*“The existence of nations and national borders is an obstacle to the establishment of justice in the world.” Discuss this claim in relation to humanitarian intervention.*

**Introduction**

Aiming to bring peace among kingdoms and empires, the treaties of Westphalia in 1648 established the founding principle of *sovereignty of states* and its corollary, the principle of *non-intervention*, so as to enshrine the sanctity of borders and thereby ensure that each State would not invade the territory nor interfere in the internal affairs of another State. The problem with this, of course, is that it allowed for different forms of regimes to evolve independently and inequalities to grow between nations. With the development of transport and communications, borders were no longer permeable to scrutiny or judgment, and a growing concern in international relations ensued: whether or not the existence of nations and borders was in fact an obstacle to justice in the world.

Over the past 50 years, this question has mainly been raised regarding the instance of humanitarian intervention (HI) because of the fact precisely that it is carried out *without the consent* of the State where it takes place and usually against its very authorities. Tragedies such as the Biafra War in the early 70’s, Somalia, Srebrenica and most shockingly Rwanda pitted the principles of sovereignty and non-intervention against the necessity to protect Human Rights. Stuck between a rock and hard place, States became increasingly incoherent in their behavior and were criticized both for what they did and didn’t do. This dangerous contradiction is most strikingly illustrated by the UN Charter itself, where Article 2 enshrines the intervention-proscribing principle of sovereignty of States while Articles 55 & 56 lay down the intervention-prescribing necessities of Human Rights.

When looking at HI in the broader scope of Justice, the question then becomes: should sovereignty (i.e. non-intervention) serve as a barrier against humanitarian intervention? The necessary flipside to this interrogation follows as such: do States have a right, or even a moral duty, to intervene in the internal affairs of another State in order to prevent and stop violations of Human Rights?

**I –Justice in sovereignty, human rights and intervention**

In order to grasp the full complexity of the problem at hand, we must understand HI as the use of military force. The controversial aspect of HI is that it is the *physical intrusion* of one State into another and this cannot be achieved without the presence of men and equipment. The underlying question at heart here then becomes whether intervening militarily within the borders of another country without its government’s authorization and for humanitarian purposes serves the interests of Justice or not. The difficulty here stems from that fact that, in truth, both sovereignty *and* Human Rights carry their respective weight as principles of Justice.

On the one hand, as a safeguard against interference between States, sovereignty is the penultimate principle of international relations as the whole doctrine of just war hinges on its prescriptions. It protects the interests of weaker States against the expansive pretentions of stronger ones and is the normative translation of a people’s right to self-determination. At their roots, then, sovereignty and non-intervention are rules of peace, equality and respect *among nations*. On the other hand, Human Rights were drafted so that every single human being, irrespective of place of birth, gender, skin color or social status is able to enjoy the same amount of fundamental rights and protection from harm. So essentially, Human Rights are statements of peace, equality and respect *among individuals*.

However, so long as State governments are responsible for protecting Human Rights, they find themselves in a dilemma when faced with situations where other States’ governments are causing Human Rights violations within their own borders. On the one hand, if they intervene, they protect individual rights but violate the principle of sovereignty. On the other, if they don’t intervene, they respect the system of States but fail to stop harm being caused to individuals. In resolving a case where both options entail a negative, one ought to choose the “lesser of two evils”. But are we really facing such a case here? What would the two “evils” be? By intervening we would be *violating an aggressor’s boundaries*; by not intervening we would be *ignoring a victim’s suffering*. Breaking the problem down in this way, we face a staggering conclusion. Have our international customs and traditions rendered us so morally blind that we even have to doubt whether or not intervention actually serves Justice?

II - **Justice requires that sovereignty yield to humanitarian intervention**

From April to July 1994, an estimated 800 000 Rwandan Tutsis were murdered in what proved to be the quickest and most intense genocide in History. Yet, as the whole world witnessed in horror, no one came to their rescue. Was it because Rwanda was a State so powerful that potential actors were afraid of retaliation? Was it because the victims of the genocide deserved their fate for past injustices? Was it because some unfathomable catastrophe somewhere else was overwhelming the world’s forces? No. The only reason was the lack of agreement between States on how best to address the non-intervention rule. While paperwork piled up in UN offices, bodies piled up in the streets of Kigali and by the time States realized how cowardly they were acting, it was too late.

The way the international community reacted to the Rwandan genocide demonstrated the moral foolishness of international relations. The threat of nations to Justice in the world became apparent as soon as tyrannous regimes could use sovereignty as a license to kill and borders as a shield from outside intervention. In the aftermath of the Rwandan genocide, Kofi Anna, then Secretary General of the UN, challenged the international community to rethink its codes of conduct: “*If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda […], to gross and systematic violations of human rights that offend every precept of our common humanity*?” The invocation of the “precepts of our common humanity” is fundamental, as through this formula he makes HI an element of morality and, by extension, of Justice.

Sadly, the larger part of the debate was misguided as it concentrated on the rightfulness of intervention *per se*. By doing so, it failed to grasp the fact that the legitimacy of HI is only inversely proportionate to the legitimacy of sovereignty, and truth is, sovereignty and nonintervention are prescriptions of Justice *only* so far as the State itself is an object of Justice. Problematically, the concept of sovereignty evolved in such a way that it ignored the original purpose of the State. Without going back to social contract theories, States exist primarily to guarantee order between individuals and protect their rights and liberties. In other words, States are nothing more than a *means* to an end; that end being, broadly, *Justice*. To this effect, Thomas G. Weiss writes that “although the State remains the principle provider of security, it is seen in instrumental terms”[[1]](#footnote-1), meaning in turn, as Fernando Tesón points out, that “sovereignty is an instrumental, not an intrinsic, value”. Therefore State “who seriously violate [the rights of their people] undermine the one reason that justifies their political power [and] should not be allowed to shield themselves behind the sovereignty principle”[[2]](#footnote-2).

It is the shattering of this diplomatic fantasy that allows for humanitarian intervention to find its justification. Today it is widely accepted that if States violate Human Rights they “forfeit their right to be treated as legitimate sovereigns”[[3]](#footnote-3) and therefore “their sovereignty, as well as their right to nonintervention, is suspended”1 . This shift in perception inevitably points to the effect of borders on the unequal delivery of Justice in the World. The creation of many humanitarian NGO’s since the 1970’s illustrates the lack of efficiency from States precisely because unlike States they don’t need to submit themselves to the stringencies of international diplomacy. On this matter Kofi Annan conceded that “States bent on criminal behavior [should] know that frontiers are not an absolute defense”[[4]](#footnote-4) and Fernando Tesón even more directly asserted that “national borders can hardly have any moral significance [when] a great deal of suffering and injustices in the world derives from exaggerated importance that people assign to [them]”[[5]](#footnote-5).

Yet, how stringent an obligation is it? Even before the Westphalia Treaties, Hugo Grotius wrote in *De Jure Belli ac Pacis* that States may exercise a right to intervene in cases of misconduct. This however was still only a *right*, so it remained a supererogatory action at the discretion of States. Justice, however, is supposed to be impartial, so it cannot be left to the will of those in power. In the 1980’s, legalists such as Mario Betatti and politicians such as Bernard Kouchner theorized what became known as the *duty to intervene*. Although it caused some controversy, it seems like this is the correct way to consider HI. Refusing to intervene should be seen as failing one’s moral obligations, and therefore participating to the injustices. In this sense, HI can be assimilated to what Cécile Favre calls “mandatory rescue killings”. Seen as there is a “moral duty to kill a morally culpable attacker in defense of his victim […], States are not merely entitled to wage a war of intervention in defense of a genocidal tyrant’s victims, [they] are also under a moral duty to do so”[[6]](#footnote-6). The ICISS adhered to this conception by claiming that whenever a State “is unwilling or unable to fulfill [its responsibility to protect] – or is itself the perpetrator of abuse – there is a residual responsibility for other states to take up the slack”[[7]](#footnote-7). In other words, States not only have a right to intervene, they are right to do so.

**III – Redefining sovereignty and conditioning intervention to prevent new injustices**

However, admitting that sovereignty must not be an obstacle to HI does not mean that these types of behaviors should be unrestrained. After all, sovereignty and nonintervention serve several purposes that for the sake of Justice cannot be ignored. First of all, in the current system of States, they ensure respect among nations and allow for the balance of power to remain in check. As the ICJ stated out in 1949, “respect for territorial sovereignty is an essential foundation of international relations”. This may be true, yet the argument from stability cannot be upheld in the face of gross violations of human rights, because in reality, “allowing the atrocities to continue is a much worse dissolver of that [international] glue than the infringement of borders.”[[8]](#footnote-8)

It seems quite peculiar that non-interventionists have no quarrel over, for example, federal troops using force against a violent provincial government, but they will not accept those same federal troops from crossing a national border stop similar crimes. “For [non-interventionists], national borders mysteriously operate a *change in the description* of the act of humanitarian rescue: it is no longer humanitarian rescue, but war.”8 Admittedly, in the sense that it is a military operation, HI can be qualified as war, but recognizing this should simply put the intervening State under a duty to abide by the rules of just war. Yet by some curious self-defeating intellectual contortion, those who refuse the Clasewitzian view that war is the pinnacle of a continuum in political practices and instead see it as something that is intrinsically wrong are usually the same who advocate for Human Rights and shriek in disgust whenever some tyrant massacres innocent populations.

The underlying concern here is really that HI must not lack just cause and just intention. Indeed, HI has often been criticized as a hypocritical means to advance secondary interests responding far more to political and economical ambitions than to concerns of Justice. For instance, NATO’s intervention in Kosovo was largely conducted to boost its political creditability, while the US’s invasion of Iraq lost most of its support when it became clear that freeing the people from Saddam Hussein’s oppression was only an excuse to gain control of a geostrategic and resourceful territory. The problem is that in most instances, the countries that are expected to intervene are from rich, developed areas (North America, Western-Europe…) whereas the countries that are subject to intervention are usually in poor, developing regions (Africa, Eastern-Europe…). This inevitably creates an impression of prejudice and stigmatization, exposing HI to accusations of Western imperialism. It is no coincidence that while the G7 Summit’s agendas often include decisions of intervention, the G77 Summit which unites developing countries stated in 2000 that it rejects the so-called right of humanitarian intervention by claiming that such assistance should be conducted in full respect of the sovereignty of these States and with their approval. President Bouteflika of the Organization of African Unity claimed in 1999 that sovereignty was their “final defense against the rules of an unjust world”[[9]](#footnote-9). Despite the theoretical truth of such statements, one cannot help but perceive in their subtext the desires of ancient or illegitimate rulers to cling onto their privileges.

In the same vein as these reservations, other critics argue that HI wrongfully takes for granted the idea that Justice is an absolute and universal value. By virtue of moral relativism, therefore, any kind of intervention should be deemed unjust. To some extent, Michael Walzer defends this view by describing “a kind of organic unity between the state and the people”[[10]](#footnote-10) making humanitarian intervention necessarily unilateral, unwelcomed and bigoted. Taking the example of Algeria he argues that “it may seem paradoxical to hold that the Algerian people have a right to a State within which their rights are violated, but that is the only kind of state that they are likely to call their own.”10 However sensible this theory may seem, this way of ascribing legitimacy to states is far too liberal, for the simple reason that, as David Luban quite elegantly explains, States fit their people “the way the sole of a boot fits a human face: after a while, the patterns of indentation match with uncanny precision.”[[11]](#footnote-11) For this reason, it would be a great benefit to world Justice if we simply recognized once and for all the fact that Human Rights, although they appeared in the West, are no less common benefits to humanity than mathematics or modern medicine.

Finally, an indirect and more practical danger in the use of HI must be pointed out as it is currently illustrated by the interventions under way to stop civil wars in Lybia and the Ivory Coast. On the one hand, NATO is air-raiding Lybia to dislodge General Kadhafi after his four-decade dictatorial rule and on the other the UN is supporting efforts to arrest bad-looser Gbagbo after his defeat at the latest elections. While both interventions are generally heralded in the Western States as victories of Justice, they raise the imminent concern of the limits to this Justice. In other words, how ruthless must a regime be in order to compel the “savior-states” to make a move? The recent warnings by the French ambassador in Dakar a clear: “We’re waging a humanitarian war in the name of our conception of human dignity. Great. But is this principle applicable everywhere? Must it guide all our foreign policy? Should we be prepared to intervene tomorrow in Syria, Yemen and Algeria?”[[12]](#footnote-12) Whether we like it or not, HI is subject to the judgment and capacity of willing States. This invariably leaves space both for inconsistency in regards to a threshold of violence and favoritism in choosing who to save.

**IV – Humanitarian intervention upholds a conceptual scheme that prevents world Justice from ever existing**

Whether or not the permeability of sovereignty should be reconsidered makes us miss the whole point. While HI is a necessary means for Justice *in our current international system*, we fail to realize that our very international system is *incompatible* with any reasonable conception of Justice*.* In turn, seen as HI is by definition an inter-state behavior, it is a residual solution to the problem and it upholds our international system. To make this point clearer, we must break it down as follows:

1. 1st Premise: Justice, by definition, must be *equal* to everyone in its content and in its authority. This is essential for Justice to even exist.
2. 2nd Premise: A State only exists as a *means to an end* which is to guarantee individual security, rights and freedoms. In short, the State exists *for* Justice. To do so, it embodies and enforces its content by virtue of the monopoly of legitimate force.
3. The fact: today, we live in a society of States (State = 1 government + 1 population + 1 territory) that are autonomous (sovereignty).
4. The problem: this means that across the World, there is a *diversity of Justices* to which individuals are subject. Consequently:
   1. Either we consider that each State’s Justice *is* legitimate seen as all of its nationals are equallysubject to it, then we necessarily believe that human beings are *not all equal* in rights and liberties 🡪 contradiction of the 1st premise.
   2. Either we consider that, seen as human beings *are all equal* in rights and liberties, States *do not* serve the purpose of Justice and are therefore not legitimate means 🡪 contradiction of the 2nd premise.
5. The consequence: the conception of Justice embodied by the current system of States is self-contradictory, as it:
   1. rests on the unjust premise of inequality between human beings.
   2. upholds an unjust conception of the State.
6. The solution: in conclusion, as Justice requires *equality* in content and authority:
   1. Every human being must be submitted to the same conception of Justice; this means the same basic principles of morality.
   2. Every human being must be subject to the same authority of Justice in which is vested the monopoly of legitimate force.

States need to become nothing more than “regional extensions” of the higher, unique authority. This call for the end of the State-system does not only stem from the fundamental premise of Justice, but from the fact that States themselves, by virtue of monopolizing resources, are the only actors capable of such horrendous crimes against entire populations. As Michael Walzer points out, “the greatest danger most people face in the world today comes from their own states”[[13]](#footnote-13). HI only serves the purpose of shifting the power between States but under no circumstance does it qualm the greater threat of future injustices.

Yet one could then argue that endorsing a single higher authority could end up being just as dangerous in the sense that it would enshrine a universal conception of morality. However strong the claims for moral relativism may be, this is where rational discussion comes into it and that we must make an assumption in favor of cosmopolitanism: that everyone, behind a veil of ignorance, would agree on some core principles of morality (i.e. killing is bad) and of Justice (i.e. murders are to be prevented). By extension, this means that the “sanctity of borders” is at best useless and at worse a shield for crimes and injustices. As the ICISS itself concluded, “from the perspective of the victims of world politics, the society of states is providing neither order nor justice.”[[14]](#footnote-14)

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