

HUGO GROTIUS' THINKING FOR THE MORAL BASIS OF HUMANITARIAN INTERVENTION

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Abstract

One of the dominant controversies of the last decades of the 20th century is the question: "What should international community or other states do when a country is unable or unwilling to stop massive and systematic human rights violations within its territory (for example: civil war in Liberia in 1990, violent oppression against the Kurds in Northern Iraq in since 1991, violent prosecution against civilians in the province of Kosovo in 1999)? Does the international community have a moral obligation to intervene in the country, which has its own sovereignty, through humanitarian intervention to end the massacre?" Although there is a general consensus on the importance of humanitarian intervention, this military action is much debated in the fields of moral, law, politic, philosophy in the international world. In the field of moral, this simple article tries to search the moral basis of humanitarian intervention according to the theory of Hugo Grotius. The method used in this article is literature study.

Abstrak

Salah satu kontroversi yang dominan pada dekade terakhir abad ke-20 ialah pertanyaan: "Apa yang komunitas internasional atau negara lain harus lakukan ketika sebuah negara tidak dapat atau tidak mau menghentikan pelanggaran HAM secara masif dan sistematis dalam wilayahnya (contohnya: perang sipil di Liberia pada tahun 1990, penindasan suku Kurdi di Irak Utara sejak tahun 1990, penindasan sipil di Provinsi Kosovo pada tahun 1999)? Apakah komunitas internasional memiliki kewajiban moral untuk mengintervensi negara itu, yang memiliki kedaulatannya sendiri, melalui intervensi kemanusiaan (humanitarian intervention) untuk mengakhiri pembantaian itu?" Walaupun ada konsensus umum tentang pentingnya intervensi kemanusiaan, tetapi aksi militer ini banyak diperdebatkan dalam bidang moral, hukum, politik, filsafat di dunia internasional. Dalam bidang moral, artikel sederhana ini mencoba mencari dasar moral dari intervensi kemanusiaan menurut teori dari Hugo Grotius. Metode yang digunakan dalam artikel ini adalah studi pustaka.

Keywords

Hugo Grotius, moral basis of humanitarian intervention,
dasar moral dari intervensi kemanusiaan

INTRODUCTION

In the last decades of the 20th century it happened civil war in Liberia, violent oppression against the Kurds in Northern Iraq, violent prosecution against civilians in the province of Kosovo, etc. One of the dominant controversies in that decade was the following questions. What should international community or other states do when a country is unable or unwilling to stop massive and systematic human rights violations within its territory?" Just watch the

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atrocities and be indifferent or stop the carnage? Does the international community have a moral duty to intervene another state, which has its own sovereignty, by humanitarian intervention in order to end such a massacre? It is difficult question to answer for international community or other states. Adam Roberts says that humanitarian intervention is a difficult subject for the United Nations.² Before doing humanitarian intervention, it is needed to search its moral basis that this military action is right. This unpretentious article proposes Hugo Grotius' thinking for the moral basis of humanitarian intervention.

HUMANITARIAN INTERVENTION

Before we understand what humanitarian intervention is, as examples, below are three cases of humanitarian intervention since 1990 which were recorded by Danish Institute of International Affairs.³

a. The intervention by ECOWAS in Liberia, 1990.

The Economic Organisation of West African States (ECOWAS) intervened in Liberia in 1990, to put an end to the bloody civil war and to restore order in the country from the complete breakdown of government. The intervention was subsequently endorsed by the Security Council in Resolution 788 (1992). It welcomed the efforts of the ECOWAS to restore peace in Liberia.

b. The interventions lead by the United States, UK and France in Iraq since 1991.

After the Iraqi invasion of Kuwait in 1990 had been countered by the international community on the basis of the authorisation by the Security Council (SC Res. 678, 1990) and Iraq had agreed upon conditions for a ceasefire, sanctioned by the Security Council (SC Res. 687, 1991), in 1991, the Iraqi government initiated a campaign of violent oppression against minorities in Iraq, notably the Kurds in Northern Iraq. In Resolution 688 (1991), considering the repression and its international consequences a threat to international peace and security, the Security Council condemned the repression of civilians in Iraq and insisted that Iraq allow immediate access by humanitarian organisations in all parts of Iraq.

Immediately after the adoption of Resolution 688 and in order to enforce its demands for humanitarian relief in Northern Iraq, in April 1991, the United States declared and started to enforce a no-fly zone in Northern Iraq to secure the safety of humanitarian relief operations. Under this shield, a large humanitarian relief operation was initiated in Northern Iraq, backed by thousands of troops from 13 countries. The international force was replaced by 500 lightly armed UN guards in accordance with an agreement between the UN and the Iraqi government in May 1991. US, UK and French forces continued to enforce the no-fly zone in Northern Iraq.

The UN General Assembly discussed the intervention in Northern Iraq. Several states spoke out in its favour, whereas some states spoke out against it as a violation of Iraq's sovereignty. In the end, no resolution of condemnation was adopted.

In the declaration of 16 July 1991 from the G7 summit in London, the operations in Iraq were commented upon in this way: "*We note that the urgent and overwhelming nature of the humanitarian problem in Iraq caused by*

² Cf. Adam ROBERTS, "The United Nations and Humanitarian Intervention," in *Humanitarian Intervention and International Relation*, ed. by Jennifer M. Welsh, Oxford University Press, New York (NY) et al. 2004, 96.

³ Cf. DANISH INSTITUTE OF INTERNATIONAL AFFAIRS, *Humanitarian Intervention: Legal and Political Aspects*, second impression, Danish Institute of International Affairs, Copenhagen 2000, 90-93.

violent oppression by the Government exceptional action by the international community, following UN Security Council Resolution 688. We urge the UN and its affiliated agencies to be ready to consider similar action in the future if the circumstances require it. The international community cannot stand idly by in cases where widespread suffering from famine, war, oppression, refugee flows, disease or flood reaches urgent and overwhelming proportions.”

In August 1992, the Iraqi government initiated another campaign of violent oppression in Southern Iraq against the Shiites. As a response, the United States, UK and France declared a no-fly zone in the Southern Iraq. The three states continued to enforce by forces, including operations against Iraqi military planes violating the no-fly zone and against Iraqi anti-aircraft batteries, which engage Western military planes.

Generally the world community regarded the military interventions in Northern and Southern Iraq following Resolution 688 as somehow emanating from the authority of the Security Council, although some states were very ambiguous and others expressed serious reservations. The intervening states took the position that the interventions were based on the authority of the Security Council. In international legal doctrine, it has been much debated whether the interventions in Iraq had a legal basis in prior Security Council resolutions. There seems to be general agreement that the Security Council did not expressly authorise the interventions.

c. NATO’s intervention in the Federal Republic of Yugoslavia, 1999.

In 1998, the Federal Republic of Yugoslavia had issued a campaign of violent prosecution against civilians in the province of Kosovo. In Resolutions 1160 and 1199 (1998), the Security Council determined that the humanitarian situation in Kosovo constituted a threat to international peace and stressed the need to prevent a humanitarian catastrophe. However, a Security Council authorisation for military intervention was not given due to the stated intentions of Russia and China to block such a decision by veto.

In November 1998, NATO threatened to intervene with force. After negotiations with Belgrade proved unsuccessful, in March 1999, NATO initiated a military operation to put an end to the oppression against the ethnic Albanians in Kosovo. During the NATO operation, heavy criticism was expressed notably by Russia and China. However there were also many statements of support or, at least, implicit acceptance from the international community. In June 1999, the operation was concluded when Belgrade essentially agreed to sign the agreement with the G8 on the autonomy of Kosovo and on international military presence in Kosovo, which it had earlier refused to sign. The Security Council welcomed the agreement in Resolution 1244 (1999), in which it authorised an international security presence in Kosovo under Chapter VII.

The case has been brought before the International Court of Justice by the Federal Republic of Yugoslavia, alleging a violation of the prohibition on the use of force. In its preliminary order of 2 June 1999, the Court rejected the request by Yugoslavia for provisional measures, but at the same time indicated concern for the legality of the use of force by NATO.

According to Aidan Hehir, humanitarian intervention is an issue of uniquely broad interest which continues to be debated in the international arena, within academia (philosophers, legal scholars, political scientists, and theologians), between policy makers, and in the popular media. Humanitarian intervention is relevant to academics and students studying international relations, international law, philosophy, political theory, security studies, peace studies, and theology. It is an issue that directly impacts on the agenda of states, non-

governmental organizations, and international organizations (United Nations, North Atlantic Treaty Organization, African Union, Arab League, etc.). Most importantly, the atrocities affect the victims and the immigrants who cry out for something to be done.⁴

There is no single standard definition of “humanitarian intervention” because the concept is the subject of so much debate. It is difficult to define precisely. Many writers do not provide a definition. Different definitions of humanitarian intervention have been proposed by different scholars and policy officials according to their different points of view.

What is humanitarian intervention? The following definition is proposed: Humanitarian intervention is a military action taken by a state, or a group of states, or a regional organization (for example: NATO) in a target state, generally without that state’s consent, for the purpose of stopping massive killings of a civilian population that shock the moral conscience of mankind (for example: genocide), and ideally with a UN mandate.

HUGO GROTIUS AND HIS WORK *ON THE LAW OF WAR AND PEACE*

Hugo Grotius (Huigh de Groot, 1583 - 1645), “the miracle of Holland,” is a great man in the history of international law, natural law, civil law, criminal law, and modern humanities.⁵ Grotius is regarded as the “father of international law” for compiling and interpreting the diverse laws, compacts, and legal writings of the preceding centuries into a body of law.⁶

In 1625, Grotius published his legal masterpiece *De Jure Belli ac Pacis*. It was the first concise and systematic treatise on international law, although already formed in nucleus in the earlier *De Jure Praedae*. His political theory and legal system did not represent a break, but rather the continuance and summation of ideas that had their origin in the writings of Aristotle and the Stoics and came through the medieval school to the modern age. In particular, Grotius was aware of and in accord with the ideas on the law of nature and the law of nations developed shortly before him by the Spanish theologians, among them Francisco de Vitoria (c. 1480-1546) and Francisco Suárez (1548-1617), to whose works he referred.⁷

In contemporary international thought, Hugo Grotius stands alongside Thomas Hobbes and Immanuel Kant in something of a “holy trinity” of classical theorists. Grotius’ *De Jure Belli ac Pacis* (translated as *The Rights of War and Peace* or *On the Law of War and Peace*) is rightly counted alongside Hobbes’ *Leviathan* and Kant’s *Perpetual Peace* as one of the most important “classics” of international thought.⁸

Three Grotius’ thinking is proposed for the moral basis of humanitarian intervention:

- a) The principle of the defence of the oppressed against tyranny,
- b) The right and obligation to help other,
- c) The law of love (*jus caritas*)

⁴ Cf. Aidan HEHIR, *Humanitarian Intervention: An Introduction*, Palgrave MacMillan, Basingstoke 2010, 1 & 11.

⁵ Cf. Benedict KINGSBURY – Adam ROBERTS, “Introduction: Grotian Thought in International Relations,” in *Hugo Grotius and International Relation*, ed. by Hedley Bull, et al., Oxford University Press, New York (NY) et al. 1990, 1.

⁶ Cf. David L. CLOUGH – Brian STILTNER, *Faith and Force: A Christian Debate about War*, Georgetown University Press, Washington (DC) 2007, 56.

⁷ Cf. P. REMEC, “Hugo Grotius,” in *New Catholic Encyclopedia*, Vol. 6 (Fri-Hoh), ed. by Thomas Carson and Joan Cerrito, second edition, Thomson/Gale, in association with The Catholic University of America, Detroit (MI) et al. 2003, 539-541.

⁸ Cf. Renée JEFFERY, *Hugo Grotius in International Law*, Palgrave Macmillan, Basingstoke 2006, 1.

THE PRINCIPLE OF THE DEFENCE OF THE OPPRESSED AGAINST TYRANNY

Grotius concluded his second book of *De Jure Belli ac Pacis* by elaborating upon whether or not war on behalf of others can be considered just. The text of book II, chapter 25 on “The causes of undertaking war for others” is:

Though it is a rule established by the laws of nature and of social order, and a rule confirmed by all the records of history, that every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere. Yet where a Busiris, a Phalaris or a Thracian Diomede provoke their people to despair and resistance by unheard of cruelties, having themselves abandoned all the laws of nature, they lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations. Thus Constantine took up arms against Maxentius and Licinius, and other Roman emperors either took, or threatened to take them against the Persians, if they did not desist from persecuting the Christians. (II.25.8)⁹

In the above text, Grotius mentioned several names. Who were they? Busiris and Thracian Diomede were kings in Greek mythology. Phalaris, Constantine, Maxentius, Licinius, and Persian Emperors were real figures in history. Busiris sacrificed foreigners to Zeus.¹⁰ Phalaris did excessive cruelty and cannibalism.¹¹ Thracian Diomedes fed his four mares with human flesh of foreigners.¹² That is why Grotius wrote that Busiris, Phalaris, Thracian Diomede “provoked their people to despair and resistance by unheard of cruelties.” Maxentius (Latin: Marcus Aurelius Valerius Maxentius, the Western Roman Emperor from 306 to 312) was a cruel tyrant to the city and people of Rome.¹³ Licinius (Latin: Valerius Licinianus Licinius, the Eastern Roman emperor from 308 to 324) persecuted the Christians in his empire.¹⁴ And the Sasanian Persian Emperors, especially Shapur II (309–379), persecuted all the Christians living within the Persian empire.¹⁵ For Grotius, all these kings/emperors have the similarity: they exercised such tyrannies over their people in their kingdoms/empires, they abandoned all the laws of nature and of social order.

Grotius had the opinion that every kingdom has its own sovereignty, “it is a rule established by the laws of nature and of social order, and a rule confirmed by all the records of history, that every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere” (II.25.8)¹⁶ Yet, if one kingdom exercises such tyranny over his own people, the consequence is serious: “they [the tyrannical kingdoms/empires] lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations.”¹⁷ So, foreign power can justly interfere to end that tyranny and to help the oppressed. This is what we know now as humanitarian intervention—even though

⁹ Hugo GROTIUS, *On the Law of War and Peace*, translated and slightly abridged by A.C Campbell, Batoche Books, Kitchener 2001, 247-248. Original Latin: *De Jure Belli ac Pacis*.

¹⁰ Cf. Encyclopaedia Britannica, “Busiris,” in *Encyclopedia Britannica Ultimate Reference Suite*, Encyclopaedia Britannica, Inc., Chicago (IL) 2011.

¹¹ Cf. Encyclopaedia Britannica, “Phalaris,” in *Encyclopedia Britannica Ultimate Reference Suite*, Encyclopaedia Britannica, Inc., Chicago (IL) 2011.

¹² Cf. Jenny MARCH, *Cassell’s Dictionary of Classical Mythology*, Cassell and Co, London 1998, 259.

¹³ Cf. Noel LENSKI, “The Reign of Constantine,” in *The Cambridge Companion to the Age of Constantine*, ed. by Noel Lenski, Cambridge University Press, New York (NY) et al., 2006, 70.

¹⁴ Cf. Encyclopaedia Britannica, “Lucinius,” in *Encyclopedia Britannica Ultimate Reference Suite*, Encyclopaedia Britannica, Inc., Chicago (IL) 2011.

¹⁵ R. N. FRYE, “Persia,” in *New Catholic Encyclopedia*, Vol. 11 (Pau-Red), ed. by Thomas Carson and Joan Cerrito, second edition, Thomson/Gale, in association with The Catholic University of America, Detroit (MI) et al. 2003, 138.

¹⁶ H. GROTIUS, *op. cit.*, 247.

¹⁷ *Ibid.*

Grotius did not use this term. Therefore, for Grotius, the just cause for humanitarian intervention was based on *the principle of the defence of the oppressed against tyranny*.

Grotius continued his explanation by giving examples of “humanitarian intervention”: “Thus Constantine took up arms against Maxentius and Licinius, and other Roman emperors either took, or threatened to take them against the Persians, if they did not desist from persecuting the Christians.” Constantine I or Constantine the Great (Latin: Flavius Valerius Constantinus, 280-337) defeated Maxentius in 312. A statue set up at the same time showed Constantine himself holding a cross “By this saving sign I have delivered your city from the tyrant and restored liberty to the Senate and people of Rome.” Two years later he defeated Licinius, who persecuted the Christians. Then he became the sole emperor of East and West. He wrote in 324 that he had come from the farthest shores of Britain as God’s chosen instrument for the suppression of impiety. And in a letter to the Persian King Shapur II he proclaimed that, aided by the divine power of God, he had come to bring peace and prosperity to all lands.¹⁸ This humanitarian intervention also happened when the other Roman Emperors made war against the Persians to stop the Christians persecution in Persia.¹⁹

THE RIGHT AND OBLIGATION TO HELP OTHER

Men have the right and obligation to help other. To assist other is a right which comes from the law of nature. “In speaking of belligerent powers, it was shewn that the law of nature authorises the assertion not only of our own rights, but of those also belonging to others. The causes therefore, which justify the principals engaged in war, will justify those also, who afford assistance to others” (II.25.1).²⁰ The other powers are not “prohibited from giving them assistance when labouring under grievous oppressions” (II.25.8).²¹ “Thus a guardian or any other friend may undertake an action for a ward, which he is incapacitated from doing for himself” (II.25.8).²² In contrast to the oppressed (the subject) who does not have the right of resistance, the other kings have the right to assist the oppressed. So, military intervention by a foreign sovereign on their behalf may be legitimate.

The impediment, which prohibits a subject from making resistance, does not depend upon the nature of the occasion. . . whether they were subjects or not, but upon the character of the persons, who cannot transfer their natural allegiance from their own sovereign to another. But this principle does not bind those, who are not the liege-subjects of that sovereign or power. Their opposition to him or the state may sometimes be connected with the defence of the oppressed, and can never be construed into an act of treason. (II.25.8)²³

Men have the obligation to help each other. “The last and most extensive motive is the common tie of one Common Nature, which alone is sufficient to oblige men to assist each other” (II.25.6).²⁴ R. J. Vincent describes that the sovereigns retain a responsibility for humankind at large. They ought to care not only for the single nation which is committed to them, but for the whole human race. Consequently if a tyrant practises atrocities towards his subjects, even though those subjects cannot take up arms against him, it does not follow that

¹⁸ Cf. Encyclopaedia Britannica, “Constantine I,” in *Encyclopaedia Britannica Ultimate Reference Suite*, Encyclopaedia Britannica, Inc., Chicago (IL) 2011.

¹⁹ Cf. R. N. FRYE, “Persia,” 138.

²⁰ H. GROTIUS, *op. cit.*, 244.

²¹ *Ibid.*, 247.

²² *Ibid.*, 248.

²³ *Ibid.*

²⁴ *Ibid.*, 247.

others in a position of responsibility regarding humankind as a whole could not take up arms on their behalf. So to a general principle of non-intervention (the actual term here came after Grotius) is added an exception, especially when subjects are persecuted for their religious beliefs.²⁵ Eventhough men or states have the obligation to help each other, they are not bound, as Grotius explained further:

But in the first place it is certain that no one is bound to give assistance or protection, when it will be attended with evident danger. For a man's own life and property, and a state's own existence and preservation are either to the individual, or the state, objects of greater value and prior consideration than the welfare and security of other individuals or states. Nor will states or individuals be bound to risk their own safety, even when the aggrieved or oppressed party cannot be relieved but by the destruction of the invader or oppressor. For under some circumstances it is impossible successfully to oppose cruelty and oppression, the punishment of which must be left to the eternal judge of mankind. (II.25.7)²⁶

THE LAW OF LOVE (*JUS CARITAS*)

For Renée Jeffery, Grotius' most humanitarian sentiments appear in the law of love (charity/*caritas*). Jeffery mentions that Tadashi Tanaka points out, throughout *De Jure Belli ac Pacis*, Grotius refers to love (*caritas, delectio*), the law of love (*lex caritas, lex dilectionis*) and the rules of love (*caritatis regulae*), using the terms *caritas* and *delectio* interchangeably. Jeffery explains that in particular, Grotius' most lucid exposition of the subject states that "the Rules of Charity reach farther than those of Right" and equates failure to adhere to the law of love with having a hard heart. The law of love is fundamentally dictated by the *jus evangelicum*, the law of the Gospel. This law of love commands individuals to put our neighbour upon a level with our selves and to "do unto others as you would have them do unto you." Taking the evangelical foundations of charity one step further, Grotius continued to argue that "CHRIST's Precepts then of loving and promoting the Good of every one, are to be *obeyed*, unless a greater and juster Love interpose." By this, Christ teaching the law of love ought to be applied to all areas of conduct, given his earlier contention that states and individuals are morally and legally equivalent, it stands to reason that he was also referring to states in this sense. The law of love includes the states.²⁷ Consequently humanitarian intervention to help the oppressed is a real conduct based on Christ teaching the law of love.

Renée Jeffery argues that there are two serious problems on the logical extension of Grotius' reliance on the law of the Gospel as the basis for the law of love. First, by applying Christ's teachings to the conduct of war, he was faced with the problem of how to reconcile notions of Christian pacifism with the reality that Christians engage in wars. Second, for the realization of a universal moral order, it arises the question of how to make the law of love applicable to all of humanity. Although Grotius certainly believed that the law of the Gospel was applicable to all mankind, however he must surely have recognized that those outside the Christian faith would not concur with his view.²⁸

CONCLUSION

²⁵ Cf. R. J. VINCENT, "Grotius, Human Rights, and Intervention", in *Hugo Grotius and International Relation*, ed. by Hedley Bull et al., Oxford University Press, New York (NY) et al. 1990, 247.

²⁶ H. GROTIUS, *op. cit.*, 247.

²⁷ Cf. R. JEFFERY, *op. cit.*, 43-44.

²⁸ Cf. *Ibid.*, 44-45.

Hugo Grotius' thinking is proposed to become the moral basis of humanitarian intervention:

(1) *The principle of the defence of the oppressed against tyranny.* Every kingdom has its own sovereignty. Yet, if one kingdom exercises such tyranny over his own people, the consequence is the tyrannical kingdoms/empires/states lose the rights of independent sovereigns, and can no longer claim the privilege of the law of nations. So, foreign power can justly interfere to end that tyranny and to help the oppressed.

(2) *The right and obligation to help other.* To assist other is a right which come from the law of nature. The other powers are not prohibited from giving them assistance when labouring under grievous oppressions. The other kings have the right to assist the oppressed. So, military intervention by a foreign sovereign on their behalf may be legitimate. Men have the obligation to help each other as the common tie of one Common Nature. Sovereigns retain a responsibility for humankind at large. Consequently if a tyrant practises atrocities towards his subjects, even though those subjects cannot take up arms against him, it does not follow that others in a position of responsibility regarding humankind as a whole could not take up arms on their behalf. Eventhough men or states have the obligation to help each other, they are not bound.

(3) *The law of love (jus caritas).* Grotius' most humanitarian sentiments appear in the law of love (charity/*caritas*). Grotius' most lucid exposition of the subject states that "the Rules of Charity reach farther than those of Right". This law of love commands individuals to put our neighbour upon a level with our selves and to "do unto others as you would have them do unto you." Christ teaching the law of love ought to be applied to all areas of conduct. The law of love includes the states. Consequently humanitarian intervention to help the oppressed is a real conduct based on Christ teaching the law of love.

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