

# Article

## ***The Morality of Humanitarian Interventions<sup>1</sup>***

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*In this paper I develop an argument to the effect that humanitarian moral interventions, far from being inconsistent with the normative framework of just war, fit in very well with the justifying conditions of this framework. The argument develops by considering three objections against humanitarian military interventions, emanating from just war criteria. The criteria in question are just authority, just cause, and non-combatant immunity. It will be argued that while just authority logically depends on just cause and has no independent argumentative force of its own, the criterion of just cause should be understood to include a defence of human rights or vital human interests and not only of national sovereignty. As for the criterion of non-combatant immunity, it will be argued that the unintended killing or injuring of innocent non-combatants can be dealt with by means of a modified version of the doctrine of double effect. Moreover, the moral responsibility for unintended innocent victims of an intervention should rest with the repressive regimes that made the intervention necessary in the first place. By relating humanitarian military interventions to the criteria of just war and to human rights, the argument developed here places the justification of such interventions at the centre of contemporary moral discourse.*

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## INTRODUCTION

As soldiers we have been used to moving mountains to protect our own sovereignty or risks to our way of life. In the future we must be prepared to move beyond national self-interest to spend our resources and spill our blood for humanity. We have lived through centuries of enlightenment, reason, revolution, industrialization, and globalization. No matter how idealistic the aim sounds, this new century must become the Century of Humanity, when we as human beings rise above race, creed, colour, religion and national self-interest and put the good of humanity above the good of our own tribe. For the sake of the children and of our future. *Peux ce que veux. Allons-y.* (Dallaire 2004: 522)

Thus ends Lieutenant General Roméo Dallaire's account of his mission as a UN Force Commander in Rwanda, at the time of the genocide which cost 800,000 Rwandans their lives during a few months in 1994. Dallaire's small unit could do very little to prevent the ongoing massacres, and he describes in painful detail the frustration resulting from trying in vain to convince the international community that it should intervene in Rwanda. Moreover, he had the humiliating experience of having to negotiate on an almost daily basis with the very perpetrators of the genocide—an experience which he aptly describes as “shaking hands with the devil.”

Dallaire points to the need for a new conception of military obligation which centres upon human rights rather than national interest. This in turn implies an extension of the traditional rules of just war, which regulate when and how a state may engage in military activities against another state. The need for such an extension is also recognized in the most recent literature on just war theory. David Fisher, for instance, has argued in favour of including not only a right, but a *duty* to intervene among the prescriptions of just war:

Where there are major abuses of human rights—mass killings or ethnic cleansing—the consequences are, *ex hypothesi*, of extreme gravity. If we know what is happening and can do something to prevent it but do not do so, we can be judged to have consented to its occurrence. In such circumstances, and assuming all the just war criteria are met, it is reasonable to conclude that we have not just a right but a responsibility to intervene. We have, in that sense, a duty to save the lives of the innocent. (Fisher 2011: 239)

On the other hand, there are also certain powerful objections against extending the concept of just war to include humanitarian military interventions—henceforth, HMIs.

These objections centre around another interpretation of just war theory and its criteria regarding just authority, just cause, and non-combatant immunity, denying that “all the just war criteria are met” in the case of HMIs. In this paper, we will argue that these objections can be overcome, and that HMIs hence are consistent with the principles of just war.

The objections that we will analyse are the following:

(1) The objection from just authority: The government of one state is no just authority regarding the internal affairs of another state. Hence, it has no right whatsoever to subject that state and its citizens to a HMI, even if that HMI is undertaken with a view to protect these citizens’ human rights or vital human interests.

(2) The objection from just cause: A state is only entitled to go to war to protect itself against external aggression. This is the only just cause for war. To engage in a HMI directed against another state, which does not pose a clear and imminent military threat to one’s own nation, cannot be described as a case of necessary defence against external aggression. Hence, the intervening state would, under such circumstances, lack moral justification for its actions.

(3) The objection from non-combatant immunity: Given the standard conditions of modern warfare, it is almost inevitable that innocent non-combatants will be killed and injured in the course of a HMI. This inevitable sacrificing of innocent victims contradicts the moral purpose of the HMI, which is to protect human rights or vital human interests, and hence the HMI will be deprived of whatever moral justification it may have initially had.

We will now go on to discuss these three objections, and in the course of this discussion we will give reasons for our belief that they can be overcome and that HMIs may well have a place within the framework of the just war tradition. Moreover, by relating both HMIs and just war theory to the moral value of maintaining certain basic human interests or rights, we place the arguments concerning HMIs centrally within the framework of contemporary moral discourse.

### **THE OBJECTION FROM JUST AUTHORITY**

This objection denies that one state could be a just authority regarding the internal affairs of another state. It holds that the sovereignty of states limits the right to interfere, even against governments who oppress their own peoples. Now, the objection from just

authority seems to be somewhat out of step with contemporary views on state sovereignty and human rights. The doctrine of non-intervention, associated with the Treaty of Westphalia of 1648 and the emerging national states, has gradually given way to the Era of Human Rights, epitomized in the UN Declaration of 1948. Although the UN Declaration did not envisage HMIs for the sake of protecting human rights, it helped to pave the way for a new conception of the morally legitimate state as one that respects and maintains human rights. Today the actions of governments and politicians are routinely evaluated from the point of view of human rights: “Human rights has become the major article of faith of a secular culture that fears it believes in nothing else” (Ignatieff 2001: 53).

Hence, within the framework of contemporary political theory, a morally legitimate state is a state which recognizes its citizens as rights-holders. According to a minimalist conception, a “decent” state need not be a liberal state in the sense that it grants all its individual citizens equal political rights, but it should recognize their right to a freedom from slavery and to a “sufficient measure of liberty of conscience to ensure freedom of religion and thought” (Rawls 1999: 65). According to a more extensive conception, morally just states are “democratic legal states,” based on laws “that an entire people of free and equal individuals could possibly agree to; and where these laws are formulated and imposed through democratic procedures” (Stilz 2009: 95).

Likewise, according to Michael Walzer, what gives credibility to the idea that a state has a moral right to defend itself against external aggression is the tacit assumption that the state functions as a protector of the rights to life and liberty of its individual citizens:

When states are attacked, it is their members who are challenged, not only in their lives, but also in the sum of things they value most, including the political association they have made. We recognize and explain this challenge by referring to their rights. If they were not morally entitled to choose their form of government and shape the policies that shape their lives, external coercion would not be a crime; nor could it so easily be said that they had been forced to resist in self-defense. Individual rights (to life and liberty) underlie the most important judgments that we make about war.... The rights of states rest on the consent of their members.... The moral standing of any particular state depends upon the reality of the common life it protects and the extent to which the sacrifices required by that protection are willingly accepted and thought worthwhile. If no common life exists, or if the state doesn't

defend the common life that does exist, its own defense may have no moral justification. (Walzer 2000: 53–54)

Hence, according to Walzer's argument, a government which oppresses its own citizens and deprives them of freedom and basic well-being would not be allowed to use the principle of national sovereignty as a shield against a HMI undertaken by a neighbouring state. Nor would it be a case of morally legitimate self-defence for such a government to resist a HMI. Tyrannies simply do not have the same rights as rights-respecting states: "The protection of the human rights of its members is the key moral task that grounds the right of a state to coerce its members ... Should a state fail in the performance of that task, it has no moral standing to stop an outside party from intervening in order to help rectify the state's failure" (Altman and Wellman 2008: 233).

However, the above arguments only clarify why an oppressive state has no right to *resist* a HMI. It does not settle the question of just authority, that is, the right of another state to intervene against the oppressive state in the first place.

One possibility here is that the proper just authority is not any individual state, but rather the international community. After all, HMIs are supposed to protect universal human rights or vital human interests, and it could be argued that this should be the concern of some supranational agency rather than any individual political community. Moreover, we have the United Nations and we have the agreements and conventions regarding human rights which its member states have signed, and hence it would be only natural to consider the UN as a just authority when it comes to initiating HMIs.

However, even if the UN in theory would be an excellent supranational just authority, its track record as a modern Hobbesian Leviathan is less than convincing. This could be observed during the wars in former Yugoslavia:

The Serbs took UN hostages and there were telephone negotiations between a Bosnian Serb official and General Michael Rose of the UN. Jovan Zametica spoke to General Rose in a tone which Hobbes did not imagine would be used by people addressing Leviathan: 'Don't mess with us, Mike. Don't fuck with us.' (Glover 2001: 137)

And, speaking of international agreements, "for those who found the UN debacles in Bosnia and Rwanda less than satisfying, it is worth reminding ourselves that these collective humanitarian actions were carried out under the constraints imposed by such existing agreements and conventions" (Lucas 2003: 84).

Hence, we have to return to the case of a state, unilaterally contemplating a HMI with the purpose of protecting the human rights or vital human interests of the citizens of

another state. What legitimate authority can such a state have for intervening in another state to defend citizens of that state against their own government? Does the legitimate authority of the intervening state depend on its being democratic, respecting its own citizens' human rights or vital human interests? Or can HMIs be undertaken justifiably also by undemocratic states?

The Vietnamese invasion of Cambodia that ended the rule of Pol Pot and the Khmer Rouge in 1979 was not initiated by a democratic government, nor were the Cambodians asked to give their consent to it. Still, given the murderous brutality of the Khmer Rouge and the prospects for a more democratic and peaceful development in Cambodia following their downfall, few people would be morally concerned about the interference with Cambodian state sovereignty brought about by the Vietnamese invaders. Moreover, looking at cases of domestic law and order, it likewise seems that in our moral deliberations factors pertaining to the *need* for an interpersonal intervention, and the expected *consequences* (for human rights or vital human interests) of intervening as compared to *not* intervening, are given priority over questions regarding who has the formal or legal right to intervene:

Even police are morally permitted to resort to violence only to defend themselves or to protect third parties; that is, the use of violence is not legitimated in advance, but must be justified in each case as a last resort which prevents a greater harm. On the other hand, it is morally permissible and perhaps sometimes required for ordinary citizens to use violence under similar circumstances, even though ordinary citizens do not have legitimated authority to enforce the law. If a person or group of people is able to prevent a rape by restraining and hurting the would-be rapist, for example, they are justified in doing so. (Young 2003: 264)

Just authority in the case of HMIs hence seems to be *derived* from just cause rather than constituting an independent criterion. If it is morally right to intervene, that is, if there is a just cause for an intervention, even an undemocratic government may be a just authority *of this particular HMI*, although it may not be a just authority in relation to its own citizens and regarding other specific policies and actions. On the other hand, if it is morally wrong to intervene, that is, in the absence of a just cause for an intervention, not even a perfectly democratic government, although it is a just authority in relation to its own citizens, can be a just authority of this particular HMI. This brings us to the question of *when* it is morally right or even morally necessary to intervene, that is, to the question of just cause.

### **THE OBJECTION FROM JUST CAUSE**

This objection holds that HMIs lack just cause, since they involve the use of military force against another state without there being a threat against the political sovereignty or territorial integrity of the intervening state. The presumption behind the objection is that self-defence is the only possible just cause for a military intervention against another state.

Now, it could be argued that HMIs might be considered as a form of preventive self-defence, since oppressive regimes are not to be trusted as regards their peaceful intentions. The aggression they direct against their own citizens could easily be extended to neighbouring states, destabilizing peace and order in international relations. (One could think of the activities of Nazi Germany in the inter-war era, as well as of the activities of North Korea today.) Hence, the lesson to learn would be that “[o]utlaw states are aggressive and dangerous; all peoples are safer and more secure if such states change, or are forced to change, their ways” (Rawls 1999: 81).

However, even if this presumption is valid in many cases, it does not hold for all of them. Sometimes the oppressive governments against which HMIs are directed constitute no threat whatsoever to the intervening state, neither now, nor in the foreseeable future. More important, whether HMIs can be part of a strategy of self-defence or not is irrelevant, since the defining purpose of HMIs is different. HMIs are undertaken for the sake of protecting universal human rights or vital human interests, not for the sake of national self-defence.

Returning to the question of just cause, we have already noted Michael Walzer’s argument that the right of a state to defend itself depends on its willingness to defend its individual citizens’ rights to life and liberty. This argument could be extended to include a justification of HMIs. Since we may assume that rights to life and liberty are just as important to members of other political communities as they are to us, why would it be wrong for us to defend their rights as well—even against their own government?

Now, one objection to this line of arguing would be that from the fact that a state which protects its own citizens’ rights or important interests has the right to defend itself, it does not follow that such a state is also morally justified in intervening to protect the rights or interests of citizens of other states. It is one thing to establish a state’s right to self-defence. It is quite another thing to establish a state’s right to interfere in the internal affairs of another state. After all, it could be argued that while states are indeed morally obliged to look after the rights of their own citizens, they are not morally required to try to force other states to respect the rights of their citizens. According to this line of argument, the requirements of justice do not apply to international relations. And if they do not, “liberal

states are not obliged either to tolerate nonliberal states or to try to transform them, because the duties of justice are essentially duties to our fellow citizens” (Nagel 2005: 135). Hence, from the just cause of self-defence, we cannot infer a just cause of intervention. Since this assumption regarding the absence of requirements of justice in international relations is an important objection to HMIs, we will analyse it in a more detailed manner below.

### **THE REALIST OBJECTION TO HMIS**

Those who object to the idea that the purpose of protecting the rights or interests of the citizens of another state could constitute a just cause for a HMI need not deny the expected causal efficiency of the intervention. That is, they may well agree that a HMI indeed would bring about more decent conditions of life for the oppressed citizens of the state targeted by the intervention. But they may still think that this is not sufficient to justify a HMI.

This would be the position of the *political realists*, who reject all kinds of moral idealism in international affairs and who believe that any government should give priority to the national interest of its own political community and not intervene in any other state’s affairs unless this furthers the national interest. Now, political realists need not deny that moral considerations as a matter of fact do influence the decisions of governments and politicians, or that moral considerations might be consistent with the national interest. A conception of such a “moralised realism” has been outlined by Rory Conces (Conces 2009: 103–109). However, when it comes to *justifying* political decisions, political realists will hold that the national interest should be decisive.

According to political realists, moral reasons may well guide *interpersonal* actions within a particular nation. But between *nations* “there is no common moral standard, no mutually accepted procedure for reaching moral conclusions, and no common judiciary for enforcing moral judgments” (Lackey 1989: 1). Sometimes this idea seems to be a rather thin cover for a nationalist contempt for ideas of universalism in ethics, similar to the attitude expressed by Hermann Göring:

What the devil do you mean, morality?—word of honor? Sure, you can talk about word of honor when you promise to deliver goods in business.—But when it is the question of the *interests of the nation!*? ... Then morality stops! (Holmes 1989: 50)

Sometimes, however, political realism is more of a policy of caution, expressing fear for the fate of a nation whose politicians are guided by blind idealism. Henry Kissinger’s retrospective analysis of U.S. involvement in Vietnam voices this attitude:

In Kissinger’s view ... the disaster that befell America in Vietnam had its origin in ‘a naive idealism that wanted to set right all the



world's ills and believed American goodwill supplied its own efficacy' (...). As a result America found itself involved in a war that it 'knew neither how to win nor how to conclude' (...). (Coates 1997: 23)

Unfortunately for the realist argument, it is marred with problems, one of which is that it lacks consistency. To begin with, what ground could be given for promoting the national interest other than the fact that doing so is beneficial to those individuals who together constitute one's nation? There is no mystical national "organism" to be found here, which may possess an interest independently of the interests of all those individual members who together form the collective called "the nation". The nation as a collective organism, a "corps moral et collectif," as Rousseau put it (Rousseau 1966: 52), is a philosophical fiction. No nation can have an existence that goes beyond the existence of its individual members. When the last of the Mohicans is dead, so is the Mohican nation. And what passes for the actions and destiny of a nation is in fact what its members, or their leaders, or the most influential among them, do in the name of the nation: "The actions of states are, after all, reducible to the actions of people" (Lackey 1989: 2). And, as Michael Walzer pointed out above, what gives credibility to the idea that a state has a moral right to defend itself against external aggression is the tacit assumption that the state functions as a protector of the rights to life and liberty of its individual citizens.

Hence, the rights of states, which play an important part in the realist argument, seem to imply the more basic moral rights or interests of individuals, and these rights or interests in turn cannot depend for their justification on citizenship in a particular state, since that would make the argument circular—states would then be justified by reference to the rights and interests of individuals, and these rights and interests would in turn be justified by reference to the individuals' membership in states. Hence, the ideal of promoting the national interest cannot be separated from the need to recognize the moral rights or interests of individuals. And since there is no good reason to suppose that individual members of other nations would differ from one's fellow nationals with respect to their having certain moral rights or certain morally important interests, the advocate of states as possessors of rights must, on pain of inconsistency, recognize a universalist morality. Hence, political realism, as it usually presents itself, seems to be logically inconsistent, as it denies at the level of international relations those very rights or interests which its justification at the domestic level requires.

We have now, by way of an analysis of the basic assumptions of political realism, arrived at the conclusion that the human rights or basic human interests which justify state protection at the domestic level should also justify protection at the international level.

Hence, maintaining and defending human rights at the international level may constitute a just cause for HMIs.

### THE MORAL DUTY TO INTERVENE AND ITS LIMITS

Now, given that we accept a universalist morality and that the protection of the rights or important interests of citizens of states other than our own may justify HMIs, there remains the question of exactly what is implied by such a justification. We may have established that we have a moral *right* to intervene in another state for the sake of safeguarding the rights or important interests of its citizens. Do we also have a moral *duty* to launch a HMI (assuming that a HMI would succeed in the aim of bringing an end to oppression)? Given that we, too, have rights or important interests that we need to protect, what kind of sacrifices can be legitimately asked of us for the sake of relieving another nation of oppression?

The answers to these questions will depend on one's choice of ethical theory as well as on the specific character of the situation at hand. A utilitarian, for instance, would refer to the basic principle of creating the greatest net happiness possible for the greatest number, and then try to establish whether this principle, given the situation at hand, is or is not best approximated by a HMI, comparing the expected gains and losses in happiness for all persons concerned if the HMI is launched with the effects on their net happiness if the HMI is *not* launched.

Factors to be considered in such a calculation include the lives lost and the lives spared due to a successful HMI against a brutal dictatorship, lives lost and spared due to *not* intervening against that dictatorship, the effects on the general happiness of a failed HMI, the general chances of success or failure of a HMI, and so on. It could also be argued from a utilitarian point of view that a government which contemplates an intervention should make sure that it enjoys domestic support for what it intends to do, in order not to deprive itself of its citizens' trust, which also constitutes an important good to be included in the happiness calculus. In the words of the utilitarian philosopher Henry Sidgwick:

For a state to embark on a career of international knight-errantry would, generally speaking, be hardly more conducive to the interests of the civilized world than to those of the supposed Quixotic community. Still I admit that cases may occur in which intervention of this kind, at a cost or risk to the intervening community beyond what strict self-regard could justify, would be clearly advantageous to the world, and that in such cases the "quasi-trusteeship" attaching to the position of government might render its duty doubtful. It would seem

that in a case of this kind the moral responsibility for public conduct is properly transferred in a large measure from the rulers to the ruled. The government may legitimately judge that it is right to run a risk with the support of public opinion which it would be wrong to run without it ... (Sidgwick 1998: 45–46)

The contemporary utilitarians Nicholas Fotion and Gerard Elfstrom likewise note that “sometimes nations will have the obligation to initiate war on behalf of ... citizens from other nations”, citing Cambodia under Pol Pot and Uganda under Idi Amin as examples of tyrannically governed states that were justly invaded by their neighbours. However, Fotion and Elfstrom are also careful to point out that “[i]ntervention into another nation’s internal affairs is ... likely to be met with great resistance and be costly in terms of human and material destruction,” and that such interventions “can be justified only when special circumstances exist” (Fotion and Engstrom 1986: 115).

Now all this seems reasonable enough: we should not risk the lives of people, be they our fellow citizens or the citizens of another nation, for just any flimsy ideal of global justice and regardless of the prospects of success. Most importantly, we should not run all the risks involved in a military intervention unless it is indeed *necessary* to intervene to end oppression in another state. If we could end oppression just as efficiently with less risky means, we should of course do so.

However, the utilitarian calculus may give little comfort to oppressed minorities whose very minority position may make their interests negligible from a utilitarian point of view. If we should belong to such a minority we may well ask ourselves: “[H]ow can we argue with assurance that everyone would be better off if our rights were more fully recognized? The society might be better off without us” (Dyck 2005: 46).

Now, even if we reject the ideal of maximizing net happiness and accept that all persons have *rights* to life and liberty that should be respected regardless of whether this satisfies a utilitarian calculus or not, we may still come to the conclusion that not all persons are equally entitled to *our* government’s assistance. We may recognize that there are indeed such things as human rights and, sharing with Thomas Jefferson the belief that “to secure these rights, governments are instituted among men” (Jefferson 1994: 24), conclude that the supreme purpose of *our* government is to protect *our* rights.

Hence, whatever obligations our government has to support the rights of citizens of other nations, these obligations cannot be allowed to override its obligation to maintain our similar rights. Just as a bad swimmer will not be morally required to risk his life for the purpose of trying to save a drowning man, so a nation with limited resources will not be

required to jeopardize its independence and the well-being of its citizens, trying to protect the citizens of another nation against the overwhelming might of a ruthless and well-armed dictatorship. The morality of human rights implies an equality of rights between agents and their recipients, not a self-sacrifice on behalf of the agents.

The morality of human rights should be understood as an egalitarian morality, in the sense that it prescribes that all humans should be equal in their possession of certain important goods, such as life, liberty, and security. It is also Kantian, in the sense that it entails that no person or group should be reduced to a mere means to the ends of another person or group. Hence, there should be limits to the sacrifices that can be demanded of us in the name of human rights. Consequently, states and nations are not required to endanger the basic rights of their own citizens for the sake of relieving other political communities of their oppressors. However, the fact that a nation is unable to successfully intervene on its own to help people in need does not mean that it is entitled to passivity. The morality of human rights requires of nations that they should do their best to join forces with each other to gather the strength sufficient for protecting human rights at a global level.

Hence, while the argument from universal human rights supports the idea of HMIs for the sake of protecting the basic rights to life and liberty of oppressed groups, it also gives room for considering the rights of those individuals and states that are called upon to initiate the HMIs in question. This double consideration is clearly brought out in what is probably the most sophisticated contemporary argument for human rights. We are here referring to the argument developed by Alan Gewirth, taking its point of departure in the generic features of successful agency—defined by Gewirth as freedom and well-being—which all agents logically must claim as their rights, and culminating in the Principle of Generic Consistency (PGC), according to which we should act in accordance with these generic rights of our recipients as well as of ourselves:

There are kinds of extreme crisis situations where the joint efforts of governments and individuals are required. When tyrannical regimes set out to murder parts of their populations, as in the Nazis' Holocaust and the "ethnic cleansing" perpetrated in the former Yugoslavia in 1993, it is a human-rights obligation of governments to condemn such policies and to take whatever steps they can to protect the oppressed groups. Here the community of rights requires an overstepping of national boundaries and an effective recognition and enforcement of the universality of human rights.... We have duties to help persons to fulfill their generic rights of agency when they cannot do so by their own efforts. Through such fulfillment, persons are enabled to

act, with general chances of success, in pursuit of their own purposes, whatever they may be, so long as they do not violate the generic rights of other persons. But by the same token, the helpers, the respondents of the duties, should also be able to act in pursuit of *their* own purposes, in accordance with their own rights to freedom and well-being. An accomodation must, then, be reached between persons' duties to help others and their rights to be free purposive agents on their own behalf. This accomodation is indicated in the PGC's injunction to act in accord with the generic rights of one's recipients *as well as of oneself*. (Gewirth 1996: 60–62)

Hence, not only is the protection of human rights a just cause for HMIs, but it may occasionally be a moral duty for states to intervene in other states for the sake of preventing or ending violations of human rights. However, this duty is conditional. A HMI should be undertaken only if it is indeed *necessary* and only if it can be undertaken without risking any *comparable loss of rights or important interests* among the citizens of the intervening state. There should also be a reasonable chance that the intervention will be *successful*. Otherwise it would just be a waste of human and material resources. What counts as success is of course a matter of dispute. Should we aim for a perfect democracy with equal political rights for everyone, or should we settle for a melioration of present conditions, abolishing torture camps and releasing political prisoners? Should this be done within one year? Five years? Ten years? At what maximum cost? We should not expect that there will be agreement regarding what counts as a successful HMI. But we should expect from democratic and responsible governments that they give us an honest picture of the purpose and estimated costs of any HMI that they propose to undertake, so that we will be able to judge for ourselves how well the actual results of a HMI correspond to its professed goals.

#### **THE OBJECTION FROM NON-COMBATANT IMMUNITY**

This is the objection that since any HMI, like any other military operation, is likely to bring with it the killing and injuring of innocent victims, HMIs cannot be morally justified. A HMI undertaken for the sake of securing objects of basic rights or interests, like life and liberty, cannot, according to this objection, retain its moral validity if the necessary means to its realization involve violating these very rights or interests.

This objection, however, assumes too rigid a view of a morally justified HMI. The precept “do no harm,” which is implied by this view, “is not a viable maxim in a world where dirty hands are the inevitable consequences of action” (Brown 2003: 45) and where

inaction may be morally impermissible. To act according to the rule that one must never, regardless of the consequences, act in a way that may possibly harm innocent lives, will effectively immobilize most armed operations against tyrannical governments. At the same time it will convince tyrants, who themselves do not hesitate to kill and torture innocent people among their own citizens, that the leaders of democratic states are too weak and soft to do anything drastic about the situation.

We should note that “innocent,” in the context of just war theory, should be understood as “currently harmless” and as opposed to “doing harm” rather than to “being guilty” (Nagel 1979: 70). We are not assuming that the innocent, as persons, are guiltless and good. They may be wife-beaters, tax-evaders, and polluters of the environment. But they may still be innocent in relation to the context that matters to the military operation at hand, in this case a HMI, in the sense that they are not involved in any activity that endangers the success of this operation. However, the category of the *innocent*, while being equivalent to that of the *non-combatant*, is not the same as that of the *civilian*. Although civilians typically are non-combatants, not all of them are. Political leaders and government officials who direct and supervise the armed operations of their country may technically be civilians, in the straightforward sense that they wear no uniforms, but their role in the war effort makes them definitely combatants. (As regards this category, it has indeed been argued that “those *most* responsible for wars are usually least involved in the actual killing” (Holmes 1989: 185).) The same goes for workers in munitions factories. However, as Michael Walzer has pointed out, we must distinguish between those civilians who produce specifically for the war effort, and those who produce for the general needs of society:

When it is militarily necessary, workers in a tank factory can be attacked and killed, but not workers in a food processing plant. The former are assimilated to the class of soldiers—partially assimilated, I should say, because these are not armed men, ready to fight, and so they can be attacked only in their factory (not in their homes), when they are actually engaged in activities threatening and harmful to their enemies. The latter, even if they process nothing but army rations, are not similarly engaged. They are like workers manufacturing medical supplies, or clothing, or anything else that would be needed, in one form or another, in peacetime as well as war. (Walzer 2000: 146)

What morality requires of those in charge of a HMI is that they should not *intentionally* bring about the harming or killing of innocent people. While it may be impossible to avoid harming or killing innocent people as a side-effect of an attack on a legitimate military target (for instance, an enemy head-quarter situated close to a civilian

residential area), it should never be the intended purpose of an attack to harm or kill innocent people. A morally justified way of waging war targets people according to what they *do* as enemy combatants or organizers of enemy combatants, but not according to who they *are* in terms of the national identity they share with the enemy combatants. This is what distinguishes morally just warfare from acts of terrorism.

Hence, an act of war may be morally justified, even if it causes innocent deaths, provided that these deaths were not the intended effect, but only the unintended side-effect of that act (which may or may not have been foreseen). This is the famous *doctrine of double effect*. However, as Richard Norman has pointed out, some principle of *proportionality* is needed to balance the number of unintended innocent deaths against the moral value of the legitimate intended target:

[T]he doctrine of double effect does not mean that unintended consequences do not matter. It does not mean that an action can be justified no matter how many unintended deaths of innocent persons it may bring about. Unintended side-effects are still subject to other moral limitations, such as the requirement of proportionality.... One could not, for example, bomb a target of only slight military importance, killing nearby civilians in huge numbers, and claim that their deaths did not matter because they were unintended. What the doctrine of double effect does is make it possible to apply an absolutist standard to the intended action and its intended consequences, while applying a consequentialist standard to the unintended consequences. (Norman 1995: 84)

Moreover, the doctrine of double effect itself needs to be made more stringent as regards the intentions of the agents of a HMI. As it stands, it only requires of these agents that they should *not intend* to harm or kill innocent people. But this does not go very far in the direction of avoiding innocent casualties. For *P* not to intend *x* is not for *P* to intend not-*x*. Hence, Michael Walzer has suggested that the negative intentional requirement of the doctrine of double effect should be supplemented by a positive one, and that the doctrine accordingly should say not only what soldiers should not intend, but also what they *should* intend:

Double effect is defensible, I want to argue, only when the two outcomes are the product of a *double intention*: first, that the “good” be achieved; second, that the foreseeable evil be reduced as far as possible.... Simply not to intend the death of civilians is too easy; most often, under battle conditions, the intentions of soldiers are focused

narrowly on the enemy. What we look for in such cases is some sign of a positive commitment to save civilian lives.... And if saving civilian lives means risking soldiers' lives, the risk must be accepted. (Walzer 2000: 155–56)

Hence, the soldiers of a justified HMI should not only aim at *not harming* non-combatants, but they should aim at *protecting* non-combatants from being harmed by their operations. However, there are, as Walzer recognizes, justified limits also to these harm-preventing efforts. Soldiers should be prepared to take *some* risks for the sake of avoiding non-combatant casualties, but they are not required to let themselves be wiped out without resistance or to cease attacking enemy strongholds just for the sake of avoiding harm to non-combatants.

Moreover, it could be argued that those non-combatants who are the expected beneficiaries of a morally justified HMI, that is, the oppressed individuals for whose sake the HMI is undertaken in the first place, should accept certain sacrifices. After all, their lives were already at risk *before* the HMI, and some of them would, in all likelihood, be killed by their own repressive government if there had not been a HMI. Hence, it would not be unfair for the intervening army to expose these oppressed non-combatants to certain risks “provided that the action’s reduction of the risks they face from the original threat exceeds the risks to which the action itself exposes them” (McMahan 2010: 360).

After all, we are talking of a morally justified HMI and of *unintended* non-combatant casualties. We are not requiring of a justified HMI that it must *never* cause *any* harm to non-combatants. “War necessarily places civilians in danger; that is another aspect of its hellishness. We can only ask soldiers to minimize the dangers they impose” (Walzer 2000: 156).

### **MORAL RESPONSIBILITY AND NECESSITY**

Now, if a certain HMI is indeed necessary to end a brutal dictatorship, it could be argued that the unintended and unavoidable deaths of non-combatants that will be caused by the soldiers in charge of the HMI in question should be morally attributed to the dictatorship which made the HMI necessary in the first place. While the soldiers of the HMI are *causally* responsible for these deaths, the dictatorship is *morally* responsible for them. If an arsonist sets a house on fire, and the fire-brigade, while trying to enter the house by tearing down a wall, accidentally kills an unconscious person lying on the floor close to the wall, it is the arsonist who is morally responsible for this person’s death, although it was the fire-brigade’s action of tearing down the wall that actually caused his death. As with the case of a morally justified HMI, the intervention of the fire-brigade is necessary both causally and



morally, and the moral responsibility for the unintended deaths and injuries in the course of such interventions should rest with those agents who by their misdeeds created this double necessity in the first place.

In this context we should note a slightly different way of shifting the burden of moral responsibility for the unintended deaths of non-combatants from the soldiers with just cause, who are causally responsible for their deaths, to the unjust rulers against which these soldiers are fighting. F. M. Kamm suggests that “citizens of a country are liable for having risks and harms imposed on them in order that their country not be unjust” (Kamm 2004: 682). The point is that since citizens share a responsibility for the activities that their state undertakes to promote its interests, and since states are under an obligation not to promote their interests at the expense of the legitimate interests of other states, citizens must bear the costs for seeing to it that their state does not inflict injustice on other states. They should rather accept harm for themselves than letting their state unjustly inflict harm on the citizens of another country. This may involve, in Kamm’s example, having a backfiring missile sent off, even if it will kill some of one’s fellow national non-combatants, for the sake of destroying another missile that otherwise would kill people across the border. Likewise, Kamm goes on to argue, in the case of a just war against an unjust aggressor state, the unintended deaths of non-combatants in that state could be put down as the price its citizens have to pay to make their state just:

In inter-nation relations, there is often no international agency that will enforce the duties of one state relative to another. And, arguably, when that is the case, a state may itself try to enforce duties owed to it. Hence, when the just state conducts tactical bombing against the unjust state, knowing that noncombatants will suffer as a side effect, the just state may be seen as permissibly imposing risks and losses that the opponent state should be willing to impose on its own people to do what prevents its own injustice. (Kamm 2004: 684)

While we may agree that the burden of moral responsibility should be shifted from the just state (or, in the case that we are discussing, the agents of a justified HMI) to the unjust state, we will disagree with Kamm’s way of reasoning since it does not seem to distinguish between non-combatant citizens of an unjust state and the rulers of that state as regards their moral responsibility. According to Kamm, the non-combatant victims of justified military violence should recognize that their victimization is the price they have to pay for living in an unjust state and for making that state a just one. But this comes dangerously close to saying that these non-combatant victims have only themselves to

blame for being unintentionally killed, or at least that they have no legitimate ground for complaint when they are being unintentionally killed by the agents of a morally justified HMI. It would be preferable to see these non-combatant victims as people who indeed have a legitimate complaint—but against their unjust rulers, not against the agents of the morally justified HMI. The non-combatant citizens of a state, the brutal dictatorship of which has made a HMI morally necessary, are indeed victims—namely, of that brutal dictatorship. The moral necessity of the HMI as a response to the violations of basic human rights or interests by the dictatorship, in combination with the practical impossibility of avoiding the unintended harming or killing of non-combatants in the course of the HMI, make these unfortunate non-combatants the indirect victims of the dictatorship. The *moral* responsibility for the injuries and deaths inflicted on them hence rests with their rulers who made the HMI morally necessary in the first place, and this holds although it is the agents of the morally justified HMI who are *causally* responsible for these injuries and deaths.

### CONCLUSION

We have analysed three objections emanating from just war theory against HMIs. The first objection claimed that there could be no *just authority* for a HMI, since no state is morally authorized to intervene in the domestic affairs of another state. We found that the objection from just authority has no independent force of its own, but depends for its strength on arguments about just cause.

The second objection denied that there could be any such *just cause* for HMIs, since only the necessity of national self-defence can justify military action, and HMIs are not motivated by the need for such a self-defence, at least not primarily. By way of an analysis of the arguments of political realism, we arrived at the conclusion that the realist rejection of international morality rests on a contradictory view of moral rights. Hence, it should be possible to move beyond ideas of national interest and the right to national self-defence, and to consider the prevention or ending of violations of human rights in another state as a just cause for a HMI. However, although HMIs may be morally justified (in the sense that they have a just cause), it does not follow that they always are morally mandatory. Any government contemplating a HMI should make sure that the intervention in question is consistent with its duty to protect its own citizens' human rights or vital interests.

As for the third objection, about HMIs being inconsistent with *non-combatant immunity*, we have argued that the unintended killing or injuring of innocent non-combatants can be dealt with by means of a modified version of the doctrine of double effect. Moreover, the moral responsibility for unintended innocent victims of a morally

justified HMI should rest with the oppressor regime that made the HMI necessary in the first place. We have also argued that it is not unfair to expose the intended beneficiaries of a HMI, that is, the oppressed citizens of the state against which the HMI is directed, to some risks in connection with the HMI in question. Hence, to sum up, far from being inconsistent with just war theory, HMIs fit in very well with the normative framework of that theory. In fact, by relating the criteria and principles of just war to human rights, the justification of HMIs places just war theory firmly at the centre of contemporary moral discourse.

#### NOTE

1. This essay is a revised and updated version of Bauhn 2007.

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