

WAS NATO INTERVENTION IN KOSOVO JUST IN A MORAL POINT OF VIEW? CONFRONTING APPROACHES STATISM VS. COSMOPOLITANISM

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Abstract

This paper confronts two contrasting theoretical perspectives on humanitarian intervention such as: statism vs. cosmopolitanism. The aim of the research is to find out powerful reasons for grounding moral reasoning of humanitarian intervention. The paper seeks to argue that the justification of humanitarian intervention should rest upon moral reasoning rather than international law or normative framework when it comes to abuses of human lives, it is a moral imperative and through moral reasoning we can determine what ought to be done for sake of global justice. It is indeed a perplexing issue and we are not seeking to solve the moral dilemma but rather give a comprehensive account of which theory best fits the reality. The paper does not tell the entire story, but from a cosmopolitan standpoint we can see that sovereignty is conditional and relative while human rights are absolute while from a statist position the juridical boundaries prevail.

Keywords: statism, cosmopolitanism, moral reasoning, humanitarian intervention.

Introduction

A retrospective of more than twenty years from the intervention of North Atlantic Treaty Organization in Yugoslavia and almost two decades have passed since then but still many questions remain unanswered regarding the justification, legality and the “so –called” moral dilemma behind NATO bombing operation. Public debate on the zen-aku¹ of humanitarian intervention intensified to boiling point exactly when NATO bombed Yugoslavia. That’s when moral dilemma comes up; and that requires a moral judgment for two reasons. Through military intervention the international order is destroyed and it costs human lives and the moral reasoning behind this fact is that humanity is best served by limiting the use of force. While the second point in a roundabout way leads us to the justification that humanitarian intervention is ‘just’ when this is the only route to save human lives and innocent civilians.

That’s the dilemma, isn’t it? It is this odd juxtaposition when one argument prohibits while the other argument permits the same matter but it is in the nature of dilemmas that they have no easy solutions, the moral reasoning is indeed a double-edged sword.

In this paper I will not explicate my argument around the global justice theories or the statist position a la David Miller or cosmopolitan position a la Martha Nussbaum or Thomas Pogge, neither around Hobbsian statist position against Kantian cosmopolitanism in “Perpetual Peace”, even though he is considered to be the father of modern cosmopolitanism is, prima facie, against intervention. But I will organize the debate around a local problem which requires a global attention, such as the issue of Kosovo. The introduction synopsis leads the way for the discussion between two schools of thought Statism v. Cosmopolitanism on morality of NATO intervention. In this regard the ideas of Habermas in some way will contemplate the Kantian agenda. While in the other hand the critiques of Jerney Moses and Michael Walzer will be elaborated under the ‘moral

¹ Meaning: rights and wrongs in the sense of humanitarian intervention

paradigm’.

Kosovo- sandwiched between ‘non-intervention’ and ‘responsibility to protect’

According to the dictionary of international relations the non-intervention is defined as: “a pivotal notion in the Westphalian state system where rights associated with independence and sovereignty logically implied corresponding duties of non-intervention. Thus, the claim to exclusive domestic jurisdiction represented by the principle of cuius region eius religio extended to its collar-freedom from external interference”.

For almost four centuries the idea of sovereignty remained undisturbed and it was the cornerstone of international law until R2P took the show in 2005. It may sound cliché but it is true indeed...and the story regarding the fragile nature of ‘non-intervention’ principle begins like this: in post-1945 period non-intervention began to question itself, it seems that Westphalian principles were being challenged on all sides yet states were torn apart between the Westphalian system and the new world order which was emerging in a different route apart from the Westphalian one.

During 90’s the global scene experienced a numerous violation of human rights and atrocities in different corners of the world (Bosnia, Rwanda, Congo, Kosovo, Sudan, Iraq, Cambodia Afghanistan) that’s when ‘humanitarian intervention’ later framed under the umbrella of ‘responsibility to protect’ claimed that sovereignty is not absolute and breaching the non-intervention principle was not considered anymore as violation of international law but rather it was reputed as honor for the sake of human rights.

Looking at the trajectory of events from NATO intervention in Kosovo 1999 and on, we can see that the notion of sovereignty is outdated and lost contact with reality of the twenty-first century; gradually at certain cases when human rights violations were in question the R2P became a dominant impulse in international law. It is clear that we don’t live anymore under Hobbsian notion of absolute public authority where sovereignty was omnipotent based on the social contract of the people.

As the famous scholar David Rieff wrote in his book “A bed for the night humanitarianism in crisis: “In Kosovo, war was simply the ultimate mode of enforcement in a brave new world of human rights” this is the kind of rhetoric that cosmopolitans prefer to use. In a roundabout way they try to tell that a political entity that claims sovereignty would only be holding an empty shell. As the subtitle makes clear, a dichotomy lies at the heart of this paper. The Kosovo issue was really sandwiched between non-intervention and R2P, as Gregory Shank stated: “The world should never again stand by and do nothing in the face of evil”. Following this we can grasp the motive behind NATO military intervention; it outlined the moral imperative to intervene in order to prevent crimes against humanity. Legally the bombing is often considered as act of aggression and unjustifiable under international law but in line with this opinion I recall Bernard Kouchner famous argument: “NATO intervention was illegal but legitimate”, two conclusions may be drawn by this statement, why is illegal and why is legitimate? It was illegal because it violated the international law and UN Security Council didn’t give authorization but it was legitimate because when it comes to human rights we have moral obligations to stop the violations.” Hughes (2013).

Defining humanitarian intervention

The term humanitarian intervention is defined by Holzgrefe as: “The threat or use of force across state borders by a state (or a 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)

Walzer defines humanitarian intervention as a response to massive human rights violations, and he distinguishes it from other kinds of intervention: intervention to protect one’s own nationals, intervention in a civil war to preserve a balance of local forces against intervention by another state (‘counter-intervention’),

and intervention to assist a national community to gain independence from a state whose government the secessionists regard as alien and oppressive. (Walzer, 1977)

I will start this passage by recalling the speech of former UN- Secretary General Kofi Annan during the Nobel Peace Prize Lecture in Oslo 2001 he was saying: “genocide begins with the killing of one man – not for what he has done, but because of who he is. A campaign of ‘ethnic cleansing’ begins with one neighbor turning on another. Poverty begins when even one child is denied his or her fundamental right to education. The sovereignty of States must no longer be used as a shield for gross violations of human rights. Peace must be made real and tangible in the daily existence of every individual in need”. (Annan, 2001)

Needless to say, this fragment implies that no legal principle, not even sovereignty can ever shield crimes against humanity, his words were very coherent and cosmopolitan oriented despite of the harsh international response and biased academic debate on justification of NATO intervention. It is easy to grasp the ambivalence of the doctrine of ‘responsibility to protect’ against the non-intervention. It seems like more and more sovereignty is in decay and eroded by human rights, yes the international system cannot give up from Westphalian framework, to this regard it is worth mentioning the famous scholar Amitav Acharya “Regionalism and the emerging world order” where he claimed that: “two momentous event of the late twentieth century have underscored both the potential and the pitfalls of regionalism in shaping the world order, in the new millennium. The crisis over Kosovo hastened the decline of Westphalian sovereignty in the interstate system. The financial meltdown in Asia around mid-1997 highlighted the challenge to sovereignty in the global economy. (Acharya 2007).

In Kosovo, a regional alliance, NATO, led a successful assault against sovereignty after it had paralyzed the UN’s hand in the crisis.” I can say without a doubt the international relations are now in limbo. In order to canalize the debate around the question that is raised I think that Annan’s speech was morally in line of what happened in Kosovo, the rationale stands exactly in listing the facts and finding reasonable ground for the sake of protection of innocents.

Debating the morality of NATO intervention: Statism v. Cosmopolitanism

According to Peter Johnson (1993), “in philosophy it is often the case that the end of one story is the start of another. This is true of many attempts to provide a moral justification for the intervention by one state in the affairs of another. Such attempts frequently lead to the conclusion that there is an inherent contradiction in the argument: either states possess the right of self-determination or there is a morally justifiable basis for intervention... Quite properly, what appears to be the end of an argument is actually the start of another”.

This is the story with the international thought on the moral reasoning of non-intervention principle. Two doctrines show up as theoretical disposition: statism v. cosmopolitanism. Debates regarding the legitimacy of military actions constitute “a two thousand year old conversation”.

During the last decades the discourse regarding the humanitarian intervention became a constant refrain in international relations and the issue which attracted heated discussion was Kosovo. This somehow brought to the top all the legal, political, ethical and moral dilemmas if what was already done was ‘just’. In order to substantiate the idea of cosmopolitan judgment, I contemplate the assessment of NATO military intervention advanced by a prominent cosmopolitan theorist Jürgen Habermas.

In an interview of 2004 when asked about why he supported the same unilateralism, and justified a form of “military humanism” in Kosovo he responded: “the situation in Kosovo, when the West had to decide, in light of the accumulated experiences of the Bosnian War – think of the disaster of Srebrenica – If it wanted to watch yet more ethnic cleansing by Milosevic, or if it wanted, in the absence of national interest, to intervene. Granted, the Security Council was blocked. Just the same, there were two grounds for legitimating action—one formal, the other informal—even though the U.N. Charter does not permit any substitute for the required consent of the Security Council: For the first, one may appeal to the *obligatio erga omnes*, binding on all states,

the call for emergency assistance in the case of a threatened genocide, which, in any event, is firmly established in customary international law. For the other, one may place on the scale the fact that NATO is an alliance made up of liberal states, whose organizing principles comport with the principles of the UN's Declaration of Human Rights. Compare this with the "coalition of the willing," which has split the West, and included states in contempt of human rights, such as Uzbekistan and Taylor's Liberia". Just as important is the perspective of the Continental European countries like France, Italy and Germany, which served to justify, at the time, their participation in the Kosovo intervention. In expectation of eventual ratification by the Security Council, these countries understood this intervention as an "anticipation "of an effective law of world citizenship - as a step along the path from classical international law to what Kant envisioned as the "status of world citizen" which would afford legal protection to citizens against their own criminal regimes". (Habermas, 2004)

Underlining the last sentence we can clearly grasp the hidden cosmopolitan orientation grounded on cosmopolitan principles, he acknowledges reasonable concerns that prior to military intervention the conduct of negotiations are needed, what leads Habermas to cautiously endorse the intervention, despite these profound misgivings, is his belief that it constitutes a reasonable attempt to pursue what he calls 'the politics of human rights' in the context of a drastically imperfect global order. (Habermas, 1999)

According to him the low level of institutionalization of cosmopolitan law and [the politics of human rights] is frequently forced to be a mere anticipation of the same prospective legal order that it simultaneously tries to promote (Habermas, 1999).

In the case of Kosovo, even though NATO could not receive authorization from the UN Security Council, it underlined its actions on the grounds of normative principles of international law such as peacekeeping and human rights. (Habermas,2004,).

To this regard, it is worth to mention the argument of former Czech President Vaclav Havel, in favor of NATO's Kosovo intervention on grounds of human rights in his famous essay titled: "Kosovo and the end of the nation-state" a law that ranks higher than the law which protect the sovereignty of states", meaning that human rights are above the rights of the state, he claims that human rights and freedoms have their deepest roots somewhere outside the perceptible world...while the state is a human creation. (Cheng, 2004)

The statist would disagree with this approach and surely would argue why he puts human rights above state sovereignty? Often statist forget that states are socially constructed, which means that what is socially constructed can be politically contested. In this sense they try to give greater weight to something that is socially constructed and is not here per se while human rights are universal in essence and come before state sovereignty to this regard cosmopolitanism camp accept the principle of humanitarian intervention as a legitimate moral imperative as Kant would name it as categorical imperative in this sense the humanitarian intervention is justified and should rest upon moral reasoning rather than international law.

Every epoch or better said 'development' in international arena has its leitmotif, in this case UN's leitmotif and not only for more than two decades has been the justification of NATO intervention in Kosovo, and this brings me closer to Henry Kissinger (2015) which in his famous book 'World Order' stated: "Every international order must sooner or later face the impact of two tendencies challenging its cohesion: either a redefinition of legitimacy or a significant shift in the balance of power". As Slavoj Zizek said in harsh tones: "One thing is for sure: the NATO bombardment of Yugoslavia will change the global geopolitical coordinates. The unwritten pact of peaceful coexistence (the respect of each state's full sovereignty, i.e. non-interference in internal affairs, even in the case of the grave violation of human rights) is over".

In Kosovo, NATO intervened without UN authorization, claiming that although such authorization was unlikely to be granted, there was nevertheless an overwhelming ethical imperative to act, that's what Habermas claimed the Western powers had a moral obligation to support the intervention for reasons beyond *raison d'état*. If we go further, in this line there is no other way out but face a prominent critical voice of NATO bombing and Western powers Said (1999) in his article "Edward Said on imperialist hypocrisy on Kosovo: The treason

of the intellectuals” claimed that: “Morality teaches that, if one wants to intervene to alleviate suffering or injustice (this is the famous idea of humanitarian intervention which so many Western liberals have dragged out as an excuse for the bombing war), then one must make sure first of all that by doing so the situation will not be made worse. That lesson seems to have eluded the NATO leaders, who plunged in ill-prepared, poorly informed and heedless, and therefore cold-bloodedly sealed the fate of hundreds of thousands of Kosovars who, whether they had to bear the brunt of Serbian vengeance, or because the sheer volume and density of the bombing (despite ludicrous claims about precision-guided ordinance) made it imperative for them to flee the province, became victims twice over”, he goes further accusing the US administration and Western powers while making a parallelism: “If ethnic cleansing is evil in Yugoslavia as it is, of course it is also evil in Turkey, Palestine, Africa and elsewhere. Crises are not over once CNN stops covering them.” (Said, 1999).

What is said above does not bring us closer to statism approach toward NATO intervention but it brings to the surface different facets of the same matter, but is indeed in the very essence a selective approach, he always tries to make analogies between Middle East and Kosovo.

Solving the moral dilemma

Humanitarian intervention remains at the center of the debate in international relations and quite often this theme is covered with the blanket of uncertainty but the rationale to support the humanitarian intervention is clear; the instinct to help appears to be the most gracious side of the human nature, quite often I recall Martha Nussbaum’s essay on “Patriotism and Cosmopolitanism” (Nussbaum, M. 1996) when she traces cosmopolitanism back to its origins and it brings some arguments by addressing the Cynic philosopher Diogenes who declared that ‘I am a citizen of the world’, this sentiment being the underlying belief of all cosmopolitan strands and what he meant was that he refused to be framed by his local origin instead he defined himself in terms of more universal aspirations.

Drawing upon a general argument, the basic ethical cosmopolitan position is strictly defined and in this regard it seems preferable to mention Thomas Pogge in which he identifies three essential and shared characteristics as the moral basis of cosmopolitanism such as individualism, universality and generality. By individualism he maintains that the focus remains on individuals rather than communities and political associations, universality ensures that all humans are treated equally, with generality emphasizing the global reach of the principles of individualism and universality. Much like the concept of humanitarian intervention itself, the ethical basis of cosmopolitan humanitarian intervention is unclear. Although, any cosmopolitan approach to war is necessarily based upon principles promoting the supremacy of individuals over groups and maintaining an absolute prohibition against individuals conditional on membership of a group. (Pogge, 1992)

Conclusion

Throughout the history the concepts of moral justification have had shaky foundations but the crux of argument in this paper is to see which concept best fits the framework of today’s reality, having looked backwards into history in order to receive a narrative of moral justification of humanitarian intervention, it came out that cosmopolitanism best encapsulated the world we live in. Even though NATO intervention was a risky undertaking taking into account the brute fact that it acted without UN authorization we can see that the principle of sovereignty was not set in stone and those who believe that sovereignty is more important than human rights are either hopelessly naïve or willfully cynical. R2P remains the most feasible conception of a standing force for humanitarian intervention, as a preliminary conclusion we submit the idea that in the long term, the UN framework should also be reformed in order to give a fairer reflection of the international order as it shifts towards a post-Westphalian order. One must conclude that the NATO intervention in Kosovo lacked legal means but had moral validity.

References

- [1]. Habermas, J. (1999) 'Bestiality and Humanity: A War on the Borders between Legality and Morality', S. Meyer and W. Scheuerman (trans.) *Constellations* 6(3): (pp. 268-269).
- [2]. Habermas, J. (2004) 'America and the World: A Conversation with Jurgen Habermas, with Eduardo Mendieta', *Logos* 3(3): (p.103).
- [3]. Cheng, S (2004) 'Law, Justice, and Power: Between Reason and Will' Stanford University Press (p. 30).
- [4]. Acharya, A. (2007). The Emerging Regional Architecture of World Politics [Review of *Regions and Powers: The Structure of International Security; A World of Regions: Asia and Europe in the American Imperium*, by B. Buzan, O. Wæver, & P. J. Katzenstein]. *World Politics*, 59(4), (pp. 629–652). <http://www.jstor.org/stable/40060175>
- [5]. Annan, K.A (2001, 10 December) 'Nobel Peace Prize Lecture' <https://www.nobelprize.org/prizes/peace/2001/annan/lecture/> accessed: 18/11/2022
- [6]. Holzgrefe, J., & Keohane, R. (Eds.). (2003). 'Humanitarian Intervention: Ethical, Legal and Political Dilemmas'. Cambridge: Cambridge University Press. doi:10.1017/CBO9780511494000 (p.18)
- [7]. Hughes, J. H. (2013, June 6). Russia and the Secession of Kosovo: Power, Norms and the Failure of Multilateralism. Retrieved February 1, 2021, from <https://www.tandfonline.com/doi/abs/10.1080/09668136.2013.792448?scroll=top&needAccess=true&journalCode=ceas20>
- [8]. From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention. (2013). *The European Journal of International Law* Vol. 24 No. 1, Vol.24, (pp.68–82). Retrieved from <http://www.ejil.org/pdfs/24/1/2371.pdf>
- [9]. Said, E. S. (1999, July 7). Edward Said on imperialist hypocrisy on Kosova: The treason of the intellectuals. Retrieved January 28, 2021, from <https://www.greenleft.org.au/content/edward-said-imperialist-hypocrisy-kosova-treason-intellectuals>
- [10]. Johnson P. (1993) Intervention and Moral Dilemmas. In: Forbes I., Hoffman M. (eds) *Political Theory, International Relations, and the Ethics of Intervention*. Southampton Studies in International Policy. Palgrave Macmillan, London. https://doi.org/10.1007/978-1-349-22913-0_5 (p. 61) accessed: 20/11/2022
- [11]. Nussbaum, M. (1996) 'Patriotism and Cosmopolitanism', in Cohen, J. (ed.) *For Love of Country?*. Boston: Beacon Press, pp. 3-20.
- [12]. Pogge, T.W. (1992) 'Cosmopolitanism and Sovereignty', *Ethics*, 103(1), pp. 48-75.