes, "dashed the notions of progress when the world watched a massive humanitarian tragedy go unaddressed despite extensive media coverage and the highly successful mobilization of NGOs and Western democratic publics". It suggested that the optimism, "the progresses made by the human rights movement and global civil society [in the aftermath of Kosovo], were inflated" (Hehir, 2008, p.95). Darfur lacked priority; no one was willing to take responsibility-based action to protect civilians at risk there. Instead, it was argued that there had to be "an African solution to an African problem", since the primary responsibility to protect citizens at risk resided with the Sudanese government itself, and then, to the regional powers (neighbouring African countries) (Traub, 2010, p.12).

Western states were reluctant to deviate from the pluralist rules of international society. In fact, they seemed more concerned with preserving states' rights than human rights, looking for the consent of the Sudanese government at every moment – an attitude, which highly contrasted with Kosovo in 1999, where consent from Milosevic was optional. Moreover, it appears that the R2P principle worked in fact against intervention, enabling states to discharge themselves from their international responsibilities. As Bellamy (2005, p.33) depicts, "changing the language of the intervention debate has done little to forge consensus or overcome the struggle between sovereignty and human rights".

In this context, the questions this chapter seeks to investigate are: why non-intervention was chosen over intervention? What were the rationales, the reasons behind the decision to leave Darfuris to their own fates, when only a few years earlier in Kosovo ethnic cleansing had been decried as morally unacceptable? What made states, who had publicly declared that if "Rwanda happened again [they would] not walk away as the outside has done many times before", break

their promises[30]? (Bellamy, 2005, p.31). Darfur also questions whether solidarism extends beyond Europe, and if states are able to intervene for humanitarian reasons alone, when there is no apparent threat to international order and to Western national interests?

The chapter will proceed as follow: first, it will provide a factual background of the civil conflict in Darfur, how it came up and its complexities. Secondly, it will look at the international reaction and response to the on-going conflict; what have been the adopted measures. Then, it will try to determine, looking at states' justifications, what are the reasons that explain such a weak international response, despite the fact that it was a well-covered conflict, reuniting all the conditions for a legitimate intervention.

6.1 The Factual Background: origins of the conflict

The Republic of Sudan represents Africa's biggest country, and Darfur is its largest region, with a population of about 6 million people, ethnically diverse with approximately 100 tribes, some of them sedentary (farmers), others nomadic (Udombana, 2005, p.1152). These tribes "have a long-standing history of clashes over land, crops, and resources" and the Sudanese government seems to have privileged the nomadic tribes (Arabs) in Darfur for years, leading to distrust from the other tribes (African sedentary farmers) (Udombana, 2005, p.1153). When al-Bashir took in 1989 the control of Sudan by a coup, it allowed the National Islamic Front government to inflame the already existent tensions in the region, thus inevitably leading to an increase in conflicts between the different tribes.

The crisis in Darfur started in February 2003, "when first the Sudanese Liberation Army (SLA) and then the Justice and Equality Movement (JEM) forces" – the two rebel groups, mostly coming from sedentary tribes – "attacked government military installations [and the national army] in frustration at decades of political marginalisation, socio-economic neglect [and discrimination]" (Bellamy; Williams 2005, p.30). They accused Khartoum-based government of

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[30] See Prime Minister Tony Blair's speech given to the Labour Party Conference, Brighton, U.K, Oct. 2, 2001. Available at: <http://www.theguardian.com/politics/2001/oct/02/labourconference.labour6> (Accessed the 15 Oct. 2015). There, "he insisted that international society had a « moral duty » to provide military and humanitarian assistance to Africa « whenever it was needed »" (Bellamy, 2005, p.31).

oppressing the sedentary people in favour of nomadic tribes (Udombana, 2005, p.1153)[31]. While "[achieving] some initial success", the rebel forces were nevertheless rapidly countered by the government, which "launched a fierce counter-attack" (Hehir, 2008, p.65).

> The Sudanese Air Force was deployed to devastating effect, but it was the mobilization of the Janjaweed Arab militias [« devils on horseback »], which proved the most destructive. Armed by the government, these militias undertook a campaign of terror designed to kill and displace all those suspected of rebel sympathies (Hehir, 2008, p.65).

The Janjaweed militias come from Arabic nomadic groups backed by the Sudanese government, which uses them as counterinsurgency force (Human Rights Watch, 2004, p.1). They "attacked villages, systematically targeting civilian communities that shared the same ethnicity as the rebel groups, killing, looting, forcibly displacing, destroying hundreds of villages, and polluting water supplies" (Udombana, 2005, p.1154). There was also "deliberate destruction of crops, livestock and important cultural and religious sites" (Bellamy; Williams, 2005, p.30). Many reports, notably from Amnesty International, the Darfur Commission Report[32] and Human Rights Watch denounced the

> systematic campaign of "ethnic cleansing" [waged by government forces] against the civilian population who are member of the same ethnic groups as the rebels. Sudanese government forces and the Janjaweed militia burned and destroyed hundreds of villages, caused tens of thousands of civilians deaths, displaced millions of people, and raped and assaulted thousands of women and girls (Hoffmann, 2003, p.22).

Sudanese President Omar Al-Bashir nevertheless always denied "any links to the Arab Janjaweed militia, who are accused of trying to drive out black Africans from large swathes of territory" (BBC News, 2010). Whether it has been directly responsible, as many UN reports explicitly state, is not the matter here. What is particularly striking in the Darfur case, is that the Sudanese government seems "unwilling to address the human rights crisis in the region"[33] and that it did not take the necessary steps to restrict the activities of the Janjaweed militia. The

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[31] See also: BBC News. Q&A: Sudan's Darfur conflict. 23 Feb. 2010. Available at: <http://news.bbc.co.uk/2/hi/africa/3496731.stm> ; Johnson (2003); Bellamy and Williams, (2005); and Udombana (2005).
[32] See Darfur Commission Report and Amnesty International USA. Sudan: Continuing Human Rights Violations. AI Index: AFR 54/038/2005, 13 Apr. 2005. Available at: <http://www.amnesty.org> (Accessed on 15 Sept. 2015)
[33] Ibid.

civil war in Darfur thus created a critical situation, with a majority of civilians fleeing the conflict and "[remaining] internally displaced within [extremely basic] camps" that emergency aid organizations created, yet where they are "vulnerable to continued Janjaweed attacks and exploitation, and sealed off from most international relief agencies" (Bellamy; Williams, 2005, p.31).

> [The Darfur crisis] combines the worst of everything: armed conflict, extreme violence, sexual assault, great tides of desperate refugees – without even the unleavened bread of a desperate escape, hunger, and disease, all uniting with an unforgiving desert climate. Evidence from numerous sources – governmental, intergovernmental, and nongovernmental – have suggested a tragedy that, in nature and scale, follows in the example of the Holocaust (Udombana, 2005, p.1150).

The civil war in Darfur has often been described as the worst humanitarian crisis on the African continent. According to BBC News (2010), "some 2.7 million people have fled their homes since the conflict began, and the UN says about 300'000 have died – mostly from disease". In 2011, Oxfam made a report about the protection of civilians and stated that "Sudan had both the highest level overall of people remaining internally-displaced – around 5 million – and the highest number of people newly displaced by conflict" (OXFAM, 2011, p.2). At the moment, about 1.8 million people are estimated to be internally displaced – estimates that the Sudanese government continues to dispute[34]. Although it now receives much less media coverage and attention than it had in earlier years, the civil conflict still continues. Despite negotiations, there seems to have been an unwillingness to address human rights violations there. Against that, it is interesting to see what has been done to address this humanitarian tragedy.

6.2 International Reaction to the conflict and adopted measures

From the beginning of the conflict, the magnitude of the violence in Darfur generated international attention and indignation from human rights supporters. From the earliest days of the crisis, global civil society was "involved in raising awareness of the situation in Darfur"[35]. There was extensive media coverage of

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[34] See UNAMID. UNAMID Background. Available at:
<http://www.un.org/en/peacekeeping/missions/unamid/background.shtml> (Accessed the 15 Jul. 2015) And Global Centre for the Responsibility to Protect. Sudan. [s.d] Available at:
<http://www.globalr2p.org/regions/sudan> (Accessed 15 Jul. 2015).
[35] ICRtoP. The Crisis in Darfur. New York, [s.d.] Available at:
<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-darfur> (Accessed 15 Jul. 2015)

the conflict and public opinion soon became mobilized. NGOs such as Amnesty International, International Crisis Group, Oxfam, or the "Save Darfur Coalition" were quick to denounce the on-going massacre in Darfur. "A series of negotiations and ceasefires between the government and rebels followed, but failed to effect tangible results" (Hehir, 2008, p.66).

The first UN Security Council resolution to address the civil war in Darfur was Resolution 1556, adopted on the 30th of July 2004 under Chapter VII of the UN Charter. It imposed an arms embargo, "[demanded] that the Government of Sudan fulfil its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders", facilitates the provision of humanitarian assistance and addresses the serious human rights violations in the region (United Nations, 2004a, p.3-4). The resolution reaffirmed the territorial integrity of Sudan and "supported the envisaged African Union (AU) Protection Force" (Bellamy; Williams, 2005, p.29). By doing so, "the Security Council chose not to assume responsibility for alleviating human suffering in Darfur by authorizing a humanitarian intervention" (Bellamy; Williams, 2005, p.29). In fact, by contrast with Kosovo, "none of the states that voted in favor of the resolution mentioned that the Security Council had a right or duty to intervene […]; [this responsibility] was placed on the Sudanese government and failing that, the African Union" (Hehir, 2008, p.67).

The reactions to the adoption of Resolution 1556 were mixed. For some states, such as China, Russia and Pakistan, "the resolution went [already] too far, in threatening economic and diplomatic sanctions against Sudan" (Bellamy; Williams, 2005, p.32). For others, especially human rights activists, Resolution 1556 was felt as a failure. Amnesty International for instance claimed that it "failed to adopt measures that are urgent and essential to address the appalling human rights situation" (Bellamy; Williams, 2005, p.32). One of its spokesmen, Adotei Akwei, went further, "describing the Resolution 1556 as "represent[ing] the abandonment of the people of Darfur and an abdication of the Security Council's role as a human rights enforcing agent"[36] (Hehir, 2008, p.67).

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[36] See Hoge, W. U.N. Council Threatens to Punish Sudan Over Militia Killings. New York Times, 31 July 2004. Available at: < http://www.nytimes.com/2004/07/31/world/un-council-threatens-to-punish-sudan-over-militia-killings.html?_r=0> (Accessed 15 Oct. 2015)

The US ambassador, in a discourse to the UN, recognized that, "many people who are concerned about Darfur would say that this resolution does not go far enough. […] Perhaps they are right" (United Nations, 2004b, p.4). Yet while acknowledging that the answer was insufficient and that genocide was going on, at no moment, and thus, by strong contrast with Kosovo a few years earlier, was intervention mentioned. In fact, and similarly with European Union's response to the crisis, the US Ambassador declared that, "the responsibility for this disaster lied squarely with the government of Sudan"(United Nations, 2004b, p.3). Thus, "like the Security Council, Western states threatened sanctions against the Sudanese government, but showed no interest in deploying their own peacekeepers to Darfur" (Bellamy; Williams, 2005, p.34).

6.3 International society's feeble response

The *Responsibility to Protect* (R2P) interprets the sovereignty principle as laid down in Article 2 (1) of the UN Charter primarily as a responsibility for the protection of its own citizens. This responsibility to protect creates conditionality for the sovereignty principle. That is, while it is acknowledged that states have the primary responsibility for the welfare of their own citizens, "if [they] fail to do justice to their responsibility to protect [them], the international community has to take over the role of the state and guarantee the protection of human beings" (Evans; Sahnoun, 2002, apud Krieg, 2013, p.17). As stated in the ICISS report,

> Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect […] (ICISS, 2001, p.IX).

In Darfur, the responsibility to protect civilians was placed since the beginning in the hands of the Sudanese government, while the latter was complicit in the crimes and clearly unwilling to address the human rights violations, and failing that, the African Union (AU) (Bellamy; Williams 2005, p.35; Hehir, 2008, p.67). It was claimed that there had to be "African solution to African problems" – a language that ultimately "provided a convenient façade behind which Western powers could wash their hands of committing their own soldiers to Darfur" (Bellamy; Williams 2005, p.35). This was particularly curious, as Hehir (2008,

p.66) suggests, "given that the Khartoum regime had been instrumental in orchestrating the crisis and was not, as the Resolution essentially implies, a third party to the conflict" (UNHCR, 2004). Besides, it was widely acknowledged that the Sudanese government "lacked the capability and will to quickly stop or disarm the Janjaweed by force" (de Waal, 2004, apud Bellamy; Williams, 2005, p.32).

In August 2004, as endorsed by Resolution 1556, the AU did deploy a small force – the African Union Mission in Sudan (AMIS). However, it was clearly understaffed and under-resourced. In addition, compliance with Resolution 1556 was erratic at best (Bellamy; Williams, 2005, p.33). Indeed,

> [a] UN compliance report […] noted that the Khartoum government had failed to meet "some of the core commitments" [...] In particular, reports soon emerged that, far from demobilizing the Janjaweed, the Sudanese government was incorporating the militia into regular military and police forces" (Bellamy; Williams, 2005, p.33).

Resolution 1564 followed, with the Security Council declaring that the Sudanese government had failed to comply with its obligations under Resolution 1556 to protect civilians in Darfur and to ensure security and disarmament obligations[37]. However, the new "resolution did not implement any punitive measures" against the Sudanese government, "stating instead that the Council "shall consider taking additional measures" should Sudan's non-compliance continue" (Hehir, 2008, p.67). The new resolution did not go further than previous ones, thus clearly showing the lack of priority of the Darfur crisis in the international agenda, and the "unwillingness of states to take "responsibility-based" action in Darfur" (Bellamy; Williams, 2005, p.29). The African Union was also unable to protect civilians from harm in Darfur. In such cases then, the right answer would have been for the international society to assume the responsibility to protect the civilians in Darfur. However, no one was willing to take any decisive action.

> Seven further Resolutions in 2005 did little to effect real change and constituted various strongly worded condemnations but little punitive action beyond the extension of AMIS's mandate and the creation of a "Panel of Experts" to oversee and report the crisis (Hehir, 2008, p.67).

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[37] See UN Security Council Press release, 18 Sept. 2004. Available at : < http://www.un.org/press/en/2004/sc8191.doc.htm> (Accessed 14 October 2015)

6.3.1 UNMIS and UNAMID

The first real incentive to do something came on 31 August 2006, after more than two years since the beginning of the conflict, when the Security Council passed Resolution 1706, which authorized the deployment of the UN Mission in Sudan (UNMIS). The resolution was passed under Chapter VII, with a mandate authorizing "the use [of] all necessary means [including force] to protect civilians under threat of physical violence" (United Nations, 2006b). The deployment to Darfur of the UN Mission in Sudan (UNMIS) was intended to redress the weaknesses of AMIS (Barber, 2009, p.305). With Resolution 1706, the UN Security Council explicitly made "the rapprochement between R2P and the protection of civilians in peacekeeping operations" (Thardy, 2013, p.203-204). Indeed, it was the first time that the *Responsibility to Protect* principle was explicitly stated in a UN peacekeeping operation.

As the previous resolution had failed because of the absence of the consent of Sudan, this time, the Security Council only "invited" (§1) the host nation to accept such an outcome. Yet still, "the express desire for an invitation" represented "a regression from the proposals put forward by [R2P] which explicitly state that consent is not required" (Hehir, 2008, p.67). Unsurprisingly, the Government of Sudan rejected the resolution, manifesting that it was clearly unwilling to accept the help and assistance of UN peacekeepers to fulfill its responsibility to protect. Despite the resolution's threatening language, the lack of "international political will to push ahead with a non-consensual intervention [resulted in] efforts to deploy UNMIS personnel in Darfur [being] stalled" (Barber, 2009, p.298). The Security Council, under the influence of "opponents of intervention [who] argued that military action would probably worsen the situation" (Bellamy, 2005, p.52), once again, decided to respect the will of the host government in accordance with the « traditional peacekeeping » consent principle, and put aside its commitments towards R2P.

It is in 2007, with Resolution 1769, that the Sudanese government finally consented to the deployment of a hybrid AU/UN peacekeeping force (UNAMID), with a mandate to "take the necessary action [to protect civilians] in the areas of deployment of its forces and as it deems within its capabilities" (§15) (Barber, 2009, p.298). For the interventionists members of the UN, imperative action was

needed in order to halt the suffering of thousands of Darfuris[38]. The aim of the Mission in this context was to do "everything in its power to protect civilians in Darfur, facilitate the delivery of humanitarian aid to all areas, […] and to help provide an environment in which peace can take root" (UNAMID)[39].

However, "despite the best intentions of the African Union [and the UN], the harsh reality is that UNAMID is understaffed and incapable of fulfilling its mission" (Benjamin, 2010, p.240). There hasn't been any significant improvement in security since it was deployed and the fighting continues between communities, armed movements and the government. While the International Criminal Court (ICC) issued (in 2008, and then again in 2010) a warrant for the arrest of the Sudanese President, "on the basis that there were "reasonable grounds to believe that [al Bashir] bears criminal responsibility for the crime of genocide under Article 6(a) of the Rome Statute" (ICC, 2008, p.3; Benjamin, 2010, p.233), besides naming, there hasn't been much done. As Hehir (2008, p.68) puts it:

> [the] violence has continued, and has continued to be reported. The UN, international media, NGO's and regional organizations have all sought to highlight the suffering in Darfur. Throughout 2006 high-profile international figures led mass marches calling for greater action on Darfur. The history of the conflict in Darfur since 2003 thus evidences a striking contrast between massive international publicity of the "genocide" and the hesitant, timid, and equivocal action on the part of the UN Security Council and Western states.

In January 2015, Aicha Elbasri, a former spokesperson for the UNAMID mission in Darfur, affirmed in an interview to *The Guardian* (Elbasri, 2015) that in 2009, a UN and African Union peacekeeping chief declared that the war in Darfur was "over" (USA Today, 2009). If we look at the Internet now, we can barely find any documents about the civil war on Darfur dating after 2009. Indeed, it seems that "the war slipped off the international radar [although] it continued to affect the lives of millions of civilians in the region" (Elbasri, 2015). "The ICC has [also] suspended its investigations into crimes in Darfur, while the joint peacekeeping force, UNAMID, is allegedly preparing for a withdrawal following demands from the Sudanese government" (Elbasri, 2015)[40].

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[38] See UN Security Council Resolution 1769 (S/RES/1769).
[39] UNAMID Background. Available at:
<http://www.un.org/en/peacekeeping/missions/unamid/background.shtml> (Accessed 14 Sept. 2015)
[40] See Smith, D. ICC chief prosecutor shelves Darfur war crimes probe. The Guardian, UK. 14 Dec. 2014. Available at: <http://www.theguardian.com/world/2014/dec/14/icc-darfur-war-crimes-

The fact that the conflict still continues and that now a withdrawal of peacekeepers is envisaged demonstrates the lack of priority that has been Darfur, and international society's incapacity to respond to this humanitarian tragedy. In a recent article at *The Washington Post,* Eric Reeves talked about the "world's abandonment of Darfur", referring to it as "the first 21th century genocide", and the longest one in more than a century (Reeves, 2015). Similarly, Traub (2010, p.2) declared that "the international community might have been able to deter the regime by recognizing the rising campaign of violence at the very outset, in mid-2003", taking preventive measures or doing an early intervention.

> Both the UN Security Council and regional bodies, above all the African Union (AU), could have threatened, and then imposed, a graduated series of punishments in order to significantly raise the cost to the regime of continuing its campaign of attacks. Why were these actions not taken? (Traub, 2010, p.2).

6.4 Reasons for insufficient action in Darfur

When we look at the humanitarian disaster that is Darfur, we can't but argue that international society chose to ignore civilians' distress there. Indeed, while the situation was well-publicized and decried as one of the worst situation of humanitarian emergency at that time, besides humanitarian assistance, sanctions and the presence of a late (and ineffective) peacekeeping mission, not much has been done to avert human suffering there.

> The scale of the humanitarian disaster in Darfur [was not without evoking] memories of the genocide in Rwanda in 1994 [and] international community's willful paralysis in face of the genocide [; an episode that became] one of the most frequently decried in contemporary international politics (Hehir, 2008, p.68).

Yet while talk about genocide in Rwanda had been avoided by many states, it was widely recognized that a genocide was happening in Darfur; states did not try to deny it this time, and while "the optimistic pronouncements made after the intervention in Kosovo suggested that [the "never again" commitment in face of genocide] was being realized" (Hehir, 2008, p.68), this is not what happened.

This attitude heavily contrasts with the position states (that is, Western

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fatou-bensouda-sudan> (Accessed 20 Jul. 2015) And Sengupta, S.; Gettleman, J. U.N. set to cut force in Darfur as fighting rises. The New York Times, New York 25 Dec. 2014. Available at: <http://www.nytimes.com/2014/12/26/world/africa/united-nations-set-to-cut-force-in-darfur-as-fighting-rises.html?_r=2> (Accessed 15 Sept. 2015)

states) adopted a few years before in Kosovo, where NATO members acted out of a humanitarian imperative, in a preventive manner, and despite the lack of a UN Security Council authorization, to stop ethnic cleansing. There was indeed no such dialogue as those about the necessity to place morality over legal concerns, or human rights before states' rights, in the Darfur case. This is somehow problematic, since "to acknowledge that genocide is occurring [as did for instance the United States[41]] and then articulate a legal justification as to why, despite this, no action needed to be taken", puts in serious doubt the "never again" declarations (Clinton) and the idea of this "new interventionism" (Hehir, 2008, pp.69-70). While it was "acknowledged that the government of Sudan was complicit in large-scale crimes against humanity and ethnic cleansing in Darfur" (Bellamy; Williams, 2005, p.31), the reaction remained insufficient. If altruism is not enough to trigger intervention, what explains then states' reluctance, and incapacity to intervene (adequately) in Darfur?

6.4.1 Justifications

Many reasons have been invoked to justify the lack of an adequate response, but the most common have centered around the claim that there had to be an "African solution to an African problem". Since the beginning of the conflict, it was indeed claimed that the protection of Darfuris was a responsibility of the Sudanese government – which is kind of a paradox, since the latter was accused of being an active part to the conflict. Within the UN, there were many voices raised against intervention, saying that it would cause more harm than good. Ramesh Thakur, for instance, "argued that talk of Western intervention would, in all probability, embolden the rebels in Darfur and elsewhere in Sudan, worsen conditions, and reduce the chances of a comprehensive and sustainable peace settlement" (Thakur, 2004, p.63, apud Bellamy; Williams, 2005, p.39). Similarly, Francis Deng, the UN Secretary-General's Special Representative on internally displaced persons, sustained that,

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[41] "On 9 September 2004, […] Secretary of State Colin Powell [announced] […] that his government also believed genocide had been committed in Darfur. However, Powell went on to endorse a restrictive interpretation of the 1948 Genocide Convention and to insist that, despite his determination, no new action would be required on the part of the US government" (Bellamy; Williams, 2005, p.31). Despite the fact that Powell and Condoleezza Rice have personally witnessed the situation in Darfur, the U.S. aid remained limited to humanitarian assistance.

> [far] from alleviating the suffering of the people of Darfur, military intervention would be likely to complicate and aggravate the situation, because it would provoke resistance that would add another layer of conflict and would jeopardize the government's cooperation on the Machakos/Naivasha process. Deng concluded that international intervention in Darfur […] would push the country into an unknown future of multiple conflicts, with catastrophic consequences. His preferred solution was for the international community to support the AU to meet this challenge (Deng, 2004, apud Bellamy; Williams, 2005, p.39)

However, neither the Sudanese government nor the African Union were able to provide a sufficient answer to the plight of hundreds of thousands civilians. In this context, an early international intervention might have avoided the humanitarian disaster that is now Darfur. Yet the international community made it a priority to obtain the express consent of the Sudanese government in any peacekeeping mission to be deployed, rather than respond in a decisive manner to the ongoing massacre. This attitude contrasted with the hastened Western states' decision to intervene in Kosovo, preventively, despite the lack of a UN Security Council authorization.

The conflict in Darfur had reached the threshold for a morally legitimate humanitarian intervention. We might presuppose that something was missing in the equation for states to be sufficiently mobilized in Darfur: the will to go there. Some have recalled in this context the difficulty to make the responsibility to protect a reality in a world where so many states (including permanent members) remain attached to the primacy of sovereignty and the principles of non-interference and non-use of force. As a matter of fact, for many states, and in particular in Southern and recently independent countries, the concept of humanitarian intervention remains difficult to understand. Indeed, why "doing something" should be about intervening militarily when there are grave human rights violations, when millions die every day of diseases and famine, and assisting them could be much less risky and costly? For many, the humanitarian intervention discourse hides western imperialist values and a desire to interfere in other states' affairs and dictate governments what is proper behavior.

Both China and Russia have traditionally been against interference in other states' internal affairs, and in particular military intervention, especially without the consent of the host state. They have always militated in favor of the respect of state territoriality and sovereignty, and this could explain their abstention and opposition to intervention in Darfur. Yet some would argue that their opposition

has to be interpreted in light of other reasons, for instance their fear that the authorization of UN interventions may some day be used against themselves (for instance in the contested territories of Tibet and Chechnya). Others invoked reasons have included the priority for them to keep good relationships with the Sudanese government, because of important political and economic interests. Russia and China's opposition to any military intervention or hard sanctions against Sudan, for instance, could be interpreted in light of the substantial commercial interests that both country had in the region.

Russia, for instance, was supposed to have "sold around US$150 million worth of military equipment to Sudan, and in 2002, a $200 million oil deal with the Sudanese government [had fallen] through" (Bellamy; Williams, 2005, p.33). In this context, it was argued that Russia might have feared "that sanctions against the Sudanese government could provide a loophole for the Sudanese government to default on its payments to Russia" (Peterson, 2004, p. 14, apud Bellamy; Williams, 2005, p.33). Similarly, China was accused of supplying arms, and other military equipment to Sudan[42]. Moreover, as a major investor in South Soudan's oil sector (and its largest importer), China's interests lied in maintaining good relations with the Sudanese government. However, in proceeding like this, China and Russia violated the UN arms embargo – which they denied.

The reluctance of Western states to intervene, however, was more surprising, especially after the Kosovo war and states' commitment towards the end of injustice. Against this background, some have argued that since injustice in Darfur did not directly threaten a Western-preferred international order or its vital interests, it was not a top priority. Bellamy and Williams (2005, p.34) suggest that "given the [West]'s increasing experience of peacekeeping and enforcement, the most likely explanation for its failure to contemplate intervention in Darfur was that its leaders lacked the political will to muster the necessary resources". Western states had the capacity to intervene, and to do so rapidly. For instance, the UK's Chief of General Staff told the BBC in late July 2004 that, "if need be, we will be able to go to Sudan. […] we could put a brigade [approximately 5,000 troops] together very quickly indeed" (Reuters, 2004, apud Bellamy; Williams,

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[42] See Report Accuses China and Russia of Arming Sudan. The New York Times. 9 May 2007. Available at:
<http://query.nytimes.com/gst/abstract.html?res=9A06E7DC1731F93AA35756C0A9619C8B63>
(Accessed 15 Sept. 2015)

2005, p.34). However, the reality is that they were not willing to do so, and we suppose several factors help understand Western states' reluctance to intervene, and the insistence on the African Union solving the problem.

Firstly, their reluctance to intervene can be interpreted as an agency problem, in light of the "increased […] skepticism about the West's professed humanitarianism", in particular after 9/11 and Iraq; an argument that "revolved around two factors: terrorism and oil" (Bellamy; Williams, 2005, p.36). Western states diminished credibility and legitimacy might have prevented them to consider intervention. As mentioned earlier, military intervention by Western states was highly unwanted in Sudan. It was understood as masking neo-imperial ambitions. "Whereas in the Kosovo case there was significant international acceptance of the legitimacy of NATO's claim that it was acting to avert a humanitarian crisis", following 9/11 and Iraq, most actors in international society, especially in the Muslim world, believed that the humanitarian rhetoric was "used to mask the exercise of hegemonic power" (Bellamy; Williams, 2005, p.37).

> The anti-UN demonstrations in Khartoum that followed Resolution 1556 provided an indication of the depth of anti-Western sentiment within sections of Sudanese public opinion who believe that their government was engaged in legitimate counterinsurgency operations in Darfur (Bellamy; Williams, 2005, p.37).

Similarly, "most of [the Arab League's] member states were xenophobically opposed to a Western-led intervention in North Africa, and strongly protective of one of their own" (Grono, 2006, pp.621-631). This sentiment explains why the Sudanese government only consented to the presence of peacekeepers coming predominantly from African countries. The challenge facing Western states, then,

> was to find ways of responding to Darfur's crisis that emphasized their commitment to the idea of "sovereignty as responsibility" but which did not fuel Islamic radicalism and encourage Sudan to become a haven for anti-Western terrorist groups as it had been in the early 1990s. This logic provided another justification for letting the AU take the lead in the international response (Bellamy; Williams, (2005, p.37).

Some evoked the "Somalia syndrome" as a reason for inaction, referring to US's experience in Somalia in 1993, which appears to have been also a key influence in the decision not to intervene in Rwanda in 1994 and possibly in Darfur, too (Chesterman, 2002, p.185, apud Hehir, 2008, p.79). The Somalia syndrome presupposes "that interventions in Africa are doomed to fail, given the

endemic ethnic hatreds and violent opposition towards external interference prevalent in the region" (Hehir, 2008, p.79). Darfur is a big and complex war, where it is difficult to distinguish between both sides that are fighting. It is a complicated conflict, which demands a long-term commitment within a hostile country. The high risks and costs involved with such an operation might have dissuaded possible interveners. Besides, successful armed intervention might also have been unlikely.

> The decision not to intervene [then] appears to be the result of an arguably quite **rational, if amoral, appraisal of the likely consequences of such action**. This appraisal, in the Darfur case, is said to have **privileged national interest over the alleviation of human suffering** (Hehir, 2008, p.79).

Darfur did not represent a direct threat to a Western-preferred international order. Refugees were internally displaced and mostly going to neighboring countries like Chad. Consequently, injustice there did not pose a direct threat to Western states. As suggested in our argument and in the Kosovo case, the perception of a conflict as a threat to international order can influence interveners towards action. The protection of important strategic interests can also be an important motivator, but it can dictate actions other than intervention. Sometimes, interests are in fact better preserved by inaction. If we go back to the arguments about terrorism and oil, we find that they are not entirely ill founded, in particular when it comes to the US. Indeed, the latter has a mixed relation with Sudan, and even well before 9/11, as Bellamy and Williams (2005, p.37) explain, "the US government consistently identified Sudan as a key state in its counter-terrorism policies in Africa. Moreover, since Sudan began exporting oil in 1998, the USA viewed it as a potential alternative, non-Middle Eastern, source of oil". Counter-terrorism policy being a priority in US's foreign policy, concomitantly with the oil question, might then have been reasons for insufficient action. Rationally speaking, inaction was the best option for them. Therefore, USA privileged the addressing of the consequences of the conflict, by sending humanitarian assistance, and not its causes.

Finally, another invoked reason for inaction was the concern with "the relationship between the crisis in Darfur and Sudan's other civil wars" (Bellamy; Williams, 2005, p.27). Repeatedly, Western leaders

voiced prudential concerns about the potential impact an intervention in Darfur might have on Sudan's other civil wars […]. […] These powers saw the Naivasha agreement as potentially ending Africa's longest running civil war and providing a framework within which the grievances of other regions within Sudan could be addressed. Darfur's crisis was [thus] considered secondary (Bellamy; Williams, 2005, p.38).

Thus, as argued before, the Darfur crisis seemed to lack priority. The need to respond to human rights violations there was repeatedly said, during the meetings before adopting several of the resolutions about Darfur, by global civil society, and so on. However, most states emphasized that the Sudanese government had to be consulted and included before any intervention plans. There was no question of enforcing human rights at the cost of violating states' rights.

Conclusion

Choosing Darfur as "a test case by which to judge whether the international community had got any better at responding to genocide and crimes against humanity" (Slim, 2004, p.811, apud Hehir, 2008, p.68) provided us with great insights. What can be deduced from this overview is that the capacity of states to act beyond their national interests, placing human rights before states concerns, was very limited, if existent at all. When rational calculations dictate a comportment other than the one required by morality and justice, there is not a great deal of chance that intervention is going to happen. Thus, progress in the 1990s appears to have been inflated (Hehir, 2008, p.95). "The crisis in Darfur […] dashed the notions of progress when the world watched a massive humanitarian tragedy go unaddressed despite extensive media coverage and the highly successful mobilization of NGOs and Western democratic publics" (Hehir, 2008, p.147). The abandonment of Darfuris to their own fate and UN's late and ineffective response, showed that states' capacity to act beyond their narrow interests – that is, to commit their own troops when risks and costs are higher than desirable –, was exaggerated. Genocide in Darfur, similarly to what happened in 1994 in Rwanda, was not identified as a threat to (their) international order. Rational considerations took over humanitarian rationales, and global civil society had in this context limited capacity to pressurize states towards ethical conduct. As many decried, there seems to have been a "conspiracy of silence".

> The sad reality is that Darfur simply does not matter enough, and Sudan matters too much, for the international community to do more to stop the atrocities. [...] As much as governments in Europe and the U.S. are disturbed by what is happening in Darfur [...] almost without exception they are not prepared to commit their troops on the ground in Sudan. Hence their enthusiastic support for African solutions[43].

The Darfur case enable us to affirm that there has been, in fact, an idealization that the West would act, and according to some, this belief only served to worsen conflicts, which would rapidly escalate in order to trigger international attention[44]. The worst humanitarian crisis in the post-Kosovo period is also proof that the promises after Kosovo, that is, *the Responsibility to Protect*, have failed to manifest, as it served in fact to undermine intervention by handing the responsibility to the Sudanese government. And global civil society, despite its capacity to highlight human suffering in Darfur, had insufficient impact on the decision-making process. The on-going crisis in Darfur, then, illustrates well that the principles subsumed by the responsibility to protect remain weak and are still contested within the international community.

The present section illustrated the contrast that exists between theoretical evolution of politics and practice. Darfur shows, as Hehir suggests (2008, p.74), the confrontation of the post-1999 optimism and "the reality of international politics and the ongoing suffering of thousands across the globe". While injustice in the Balkans was perceived as threatening international order, and thus mobilized Western states to intervene in 1999, the extent to which injustice is interpreted as a threat to international order will vary from case to case (Wheeler, 2000, p.302). As Wheeler argues, in Kosovo, "Western states had both security interests and a moral obligation in risking soldiers lives to stop the supreme humanitarian emergency". The same cannot be said about a far away country like Rwanda or Darfur (Wheeler, 2000, p.302):

> Can it really be argued that the genocide there posed a threat to western security interests and wider international order that justified the sacrifice of Western soldiers? [...] At this point, we are left to say they should have intervened for reasons of humanity.

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[43] ICRtoP. The Crisis in Darfur. New York, [n.d.] Available at: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-darfur> (Accessed: 15 Jul. 2015)

[44] See Kuperman, A. J. The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans. International Studies Quarterly 52, 2008, pp.49-80.

As Wheeler points out well, Darfur did not pose a direct threat to international order and Western states' national and security interests, that would justify risking soldiers and incurring the costs and long-term engagement that it demands. For instance, there was no threat that thousands of refugees might go to their borders. Genocide was happening in a faraway country, with which they did not share similar values or civilization; where their presence was rather perceived as a threat, as a new form of imperialism, rather than "salvation". It was highly unwanted, as anti-UN manifestations within the country showed. Besides, security and national interests in Darfur also served to impede intervention, as maintaining good relationship with the Sudanese government and solving other wars within Sudan were priorities for many UN Security Council members.

Kosovo has then to be understood rather as an enabling context, with the right combination of principledness and national interests that made intervention possible, rather than with a "revolution" or turning point. Besides, we cannot affirm with certainty that a determinate behaviour will always reproduce/continue. For instance, it is not certain that because some states once show more solidarism (for instance in Kosovo), or on the contrary, no solidarism at all, that this will become a fixed pattern of international society. In a similar context it might adopt a radically different attitude. While states might have showed more solidarism in the Kosovo case and adopted new standards and principles of action such as the *Responsibility to Protect* (R2P) subsequently, it is important to highlight the fact that "changing norms […] do not determine that action will [actually] take place (Wheeler, 2000, p.9). "New norms don't guarantee changed actions, since just as their restraining power does not physically prevent actions, "new or changed norms enable new or different behaviours, they do not ensure such behaviours" (Finnemore, 1996, p.158). States can agree in principle but violate rules in practice – as they always have done. Besides, Western states argued that Kosovo was as a unique case, from which no precedent for further action could be derived. This is particularly revealing.

While humanitarian concerns were present in Darfur and the West's attitude was condemnatory, the latter ultimately remained muted and weak. Similarly to Rwanda in 1994, "the scale of the genocide in Darfur was not sufficient to compel Western states to overcome their reluctance to become embroiled in the internal affairs of an African state for fear of the costs involved" (Hehir, 2008, p.79).

Darfur was risky, costly, and the maintenance of good relationships with the Sudanese government was a priority for many states within the Security Council. Still, we might wonder, states could have intervened for humanitarian reasons alone. Indeed, the conflict had reached the just cause threshold (JWT and R2P) for legitimate intervention. Yet we see here that altruism is not sufficient enough, on its own, to trigger intervention. Although inaction is not derived exclusively from disinterest or amorality, the decision to intervene nevertheless depends on a complex combination of factors, which determine the response to any given situation, and where security concerns and interests are most of the times determinant. Thus, as Bellamy and Williams rightly argue (2005, p.43):

> Armed intervention in response to a supreme humanitarian emergency is currently only likely when a state, group of states or regional organization becomes sufficiently animated that it is prepared to incur significant political and material risks to ease the plight of suffering strangers and secure international legitimacy for its actions. […] In Darfur's case, […] many […] could have taken such political and material risks […]. However, neither the AU nor the League of Arab States (LAS) […] were prepared to do so. The lack of a regional response left EU and NATO members as the most plausible interveners. But these were unwilling to contemplate intervention in Darfur.

Despite the progresses made in the name of human rights, international society remains statist, lying at the pluralist side of the spectrum and making the decision whether to intervene predominantly dependent on rational calculations. In this sense, unless international order or vital national interests are threatened, or that the risks and costs of intervening are low and demand a short-term engagement (which was not the case here) states will not intervene. Mueller (2005, p.109) provides a comprehensive explanation for that:

> Because they often have little interest in humanitarian problems in distant areas of the globe, because they sometimes subscribe to a misguided impression about ancient ethnic hatred that provides them with a convenient excuse for neglect, because they have a low tolerance for casualties in such ventures, because they have an aversion to the costs and problems that attend long-term policing, because there seems to be little domestic political gain from success in policing ventures, and because they harbor something of a bias against undertakings that could be construed as aggression.

Thus, contrarily to the Kosovo belief, order – understood as rational action –, and justice – understood as moral action –, cannot always be reconciled. What appears is that, at the end, order generally trumps justice and sovereignty trumps human rights. There was thus an overestimation of the ability of an ideal (justice)

to compel states' actions, and a clear underestimation of the importance of interests in Western foreign policy. Although "the situation in Darfur [was] a relatively straightforward case for the permissibility of armed humanitarian intervention, […] [having] even surpassed the threshold conditions for military intervention", the international community was unable to take appropriate action in Darfur (Heinze, 2009, p.126). The consequences of this can be seen today in an on-going conflict. "Despite the massive and well-publicized violence, the reasons for insufficient action were simply more compelling than the reasons for action. There is little reason to believe that this calculus has since changed" (Traub, 2010, p.24). Concluding, the increased optimism to a new era in the 1990s did not manifest itself and, looking at international politics today, for instance with the crisis in Syria, it is probably not that soon that it will change. Indeed, it is only recently that the international community started looking at the humanitarian tragedy that is Syria, and we might argue that it strangely coincides with the rise of Syrian refugees in European boundaries, and countries.

7. Conclusions

Against the background of the end of the Cold War, this thesis has sought to explore whether the growing optimism in the 1990s concerning an era where states would take more responsibility-based actions when it comes to addressing injustice, that is, human rights violations, concretized. Many International Relations scholars, such as Richard Falk, described the 1990s as a period characterized by a "global justice movement, which provided grounds for hopes that normative constraints would impinge on the practice of realist geopolitics" (Hehir, 2008, pp.41-42). It was believed that the concern with human suffering abroad would translate into state action, especially now that the Security Council was freed from the Cold War blockade.

The present study was particularly interested in this context in providing answers to the controverted questions of what leads states to intervene militarily, and whether they are capable of acting as moral agents? What actually influences, motivates, and determines humanitarian intervention? The questions this research asks have historically been the subject of great debates in the field of International Relations, especially between Realists and Cosmopolitanists. They disagree about the possibilities of acting morally within the international realm. More precisely, the Realist tradition of thought sustains that morality does not have a place in international relations because states are unable to act as moral actors. Authorizing the presence of moral elements might then, according to them, lead to abuses, thus weakening an already fragile international order. They affirm that, "intervention never occurs for altruistic or moral reasons"; "governments only invest the nation's assets if the common good of the nation is served, [that is,] if the intervention renders material benefits" (Krieg, 2013, p.134). States are considered entirely rational actors. Consequently, "[any] intervention whose costs have to be borne by the nation, [and which] only serve the interests of strangers" (Krieg, 2013, p.134), is not deemed permissible.

By contrast, the Cosmopolitanist tradition of thought claims that, "the interests of the state or the nation are […] secondary to the interests of individuals, […] [and] there should not be a distinction made between nationals and non-nationals" (Krieg, 2013, p.134). They believe in the capacity of states of

acting as moral agents, that it is altruism that guides humanitarian intervention, and "reject any notions of maximizing one's own interest or the interests of the nation" (Krieg, 2013, p.134). Human rights must thus be placed before states' rights and justice have the priority over considerations about order or interests.

In the present study, we adopted the view of the English School, which is a *via media* between the two extremes of Realism and Cosmopolitanism (Buzan, 2004, p.10). We affirmed that they explain and depict the reality of international society and states' decision-making process in a more acute way. For instance, English School theory scholars acknowledge that states are both rational and moral actors, and that their behaviors reflect a concern for both order and justice, albeit in differing degrees. We have declared in this context that we cannot reasonably define states' actions (or inactions) and decisions, especially when it comes to supreme humanitarian emergencies, in terms of either a national/security interest or altruism. This dichotomy has to be nuanced, since any decision taken by states necessarily comprises both moral and rational considerations.

International actors are therefore able to increase their level of solidarity and act in more ethical ways. However, it depends on their willingness to do so. We suggested that two main factors help explain the decision to intervene or not: first, the perception of a determinate crisis (injustice) as a threat to international order. And second, the presence of important strategic interests that dictate different responses, according to a cost-benefit calculations. We also invoked other reasons, which, in a lesser degree, might influence and impact the decision, facilitating or impeding intervention to take place, i.e., the diminished legitimacy and credibility of interveners.

While, as Wheeler (2000, p.309) writes, "there is often a "mutual compatibility between protecting the national interest, promoting international order, and enforcing human rights", as NATO's intervention in Kosovo in 1999 showed, our empirical analyses demonstrated that it is the concern for order, and in particular, fears about the possible impacts that instabilities in other states could have on states' national interests (for example, the risk of refugee flows in the Kosovo case), that are generally decisive in the decision-making process. Yet the extent to which disorder in other countries is interpreted as a threat to (Western) states' interests varies from case to case, as inaction in Darfur shows. Moreover, the protection of strategic interests can dictate different responses. Decisions

whether to intervene are thus highly dependent upon rational considerations and the international political context, which can work to impede or difficult action, despite the threshold for a legitimate intervention having been met, and the existence of real humanitarian concerns to the plight of civilians abroad. Andreas Krieg (2013, p.50) illustrates this phenomenon, when affirming that,

> despite the fact that human beings have naturally an inclination to help others and engage in altruistic behavior, the actual willingness and propensity to do so depends [on other factors]. […] since even the most altruistic personalities do have limits in their ability to do good for the benefit of others without creating harm to themselves, altruistic action is naturally subject to selectivity.

Since intervening in other states for the sake of others than national citizens implies costs and risks for interveners, it is probable that they will consider intervention only if they perceive these human rights violations as a threat to international peace and security (United Nations, 1945), or more precisely, as a threat to their own security and interests. Humanitarian intervention is highly dependent upon states' rational calculations, that is, considerations of costs, risks, and benefits of both action and inaction, and this necessarily entails some selectivity. States might intervene, yes, but neither everywhere, nor every time. We stated in the present thesis that what made the Kosovo intervention possible was the mutual compatibility between the pursuit of order and justice. That is, humanitarian reasons commingled with security interests in Kosovo, and the pursuit of both objectives enabled military intervention.

Had Kosovo not constituted a threat to European countries, intervention would probably not have taken place or even be considered. Indeed, our empirical analysis showed that in the Kosovo case, Western states intervened not only because human rights violations there represented an affront to common humanity, or because of intensive pressures from global civil society and indignation from public opinion. While the international community was deeply engaged and concerned with human suffering in the Balkans, it is the view of refugees at the boundaries of Europe, the perception of it as a threat to Western European security and economic interests that ultimately were decisive. Indeed, it is not before Kosovar Albanian refugees were at the doors of Europe that decisive action was taken. The calculations of intervention as rapid, casualty and risk-free were also determinant.

Darfur was employed in the present work as a test case to determine why was it that despite all the proclaimed progresses in the field of human rights (R2P) and increased optimism (especially after Kosovo) about the capacity of states to take responsibility-based action, no one was willing to send troops there, claiming instead that there had to be an "African solution to African problems"? Humanitarian crisis in Darfur served to confirm that the so-claimed "triumph of human rights" in Kosovo was nothing more than "a happy coincidence where the promotion of national security also defends human rights" (Wheeler, 2000, p.30). Indeed, despite the similarities with Kosovo, the international response to the conflict in Darfur has been very different.

Some have argued in this context that since Kosovo happened in Europe, it more easily mobilized Western actors than a conflict occurring in faraway Africa would. The failure to act in a decisive manner ten years earlier in Rwanda reminds us of this point. Others argued that it is the international political context at the time of the crisis that certainly made it difficult to persuade others to support a military intervention, because of a perceived abuse of the practice by those same Western states that intervened in Kosovo. Non-intervention in Darfur could then be explained in terms of "agency problems" (Heinze, 2009, p.125). More specifically, some international events portrayed interveners "as abusing their privileged normative position [as "human rights defenders"], because of frequent abuse of these norms [especially after 9/11 and Iraq] or by engaging in double standards" (Heinze, 2009, p.124). This "affected [Western states'] legitimacy and efficacy as agents of humanitarian intervention" (Heinze, 2009, p.125), possibly impeding them to intervene militarily in Darfur.

> If the credibility of a human rights norm carrier is diminished as a result of its rhetoric or behavior, it creates an international political context in which the actor finds it increasingly difficult to persuade other actors to support its agenda, possibly provoking opposition (Heinze, 2009, p.124).

The impact of NATO's illegal intervention in 1999 would have, then – contrarily to human rights advocates' hopes – had rather a negative influence for future interventions. Indeed, as our empirical analysis has shown, there was far less willingness to allow those Western states capable to intervene in Sudan due to fear of their motives being commingled with strategic interests (Heinze, 2009, p.124). Indeed, and by contrast with Kosovo, the presence of Western

peacekeepers was highly unwanted in Darfur. Yet insufficient action in present humanitarian tragedies (DRC, Syria, etc.) denote that it is not only about bad reputation, but mostly about a lack of will.

More specifically, instabilities and human rights violations in this Southern Soudan province did not pose a direct threat to the same actors that advocated intervention in the Balkans five years earlier. There were no equivalent risks of refugee flows for instance. Therefore, they did not felt compelled to act, because they did not feel "concerned". Moreover, not only were the risks and costs (financial and human) involved in a humanitarian intervention there particularly high, but also, intervention there demanded a long-term engagement from states, furthermore in a "hostile" country. States' reluctance to "do something", international society's weak response to human rights violations in Darfur, then, can also be explained in part by arguing that states' interests (and international order) were better preserved with inaction. There was no mutual compatibility between order and justice in this case.

As Krieg (2013, p.50) rightly portrays, "governments only tolerate the losses and costs of intervention that actually serve the national interest. The fewer the national interests involved, the more governments are inclined to either remain passive or keep the costs minimal". Many powerful states, for instance China and the United States, had important security-related interests involved in the country and set as a priority to keep good relations with the Sudanese government. Therefore, the decision was ultimately based on rational considerations, not moral ones, confirming the argument that human rights have less "constraining power". Indeed, as Krieg (2013, p.43) explains, while

> [i]nternational law binds the state to universal international norms, which dictate the defense of human rights beyond national borders. [It] does not impose a perfect duty on the state [(no mechanisms of human rights enforcement), and] the state itself is in fact not bound by any second contract that might take precedence over the social contract […] For this, the international community would need the establishment of a credible and enforceable human rights regime that does not only authorize, but actually impose the duty on all states to intervene in cases of supreme humanitarian emergency.

This is what the Responsibility to Protect principle pretends to accomplish, though the amount of its success is questionable. The solution then, according to some, would be to make intervention compulsory. However, this seems difficult to achieve, in particular since the rules of sovereignty, non-intervention and non-

use of force continue to stand as master institutions within the international realm. There is no consensus on a global level, as to derogating them to pursue justice. Indeed, if we look at the Security Council meetings before the votes of resolutions, states were particularly insistent on the importance of respecting the sovereignty and territorial integrity of states. The necessity of obtaining the consent of the accused government is highlighted by many states, which remain particularly prudent, weighting their words. These questions matter and states are likely to derogate to them only if a determinate humanitarian tragedy is severe enough that it could have a harmful impact on other states, thus justifying why intervention is necessary not only morally, but also rationally.

Thus, even if global civil society succeeds in convincing states that intervention is the "moral thing to do"; even if they come to believe it is the appropriate conduct; they will only be willing to spend assets if massive human rights violations abroad threaten to destabilize the "world" in which they live. Again, this doesn't mean that states are devoid of morality or that morality does not have a place within the international realm, as would realists argue. Altruism plays a significant role in motivating states to intervene. As Krieg (2013, p.135) puts it, "altruism does impact the decision-making process surrounding humanitarian intervention and can ultimately stimulate both individual decision makers and governments to invest both financial assets and military personnel into saving strangers". The United States' intervention in Somalia in 1992, for instance, is often referred to "as a proof that regardless of the availability of national/self-interests, the suffering of individuals can trigger feelings of moral obligation to assist endangered individuals abroad" (Krieg, 2013, p.135).

However, "despite the existence of altruism in the decision-making process surrounding humanitarian intervention, national/self-interest is a constant that also cannot be disregarded" (Krieg, 2013, p.135). As a matter of fact, it seems that intervention for altruistic reasons will occur only if costs and risks are estimated as very low, and thus, as not compromising the intervening states' assets (yet the United States estimated it wrong in Somalia). Consequently, despite the progresses and normative developments in the humanitarian field, which led for instance to the adoption of the *Responsibility to Protect* (R2P) principle, place human security as a priority in their foreign policy agenda, and create many legal bodies and institutions empowered to prosecute as well as protect individuals (for

instance the International Criminal Court); despite the United Nations increasingly taking its responsibility as a norm-enforcer of human rights; and despite the pressure exercised by global civil society on states and its capacity to raise international awareness (through medias); the response to human rights violations and to human suffering has remained, and still is, insufficient.

International society's failure to prevent, to avert, and to stop human suffering and massive crimes such as ethnic cleansing and genocide continues to be seen today, in Darfur, in the Democratic Republic of Congo, in Syria, and many other places. Yet "stopping genocide requires a willingness to use force and to risk soldiers lives" (Wheeler, 2000, p.240), and this illustrates the limits of humanitarian intervention on pure moral grounds, as actors will be more reluctant to put "themselves in danger in parts of the world that are peripheral to their national interests" (Wheeler, 2000, p.240).

> If intervention does neither serve the political interests of the decision maker nor economic or geo-strategic national interests, altruism cannot compensate. […] Taking into account that humanitarian interventions entail real costs in terms of material and manpower, it appears to be not viable to expect governments to invest into humanitarian crises in absence of any material returns (Krieg, 2013, p.135).

Consequently, to those who hoped that the 1990s would give place to a more solidarist, responsible international society, the present thesis answers that a society of states, where individual rights are put above state rights and interests, is a bit of a premature project – at least on a global scale. While there have been many developments in the field of human rights, there are limits to humanitarianism in the form of intervention in support of civilians in danger, as our case studies have shown. It appears from our investigation that the world is still more bound to pluralist (and sometimes realist) values, than solidarist ones. Overall, the gap between words and deeds has been reduced, when it comes to human rights enforcement; however the response to injustice remains too timid. It seems that while being informed and while having the capacity to help, governments chose to ignore, doing the minimum required, to help those in need and the victims of terrible atrocities. Consequently, human rights violations continue to be unaddressed, or are inefficiently addressed, and the absence of consensus among states on recent human rights' developments doesn't permit to be excessively optimistic for the near future. The difficulty for some states to

understand sovereignty as responsibility, and the perception by many that talk about human rights and solidarism only serve Western countries' interests, are other reasons why humanitarian developments and actions are regularly opposed. Thus, while there seems to be developments that go in favor of a more solidarist society of states, strong pluralist elements still characterize states' conduct, thus delaying the "solidarist dream" (Wheeler, 2000). This makes us conclude then, that while states can act as moral actors, they are predominantly rational ones, and at the end, order trumps justice. Humanitarian crisis continue being addressed only selectively, as we see in unfolding crises today. Human rights advocates therefore did not succeed in dislocating the primacy of order over justice.

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