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# EUROPAEA

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1/2013

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**1 / 2013**

**January – March**

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1

**S T U D I A**  
**UNIVERSITATIS BABEȘ-BOLYAI**  
**STUDIA EUROPAEA**

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EDITORIAL OFFICE: Hasdeu no. 51, 400015 Cluj-Napoca, ROMANIA  
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Special issue on the proceedings of the international colloquium  
*L'intervention humanitaire. Des principes éthiques aux défis pratiques*  
organized by the Faculty of European Studies,  
Cluj-Napoca, on the 26<sup>th</sup> of October 2012

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**JUS IN BELLO AND THE SOLIDARIST CASE  
FOR HUMANITARIAN INTERVENTION.  
FROM THEORY TO PRACTICE**

**Laura M. Herța\***

**Abstract**

*It is our contention that even though in theory the array of arguments supportive of humanitarian intervention (with the purpose of saving innocent people in cases “that shock the human conscience”) are by now fortified, in practice certain military actions aimed at the protection of civilians are highly controversial, thus managing to undermine the plea for the legitimatization of forcible humanitarian actions. In this article we will follow the pluralist vs. solidarist debate on humanitarian intervention and discuss the R2P norm. Then, we will analyze the extent to which the military means employed by intervening forces contribute to collateral damage (i.e. to civilian casualties) and the way in which such actions collide with the morally loaded concept of responsibility to protect and the core ideas of jus in bello. The article will address the following questions: How is humanitarian intervention defined and how is the forcible humanitarian intervention defended? To what extent phrases such as “humanitarian war”, “armed humanitarians” or “humanitarian military intervention” entail a plea for ending human suffering; or, are they simply an oxymoron? What is the grounding attribute of both Just War theory and humanitarian intervention? To what extent was the jus in bello, as chief element of Just War theory, respected during NATO’s campaign in 1999 and during the intervention in Libya (2011)? Is there an incremental respect for the jus in bello during the period 1999-2011?*

**Key words:** humanitarian intervention, just war theory, jus in bello, responsibility to protect, solidarism

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## Introduction and research questions

This article tackles the correlation among the following conceptual issues: humanitarian assistance/intervention, just war theory, the binary *right* and *duty* of intervention, the responsibility to protect, the *jus in bello* (chief component in the just war tradition) and its (mis)use in the cases of Kosovo and Libya. The documentation for the article has two main sources: on the one hand, it tries to encapsulate the relevant literature on the topic of humanitarian intervention and just war theory (including most of its controversial approaches), and, on the other hand, reports and resolutions of the United Nations and of key non-governmental organizations preoccupied with human rights and *just conduct* during intervention (such as Amnesty International and Human Rights Watch).

The article will further be divided in different sections: firstly, we will define humanitarian intervention and relate pivotal attributes of it to theoretical claims in International Relations literature and then we will present the debate between what Nicholas Wheeler calls *The Pluralist Case* against, and *The Solidarist Case* for, humanitarian intervention. Secondly, we will discuss the Just War Theory and focus mostly on its *jus in bello* element, trying to emphasize its Grotian source, its relevance in subsequent codification of the laws of war and in contemporary international law. Thirdly, we will analyze the interventions in Kosovo (1999) and in Libya (2011) with the primary purpose of identifying respect for, or flawed aspects of, *just conduct of the intervening forces*. Finally, we will attempt to design a sketch for future humanitarian interventions which is meant to incorporate the lessons learned by the international community, and to correct previous mismanagement.

The research questions which triggered this analysis are: How is humanitarian intervention defined and how is the *forcible humanitarian intervention* defended? To what extent phrases such as “humanitarian war”, “armed humanitarians” or “humanitarian military intervention” entail a plea for ending human suffering; or, are they simply an oxymoron? What is the grounding attribute of both Just War theory and humanitarian intervention? To what extent was the *jus in bello*, as chief element of Just War theory, respected during NATO’s campaign in 1999 and during the intervention in Libya (2011)? Is there an incremental respect for the *jus in bello* during the period 1999-2011?

### **Defining humanitarian intervention: conceptual clarifications**

Humanitarian intervention has gradually become one of the most salient issues in world politics, receiving both positive and negative assessments in inter-state interaction, as well as a great deal of attention in the academic field.

Defining humanitarian intervention has also been a chief endeavour and, by now, this is based on systematic empirical research and solid conduct of documentation. English School scholars have been preoccupied with the international society of states, high degree of order among states, and the role of norms in regulating state behaviour. R.J. Vincent defined *intervention* in his seminal book *Nonintervention and International Order* as follows: "Activity undertaken by a state, a group within a state, a group of states or an international organization which interferes coercively in the domestic affairs of another state."<sup>1</sup> This description of the *intervening* action does not necessarily entail the complex moral-legal-political problematic on humanitarianism and responsibility attached to it; it explains the act of outsider-performed intervention within the internal jurisdiction of states and highlights the traditional account on intervention, which implies "a coercive breach of the walls of the castle of sovereignty."<sup>2</sup> Vincent's definition from the early 1970's exposes a key feature of international order during the Cold War and a stringent necessity in inter-state relations, namely *the rule of non-intervention* in the domestic politics of states, which is the corollary of state sovereignty. Consequently, intervention was traditionally regarded as violation of state practice and international law, as a controversial action, and Vincent is accurate in adding this to his definition: "[Intervention] is a discrete event having a beginning and an end, and it is aimed at the authority structure of the target state. It is not

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<sup>1</sup> R. J. Vincent, *Nonintervention and International Order*, Princeton: Princeton University Press, 1974, p. 13. Vincent's definition and approach is largely discussed by Timothy Dunne who explains the importance of R.J. Vincent's seminal work (based on his doctoral dissertation), since it "presents a genealogy of the idea of intervention and the way in which the theory and practice of non-intervention has, in part, constituted the evolution of international society." See Tim Dunne, *Inventing International Society. A History of the English School*, New York: St. Martin's Press, 1998, pp. 161, 164.

<sup>2</sup> Nicholas J. Wheeler; Alex J. Bellamy, "Humanitarian intervention and world politics", in Jon Baylis; Steve Smith (eds.), *The Globalization of World Politics*, Oxford: Oxford University Press, 2005, p. 557.



necessarily lawful or unlawful, but it does break a conventional pattern of international relations.”<sup>3</sup>

The ICRC (International Committee of the Red Cross) advanced a non-political and non-discriminatory explanation for understanding *the humanitarian* component of the humanitarian intervention concept, by referring to acts aiming at “preventing and alleviating human suffering”; such a nuance was fraught with controversy since there is no consensus over what constitutes human suffering and since the latter has different connotations along time and space.<sup>4</sup> From its inception the Red Cross has been trying to “civilize wars”, to care for wounded during armed conflict and to protect civilians; these efforts stemmed from ideals of the founder of ICRC, Jean Henri Dunant, and were later coalesced in the Geneva Convention (1964). As David Forsythe noted, “the ICRC has been trying to promote the development of International Humanitarian Law from its very beginnings”, it has been working to foster humanitarian protection, and to “transfer the basic humanitarian obligation from private parties to public authorities.”<sup>5</sup>

According to Weiss and Hubert, “the definition of ‘humanitarian’, as a justification for intervention, is a high threshold of suffering. It refers to the threat or actual occurrence of large scale loss of life (including, of course, genocide), massive forced migrations, and widespread abuses of human rights. Acts that shock the conscience and elicit a basic humanitarian impulse remain politically powerful.”<sup>6</sup> The authors rigorously trace the references to humanitarian intervention within international legal literature during the second half of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> and mention “the intervention in Greece by England, France, and Russia in 1827 to stop Turkish massacres and suppression of populations associated with insurgents; and the intervention by France in Syria in 1860 to protect Maronite Christians” and “the prominent interventions undertaken by European powers against the

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<sup>3</sup> Vincent, *op. cit.*, p. 13.

<sup>4</sup> *Ibidem*, 2001, p. 471. The authors explain that *slavery* is nowadays unconceivable but it was a legitimate practice in previous centuries, and that *human rights* have different understandings and underpinnings in Western and Muslim societies.

<sup>5</sup> David P. Forsythe, *The Humanitarians. The International Committee of the Red Cross*, Cambridge: Cambridge University Press, 2005, pp. 259-260.

<sup>6</sup> Thomas G. Weiss; Don Hubert, *The Responsibility to Protect: Supplementary Volume to the Report of ICISS*, Ottawa: International Development Research Center, 2001, p. 15.

Ottoman Empire from 1827 to 1908” by pinpointing to the fact that “intervention was invoked against a state's abuse of its sovereignty by brutal and cruel treatment of those within its power, both nationals and non-nationals. Such a state was regarded as having made itself liable to action by any state or states that were prepared to intervene.”<sup>7</sup>

Scholars like J. L. Holzgrefe and Allen Buchanan provide a definition which includes the act of humanitarian relief and which clearly mentions the preoccupation for human rights associated with such practice: “[Humanitarian intervention] is the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals others than its own citizens, without the permission of the state within whose territory force is applied.”<sup>8</sup> A further clarification is provided by Holzgrefe, by stating that this operational definition is meant to deliberately exclude other types of engagement occasionally associated with the term: “*non-forcible* interventions such as the threat or use of economic, diplomatic, or other sanctions, and *forcible* interventions aimed at protecting or rescuing the intervening state’s own nationals.” The purpose of this differentiation is meant to tackle the issue of “whether states may use *force* to protect the human rights of individuals other than their own citizens.”<sup>9</sup> According to Michael Walzer, “humanitarian intervention is justified when it is a response (with reasonable expectations of success) to acts that ‘shock the moral conscience of mankind’.”<sup>10</sup>

Nicholas Wheeler and Alex Bellamy also distinguish between non-consensual, *forcible humanitarian intervention* and *non-forcible intervention*,

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<sup>7</sup> *Ibidem*, pp. 16-17.

<sup>8</sup> J. L. Holzgrefe, “The humanitarian intervention debate”, in J. L. Holzgrefe; Robert O. Keohane, *Humanitarian Intervention. Ethical, Legal, and Political Dilemmas*, Cambridge: Cambridge University Press, 2003, p. 18; Allen Buchanan, “Reforming the international law of humanitarian intervention”, in J. L. Holzgrefe; Robert O. Keohane, *Humanitarian Intervention. Ethical, Legal, and Political Dilemmas*, Cambridge: Cambridge University Press, 2003, p. 130.

<sup>9</sup> *Ibidem*.

<sup>10</sup> Michael Walzer, *Just and Unjust Wars. A Moral Argument with Historical Illustrations*, 4<sup>th</sup> edition, New York: Basic Books, 2006, p. 107. Walzer adds that “it is not the conscience of political leaders that one refers to in such cases. They have other things to worry about and may well be required to repress their normal feelings of indignation and outrage. The reference is to the moral convictions of ordinary men and women, acquired in the course of their everyday activities.”

explaining that while the former involves coercion and the breach of sovereignty, the latter “emphasizes the pacific activities of states, international organizations, and non-governmental organizations in delivering humanitarian aid and facilitating third party conflict resolution and reconstruction.”<sup>11</sup> A further subdivision is then made between *consensual non-forcible intervention* and *non-consensual non-forcible intervention*: the first points to the activities of different humanitarian agencies or relief organizations and particularly to the International Committee of the Red Cross whose work is correlated with consent of sovereign governments; the second is relevant for relief work of other NGO’s, and one example is the activities of Médecins sans Frontières which operates without the consent of host governments.<sup>12</sup>

During the 1990’s the concern for humanitarian intervention intensified and approaches on the topic multiplied. Ian Holliday refers to a “humanitarian turn” and identifies two key factors that contributed to it: the United Nations and the role of the Secretary-General, and the “new” humanitarians.<sup>13</sup> In 1992, Boutros Boutros-Ghali issued his *Agenda for Peace* and warned the international community about the dynamics and nature of intra-state turmoil which threatened the new international order, by stressing the need to formulate and design efficient means to address such risks<sup>14</sup>; he also emphasized the transformative role of the UN in international politics. This new active role of the UN was developed in other subsequent organization’s reports (notably the *Supplement to An Agenda for Peace* from 1995 and the Brahimi Report from 2000). Additionally, in 1993, the UN General Assembly issued a resolution which, *inter alia*, established a Department of Humanitarian Affairs and listed twelve principles for humanitarian intervention.<sup>15</sup> All these documents

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<sup>11</sup> Wheeler; Bellamy, *op. cit.*, 2001, pp. 573-574.

<sup>12</sup> *Ibidem*.

<sup>13</sup> Ian Holliday, “Ethics of Intervention: Just War and the Challenge of the 21<sup>st</sup> Century”, *International Relations*, vol. 17(2), pp. 116-117.

<sup>14</sup> See Boutros Boutros-Ghali, *An Agenda for Peace*, where the terms *preventive diplomacy*, *peace keeping*, *peace-making* and *post-conflict peace building* are described as means to accommodate threats to international peace and security in the aftermath of Cold War order, [[http://www.unrol.org/files/A\\_47\\_277.pdf](http://www.unrol.org/files/A_47_277.pdf)].

<sup>15</sup> Holliday, *op. cit.*, pp. 116-117. See details in *Supplement to An Agenda for Peace* [<http://daccess-dds-un.un.org/doc/UNDOC/GEN/N95/080/95/PDF/N9508095.pdf?OpenElement>],

mark the concern of UN for humanitarian intervention. Ian Holliday asserts that a parallel phenomenon outlined the salience of humanitarian intervention, namely the increasing contribution of NGO's to international humanitarian missions and their deployment in different areas of the world. The author refers to the old humanitarians (also called conventional) "who professed an apolitical impartiality and neutrality" (which, we may add, is best identified with the work of ICRC) and to the "development of new humanitarianism" (practised by Amnesty International, Médecins sans Frontières, Human Rights Watch). He argues that "new humanitarians are openly radical, political and campaigning. They prioritize human rights over the principle of human need that long underpinned humanitarian intervention."<sup>16</sup>

In this article we will discuss the *forcible humanitarian intervention* and its controversial aspects in the case of Kosovo and in Libya.

### **Humanitarian intervention: development of debate and theory-laden claims**

There is a long tradition pertaining to what we now call humanitarian intervention and the precursors in the legal field go back to Hugo Grotius and Emmerich de Vattel, in philosophy to the works of Immanuel Kant, John Stuart Mill, Christian Wolff, John Rawls, and in theology to Thomas Aquinas and Saint Augustine. We will focus, though, on the development of the debate during the second part of the 20<sup>th</sup> century and on the extent to which *international order among states* and promotion of *justice within states* were perceived as mutually exclusive. Basically, the tension between *international order* and *justice* refers to the post Second World War codification of an international society based on state sovereignty and the banning of outside interference in internal jurisdiction of states (as stipulated in the UN Charter, article 2, paragraphs 4 and 7) and

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the Brahimi Report

[[http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/594/70/PDF/N0059470.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/N00/594/70/PDF/N0059470.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/594/70/PDF/N0059470.pdf?OpenElement)]. See also, Paul Taylor, "The United Nations and international order", in Baylis; Smith (eds.), *op. cit.*, (especially the subchapter on *The typology of the roles of the United Nations in 2000*), pp. 347-350.

<sup>16</sup> Holliday, *op. cit.*, p. 117. See also Thomas G. Weiss, *Humanitarian Intervention. Ideas in Action*, Cambridge UK: Polity Press, 2007, especially the chapter "New Wars and New Humanitarianisms", pp. 59-87.

the promotion of human rights as conveyed by the Preamble of the UN Charter, by article 1 (paragraph 3) and articles 55 and 56 of the Charter, and by the Universal Declaration of Human Rights from 1948. The attempts to correct injustices (such as human rights violations, torture, mass killing, or any other atrocities committed against individuals) by recourse to intrusion in states' affairs were counterweight by the need to protect an international order among states which eliminated war as means to end the disputed in inter-state relations, but also had two chief tenets: the sacrosanct state sovereignty and the rule of non-intervention.

Those who opposed humanitarian intervention were arguing that jeopardizing the rules of sovereignty would result in undermining an order among states that was in fact a prerequisite for the protection of individuals and their well-being. This position against humanitarian intervention is called rule-consequentialism and claims that "international order and hence general well-being is better served by a general prohibition against humanitarian intervention than by sanctioning [it] in the absence of agreement on what principles should govern a right of unilateral humanitarian intervention."<sup>17</sup>

Nicholas Wheeler, in his impressive *Saving Strangers*, thoroughly followed the two lines of arguments and structured the debate as follows: the pluralist conception on humanitarian intervention and the solidarist case for humanitarian intervention. The debate is also organized in terms of restrictionists ("international lawyers who argue that there is a legal right of humanitarian intervention in both UN Charter law and customary international law") *versus* counter-restrictionists ("international lawyers who argue that humanitarian intervention violates Article 2(4) of the UN Charter and is illegal under both UN Charter law and customary international law").<sup>18</sup>

The pluralist approach (pertaining to scholars, policy-makers or international law experts) is centred on several objections to legitimizing humanitarian intervention. The first one is based on the aforementioned disagreement over "what moral principles should govern a right of humanitarian intervention" (the rule-consequentialism argument), which does not mean that pluralism is not concerned with human rights; instead,

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<sup>17</sup> Wheeler; Bellamy, *op. cit.*, 2005, p. 566.

<sup>18</sup> Nicholas J. Wheeler, *Saving Strangers*, Oxford: Oxford University Press, 2002, pp. 27-51; Wheeler, Bellamy, *op. cit.*, 2005, pp. 558-561.

theorists of international society, such as Hedley Bull, assert that “it might be expected that the society of states would agree to privilege individual justice over the non-intervention principle.”<sup>19</sup> Robert Jackson, another English School scholar, also points to consequentialism and to the efforts of legitimizing the use of force, by warning that it could be well-intentioned but it could also lead to chaos; consequently international peace should not be jeopardized by promotion of international justice: “there is a moral obligation to prevent war – which trumps the moral obligation to promote human rights and democracy elsewhere.”<sup>20</sup>

The second objection belongs to the Realist account on world politics and claims that “states do not intervene for primarily humanitarian reasons.”<sup>21</sup> According to Bhikhu Parekh, humanitarian intervention should be “an act wholly or primarily guided by the sentiment of humanity, compassion or fellow-feeling, and it is in that sense disinterested”<sup>22</sup> and, as mentioned before, Walzer correlates humanitarian intervention with actions that “shock the moral conscience of mankind”. The Realist thought in international relations is based on the postulate that states interact on the basis of self-maximizing power and their actions target issues which are serving them to pursue their national interests. In fact, when realist thinker Henry Kissinger expressed his opinion about the intervention in Kosovo, he argued the USA had no vital national interests in the Balkans, and thus the US involvement was not stringent. The Realist theorizing belongs to rationalism and assumes prudence, calculation of positive outcomes, and rational thinking in policy making. Therefore, Kissinger claimed that the state’s national interest could be compromised by “irrational” endeavours and contented that “intervention in the name of humanitarianism or democracy is likely to create more problems than it solves. It is impossible to know beforehand if intervention will succeed or whether it will lead to an acceptable level of casualties; there are simply too many unknown variables that the intervening state cannot control.”<sup>23</sup> In trying to define *national interest* in broader terms (including herein both material-security

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<sup>19</sup> Wheeler; Bellamy, *op. cit.*, 2005, p. 559.

<sup>20</sup> Jennifer Welsh, “From Right to Responsibility: Humanitarian Intervention and International Society”, *Global Governance*, Oct.-Dec. (8/4), 2002, p. 509.

<sup>21</sup> Wheeler; Bellamy, *op. cit.*, 2005, p. 558.

<sup>22</sup> As quoted in *ibidem*.

<sup>23</sup> Welsh, *op. cit.*, p. 508.

issues and “humanitarian interests”), Joseph Nye Jr. argues that under certain circumstances interventions undertaken to end slavery, mass murder or genocide is a morally obligatory.<sup>24</sup> In this argument, though, humanitarian imperative is situational and is correlated to national interest. Closely related to this argument, the third objection asserts that “states are not allowed to risk the lives of their armed forces on humanitarian crusades.”<sup>25</sup> The Realist thinking has a double approach on what counts as moral for state leaders, by separating the attitude towards the states’ own citizens, which is based on responsibility and prudence, from the attitude towards other equal sovereign’s individuals which fall under the responsibility of their respective leaders. In other words, moral decision makers are those who act in the interest of the state and of their own citizens (soldiers included), and they “do not have the moral right to shed blood on behalf of suffering humanity.”<sup>26</sup> As Wheeler explains, “realists [...] might concede that humanitarian considerations can play a part in motivating a government to intervene, but states will not use force unless they judge vital interests to be at stake.”<sup>27</sup> Samuel Huntington asserted in 1992 that “it is morally unjustifiable and politically indefensible that members of the [United States] Armed Forces should be killed to prevent Somalis from killing each other.”<sup>28</sup>

The objection could further be discussed not only in Realist underpinnings, but also in terms of domestic public opinion pressure, compassion for fellow-individuals, and governments’ “elasticity” in risky humanitarian action: incumbents in democratic states are accountable for their actions in the eyes of the population and they tend to respond to societal pressure; therefore, democratic state leaders are willing to deploy military troops to save the lives of innocents in other countries, but such engagement’s elasticity stretches to the point whereby the own nation’s soldiers are killed. The United States’ active participation to UNITAF and its efforts to end famine in Somalia in 1992-1993, to secure humanitarian convoys, and to reduce violence were genuinely based on humanitarian

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<sup>24</sup> Joseph S. Nye Jr., “Redefining the National Interest”, *Foreign Affairs*, 78, 1999, pp. 22-35.

<sup>25</sup> Wheeler; Bellamy, *op. cit.*, 2005, p. 558; Wheeler, *op. cit.*, p. 29.

<sup>26</sup> *Ibidem*.

<sup>27</sup> Wheeler, *op. cit.*, p. 29.

<sup>28</sup> Samuel P. Huntington, “New Contingencies, Old Roles”, *Joint Forces Quarterly*, 1992, *apud* Holzgrefe, *op. cit.*, p. 30.



feelings towards atrocities in a Horn of Africa country. When US soldiers were ambushed, killed, mutilated and dragged through the streets of Mogadishu, both American leader and public opinion empathized more with the fate of US rangers and urged for the withdrawal of American troops. It is our contention that a state's willingness to relief aid, to help innocents or to redress gross human rights violations belongs to an "elasticity stretch" whose limits are the safety of its own troops.

The fourth major objection against humanitarian intervention brings in the problem of abuse. According to the UN Charter (which is perceived as pivotal international legal document) the use of force is banned, according to article 2(4); the only exceptions to the rule of non-use of force rest upon the right of states to self-defence (codified in article 51) and to situations pertaining to collective security whereby international peace is threatened (articles 39 and especially 42 and 43 of the Charter). According to some scholars, "article 2(4) is already vulnerable" and states might "abuse it in the name of self-defence" and thus "creating a new legal right of humanitarian intervention would be equally open to abuse."<sup>29</sup> Therefore, states might pursue self-interested actions under the guise of humanitarian assistance, therefore turning the humanitarian imperative into pretext for selfish national interests. The objection claims that "because humanitarian concerns will be manipulated by intervening states, a doctrine of humanitarian intervention becomes a weapon that the strong will use against the weak."<sup>30</sup>

The fifth objection is intertwined with the previous Realist ones and invokes the *selectivity of response*. Since the Realist claim is that states always pursue national interests, they will tend to design a foreign policy agenda governed by what they will prioritize as serving the national interests. As a result, there will be an inconsistency in addressing humanitarian issues because states will select, will opt for those cases which are congruent with their interests. According to Wheeler and Bellamy, "the problem of selectivity arises when an agreed moral principle is at stake in more than one situation, but national interest dictates a divergence of responses"; the authors exemplify by mentioning voices that criticized NATO's intervention in Kosovo in 1999, which "could not have been driven by

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<sup>29</sup> Thomas Franck, Nigel Rodley quoted in Wheeler, Bellamy, *op. cit.*, 2005, p. 558.

<sup>30</sup> Wheeler, *op. cit.*, pp. 28-29.



humanitarian motives because the Alliance had done nothing to address the equally terrible plight of Turkish Kurds, the Chechens, or the East Timorese.”<sup>31</sup>

One of the strongest legal cases against the right of humanitarian intervention is provided by Simon Chesterman in his *Just War or Just Peace?*; the author sets as illustrative example NATO’s intervention in Kosovo and argues that the post-1945 international law’s strict tenet consists in the presumption that *the use of force is illegal* (as provisioned by Article 2(4) of the UN Charter).<sup>32</sup> In arguing against a customary law favouring intervention, Chesterman draws back to the origins of humanitarian intervention emerging from two opposing views: on the one hand, the one of Hugo Grotius<sup>33</sup> based on the belief that war was justified or just when opposed to an immoral enemy, and on the other hand, the coalescence of the principle of non-intervention as inherent part of sovereignty.<sup>34</sup> The latter belongs to the modern doctrine of non-intervention associated with writings of Emmerich de Vattel and Christian Wolff. By recourse to historical survey Chesterman asserts that a pre-1945 state practice supporting the right of humanitarian intervention did not really exist, since it was merely a “lacuna” in an international order/law that did not prohibit war. By the 20<sup>th</sup> century, it became clear that international law (strengthened by the Briand-Kellog Pact and by the League of Nations) acknowledged and sanctioned intervention “only in situations of civil war where clear lines could be drawn between rulers and their people; it could not be justified as a defence of the rights of the oppressed in other jurisdictions against their sovereign.”<sup>35</sup> The ban on use of force (with the exceptions of self-defence and collective security), claims Chesterman, is fortified by the UN Charter’s chief purpose: “to delegitimize individual acts of war by vesting sole authority for the non-defensive use of force in the Security Council.” Besides, he argues that establishing a new rule that weakens the constraints on the use of force is highly dangerous,

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<sup>31</sup> Wheeler; Bellamy, *op. cit.*, 2005, pp. 558-559.

<sup>32</sup> Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and Humanitarian Law*, Oxford: Oxford University Press, 2001, *apud* Welsh, *op. cit.*, p. 504.

<sup>33</sup> Hugo Grotius, *On the Law of War and Peace*, (translated from the original Latin *De Jure Belli ac Pacis* and slightly abridged by A. C. Campbell), Kitchener: Batoche Books, 2001.

<sup>34</sup> As synthesized by Welsh, *op. cit.*, p. 505.

<sup>35</sup> *Ibidem*.

and unilateral humanitarian intervention (like NATO's in Kosovo), without explicit authorization from the Security Council, "is not the alternative to collective action under the charter, but rather the antithesis of it."<sup>36</sup>

Tom J. Farer is also constructing a comprehensive objection against unilateral humanitarian intervention by exploring the legal debate; he stresses the potential for abuse of a doctrine of humanitarian intervention that would enable states to act parallel to (the consent/lack of consent of) the UN Security Council.<sup>37</sup> There is a clear-cut warning about the association of secessionist struggles and humanitarian intervention, "the tendency of secessionist conflicts to create the triggering conditions for humanitarian intervention", but also one about the debate on the legitimate use of force. The aftermath of the Cold War reasserted "a three-fold division of the universe of force into aggression, self-defence, and enforcement action authorized by the Security Council"; it is Farer's contention that this "is obviously incompatible with affirming a unilateral right to march across borders in pursuit of liberal or [...] any other ends arguably including the pre-emption of suspected terrorists. So, a debate about humanitarian intervention is inseparable from the larger debate about the conditions of legitimate violence."<sup>38</sup>

Michael Byers and Simon Chesterman argue against "the Kosovo intervention as state practice supportive of a new customary rule, with statements by the United States and several of its allies articulating humanitarian motives presented as evidence of an accompanying *opinion juris*"<sup>39</sup> and contend that customary international law cannot be changed by powerful states within the system. They also warn that "relaxing the non-intervention norm would alter the principle of sovereign equality"<sup>40</sup> which points to the rule of the strong against the weak already mentioned. The entire argument is meant to clarify that cases like Kosovo could be discussed in terms of morally required, but not in terms of creating new rules established by NATO practice.

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<sup>36</sup> *Ibidem*, pp. 505-506.

<sup>37</sup> Tom J. Farer, "Humanitarian intervention before and after 9/11: legality and legitimacy", in J. L. Holzgrefe; Robert O. Keohane, *op. cit.*, pp. 53-89

<sup>38</sup> *Ibidem*, p. 58.

<sup>39</sup> Michael Byers; Simon Chesterman, "Changing the rules about the rules? Unilateral humanitarian intervention and the future of international law", in Holzgrefe; Keohane, *op. cit.*, p. 187.

<sup>40</sup> Robert O. Keohane, "Introduction", in Holzgrefe; Keohane, *op. cit.*, pp. 5-6.

A non-Western restrictionist view has been formulated by Mohammed Ayoob who argues that “humanitarian intervention carries shades of neo-colonialism” and tends “to impair the capacity of states to provide for political order inside their frontiers”; as such, the suggestion is that “this contemporary revival of imperialism threatens to erode the legitimacy of an international society that for the first time has become truly global in character.”<sup>41</sup>

The solidarist case for humanitarian intervention (or the so-called *counter-restrictionist* position) holds that humanitarian intervention is legally permitted (since there is a loophole in article 2(4) of the UN Charter and a customary law legitimizing it) and morally imperative.

According to Nicholas Wheeler “interventions have to satisfy certain tests to count as humanitarian” and there are chief requirements to be met which “are derived from the Just War tradition”. Thus, humanitarian intervention must be based on: 1) *just cause* (or what Wheeler prefers “to call a supreme humanitarian emergency, because it captures the exceptional nature of the cases under consideration”); 2) “the use of force must be a last resort”; 3) “it must meet the requirement of proportionality”; 4) “there must be a high probability that the use of force will achieve a positive humanitarian outcome.”<sup>42</sup> Basically, a *Solidarist theory of legitimate humanitarian intervention* is inextricably connected to just war principles. Referring to the first criterion, Wheeler agrees that there is no universally accepted definition over what counts as “extreme humanitarian emergency”; and yet, without emphasizing the need to resort to numbers of killed or displaced individuals, Wheeler argues that it “exists when the only hope of saving lives depends on outsiders coming to the rescue”, that intervention is justified in cases where “huge violations of human rights” have occurred in target states and have reached an extreme magnitude.<sup>43</sup> This is precisely what Michael Walzer refers to when he formulates the justification for intervention as reaction to acts that “shock the moral conscience of mankind.”<sup>44</sup> The second requirement simply states that force, or *forcible humanitarian intervention*, must represent the *ultima ratio*, resulting

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<sup>41</sup> Mohammed Ayoob, “Humanitarian Intervention and State Sovereignty”, *International Journal of Human Rights*, 2002, *apud* Welsh, *op. cit.*, p. 509.

<sup>42</sup> Wheeler, *op. cit.*, pp. 32-33.

<sup>43</sup> *Ibidem*, p. 33.

<sup>44</sup> Walzer, *op. cit.*, p. 107.

after all others means to stop the atrocities (preventive diplomacy, economic sanctions, condemnation of actions of targeting state in UN Resolutions, threats with intervention) have been exhausted and have failed to achieve a positive outcome. According to Wheeler, the problem is “how to reconcile the moral imperative for speedy action with the Just War requirement that force always be a last resort”<sup>45</sup>; in other words, the problem is how to justify and deploy a humanitarian mission that is able to save the lives of the innocents and, at the same time, submit to the non-use of force until the very last minute. The Kosovo case was controversial, *inter alia*, because of this: was there enough evidence that all other means have been exhausted? Was it obviously a case that “shocked the conscience of mankind”? Were the means employed to redress the wrongs proportional to the moral imperative?<sup>46</sup> The last question leads us to another important principle of the Just War theory, namely the principle of proportionality which requires “that the gravity and extent of the violations be on a level commensurate with the reasonably calculable loss of life, destruction of property [and] expenditure of resources”<sup>47</sup> or, as Wheeler formulates it “the level of force employed [does] not exceed the harm that it is designed to prevent or stop.” The final criterion, *the high probability of success* in the case of humanitarian intervention, is meant to assure the necessity to design a solid humanitarian response which does not lead to more chaos, whose consequences indicate the end of atrocities, and one which justifies the privilege of human rights that trumps over non-use of force. This criterion could be discussed as an attempt of Solidarism to respond to objections arguing that forcible humanitarian intervention is based on a violation of the principle of non-use of force and that jeopardizing this tenet of

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<sup>45</sup> Wheeler, *op. cit.*, p. 34.

<sup>46</sup> All these questions were addressed by many others. See, *inter alia*, Robert C. DiPrizio, *Armed Humanitarians. U.S. Interventions from Northern Iraq to Kosovo*, Baltimore&London: The Johns Hopkins University Press, 2002, chapter “Kosovo: Operation Allied Force”, pp. 130-145; Ruth Wedgwood, “NATO’s Campaign in Yugoslavia”, *The American Journal of International Law*, October, vol. 93, 1999; Robert Tomes, “Operation Allied Force and the Legal Basis for Humanitarian Interventions”, *Parameters*, vol. 30, Spring 2000; Julie Mertus, “Legitimizing the Use of Force in Kosovo”, *Ethics and International Affairs*, vol. 15, no.1, 2001; Henry F. Carey, “U.S. Domestic Politics and the Emerging Humanitarian Intervention Policy: Haiti, Bosnia, and Kosovo”, *World Affairs*, vol. 164, 2, Fall 2001; Ivo H. Daalder; Michael E. O’Hanlon, “Unlearning the Lessons of Kosovo”, *Foreign Policy*, no. 116, Fall 1999.

<sup>47</sup> Cf. Nigel Ridley, quoted in Wheeler, *op. cit.*, p. 34.

international law, in cases where the probability of success is not secured, grossly undermines an international order (based on the absence of interstate war and on compliance to the rule of non-use of force). Cases like Somalia (namely the activities of UNOSOM II) clearly point to ambivalent strategies that combine humanitarian relief, with warlord hunting, and with engagement in military action, that point to the often mentioned oxymoron "*humanitarian war*", which means intervention ending in debacle and departing from envisaged humanitarian consequences.

At the heart of the solidarist arguments lies the preoccupation for human rights, for *individuals*, perceived as key subjects in international law, rather than for states and their rights. Wheeler asserts that "Solidarism is committed to upholding minimum standards of common humanity, which means placing the victims of human rights abuses at the centre of its theoretical project, since it is committed to exploring how the society of state might become more hospitable to the promotion of justice in world politics."<sup>48</sup>

The solidarists counter the Realist or pluralist objections as follows: first of all, related to the motives behind state-performed intervening action (which is congruent to national interest rather the humanitarian rationale), the solidarist argument states that "the primacy of humanitarian motives is not a threshold condition", since "even if an intervention is motivated by non-humanitarian reasons, it can still count as humanitarian provided that the motives, and the means employed, do not undermine a positive humanitarian outcome."<sup>49</sup> According to Fernando Tesón, the rules of state-sovereignty and non-intervention are not unconditional; they belong to a society of states (and in this respect Wheeler places him within the "solidarist wing of the English School") based on a commonly agreed value: human rights protection. It is Tesón's contention that (as synthesized by Wheeler) "governments that massively violate human rights forfeit their right to protection of the rules of sovereignty and non-intervention, and as a result, other states are morally entitled to intervene."<sup>50</sup> Consequently, "the true test is whether the intervention has put an end to human rights deprivations. That is sufficient to meet the requirement of disinterestedness, even if there are other, non-humanitarian reasons behind

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<sup>48</sup> Wheeler, *op. cit.*, p. 37.

<sup>49</sup> *Ibidem*, p. 38.

<sup>50</sup> Emphasis added.

the intervention.”<sup>51</sup> As far as separation between *national interest* and *pursuit of justice* (instantiated in humanitarian action) is concerned, Paul Taylor observes that the United Nations has incrementally contributed to a *locus* where the “disentanglement between moral motives and national interests” became difficult, that the “clear-cut conflict between perceptions of national interest and the pursuit of justice” is currently surmounted; moreover, “states’ contributions to activities such as peacekeeping, or humanitarian intervention, were defended in terms of national interest [...] states like Canada accepted an obligation to develop their capacity for peacekeeping, which was the moral course, but one which could also be justified as a reflection of national interest.”<sup>52</sup> The counter-restrictionist argument says that in the post Cold-War international order, due to the emergence of intra-state violence (associated with human deprivation, massive flows of refugees, displacement, torture) which destabilizes regions and threatens international security, there is no “divorce” between states’ interests and international peace based on the well-being of individuals. With respect to the Realist assumption over the potential of abuse, Wheeler argues that this constitutes “an objection to humanitarian intervention only if the non-humanitarian motives behind an intervention undermine its stated humanitarian purposes”; furthermore, he believes in the solidarist claim that “states are responsible for human rights at home but also for defending them abroad”, and this might include, in certain situations (*i.e.* “to save the victims of gross and systematic violations of human rights”), putting their soldiers at risk.<sup>53</sup> The latter is also a counter-view on what counts as moral for decision makers and to the concern for states’ military troops.

The most salient discussion related to forcible humanitarian intervention is centred on its legality. Since we chose to discuss Kosovo in the final part of the article, we should mention at this point that NATO’s military action in 1999 was a precedential case and it triggered numerous discussions related to: (il)legality, lawfulness/unlawfulness, (il)legitimacy, and (short/long term) success or failure/abuse. The main point in Solidarist argumentative package is that the disjunction between *international order* and *internal justice* should be turned obsolete, that they are not mutually

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<sup>51</sup> Tesón, *Humanitarian Intervention*, quoted in *ibidem*.

<sup>52</sup> Taylor, *op. cit.*, p. 336.

<sup>53</sup> Wheeler, *op. cit.*, p. 38.

exclusive, and that members of the UN signed up both to protect human rights, and to ban the use of force. The latter idea is connected to a revisiting of the concept of sovereignty (idea to which we will come back).

One chief legal interpretation is related to Article 2(4) of the UN charter, which stipulates that “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations.”<sup>54</sup> According to some legal scholars this does not represent “a general and comprehensive prohibition on the use of force”, instead “it merely regulates the conditions under which force is prohibited, but allows exceptions beyond the two mentioned in the Charter (Articles 51 and 42).”<sup>55</sup> Basically, this view interprets the article as if the Charter allows the use of force in certain circumstances (others than those described under Articles 51, 39 or 42). The loophole identified here, as Tesón asserts, indicates that humanitarian purposes backed by the use of force are supported in the Charter<sup>56</sup> and that “humanitarian intervention would not contravene the charter if it did not violate ‘the territorial integrity or political independence’ of the target state”, especially if humanitarian intervention does not run contrary to the purposes drafters of the UN Charter, namely human rights and freedoms listed in Article 1(3).<sup>57</sup> But, the cases we selected to analyze both depart from this argument: in the case of Kosovo, the outcome of the intervention was secession and it infringed the territorial integrity of the Republic of Serbia, whereas intervention in Libya resulted in regime change (ousting the Gaddafi government) which is essentially connected to the state’s “political independence.”<sup>58</sup> This does not mean that we argue against these

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<sup>54</sup> See article 2(4) of the UN Charter available at [<http://www.un.org/en/documents/charter/>].

<sup>55</sup> Chantal De Jonge Oudraat, “Humanitarian Intervention: The Lessons Learned”, *Current History*, Dec. (00/641), 2000, p. 421.

<sup>56</sup> Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, 1997, *apud* Welsh, *op. cit.*, p. 505.

<sup>57</sup> Welsh, *op. cit.*, p. 505.

<sup>58</sup> Here the discussion could be further continued by raising other salient questions: should a murderous/tyrannical regime be equaled to the state, and thus should it benefit from its prerogatives, even though the individuals contest its legitimacy and the internal society provides an alternative regime? Does states’ political independence and sovereignty stretch to an understanding in which this is, in the words of Wheeler and Bellamy, a “license to kill” the citizens?



two interventions (or against humanitarian intervention for that matter), but rather that we do not believe that this argument is supportive for the case studies selected here.

Some counter-restrictionists argue that humanitarian intervention should be permitted even without the explicit authorization of the UN Security Council and assert that “if the UN fails to take remedial action in cases of genocide and mass killing [...] individual states gain the legal right to intervene with force to reduce human suffering”<sup>59</sup>; Reisman and McDougal argue that the provisions related to human rights from the Charter “provide a secure legal basis for unilateral forcible intervention.”<sup>60</sup> Drawing attention to the dramatic events in Rwanda and the genocide against the Tutsi, Kofi Annan addressed the same issue in 1999, then took the debate to the UN General Assembly and urged states “to develop criteria to permit humanitarian interventions in the absence of a consensus in the Security Council”<sup>61</sup> in situations where abhorrent acts against human beings are occurring and certain states are ready to engage militarily with the sole purpose of stopping them. The problem is not related to states acknowledging what counts for genocide or abhorrent, but rather to the need of an immediate response of the international community and paralysis of Security Council (which results in lack of resolution) or slowness in issuing a prompt response. In fact, Kofi Annan tackled three key salient issues in his *Report to The Millennium Assembly of the United Nations*, in 2000: *protecting the vulnerable*, *addressing the dilemma of the intervention*, and *strengthening peace operations*. Related to humanitarian intervention he asserts that the debate over *sovereignty* and *protection of human rights and use of force* constitutes a real dilemma, but he contends that “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how *should* we respond to a Rwanda, to a Srebrenica — to gross and systematic violations of human rights that offend every precept of our common humanity?”<sup>62</sup> Moreover, he contends that “surely no legal

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<sup>59</sup> Wheeler; Bellamy, *op. cit.*, p. 560.

<sup>60</sup> As mentioned in *ibidem*.

<sup>61</sup> De Jonge Oudraat, *op. cit.*, pp. 419-420.

<sup>62</sup> Kofi A. Annan, *We the Peoples: The Role of the United Nations in the twenty-first century*, Report of the Secretary-General, The Millennium Assembly of the United Nations, 2000, p. 34.

[<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan000923.pdf>], retrieved in September 2012.



principle — not even sovereignty — can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community.”<sup>63</sup> What shall be discussed in the last part of this article is whether a clear-cut, explicit UNSC Resolution that authorizes “the use of force” according to Chapter VII of the Charter is imperatively needed, or tacit approval/*post-factum* legitimacy is enough.

Another way of defending humanitarian intervention is the recourse to customary international law. This means there is enough historical evidence in the pre-UN system period to prove that states had engaged in humanitarian action and that, if states repeat a practice and regard it as “behaviour required by law”, “a norm of customary international law” is developing. One important aspect here is that states don’t merely repeat an action, but they perceive it as if it is “accepted as law.”<sup>64</sup> As we have seen, a strong objection to this interpretation comes from Chesterman who believes that it privileges custom over treaty, who argues that the evidence provided constitutes a Western interpretation of international law, and that it lacks “the necessary *opinion juris* that might transform the exception into the rule.”<sup>65</sup> According to the legal arguments against humanitarian intervention “the law of the Charter concerning the prohibition of the use of force” has the character of *jus cogens*, which “denotes a peremptory norm of general international law that is described in the 1969 Vienna Convention of the Law of Treaties as ‘a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character’.”<sup>66</sup> As Nicholas Wheeler shows, counter-restrictionists/solidarists “deny that the prohibition on the use of force is *jus cogens*” and they stem their arguments from Hugo Grotius, “the father of solidarist international society theory”<sup>67</sup>; according to Grotius, “if a tyrant [...] practices atrocities against his subjects, which no just man can approve [...] it would not follow that others may not take up arms for them”<sup>68</sup> and “it is not to be denied, but

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<sup>63</sup> *Ibidem*.

<sup>64</sup> Wheeler, *op. cit.*, p. 43; Wheeler; Bellamy, *op. cit.*, p. 560.

<sup>65</sup> Cf. Chesterman, as explained and quoted by Welsh, *op. cit.*, pp. 505-506.

<sup>66</sup> Wheeler, *op. cit.*, p. 44.

<sup>67</sup> *Ibidem*.

<sup>68</sup> Grotius quoted in *ibidem*.

that in most governments the good of the subject is the chief object which is regarded: and that what Cicero has said after Herodotus and Herodotus after Hesiod, is true, that Kings were appointed in order that men might enjoy complete justice.”<sup>69</sup> Wheeler counterweighs another restrictionist argument (the selectivity of responses) by stressing that “it is important to distinguish between actions that are selective because states privilege selfish interests over the defence of human rights, and those that are selective because of prudential concerns.”<sup>70</sup>

Another strong argument of the solidarist account on humanitarian intervention is centred on the notion of sovereignty. In short, solidarism revises the essence of the concept and discusses the *sovereignty as responsibility*. As a response to the aforementioned Report of Kofi Annan, the ICISS (International Commission on Intervention and State Sovereignty) was established at the UN Millennium Assembly (September 2000). It was co-chaired by Gareth Evans<sup>71</sup> and Mohamed Sahnoun<sup>72</sup>, it was launched at the initiative of the Canadian government, and in 2001 it issued the Report entitled *The Responsibility to Protect*<sup>73</sup> and a supplementary

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<sup>69</sup> Grotius, *On the Law of War and Peace (De Jure Belli ac Pacis)*, p. 54.

<sup>70</sup> Wheeler, *op. cit.*, p. 47.

<sup>71</sup> Gareth Evans is former foreign minister of Australia and he published a comprehensive and highly praised book on the workings of ICISS, the concept of R2P (responsibility to protect), and its relevance for the international community’s efforts in dealing with mass atrocity crimes. See Gareth Evans, *The Responsibility to Protect. Ending mass atrocity crimes once and for all*, Washington DC: Brookings Institution Press, 2008.

<sup>72</sup> Mohamed Sahnoun is senior Algerian diplomat and veteran UN Africa adviser (former special adviser to the UN Secretary-General and UN appointed negotiator in Somalia), extraordinarily knowledgeable on the issues from his activities of field engagement in Somalia, the Great Lakes region (East Africa), Ethiopia and Eritrea.

<sup>73</sup> Closely involved in writing the report were Michael Ignatieff and Ramesh Thakur. Michael Ignatieff is a Canadian scholar and human rights specialist (see, *inter alia*, his *The Warrior’s Honor. Ethnic War and the Modern Conscience*, New York, 1997). Ramesh Thakur is an Indian scholar who wrote *The United Nations, Peace and Security. From Collective Security to the Responsibility to Protect*, Cambridge: Cambridge University Press, 2006. Other participants to ICISS were former Philippines president Fidel V. Ramos, African National Congress head Cyril Ramaphosa from South Africa, Guatemalan foreign minister Eduardo Stein, former U.S. congressman Lee Hamilton, German NATO general Klaus Naumann, human rights specialist Gisele Côté-Harper, the Russian diplomat and parliamentarian Vladimir Lukin, and Cornelio Sommaruga, former long-serving president of the ICRC (International Committee of the Red Cross). See Evans, *op. cit.*, pp. 38-39, where the author discusses at length “The Birth of ‘The Responsibility to Protect’”.

volume of research essays, bibliography, and background material, edited by Thomas G. Weiss and Don Hubert. ICISS set out *ab initio* three pivotal goals: “1) to promote a comprehensive debate on the issue of humanitarian intervention; 2) to foster a new global political consensus on how to move forward; and 3) to find new ways of reconciling the principles of intervention and state sovereignty.”<sup>74</sup>

At this point a contextual clarification is in order, since it helps us understand how *the responsibility to protect* (R2P) was coalesced and received adherence. We previously followed the debate over humanitarian intervention and also tried to separate its content (and state practice) during the Cold War and in the aftermath of the Cold War period, when the new international order was not so much challenged by the conventional inter-state aggression (with the exception, of course, of Iraq’s invasion of Kuwait), but rather by internal conflict and intra-state turmoil that grossly and shockingly affected civilians shifting the *locus* of the violence from the military sector to the societal one. Cases like Somalia, Bosnia, Rwanda, Burundi, Kosovo, East Timor, Sierra Leone are all illustrative in this respect, but also they point to the failure of the international community to prevent the atrocities and the human suffering. At the heart of the debate was actually the *right to intervene*, but gradually the centrepiece of the debate changed over the 1990’s, thus providing a positive context for the emergence of R2P.

Thomas G. Weiss and Don Hubert conducted an analysis on interventions both in the pre- and post-1990 period. The examination of interventions during the period 1945-1990, such as Belgium in the Congo (1960) (which later became an international intervention - ONUC), India in East Pakistan (1971), Vietnam in Cambodia (1978), Tanzania in Uganda (1979), France in Central Africa (1979), the US and certain Caribbean countries in Grenada (1983), and the US in Panama (1989), indicates that “there [was] substantial evidence in these cases about why controversy surrounds what constitutes an actual incidence of ‘humanitarian’ intervention.”<sup>75</sup> The authors’ survey on military interventions conducted in the 1990s without permission of target states’ governments, or without meaningful consent, but with “purported humanitarian justifications”

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<sup>74</sup> Welsh, *op. cit.*, p. 510.

<sup>75</sup> Thomas G. Weiss; Don Hubert, *The Responsibility to Protect: Supplementary Volume to the Report of ICISS*, Ottawa: International Development Research Center, 2001, pp. 49-77.

included: Liberia (1990-1997), Northern Iraq (1991), The Former Yugoslavia (1992-1999), Somalia (1992-1993), Rwanda and Eastern Zaire (1994-1996), Haiti (1994-1997), Sierra Leone (1997-2000), and East Timor (1999)<sup>76</sup>; all these cases were regarded as humanitarian driven actions, even though heated debates emerged regarding legality in the case of Kosovo, and other discussions were centred on tragic consequences or failure in other cases. As Chantal De Jonge Oudraat observed, “unlike in the early 1990’s, the debate at the end of the decade focused not on the question of whether humanitarian considerations could be characterized as ‘threats to international peace and security’ and thus justify intervention in states’ domestic affairs, but rather whether such interventions needed the authorization of the UN Security Council.”<sup>77</sup>

It is in under all these circumstances that R2P emerged and, as Evans rightly shows, it indicated “the solution” and the transition from the *right to intervene* to interventions dictated by, and aiming at, the *responsibility to protect*. The R2P was inherently related to new security issues (like intra-state warfare)<sup>78</sup>, to new threats in a globalized world, such as non-state actors, the salient issue of refugees or internally displaced people/IDP’s (as emphasized by scholar and former Sudanese diplomat Francis Deng<sup>79</sup>), human security (at length discussed by Mary Kaldor<sup>80</sup> or Ramesh Thakur<sup>81</sup>), failed states (or, as William Zartman called them, collapsed states<sup>82</sup>). As stated in the ICISS Report, the *responsibility to protect* is based on certain core principles:

- A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.

<sup>76</sup> *Ibidem*, pp. 79-126. See also John Harriss, “Introduction: a time of troubles – problems of international humanitarian assistance in the 1990’s”, in John Harriss (ed.), *The Politics of Humanitarian Intervention*, London and New York: Pinter, 1995, pp. 1-16.

<sup>77</sup> De Jonge Oudraat, *op. cit.*, p. 419.

<sup>78</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Ottawa: International Development Research Centre, 2001, pp. 4-6

<sup>79</sup> Francis M. Deng; Sadikiel Kimaro; Terrence Lyons; Donald Rothchild; William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa*, Washington: The Brookings Institution, 1996.

<sup>80</sup> Mary Kaldor, *Human Security*, Cambridge: Polity Press, 2007.

<sup>81</sup> Thakur, *op. cit.*, pp. 71-157.

<sup>82</sup> William Zartman (ed.), *Collapsed States: The Humanitarian Challenge to the United Nations*, Boulder, 1995.

- B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.<sup>83</sup>

Moreover, according to the ICISS Report,

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

- A. obligations inherent in the concept of sovereignty;
- B. the responsibility of the Security Council, under Article 2(4) of the UN Charter, for the maintenance of international peace and security;
- C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
- D. the developing practice of states, regional organizations and the Security Council itself.<sup>84</sup>

The emerging norm states that, as a last resort, the international community or states within it are legitimized in employing military force against another state with the purpose of saving endangered civilians. This right, it is argued, derives from a shift in conceptualizing sovereignty in world politics, namely from “sovereignty as authority” to “sovereignty as responsibility.”<sup>85</sup> The huge difference is that while the former refers to states’ control over their territories and population, the latter “suggests that sovereignty is conditional on a state demonstrating respect for a minimum standard of human rights.”<sup>86</sup> This assertion is also taken by others in order to pinpoint to the limits of sovereignty, as inherent in the UN Charter:

According to Chapter VII, sovereignty is not a barrier to action taken by the Security Council as part of measures in response to “a threat to the peace, a breach of the peace or an act of aggression.” In other words, the sovereignty of states, as recognized in the UN Charter, yields to the demands of international peace and security. And the

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<sup>83</sup> ICISS, *op. cit.*, p. XI.

<sup>84</sup> *Ibidem.*

<sup>85</sup> See initial attempts in this respect in Deng *et.al.*, *op. cit.*;

<sup>86</sup> Welsh, *op. cit.*, pp. 510-511.

status of sovereign equality only holds effectively for each state when there is stability, peace, and order among states.<sup>87</sup>

One of the key contributions of ICISS is that it tries to reconcile the legal-moral tension of humanitarian intervention, by reconsidering the meaning of sovereignty:

The defence of state sovereignty, by even its strongest supporters, does not include any claim of the unlimited power of a state to do what it wants to its own people. The Commission heard no such claim at any stage during our worldwide consultations. It is acknowledged that sovereignty implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship.<sup>88</sup>

According to the ICISS report, the responsibility to protect is intertwined with certain principles for military operation: first of all, *the just cause threshold*, which includes situations of “**large scale loss of life** [...] *with genocidal intent or not, and large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.*” Secondly, the Report mentions four precautionary principles, also discussed by Wheeler (*right intention, last resort, proportional means, and reasonable prospects*); thirdly, *right authority* (which is not intended to bypass the UN by strengthening other types of authority, since “the task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has”) is explained; finally, *comprehensive operational principles* are tackled (“Clear objectives” [...] and “resources to match”; “acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state”, “rules of engagement” that imply “total adherence to international humanitarian law”).<sup>89</sup>

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<sup>87</sup> Weiss; Hubert, *op. cit.*, p. 7.

<sup>88</sup> ICISS, *op. cit.*, p. 8. Emphasis added.

<sup>89</sup> *Ibidem*, pp. XII-XIII.

### Humanitarian intervention and the Just War tradition

As we have shown, both the solidarist approach of Nicholas Wheeler and the International Commission on Intervention and State Sovereignty (which produced the R2P milestone ) derive their arguments for a defensible humanitarian intervention from the just war conceptual framework. According to Brian Orend, just war theory “is probably the most influential perspective on the ethics of war and peace.”<sup>90</sup> The just war tradition goes back to famous writings of Saint Augustine, Thomas Aquinas, Hugo Grotius, Suarez, Emmerich de Vattel.<sup>91</sup> Grotius wrote *De Jure belli ac Pacis* in 1625 and argued that war, just as peace, has its inner rules and that princes should not be allowed to legitimize their crimes, that kings should be concerned with “lawfulness of war”, should consider “precautions against rashly engaging in war, even upon just grounds” and “should respect what is lawful in war”<sup>92</sup>; the result was *bellum iustum*. The just war had three components:

- *jus ad bellum*, namely the right to wage war;
- *jus in bello*, what is permissible during the war;
- *jus post bellum*, how the war will be ended in a moral way.

Essentially, the doctrine of justifiable war or the just war tradition implied a presumption against war (since, in the words of Grotius, “it is often a duty, which we owe to our country and ourselves, to forbear having recourse to arms”<sup>93</sup>), but it also regulated the carrying out of war: a) it meant that war should be waged only if certain criteria are satisfied (*jus ad bellum*); b) it referred to the fact that war should be fought in a moral way (*jus in bello*), and c) that it will be ended in a moral way (*jus post bellum*).

There are certain specifications related to the rules for waging war and for the conduct during war. In the case of *jus ad bellum* (the just resort to war) the main assumption is that there are several principles that regulate warfare: just cause, legitimate authority, formal declaration, right intention, probability of success (so that “there must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than

<sup>90</sup> Brian Orend, *War*, 2005, [http://plato.stanford.edu/entries/war/], retrieved in October 2012.

<sup>91</sup> *Ibidem*. See also Theodore Meron, “Common Rights of Mankind in Gentili, Grotius and Suarez”, *American Society of International Law*, vol. 85, no. 1, January 1991, pp. 110-116.

<sup>92</sup> Grotius, *op. cit.*, pp. 18-41, 239-243 and 250-265.

<sup>93</sup> *Ibidem*, p. 240.



the consequences of inaction”<sup>94</sup>), proportionality (referring to the fact that the force employed should be matched with initial moral, just, and humanitarian purpose, or, as the Report ICISS states, “the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective”<sup>95</sup>), last resort (*ultima ratio*).<sup>96</sup>

In what concerns *jus in bello* (just conduct of war) the chief idea is that there are several rules that combatants should follow: Discrimination and Non-Combatant Immunity which means that “soldiers must discriminate between the civilian population, which is morally immune from direct and intentional attack, and those legitimate military, political and industrial targets involved in rights-violating harm.”<sup>97</sup> Basically, the people *hors de combat* should not suffer, namely war must only target enemy combatants and not civilians caught in circumstances they are not guilty of. Other criteria include No Atrocious Weapons, Proportionality (which means that “unjustified killing and destruction are not allowed and collateral civilian deaths must be minimal”<sup>98</sup> and “the damage must not be greater than the offenses one aims to halt”<sup>99</sup>), Prisoners of War Treated Humanely (later, this provision was stressed by the Geneva Conventions), No Reprisals (which means that respect for the *jus in bello* must be retained even if the enemy violates it), No Repression of One’s Own Civilians.<sup>100</sup> In fact, Hugo Grotius asserted that “the final object is always some good, or at least the evasion of some evil, which amounts to the same. The means are never to be considered by themselves, but only as they have a tendency to the proposed end. Wherefore in all cases of deliberation, the proportion,

<sup>94</sup> Cf. ICISS, *op. cit.*, p. XII.

<sup>95</sup> *Ibidem*.

<sup>96</sup> See, *inter alia*, Jean Bethke Elshtain, “The Third Annual Grotius Lecture: Just War and Humanitarian Intervention”, *American Society of International Law. Proceedings of the Annual Meeting*, 2001, pp. 1-12; Orend, *op. cit.*; James Pattison, *Humanitarian Intervention and the Responsibility to Protect*, Oxford: Oxford University Press, 2010, pp. 100-101; Ian Holliday, “Ethics of Intervention: Just War and the Challenge of the 21<sup>st</sup> Century”, *International Relations*, vol. 17(2), pp. 119, 125-126.

<sup>97</sup> Orend, *op. cit.*

<sup>98</sup> *Just war criteria* available at [<http://www.vernalproject.org/papers/Understanding.html>], retrieved January 2013.

<sup>99</sup> Elshtain, *op. cit.*, p. 4.

<sup>100</sup> Orend, *op. cit.* and *Just war criteria*, [<http://www.vernalproject.org/papers/Understanding.html>], retrieved January 2013.



which the means and the end bear to each other, is to be duly weighed.”<sup>101</sup> Finally, as Orend explains, *jus post bellum* “seeks to regulate the ending of wars, and to ease the transition from war back to peace.”<sup>102</sup> Another subdivision is made between two sorts of principles: “external *jus in bello*” (which refers to the way in which the intervener should treat the opposing party’s soldiers) and “internal *jus in bello*”<sup>103</sup> (which “concerns the rules that an agent should follow in connection with its own soldiers and citizens”<sup>104</sup>). As Brian Orend pointed, the just war tradition has been incorporated into “contemporary international laws governing armed conflict, such as The United Nations Charter”.<sup>105</sup> With respect to the proper conduct during war, namely *jus in bello*, the second half of the 19<sup>th</sup> century and the first part of the 20<sup>th</sup> century indicated a major leap aiming at codifying the rules of waging war. Several international conventions were signed and several international conferences were held in order to codify rules for combatants during war.<sup>106</sup> In the academic field, the just war theory was restated and defended by Michael Walzer in his *Just and Unjust Wars*.

When discussing the just war tradition and humanitarian intervention, certain limits and nuances regarding the criteria are questioned; for instance, Wheeler raises the following issue: even if civilians are not deliberately targeted by the intervening forces, “what risks interveners should take in order to avoid civilian losses; Military necessity can be used to justify the killing of innocents on the grounds that this happens to be an inadvertent consequence of attacks against legitimate military targets.”<sup>107</sup> The latter idea was incorporated in military strategy and is today known as the doctrine of double effect whose source dates

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<sup>101</sup> Grotius, *op. cit.*, pp. 241-242.

<sup>102</sup> Orend, *op. cit.*

<sup>103</sup> *Idem*, *The Morality of War*, Ontario: Broadview Press, 2006, *apud* Pattison, *op. cit.*, pp. 101-102. Here the binary aspect of “discrimination” is emphasized: one the one hand “permissible targets”, based on the “moral equality of soldiers”, and, on the other hand, “impermissible targets” (*i.e.* civilians) who benefit from “non-combat immunity”.

<sup>104</sup> Cf. Pattison, *op. cit.*, p. 101.

<sup>105</sup> Orend, *op. cit.*

<sup>106</sup> The Geneva Convention (1864), the Declaration of Sankt Petersburg (1868), the Hague Conventions (1899 and 1907), the diplomatic conference in Geneva (1949) and the Conference on the reassertion and development of international law in case of armed conflict in Geneva (which had four different sessions: 1974, 1975, 1976, and 1977).

<sup>107</sup> Wheeler, *op. cit.*, p. 35.

back to the Middle Ages and which allowed soldiers to harm civilians is situations whereby the act was not intended. In current debate on humanitarian intervention, the double-effect refers to permission of collateral damage (*i.e.* non-combatants) when the damage was not intended and “it asserts that a humanitarian intervention that has both a good effect (such as tackling genocide) and a bad effect (such as civilian casualties) can be morally permissible if the following conditions are met: *the good effect is intended [...], the bad effect is not intended [...], the bad effect is not instrumental [...], the bad effect is proportionate [...]*”<sup>108</sup> The latter two conditions are meant to prevent situations where the opposing side’s civilians are hit to weaken the other or when the positive outcomes overcome the negative side-effects. According to Walzer, the doctrine of double-effect “stands in need of correction. Double effect is defensible [...] 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.” Since he believes that “simply not to intend the death of civilians is” not enough, Walzer adds a third condition: “The intention of the actor is good, that is, he aims narrowly at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends, and, aware of the evil involved, he seeks to minimize it, accepting costs to himself.”<sup>109</sup> According to Fernando Tesón, “proportionate collateral harm caused by a humanitarian intervention, where the goal is to rescue victims of tyranny or anarchy, may, depending on the circumstances, be morally excusable.” He argues in defence of intention of the act which is “to maximize the universal respect for human rights”, and claims that “proportionate *collateral deaths* of innocent persons, while indirectly caused by the intervener, do not necessarily condemn the intervention as immoral.”<sup>110</sup> The Report of the International Commission on Intervention and State Sovereignty stresses the following operational principles: “acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state; rules of engagement which [...] involve total adherence to international humanitarian law; acceptance that force protection cannot

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<sup>108</sup> Pattison, *op. cit.*, pp. 117-118.

<sup>109</sup> Walzer, *op. cit.*, p. 155.

<sup>110</sup> Fernando R. Tesón, “The liberal case for humanitarian intervention”, in J. L. Holzgrefe; Robert O. Keohane, *op. cit.*, pp. 115-116.

become the principal objective; maximum possible coordination with humanitarian organizations.”<sup>111</sup>

### **From Kosovo to Libya: How much internalization of *jus in bello* principles?**

The final part of this paper intends to briefly analyze the rules of engagement during interventions in Kosovo and in Libya (namely whether the *jus in bello* was respected by the intervening forces) and to observe if there is an incremental consideration for, and compliance with, the *jus in bello* emerging from the comparative analysis of the two interventions.

In the case of Kosovo (like in the case of Libya for that matter) we will not tackle the *jus ad bellum*, the legitimacy and controversy over it, or whether they indicate fidelity to law, since this was vastly and comprehensively addressed elsewhere.<sup>112</sup> Instead, we will discuss NATO's air strike strategy and correspond it to the requirements from international humanitarian law. When NATO launched its air campaign, it had invoked the necessity to save the innocents and to react to atrocities in the FRY's province Kosovo; basically, it invoked the United Nations Security Council Resolution (UNSCR) 1199, issued in September 1998 which declared: grave concern because of “recent intense fighting in Kosovo” and “excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which have resulted in numerous civilian casualties”, and mentioned the estimation of the Secretary-General regarding “the displacement of over 230,000 persons from their homes”; grave concern due to “the flow of refugees into northern Albania, Bosnia and Herzegovina and other European countries as a result of the use of force in Kosovo, as well as by the increasing numbers of displaced persons within Kosovo, and other parts of the Federal Republic of Yugoslavia”, and added the United Nations High Commissioner for Refugees' estimation that there were 50,000 people “without shelter and other basic necessities”; the reaffirmation of “the right of all refugees and displaced persons to return to

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<sup>111</sup> ICISS, *op. cit.*, p. XIII.

<sup>112</sup> Wheeler, *op. cit.*, pp. ; Allen Buchanan, “Reforming the international law of humanitarian intervention”, in J. L. Holzgrefe; Robert O. Keohane, *op. cit.*, pp. ; Jane Stromseth, “Rethinking humanitarian intervention: the case for incremental change”, in J. L. Holzgrefe; Robert O. Keohane, *op. cit.*, pp.

their homes in safety”.<sup>113</sup> In October 1998, the North Atlantic Council issued activation orders for an air campaign.<sup>114</sup> After failure of negotiations (the Contact Group had dispatched Richard Holbrooke to Belgrade, and the Organization on Security and Cooperation in Europe had deployed a verification mission, but “after the breakdown of the Paris talks [...] Serbian forces began a new campaign in Kosovo of ethnic cleansing”<sup>115</sup>) the British Government said that

In the mid '90s, President (Milosević) was the prime player in the war in Bosnia which gave our language the hideous phrase 'ethnic cleansing'. Only after three years of fighting in which a quarter of a million people were killed, did NATO find the resolve to use force. Now we are seeing exactly the same pattern of ethnic violence being replayed again in Kosovo [...] We cannot allow the same tragedy to be repeated again in Kosovo.<sup>116</sup>

According to Nicholas Wheeler, the statements of American and British leaders “point to this being a case where a key determinant of the use of force was [their] belief that this was a Just War.”<sup>117</sup> On March 24, 1999, NATO initiated air strikes against the FRY. NATO Secretary-General Solana claimed that the military alliance acted because all diplomatic alternatives had failed, whereas President Clinton emphasized that “US interests in preventing a potentially wider war if action were not taken, as well as the humanitarian concerns, led the allies to act” and UK Prime Minister Blair stressed “the need to protect Kosovar Albanian citizens and argued that the choice was to do something or do nothing.”<sup>118</sup> The air strike 78-day campaign was highly controversial, and it was called “humanitarian war” or “air war against Belgrade” at the time. Even though aiming at protecting the civilians,

the bombing initially exacerbated humanitarian problems. Ethnic cleansing began with a vengeance in Kosovo. Prior to the bombing,

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<sup>113</sup> United Nations, *Security Council Resolution 1199*, (S/RES/1199), 23 September 1998 available at [<http://www.un.org/peace/kosovo/98sc1199.htm>], retrieved in September 2012.

<sup>114</sup> Weiss; Hubert, *op. cit.*, p. 110.

<sup>115</sup> Wheeler, *op. cit.*, pp. 261-264.

<sup>116</sup> Statement by former Foreign Secretary Robin Cook in the House of Commons, quoted in *ibidem*, p. 266.

<sup>117</sup> Wheeler, *op. cit.*, p. 267.

<sup>118</sup> Weiss; Hubert, *op. cit.*, p. 112.

UNHCR estimated that there were 410,000 ethnic Albanians internally displaced as a result of Serb operations, and another 90,000 across the border. Within a matter of days, there were 750,000 refugees in Albania and Macedonia, as well as 250,000 IDPs at the border. UNHCR had prepared contingency plans for 100,000 refugees and was soon overwhelmed.<sup>119</sup>

According to other analyses, “the short-term humanitarian outcome was negative”, because “air strikes did not save any lives and caused between 600 and 5000 Serbian military deaths, 400-600 Serbian civilian deaths, and an unknown (probable smaller) number of Kosovar Albanian civilian deaths.”<sup>120</sup> Other voices are even more critical:

The intervention itself failed in its goal of averting a humanitarian catastrophe. Serb forces responded to the bombings by dramatically escalating attacks on the Albanian population of Kosovo. Executions occurred as a means to ‘eliminate resistance and to demonstrate the costs of remaining in Kosovo [...] Milosević’s forces drove more than 1.3 million Kosovars from their homes, some 740,000 of whom flooded into neighbouring Macedonia and Albania.’ An estimated 10,000 were killed.<sup>121</sup>

In fact air attacks from high above, even when targeting military facilities, cannot secure civilians on the ground and result in more violence, reprisals, and chaos. In the case of Kosovo the ethnic cleansing, initially *just cause for intervention*, intensified and became facilitated by NATO’s bombing strategy.

We reiterate one key operational principle of the Report of ICISS, namely “acceptance of *limitations*, incrementalism and *gradualism in the application of force*, the objective being *protection of a population*, not defeat of a state”; in this case, as Wheeler and Bellamy argue it was “too much, and too soon.”<sup>122</sup> Also, as Weiss and Hubert assert “bombing campaign was a

<sup>119</sup> *Ibidem*, p. 113.

<sup>120</sup> Taylor B. Seybolt, *Humanitarian Military Intervention. The Conditions for Success and Failure*, SIPRI (Stockholm International Peace Research Institute): Oxford University Press, 2008, p. 80 si 82.

<sup>121</sup> Sara E. Davis; Luke Glanville, *Protecting the Displaced. Deepening the Responsibility to Protect*, Leiden, Boston: Martinus Nijhoff Publishers, 2010, p. 116; see also Independent Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford: Oxford University Press, 2000.

<sup>122</sup> Wheeler; Bellamy, *op. cit.*, p. 566.

textbook example of escalation theory and hightech, low-risk military warfare” and even though

initial targets were military [...] after a month the bombing extended to dual-use targets, including mass media and power grids. The war was also extended to FRY territory, including the bombing of Belgrade. Many observers are of the opinion that the destruction of Serbia's infrastructure - for instance, 70 percent of bridges and 100 percent of refining capacity - and the threat of ground forces ended the war.<sup>123</sup>

The military strategy based on air strikes was designed after the tragedy in Somalia and after the shock within American domestic public opinion at the sight of mutilated US soldiers dragged through the streets. So, as Wheeler notices, there is “a great attraction to Western policy-makers” because “it avoids the costs and risks of committing ground troops”; the air campaign was justified because “soldiers returning in body bags would rapidly erode domestic support for the action against Milosević.” Also, a reliance on bombing could mean that “serious show of force would compel Milosević to back down after only a few days of bombing.”<sup>124</sup>

In the case of Kosovo there was a clear inability to stop atrocities from the air. Basically, when trying to reconcile domestic pressure for sparing the military troops (and thus using air attacks) and averting a humanitarian disaster, the best solution would be to combine ground troops with air campaign. Wheeler asserted that events in Kosovo “required not only air power but also a major commitment of ground troops”. James Pattison argues for more restrictive principles of external *jus in bello* and contends that

The intervener's conduct should [...] be driven, like the domestic police, by the objectives of the protection of civilians and the maintenance of the peace [...] if ground troops had have been deployed in Kosovo, the mission would not have been to make war upon the Serbian military in a conventional manner. Rather, it would have been to prevent those forces from firing on Kosovar civilians and to prevent exchanges of fire between the Serbs and Kosovar militia.<sup>125</sup>

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<sup>123</sup> Weiss; Hubert, *op. cit.*, p. 113.

<sup>124</sup> Wheeler, *op. cit.*, p. 268.

<sup>125</sup> Pattison, *op. cit.*, p. 106.

Nicholas Wheeler points out that even General Wesley Clarke (NATO commander during Operation Allied Force) admitted that “air power alone cannot stop paramilitary action.”<sup>126</sup> Also, he reiterates one chief element of *jus in bello* and raises a proper question: “Since meeting the test of proportionality is a threshold criterion of a legitimate humanitarian intervention, did the level of force employed by the Alliance exceed the harm that it was designed to prevent and redress?”<sup>127</sup> Also, James Pattison showed that “NATO’s use of cluster bombs and reliance on aerial bombing in Serbia certainly weakened (if not fatally) the humanitarian credentials of its intervention. What is called for, then, is consistency of means and ends: an intervener should use humanitarian means when attempting to achieve humanitarian ends.”<sup>128</sup> At the time numerous voices criticized the refusal to deploy ground forces; The UN High Commissioner for Human Rights (Mary Robinson) questioned “whether NATO was sufficiently careful in its targeting” and Nicholas Wheeler argued that the obstinate “reliance on the air campaign reflected in her view a lack of moral courage on the part of NATO governments to place their service personnel in harm’s way in defence of the values they claimed to be fighting for.”<sup>129</sup> Another pivotal operational principle stressed by ICISS is: “Rules of engagement which fit the operational concept [...] reflect the principle of proportionality; and involve total adherence to international humanitarian law.” After the bombing campaign the Allied leaders committed themselves to aiding all refugees return to their homes, and an international protectorate was established to stabilize Kosovo, but during the *forcible humanitarian intervention* this was hardly a priority on the military strategy. As Wheeler sharply concludes

NATO could have reduced the risks of civilian casualties had it asked its pilots to fly at low level, since this would have have improved target discrimination. NATO’s reluctance to bomb at low level reflected concerns not only about the safety of its air-crew, but

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<sup>126</sup> Wheeler, *op. cit.*, p. 270.

<sup>127</sup> *Ibidem*, p. 82.

<sup>128</sup> Pattison, *op. cit.*, p. 107.

<sup>129</sup> Wheeler, *op. cit.*, p. 272.



also about losing aircraft and with them the sustainability of the air campaign.<sup>130</sup>

The violent turmoil in Libya emerged as one *facet* of what later became known as The Arab Spring, namely stark contestation of regimes, civil unrest, and revolutionary movement that ranged across the Middle East and North Africa at the beginning of the year 2011. In the case of Libya, though, the protesters mounted against Colonel Gaddafi, who, buoyed by inner circle individuals and using military force against the rebels, brutally counter-reacted in trying to repress the insurgency; consequently the situation dramatically deteriorated. The international community was following worryingly the events in Libya and empathy for the suffering of innocent Libyans was considerable. At the same time, according to an article from *Foreign Affairs*, “the Libyan rebels [...] refused what would have been the most effective outside help: foreign boots on the ground”<sup>131</sup>. The milestone showing that “the world has become more committed to the protection of civilians” was reflected in the fact that two UNSC Resolutions on Libya “passed with unprecedented speed and without a single dissenting vote.”<sup>132</sup> Resolution 1970 had “expressed its readiness to consider taking additional appropriate measures, as necessary, to facilitate and support the return of humanitarian agencies”<sup>133</sup>, whereas in the case of Resolution 1973, issued on the 17<sup>th</sup> of March 2011, “ten countries voted in favor, including permanent members France, the United Kingdom, and the United States. None opposed. Brazil, China, Germany, India, and Russia abstained.”<sup>134</sup> Resolution 1973

*Expressing grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties, [...]*

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<sup>130</sup> *Ibidem*.

<sup>131</sup> Jon Western; Joshua S. Goldstein, “Humanitarian Intervention Comes of Age. Lessons From Somalia to Libya”, *Foreign Affairs*, Vol. 90, No. 6, November/December 2011, p. 54

<sup>132</sup> *Ibidem*, p. 55.

<sup>133</sup> United Nations, *Security Council Resolution 1973*, (S/RES/1973), 2011, available at [<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%20S%20RES%201973.pdf>], retrieved in October 2012.

<sup>134</sup> Human Rights Watch, *Unacknowledged Deaths. Civilian Casualties in NATO's Air Campaign in Libya*, USA: Human Rights Watch, May 2012, p. 19.



*Condemning* the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions, [...]

*Expressing its determination* to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel [...]

*Acting under Chapter VII of the Charter of the United Nations,*

1. *Demands* the immediate establishment of a cease-fire and a complete end to violence and all attacks against, and abuses of, civilians;
2. *Stresses* the need to intensify efforts to find a solution to the crisis which responds to the legitimate demands of the Libyan people [...]
3. *Demands* that the Libyan authorities comply with their obligations under international law, including international humanitarian law, human rights and refugee law and take all measures to protect civilians and meet their basic needs, and to ensure the rapid and unimpeded passage of humanitarian assistance;<sup>135</sup>

Consequently, under the coordination of the United States, UN member states initiated military action on the 19<sup>th</sup> of March and the key operational objective was to determine the forces of Gaddafi from the city of Benghazi. Another key element of the intervention was centred on the following humanitarian rationale: creation of *no fly zone* and *protection of civilians*, authorizing UN member states to use “all necessary measures” for that aim.<sup>136</sup> The intervention echoed optimist voices, such as those expressed in *Foreign Affairs*

The intervention has accomplished the primary objective of Resolution 1973. It saved civilian lives by halting an imminent slaughter in Benghazi, breaking the siege of Misratah, and forcing Gaddafi’s tank and artillery units to take cover rather than commit atrocities.<sup>137</sup>

It was also met with scepticism, such as formulated by Mary Kaldor:

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<sup>135</sup> UNSC Resolution 1973, *op. cit.*, pp. 1-3.

<sup>136</sup> See text of the Resolution, pp. 2-3; Human Rights Watch, *Unacknowledged Deaths*, p. 19, and Landen Garland, *2011 Libyan Civil War*, Delhi: White Word Publications, 2012.

<sup>137</sup> Western; Goldstein, *op. cit.*, p. 57.

There is a difference between war and humanitarian intervention, or as I prefer to call it, a human security intervention. The current attacks on Libya, like the NATO air strikes over Yugoslavia in 1999, are intended for humanitarian ends, the protection of civilians but the means are those of war. Certainly the United Nations Security Council Resolution 1973 was a huge achievement just in time to prevent Gaddafi forces from overrunning Benghazi. [...] But are military attacks from the air an appropriate means?<sup>138</sup>

Our interest conveys towards the *jus in bello* and respect for international humanitarian law during the intervention. Thus, we will try to survey some opposing views on this matter. According to NATO “its efforts went beyond the requirements of international humanitarian law” as quoted in a Human Rights Report and the assertion is that “no target was approved or struck if we had any reason to believe that civilians would be at risk.”<sup>139</sup> According to the same report,

NATO provided more details on its Libya operations to the UN Commission of Inquiry [and it] presented the steps it said it took to protect civilians, concluding that NATO’s targeting and strike methods were ‘as well-designed and as successfully implemented to avoid civilian casualties as was humanly and technically possible.’ These methods included a rigorous targeting review process for pre-planned and dynamic targets, the exclusive use of precision-guided weapons.<sup>140</sup>

The case against air attacks was taken up again by Kaldor who was warning about potential risks, especially the fact that “people get killed - mostly soldiers like those on the road to Benghazi, but also those very people who are supposed to be protected - namely civilians, however hard western forces try to be precise.”<sup>141</sup> Amnesty International declared that some of its delegates “visited several locations of NATO air strikes [...] where civilian casualties had been reported” and later

has documented a total of 55 named civilians, including 16 children and 14 women, who were killed in airstrikes in Tripoli (5), Zlitan (3), Majer (34) Sirte (9) and Brega (4). Twenty other civilians were

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<sup>138</sup> Mary Kaldor, “Libya: war or humanitarian intervention?”, *openDemocracy*, 29 March 2011, p. 1 [http://www.opendemocracy.net], retrieved 6<sup>th</sup> of October 2012

<sup>139</sup> Human Rights Watch, *Unacknowledged Deaths*, p. 23.

<sup>140</sup> *Ibidem*.

<sup>141</sup> Kaldor, *op. cit.*, p. 1.

reportedly killed in NATO strikes in Brega (2), Surman (13) and Bani Walid (5) according to UN experts, international NGOs and journalists who also carried out on-site investigations.<sup>142</sup>

The NATO forces (led by the French and British, having significant support from the United States) “launched thousands of air strikes on government targets during the conflict, some of which killed civilians”, claims a Human Rights Watch investigation, and “the number of civilian deaths appeared far lower than claimed by the Gaddafi government, but higher than acknowledged by NATO.”<sup>143</sup>

Amnesty International also states that “dozens of civilians have been killed in NATO air strikes on private homes in residential and rural areas where Amnesty International, UN experts, other international NGO’s and journalists found no evidence of military objectives at the strike locations at the time of the strikes.”<sup>144</sup>

Based on all evidence indicated, NATO’s targeting and strike methods were designed in such a way as to correct the errors from 1999. We claim that the brief comparative analysis on the two interventions leads to enough data to support the increasing preoccupation for the *jus in bello* during military intervention.

## Conclusion

In is our contention that the Solidarist case for humanitarian intervention has considerably gained consistency in the last years and it is our belief that the norm *responsibility to protect* is a milestone. Relating to prohibitions stemming from Article 2(4) of the UN Charter, we claim that in the immediate post Second World War period (with horrifying images of Holocaust victims and with recent memory of so many innocent killed), the drafters of the Charter did not only attempt to ban inter-state war (or to prevent another total war), but also they tried to avoid in the future massive attacks on segments from the civilian family, from humanity in general. Therefore, we do not regard with textual strictness the provisions

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<sup>142</sup> Amnesty International, *The Forgotten Victims of NATO Strikes*, UK: Amnesty International Publications, 2012, p. 6.

<sup>143</sup> Human Rights Watch, *World Report (2012 – events of 2011)*, Human Rights Watch, May 2012, p. 600.

<sup>144</sup> Amnesty International, *The Forgotten Victims of NATO Strikes*, p. 7. See also lists with “Casualties of the 2011 Libyan Civil War”, in Landen Garland, *2011 Libyan Civil War*, Delhi: White Word Publications, 2012.

of the article and we support the solidarist claim that it merely regulates the use of force: neither completely bans it, nor does it expose it to abuse. A constructivist claim in International Relations literature could be built on the following assumption: norms are constructed, and also concepts such as human rights, humanitarian intervention, the right/duty/responsibility to intervene or protect, sovereignty, and so on and so forth. If they are not pre-given, carved in stone, but created by state interaction, international deliberation, and practices in world politics, it follows that they are amenable to revision, (re)interpretation, alteration, or fortification. With respect to the extent in which there is internalization among states of the *jus in bello* principles, (and which is then instantiated in their actions), we claim that the intervention in Libya tried to be more attentive to human security than Kosovo. This does not mean that it was not fraught with controversy; rather, we argue that there is an evolving care for collateral victims. Even the fact that chief-commanders and policy-makers are committed to, and ready to, prove their respect for the protection of civilians means that a development is in progress at the beginning of the 21<sup>st</sup> century.

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## THE MORAL DIMENSION OF HUMANITARIAN INTERVENTION. THE DIALECTICS OF JUSTIFICATION\*\*

Ana Pantea\*

### Abstract

*Recent work in the ethics of international relations has done much to challenge the just war theory. In doing so, it raises the question of when it is permissible for political leaders and strong powers to justify the use of force. The right of humanitarian intervention against another state for the purpose of protecting people at risk in that other state raises fundamental inquires. States have begun advocating a right to undertake interventions to stop mass violations, especially since the humanitarian tragedies in Rwanda, Burundi, Bosnia, Kosovo and elsewhere. The paper discusses the profound ethical dilemmas related humanitarian intervention which accord because of the diversity of ethical and political perspectives that shape the contemporary world.*

**Keywords:** ethics of international relations; intersubjectivity; just war theory; responsibility to protect, violence

“My desire is [...] that America will come into the full light of the day when all know that she puts human rights above all other rights and that her flag is the flag not only of America but of humanity.”

(President Woodrow Wilson’s Address on Independence Day in 1914)

“Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples, and the menace to that peace and freedom lies in the existence of autocratic governments backed by organized force which is controlled wholly by their will, not by the will of their people.

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\*\* Ana Pantea is a postdoctoral fellow of Romanian Academy of Science – Iași. This paper is supported by the Sectoral Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number POSDRU ID 56815.

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We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized states.”

(President Woodrow Wilson’s Address of 2 April 1917 in which he recommended the declaration of a state of war between the United States and the Imperial German government)

## Introduction

Humanitarian intervention is not a new topic of debate. Cases of genocide and mass violence have questioned the theory and practice of humanitarian intervention to save innocent lives. Scholars, politicians or policy analysts debate on the merits and lack of merits of intervening militarily in another state’s territory without that state’s consent for the sake of protecting the rights and lives of civilians. Briefly defining, it is “the use of military forces to provide aid, ensure the protections of rights, and enforce a peace settlement without the permission of the political authority of the state in which the intervention occurs.”<sup>1</sup> Beside, the relative simplicity of the definition, there is little consensus when it comes to the core concepts and practice of humanitarian intervention, even in the face of growing support for the “Responsibility to Protect” doctrine.

There are two central debates at the heart of thinking on humanitarian intervention, between theorists and practitioners. One debate concerns theorizing the primacy of international law; the second concerns the issue of human rights and the use of military force. United Nations pretends to assume a moral commitment to encouraging human rights around the world. Since 2001, The International Commission on State Sovereignty’s report “The Responsibility to Protect”<sup>2</sup> has marked the beginning of a new set of arguments for the protection of human

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<sup>1</sup> Anthony F. Lang, “Humanitarian Intervention”, in Patrick Hayden (ed.), *Ashgate Research Companion*, Farnham: Ashgate, 2009, p. 133.

<sup>2</sup> Cf. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*

*Report of the International Commission on Intervention and State Sovereignty*, ed. by Gareth Evans and Mohamed Sahnoun, Ottawa: IDRC Books, 2001 [<http://responsibilitytoprotect.org/ICISS%20Report.pdf>], January 2013.

rights. Yet, there is still need for a further investigation of the moral dimension of the concepts and their impact in the international system's governance<sup>3</sup> related humanitarian intervention.

### On Use of Violence

John Stuart Mill was one of the first theoreticians on the issue of intervention. In his short article, *A Few Words on Non-Intervention*, from 1859, he demonstrates the way that the emerging moral and political order was sustained by the principle of non-intervention. Mill argues that intervention is only allowed if those oppressing a population come from outside the territory; which means they are 'foreigners'. To intervene in Mill's epoch meant undermining the normative structure of the European order, and so should be seen as morally wrong<sup>4</sup>. But this form of understanding the relationship between morality, state and intervention has changes in the last 200 years.

Nevertheless, theorists in the field of international relations still debate on the legal formulation of state sovereignty and consider any form of intervention as being morally questionable. For instance, Louis Henkin has pointed out that almost any action undertaken by one state in its relations with another could be considered a form of intervention. Taking into account such an argument, no definition has become generally accepted in international legal discourse, perhaps because many states do not want to limit their ability to engage in such actions. The closest to a definition that Henkin provides is a "violation of a state's sovereignty", suggesting that intervention should be understood primarily as a violation of a "normative structure"<sup>5</sup>. In other words, a legal definition of intervention is inherently ethical. As Henkin notes,

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<sup>3</sup> Cf. Nicoletta Pirozzi, Hubertus Juergenliemk, Yolanda Spies, "The European Union and the Reform of the United Nations: Towards a More Effective Security Council?", in *MERCURY*, E-paper, No.13, November [2011[http://mercury.uni-koeln.de/fileadmin/user\\_upload/E-paper\\_no13\\_r2011.pdf](http://mercury.uni-koeln.de/fileadmin/user_upload/E-paper_no13_r2011.pdf)], December 2012.

<sup>4</sup> John Stuart Mill, "A Few Words on Non-Intervention", in *Fraser's Magazine*, 1858, reprinted in *Foreign Policy Perspectives*, No. 8, London: Libertarian Alliance [<http://www.libertarian.co.uk/lapubs/forep/forep008.pdf>], January 2013.

<sup>5</sup> Cf. Louis Henkin (ed.), *International Law: Cases and Materials*, 3rd edn, St Paul: West, 1993, p. 868.

most international legal definitions give a negative valence to this, allowing it only under specially defined circumstances.

In a more subtle way, Michael Walzer has suggested that when considering the moral aspect and values involved in interventions it could be consider the fact that:

“Political motivations are always mixed, whether the actors are one or many. A pure moral will doesn’t exist in political life, and it shouldn’t be necessary to pretend that kind of purity. The leaders of states have a right, indeed, they have an obligation, to consider the interests of their own people, even when they are acting to help other people.”<sup>6</sup>

In other terms, the political actors are not seeking to justify their actions by reference to their state’s juridical framework or a set of ethical norms; but either they act on behalf of their own interest, or want to serve humanitarian purposes. A general concern refers to the way in which “humanity” is served properly, by multilateral decision-making or by a state involved in the decision process without harming the general interest which is humankind itself.

But the theoretical issue of justifying the use of violence in terms of humanitarian intervention or “Responsibility to Protect” requires a prior definition of the terms involved.<sup>7</sup> First, violence is understood as one human being physically harming or killing another human being<sup>8</sup>, widely considered to be a morally and legally wrong and condemnable. Political communities over the world consider murder a sin or a crime. But, war – a social institution that requires this practice of violence on a massive scale – is an attempt usually thought to bring honor to those

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<sup>6</sup>Michael Walzer, “The argument about humanitarian intervention”, in *Dissent*, Winter 2002, p. 26 [<http://www.e-ir.info/2012/01/30/humanitarian-intervention-an-exploration-of-its-justification-and-best-practices/>], February 2013.

<sup>7</sup> If justification refers to an appeal to moral principles in order to ground philosophically a claim or an action, legitimacy refers to the social fact deeming a certain claim or action as right. As such, there is a definite link between philosophical justification and legitimacy, insofar as an appeal to moral principles may persuade people to see a certain action, like a war, as legitimate.

<sup>8</sup> Cf. on minimalist and comprehensive conceptions of violence Johan Galtung, “Violence, Peace and Peace Research”, in *Journal of Peace Research*, No. 6, 3, 1969, pp. 167-191. Vittorio Bufacchi, “Two Concepts of Violence”, in *Political Studies Review*, No. 3, 2005, pp. 193-204.

who fight it and pride to the political community on whose behalf it is fought. This paradox is achieved by attaching certain positive political goals and moral principles to a brutal activity, thereby presumably transforming violence into moral action.

It is in this way that a distinction could be made between different kinds of violence: that which enforces the moral principles and political projects we endorse, and that which challenges them. This line between legitimate and illegitimate violence is largely taken for granted at the level of the modern states. At the level of global politics, however, drawing this line is much more problematic. The “just war” theory attempts to make violence meaningful and even righteous. In such extend, it is even possible to consider legitimate and illegitimate violence<sup>9</sup> at the level of global politics.

### Defining Just War

Since the seventeenth century, theorists have distinguished two sets of conditions upon wars: *jus ad bellum*, regarding the just recourse to war, and *jus in bello*, regarding the just execution of a war in progress. While it seem impossible to make a firm distinction on the entire just war tradition into a single theory, most contemporary “just war” advocates refer to the frameworks they defend as “just war theory” which means:

“(1) [S]ome wars are just; (2) some wars are unjust; (3) a set of *jus ad bellum* conditions must be satisfied for a war to be waged justly; and (4) once justly waged, a war remains just only insofar as certain *jus in bello* requirements are observed. There have been disagreements over precise articulation, but the following *jus ad bellum* requirements are widely accepted by just war theorists: 1. A just war must be publicly declared. 2. A war justly waged must have a reasonable prospect for success. 3. The cause of a just war must be proportional, i.e., sufficiently grave to warrant the extreme measure of war. 4. A war is justly waged as a last resort. 5. A just war must be waged for a just cause. 6. A just war must be waged by a legitimate authority. The following *jus in bello* requirements are also widely accepted

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<sup>9</sup> See Lester R. Kurtz, Jennifer E. Turpin (eds.), *Encyclopedia of Violence, Peace, and Conflict*, vol 2, San Diego: Elsevier Science & Technology Books, 1999.

by just war theorists: 1. A war justly fought must deploy only means proportional to the cause. 2. In a war justly fought, non-combatants are immune from attack. 3. In a war justly fought, prisoners of war are treated as non-combatants.”<sup>10</sup>

A misunderstanding or conflict might appear on the issue why war must always be a publicly declared last resort by a person declared as having the authority to do so. Calhoun *et al.* consider that few people would disregard the destruction of property and people for only a minor offense. In addition, since non-combatants are, by definition, non-threatening, their summary execution would be unjust, if any act is unjust. Still, Calhoun shows the vagueness of the just war tradition, explaining how most attention has been focused toward the *jus in bello* conditions, under the assumption that some wars are obviously justly waged.

“It is hardly surprising that military discourse about just war theory should focus upon the requirements of *jus in bello*, for once war has been waged, military professionals accept their leader’s judgment of the war as just. [...] But many philosophers of war, no less than military personnel and the populace, have also presumed that wars are sometimes just.”<sup>11</sup>

Even if it is obvious that “violence breeds violence”, military discourse and self interest still build up the image of the “foreigner” or “evil enemy” and justify wars according to this tradition. However, the world has transformed in fundamental ways since the principles of just war theory were first systematically articulated in the Middle Ages even if weapons are more destructive than ever before.

“Just cause would seem, *prima facie*, to be the least controversial of the requirements upon a just war. According to the United Nations Charter, ‘threats to peace’ and ‘acts of aggression’ are the only causes for which wars may be waged, as is explained in Chapter VII, Article 3: The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and

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<sup>10</sup> Laurie Calhoun, “The Metaethical Paradox of Just War Theory”, in *Ethical Theory and Moral Practice*, The Hague: Kluwer no. 4, 2001, p.45.

<sup>11</sup> Laurie Calhoun, *op. cit.*, p. 46.

shall make recommendations or decide what measures shall be taken.”<sup>12</sup>

As just war arguments only legitimize violence in order to justify the “just cause” of an intervention or self-defense, an appropriate moral approach to resolve international conflict is negotiation facilitated by neutral parties, like international courts.

### Self-Other

The self-other relationship and the respect for difference as the fundamental concerns for ethical action mean, basically, the requirement that other should not be killed for one’s own view about justice or truth. This philosophical concept embodies the tension between persons who are acting responsibly towards the other, but in the same time it means struggle and contestation of the otherness. Intersubjectivity rests on common understandings that are generally expressed in terms of rules and norms. In political philosophy, intersubjectivity designates the relationship between I – Thou which are mutually constituted agents<sup>13</sup>. This means that an I is a construct resulting from interaction with others. To achieve an interaction (especially with ethical implications)<sup>14</sup> it is required that a person to be oriented through the other, which means: the sharing of a common aim. On the epistemological level, establishing a sense of shared experience is the ultimate foundation for reciprocity and transmitting knowledge from one generation to another. Otherness is based on conventions settled and shared by the community, conventions which are normative; they oppose a group to identify their own group. Everyday life situations, social conflicts and wars are basically in a similar way places where social inclusion and exclusion are developed. Intersubjectivity works through a divergent relationship: strangeness-friendliness-conflict.

Strongly influenced by the phenomenological tradition, the theories of intersubjectivity settle down that although we have to fundament

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<sup>12</sup> Richard J. Regan, *Just War: Principles and Cases*, Washington, DC: The Catholic University of America Press, 1996, p. 23, *apud Ibidem*, p. 49.

<sup>13</sup> Cf. on intersubjectivity Ana Pantea, *Între eu și celălalt. Introducere în intersubiectivitatea cotidiană*, Cluj-Napoca: Eikon, 2010, pp. 210-220.

<sup>14</sup> Cf. Em. Lévinas, *Totality and Infinity: An Essay on Exteriority*, trans. A. Lingis, The Hague: Nijhoff Publishers, 1979.



somewhere, our choices are never innocent, but deeply politically rooted. Intersubjective communities have always been, are and shall be the central locus of human existence considered as a whole. Thus, self-other relationship connotes not only a possibility to achieve some practical effects of altering policies of other actors, but to constitute their roles and even identities in the process of communicative exchanges. Political subjects are partly constituted by their obligations to their partners. In such extend, intersubjectivity engages any subject as being dependent on the outside and its alterity<sup>15</sup>.

### **Responsibility to protect as the “need” to protect**

By excluding alterity through violence means ultimately enacting the alterity itself to act in the same manner, in that way breaking down the ethical distinction it could be built up between them. Violence, by definition, intends to destroy the otherness that is another human life, thereby abrogating the responsibility to that other human being. In such extend, political interventional discourse put this issue quite in question.

In 1999, Kofi Annan challenged UN General Assembly to prevent “another Rwanda” and to reach a consensus on the issue of humanitarian intervention. “If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to Rwanda, to Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?”<sup>16</sup> Thus, International Commission of Intervention and State Sovereignty issued “The Responsibility to Protect”, in December 2001. ICISS changed the language of humanitarian intervention with The Responsibility to Protect (R2P) in order to move apart from the impasse reached by the “right to intervene” debate. UN Charter emphasized before the need to respect state sovereignty, on one hand, and the limits of sovereignty in

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<sup>15</sup> Jurgen Habermas, “Questions Concerning the Theory of Power: Foucault Again”, in Jurgen

Habermas, *The Philosophical Discourse of Modernity*, Oxford: Polity, 1987, p. 284.

<sup>16</sup> United Nations, *We the Peoples: The Role of the United Nations in the 21<sup>st</sup> Century*, Millennium Report of the Secretary-General, 2000, p.48 [<http://www.un.org/millennium/>] October 2012.

order to protect human rights.<sup>17</sup> Reinterpretation of sovereignty in terms of responsibility: sovereignty seen as responsibility which implies “a responsibility on a part of government to protect their citizens.”<sup>18</sup>

The right to interfere in a state where extreme violations of human rights are taking place comes from the failure of that state to meet its responsibilities as a sovereign member of the international community. The argument settles that if a state fails to protect its citizens, the international community must apply a range of peaceful diplomatic and humanitarian measures, and even force as a last resort.

“State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non intervention yields to the international responsibility to protect.”<sup>19</sup>

The major critique formulated regarding the responsibility to protect doctrine was related to power disequilibrium, which allows major powers discretionally decide whether and where to intervene.<sup>20</sup> Even more, International Commission of Intervention and State Sovereignty report was designed to address the main objections vis-à-vis the potential for abuse of humanitarian intervention justifications. The report describes the use of force to protect human rights as an extreme measure, justified only in outstanding circumstances and emphasizes

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<sup>17</sup> *Idem*, “Draft Articles on Responsibility of States for Internationally Wrongful Acts,” in *International Law Commission, Report of the International Law Commission on the Work of Its Fifty- third Session*, UN A/56/10, p. 15.

<sup>18</sup> F. M. Deng, S. Kimaro, T. Lyons, D. Rothchild, and I. W. Zartman, *Sovereignty as Responsibility: Conflict Management in Africa*, Washington DC: Brookings Institution, 1996, p. 7.

<sup>19</sup> International Commission on Intervention and State Sovereignty, *op. cit.*, p. xi.

<sup>20</sup> C. Focarelli, “The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine”, *Journal of Conflict and Security Law*, no. 13, 2, 2008, 197.

that the rights described in humanitarian law apply to all human beings, because they are universal<sup>21</sup>.

The new language of “responsibility to protect” intends to permit finding new solutions to the civilian protection problem. Definitely it fills the normative gap regarding ways to address the needs of the victims in instances of genocide, ethnic cleansing, mass crimes, and crimes against humanity. But there is still a gap regarding the evolution on the normative side and the problems on the operational side, in terms of the ability of the international community to implement effectively the responsibility to protect civilians.

### **Two philosophical perspectives**

The debates over the topic involved advocates and critiques as well. For instance, Michael Walzer argues in the logic of just war theory that “[a] legitimate government is one that can fight its own internal war. And external assistance in those wars is rightly called counterintervention only when it balances, and does no more than balance, the prior intervention of another power, making it possible once again for the local forces to win or lose on their own.”<sup>22</sup> Continuing the argument, he considers that:

“Against the enslavement or massacre of political opponents, national minorities, and religious sects, there may well be no help unless help comes from outside. And when a government turns savagely upon its own people, we must doubt the very existence of a political community to which the idea of self-determination might apply.”<sup>23</sup>

Humanitarian intervention is justified, according to for Walzer, when it is a response to acts “that shock the moral conscience of mankind”. Taking into account a particular case, he states that the

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<sup>21</sup> As opposed to rights such as freedom of expression or assembly, which might be more controversial, the rights to freedom from arbitrary killing, genocide and torture apply equally to all people.

<sup>22</sup> Michael Waltzer, *Just War and Unjust War. A Moral Argument with Historical Illustration*, New York: Basic Books, 1977, p. 101.

<sup>23</sup> Michael Waltzer, *op. cit.*, p. 102.

political decisions should be taken in a contextual and in a legitimate way:

“Foreigners can provide all sorts of help — moral, political, diplomatic, and even material. Maybe neighbors, who share ethnicity and religion with the Libyan people, could do more. But a military attack of the sort now in progress is defensible only in the most extreme cases. Rwanda and Darfur, where we didn’t intervene, would have qualified. Libya doesn’t.”<sup>24</sup>

Others argue that dominant countries are using humanitarian pretexts to pursue otherwise problematic geopolitical goals and to evade the non-intervention norm and legal prohibitions on the use of international force. There are several well-known opponents of the doctrine, like Noam Chomsky, Jean Bricmont, and Ngũgĩ wa Thiong’o. For instance, Noam Chomsky is viewing humanitarian motivation with deep skepticism. “The discussions about R2P, or its cousin ‘humanitarian intervention,’ are regularly disturbed by the rattling of a skeleton in the closet: history, to the present moment.”<sup>25</sup> Virtually, he considers, every use of force in international affairs has been justified in terms of “responsibility to protect”, including the worst monsters (like Japan’s attack on Manchuria, Mussolini’s invasion of Ethiopia, and Hitler’s occupation of parts of Czechoslovakia).

In the same speech, he presents data to emphasize his strong opposition to the R2P doctrine: “The UN recently estimated that the number of those facing hunger has passed a billion, while the World Food Program of the UN has just announced major cutbacks of aid because the rich countries are reducing their meager contributions, giving priority to bailing out banks. Several years ago UNICEF reported that 16,000 children die every day from lack of food, many more from easily preventable disease. The figures are higher now.”<sup>26</sup>

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<sup>24</sup> Michael Waltzer, “The Case Against Our Attack on Libya”, in *The Republican*, 20 March 2011 [<http://www.newrepublic.com/article/world/85509/the-case-against-our-attack-libya>] September 2013.

<sup>25</sup> Naom Chomsky, *The Responsibility to Protect. Text of lecture given at UN General Assembly*, New York City, July 23, 2009 [<http://www.chomsky.info/talks/20090723.htm>] December 2012.

<sup>26</sup> *Ibidem*.

According to Chomsky, "humanity" is best understood by the nowadays superpowers as a political weapon, in a similar way it has been exposed prophetically by C. Schmitt: "When a state fights its political enemies in the name of humanity, it is not a war for the sake of humanity, but a war where in a particular state seeks to usurp a universal concept against its military opponent."<sup>27</sup>

Schmitt's interpretation on the impossibility of humanity as a political concept is quite meaningful. "Humanity" or "responsibility for humankind" was thus seen by Schmit as an "asymmetrical concept", since it contains the possibility of the deepest inequality. Crusades in the name of "humanity" still remain wars, as he advocated, even if one prefers to speak of humanitarian interventions or responsibility to protect the humankind.

## **Conclusion**

The key idea behind "responsibility to protect" doctrine is that human rights abuses are no longer a matter of sovereign concern, but belong to the international domain. This new framework is controversial not only because it touches upon very sensitive issues like sovereignty, nonintervention, and using force, but also because of its possible impact on the rules governing use of force. As the Security Council is the legal authority for the use of force and the lack of obligation to act in emergency cases may easily transform the doctrine in a potential political instrument. This critical aspect certainly weakens the legality of the responsibility to protect framework, raising questions about the use of force. That is because it leaves place for political assessments and interpretations of what the condition of national authorities "manifestly failing to protect" implies and announces a potentially inconsistent application of the doctrine by the Security Council. Hannah Arendt noted once that political action is indeterminate and impossible to predict. It is impossible to guarantee positive results of any form of political action which has the potential goal to protect and has to be respected universally. For such a reason, a more comprehensive ethical

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<sup>27</sup> Carl Schmitt, *The Concept of the Political*, trans. by George Schwab, Chicago and London: University of Chicago Press, 1996, p. 54.

reflection is still required on theoretical level and before acting in each particular case.

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## CHINA, RUSSIA, AND THE FAILURE OF THE RESPONSIBILITY TO PROTECT IN SYRIA: DOES THE FEAR OF REGIME CHANGE OFFER A SERVICEABLE EXPLANATION?

Ralph Janik\*

### Abstract

*The following pages analyse the motivations behind the Russian and Chinese vetoes that prevented three Security Council resolutions from entering into force. In particular, their commonly accepted argument that they used their veto power in order to prevent a repetition of the regime change that happened in Libya will be challenged on various grounds as it seems that it was not an outright objection of regime change but rather the frustration of having been left aside during the post-Gaddafi scramble for oil and other economic benefits, that led to their voting behaviour. In addition, Russia almost had no other option than using its veto power because of its close ties to the Assad regime. Here, Libya rather created an environment of distrust that Russia cling on its ally in fear that a newly-imposed regime would not continue this special relationship.*

**Keywords:** international relations, responsibility to protect, regime change, Russia, China, Syria

### Introduction

Ever since the International Commission on Intervention and State Sovereignty conceptualized the “Responsibility to Protect”, its implementation has been a rollercoaster ride at best. After mention was made in numerous UN reports and, most importantly, the 2005 World Summit Outcome Document,<sup>1</sup> consistent practical implementation in

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<sup>1</sup> 2005 World Summit Outcome Document, adopted by the General Assembly in its resolution 60/1 from 24 October 2005, UN Doc. A/RES/60/1.



Security Council practice has been absent. After the Council explicitly “reaffirmed” paragraphs the World Summit Outcome document’s paragraphs on the Responsibility to Protect a year later in resolution 1674, which was further mentioned in resolution 1706 on Darfur,<sup>2</sup> only little to no progress was made between until resolutions 1970 and 1973 on Libya. Today, the euphoria with which in particular the latter of these two resolutions were welcomed has faded in light of the inaction on the Civil War in Syria and the fact that three draft resolutions have failed due to the exercise of a double veto by Russia and China.

This voting behavior has been subject to an intense debate and the majority of commentators seem to have accepted the Chinese and Russian explanation according to which their veto had been exercised in order to prevent a repetition of the regime change in Libya.

After providing a short timeline of how the civil war in Syria unfolded, the following pages present the Russian and Chinese view on the events in Libya, with special emphasis on the debates at the Security Council meetings. The subsequent section deals with alternative explanations, most importantly the proposal that the vetoes on Syria were the result of political payback instead of fear over regime change. The paper closes with a conclusion that contains some food for thought on the Syrian conflict.

### **History of events – from internal disturbances to civil war**

As early as February 2012, the protests commonly referred to as “Arab Spring” started spreading to Syria.<sup>3</sup> The early focal point was the city of Dar’a, where a group of teenagers was arrested and allegedly tortured for having written anti-Assad slogans on public buildings, thereby triggering massive protests. On 15 March 2011, one day after a call for a “Day of

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<sup>2</sup> Security Council Resolution 1674 (2006).

<sup>3</sup> The following short outline mainly relies on the chronology provided in the Report of the independent commission of inquiry on the Syrian Arab Republic from 23 November 2011, UN Doc. A/HRC/S-17/2/Add. 1, 8 et seq., the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic from 15 September 2011, UN Doc. A/HRC/18/53, 118 et seq., the sequence of events provided by the New York Times

[<http://topics.nytimes.com/top/news/international/countriesandterritories/syria/index.html>], 18 March 2013, and by Global News, [<http://globalnews.ca/news/215647/timeline-of-events-uprising-in-syria/>], 18 March 2013.

dignity” had been issued on Facebook, cities such as Homs, Hama, Idlib, and even Damascus were affected, marking the final starting point for regular protests which were subsequently struck down by massive force; from the very beginning, the government blamed “armed gangs and terrorists” often funded by foreign states, as the driving force behind the movement. Parallel to keeping order by violent means, the regime also responded by undertaking some reforms, e.g. by installing a committee in order to raise living standards and ending the state of emergency which had been in place since 1963, a measure that was taken on 21 April, along with a regulation of the right to peaceful assembly, the abolition of the Higher State Security Court, and the issuance of general amnesties. Four days later, however, Syrian forces conducted the first wide-scale military operation in Dar’a, leading 233 members of Assad’s Baath Party in Dar’a to resign – the start of a series of defections that lasts until this very day.

On 10 May 2011, the EU imposed an arms embargo and sanctions on 13 high-ranking officials – not including Assad –, most importantly in the form of asset freezes and travel bans. The day that followed, the Syrian prime minister announced the establishment of a committee tasked with a new law on parliamentary elections. Two weeks later, the EU extended its restrictions against Syria add Assad and nine other members of his government. At the same time, the opposition started to become increasingly organized, with a three day conference in Turkey at the beginning of June. However, a number of opposition leaders abstained from taking part in a meeting on the establishment of a National Dialogue Commission as tool in the establishment a multiparty democracy. 6 June 2011, then, is of crucial significance since violence reached a new dimension as the government reported attacks by terrorist groups on State buildings and police centers in the Idlib province. In this connection, Assad highlighted that not all of those calling for political change acted in a peaceful manner, with particular reference to religious extremists. Altogether, the month of June saw a stark increase in attacks against the state forces in cities such as Homs, Hama, or Idlib. Two weeks after these attacks, Assad gave a public speech, promising a process of “national dialogue” and political and economic reforms, starting with a general amnesty for all crimes committed until this very day. In September 2011, the opposition groups formed and established the Syrian National Council

in Istanbul. A month later, a proposed Security Council resolution<sup>4</sup> condemning the “grave and systematic human rights violations and the use of force against civilians by the Syrian authorities” and demanding the “immediate end to all violence” while urging “all sides to reject violence and extremism” was not passed due to a double veto by Russia and China.<sup>5</sup> Tensions increased, with 16 November 2011 marking the first major attack on the Syrian government, as army defectors attacked an intelligence compound in the suburbs of Damascus. In its first report, issued in this month, the independent international commission of inquiry on the Syrian Arab Republic noted human rights abuses by the Syrian authorities *inter alia* due to the excessive use of force, extrajudicial executions and other violations of the right to life, arbitrary detentions, torture and sexual violence.<sup>6</sup> However, the commission explicitly rejected the applicability of the rules of international humanitarian law and refrained from classifying the situation as a civil war because it was unable to verify the level of intensity of the fighting and the level of organization of the insurgents; however, it raised concerns that the armed violence risked turning into an armed conflict.<sup>7</sup> Five days later, the Human Rights Committee condemned Syria for its crackdown of the protests and at the end of the month, the Arab league agreed on imposing sanctions and subsequently proposed a peace plan Assad signed up to. These steps, however, did not stop the violence at all. From December 2011 until January 2012, a mission of the Arab League visited Syria and reported on intense exchanges of gunfire among the government and the rebels in Homs.<sup>8</sup> Along with several western States, the Arab League also put forward a draft resolution calling for the implementation of its action plan,<sup>9</sup> which was yet again vetoed by

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<sup>4</sup> UN Doc S/2011/612.

<sup>5</sup> Security Council Meeting 6627, 4 October 2011, UN Doc S/PV.6627, 2.

<sup>6</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 23 November 2011, UN Doc A/HRC/S-17/2/Add. 1, 16 et seq.

<sup>7</sup> *Ibidem*, 18.

<sup>8</sup> League of Arab States Observer Mission to Syria, Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012, [[http://www.columbia.edu/~hauben/Report\\_of\\_Arab\\_League\\_Observer\\_Mission.pdf](http://www.columbia.edu/~hauben/Report_of_Arab_League_Observer_Mission.pdf)].

<sup>5</sup> February 2013, 2.

<sup>9</sup> UN Doc S/2012/77

China and Russia.<sup>10</sup> In accordance with the league's findings, the president of the International Committee of the Red Cross (ICRC) declared that some of the violence in Syria in February 2012 had amounted to a civil war in certain areas, most notably the city of Homs.<sup>11</sup> By March 2012, Saudi Arabia and Qatar openly announced their intention to arm the opposition groups,<sup>12</sup> while other sources indicated that Saudi Arabia had already taken this step.<sup>13</sup> In the same month, Kofi Annan, then-UN-Arab League envoy to Syria, met with Assad in attempt to find a solution to the crisis leading to the formal acceptance of a six point plan, while the fighting over territory continued. In April 2012, the UN-brokered ceasefire took effect and the Security Council agreed to send an observer-mission to watch over the implementation of Annan's six point plan.<sup>14</sup> The initially positive effect of this mission did not last for long, and the impacts of the efforts to arm the Syrian opposition were noted in an update by the Human Rights Council's commission from 24 May 2012, where, while not addressing the legal status of the conflict explicitly, it was stated that the situation had become "increasingly militarized" and that, "[w]hereas Government forces had previously been responding primarily to demonstrations, they now face armed and well-organized fighters".<sup>15</sup> One day later, the situation reached its tragic low point with the massacre in Hula, the perpetrators of which remain unclear. The independent international commission of inquiry on the Syrian Arab Republic put the blame on government forces and

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<sup>10</sup> Security Council Meeting 6711, 4 February 2012, UN Doc S/PV.6711, 2.

<sup>11</sup> Reuters, *Some Syria violence amounts to civil war-Red Cross*, [<http://www.reuters.com/article/2012/05/08/syria-redcross-idUSL5E8G87KJ20120508>], 26 February 2013.

<sup>12</sup> Karen De Young, *Saudi, Qatari plans to arm Syrian rebels risk overtaking cautious approach favored by U.S.*, 2012 [[http://www.washingtonpost.com/world/national-security/saudi-qatari-plans-to-arm-syrian-rebels-risk-overtaking-cautious-approach-favored-by-us/2012/03/01/gIQAarWOfIR\\_story.html](http://www.washingtonpost.com/world/national-security/saudi-qatari-plans-to-arm-syrian-rebels-risk-overtaking-cautious-approach-favored-by-us/2012/03/01/gIQAarWOfIR_story.html)], 21 February 2013.

<sup>13</sup> RT, *Saudi Arabia arms Syrian rebels via Jordan* (2012), [<http://rt.com/news/rebels-jordan-syria-arab-833/>], 4 March 2013.

<sup>14</sup> Security Council Resolution 2043 (2012).

<sup>15</sup> Independent International Commission of Inquiry on the Syrian Arab Republic, Periodic Update, 24 May 2012, [<http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/CISyria/PeriodicUpdateCISyria.pdf>], 5 March 2012.

members of the Shabbiha militia,<sup>16</sup> a view that was nevertheless contested.<sup>17</sup> On 12 June 2012 the head of the UN peacekeeping operations, Herve Ladsous, publicly stated that the situation in Syria amounted to a full-scale civil war because the Syrian government had lost control over significant parts of its territory<sup>18</sup> and even the Assad and his officials, while refuting the term “civil war” in the sense that it would mean a war waged by their own people, spoke of “a war against armed groups that choose terrorism” and a “foreign backed conspiracy”;<sup>19</sup> three days later, the increasing level of violence forced the observer mission to suspend its activities. At the end of June, a special meeting of an action group that included the UN, the League of Arab States, the EU, influential countries, among those the five permanent members of the Security Council, re-emphasized commitment to the six-point plan and further stipulated the principles and guidelines for political transition. However, the opposition groups stuck to their constant rejection of any solution that did not exclude the Assad from being part of such a transition government.<sup>20</sup> At the beginning of July, the conflict was on the verge of entering into a new phase after Syria had shot down a Turkish jet. On 15 July 2012, the ICRC announced that the hostilities had entered the stage of a non-international armed conflict all over the country and not only certain parts;<sup>21</sup> significantly, clashes of a hitherto unknown intensity took place in and around Damascus. Even in light of this development, the Security Council remained unable to issue a resolution

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<sup>16</sup> Report of the independent international commission of inquiry on the Syrian Arab Republic, 16 August 2012, UN Doc. A/HRC/21/50, para. 49.

<sup>17</sup> Rainer Hermann, *Eine Auslöschung*, [<http://www.faz.net/aktuell/politik/ausland/nahe-osten/syrien-eine-ausloeschung-11784434.html>], 17 March 2013.

<sup>18</sup> Reuters, *Syria conflict now a civil war, U.N. peacekeeping chief says*, 12 June 2012, [<http://www.reuters.com/article/2012/06/12/us-syria-crisis-un-idUSBRE85B11V20120612>], 2 February 2013.

<sup>19</sup> The Guardian, *Assad regime and activists deny Syria has reached civil war*, 2012 [<http://www.guardian.co.uk/world/middle-east-live/2012/jun/13/syria-civil-war-attack-helicopters-live>], 13 March 2013.

<sup>20</sup> Report of the independent international commission of inquiry on the Syrian Arab Republic, 16 August 2012, UN Doc. A/HRC/21/50, para.20.

<sup>21</sup> The Time (2012), *Activists Report Clashes in Syrian Capital*, [<http://world.time.com/2012/07/15/red-cross-syrian-conflict-now-a-civil-war/#ixzz20i8Cp1OR>], 27 January 2013.

under Chapter VII as a third proposed resolution<sup>22</sup> again failed due to a double veto by China and Russia.<sup>23</sup>

On 2 August 2012, Kofi Annan resigned from his position; he *inter alia* voiced his frustration by stating that "[w]hen the Syrian people desperately need action, there continues to be finger-pointing and name-calling in the Security Council", and that it was "impossible for [him] or anyone to compel the Syrian government, and also the opposition, to take the steps to bring about the political process."<sup>24</sup> October, then, saw the sharpening of Syrian-Turkish tensions amidst several mortars that crossed their border, and an unsuccessful truce. The next month, after the British Prime Minister suggested the option of enabling Assad to flee to a safe haven, Assad publicly declared that he would live and die in Syria. Parallel to these developments and Assad's continuing isolation on the international plane, NATO Secretary-General Anders Fogh Rasmussen stated that the regime's collapse was "only a matter of time".<sup>25</sup> Furthermore, the influence of radical Islamist groups within the opposition movement became more and more apparent.<sup>26</sup> On December 24, the new special envoy Brahimi met with Assad in order to exchange views and possible further steps and five days later also with Russian foreign minister Lavrov who also emphasized that there was no way to persuade Assad to resign. On 9 February, the UNHCR declared that the conflict drove around 5 000 people out of the country each day and that there was a total number of 787 000 refugees. These huge numbers obviously have a tremendous impact on the region, with neighboring Lebanon and Jordan having the largest troubles in keeping internal order and stability.<sup>27</sup> In recent weeks, outside help for the

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<sup>22</sup> UN Doc S/2012/538.

<sup>23</sup> Security Council Meeting 6810, 19 July 2012, UN Doc. S/PV.6810, at 2.

<sup>24</sup> BBC News, *Syria crisis: Kofi Annan quits as UN-Arab League envoy*, 2012 [<http://www.bbc.co.uk/news/world-middle-east-19099676>], 3 March 2013].

<sup>25</sup> Cumhuriyet, *NATO: fall of Assad regime "just a matter of time"*, 2012 [<http://www.cumhuriyet.com/?hn=385298>], 2 February 2013.

<sup>26</sup> Global News, *U.S. names Syrian group a terrorist body*, 2012 [<http://www.globalnews.ca/us+names+syrian+group+a+terrorist+body/6442769715/story.html>], 7 March 2013; see also The Guardian, *Syria crisis: al-Qaida fighters revealing their true colours, rebels say*, 2012 [<http://www.guardian.co.uk/world/2013/jan/17/syria-crisis-alqaida-fighters-true-colours>], 28 February 2013.

<sup>27</sup> Christopher Phillips, *The impact of Syrian refugees on Turkey and Jordan*, 2012 [<http://www.chathamhouse.org/publications/twt/archive/view/186289>], 12 March 2013; New

rebel groups has increased significantly; most significantly, Saudi Arabia had funneled Croatian infantry weapons to the rebels,<sup>28</sup> and the US stepped up in their assistance by offering training and non-lethal equipment.<sup>29</sup> Furthermore, several European countries, first and foremost France, but also the UK, restated their intention to arm the rebel groups directly,<sup>30</sup> while the US noted its agreement with these plans.<sup>31</sup>

### **Syria and the fear of foreign-induced regime change**

Since no state openly discussed intervening outside of Security Council authorization, the main reason for the absence of intervention in Syria was the failure to agree on a decisive plan in dealing with the conflict. During the Security Council debates, however, two blocks – the “Western” States, i.e. France, the UK, and the US, on the one side, and China and Russia on the other emerged as they stood on each side of the spectrum between exercising pressure on the Syrian government that might ultimately lead to regime change or trying to find a solution that would keep Assad in power or at least not contribute to its direct overthrow. And while direct military intervention was never proposed in the three failed draft resolutions on Syria, its flat-out rejection of its possibility was the official reason for the three double vetoes by.

The possibility of abusing foreign intervention on humanitarian grounds for geostrategic and/or economic purposes regard – to use a term coined by Jean Bricmont, “humanitarian imperialism” – is one of the

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York Times, *Swollen With Syrian Refugees, Lebanon Feels Its Stitching Fray*, 2013 [<http://www.nytimes.com/2013/02/24/world/middleeast/syrian-flood-into-lebanon-stirs-fear-of-looming-disaster.html>], 12 March 2013.

<sup>28</sup> New York Times, *Saudis Step Up Help for Rebels in Syria With Croatian Arms* [[http://www.nytimes.com/2013/02/26/world/middleeast/in-shift-saudis-are-said-to-arm-rebels-in-syria.html?\\_r=0](http://www.nytimes.com/2013/02/26/world/middleeast/in-shift-saudis-are-said-to-arm-rebels-in-syria.html?_r=0)], 18 March 2013.

<sup>29</sup> New York Times, *U.S. Offers Training and Other Aid to Syrian Rebels*, 2013 [<http://www.nytimes.com/2013/02/28/world/middleeast/us-expands-aid-to-syrian-rebels.html>], 20 March 2013.

<sup>30</sup> CNN, *France: We must arm Syrian rebels now*, 2013 [<http://edition.cnn.com/2013/03/14/world/meast/syria-civil-war/index.html>], 21 March 2013.

<sup>31</sup> The Telegraph, *Syria: US would not object to arming rebels*, 2013 [<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9938671/Syria-US-would-not-object-to-arming-rebels.html>], 21 March 2013.

principal criticisms in this regard.<sup>32</sup> This fear has recently been enhanced by the events in Libya in 2011. As a reminder, Security Council resolution 1973 marked the first time the Security Council authorized the use of force in order to protect the civilian population in a civil war notwithstanding the absence of any approval by the government.<sup>33</sup> On this basis, NATO conducted “Operation Unified Protector”, which, according to some, decisively contributed to the overthrow of Gaddafi’s government since, instead of merely protecting the civilian population, NATO effectively acted as a de-facto rebel air force,<sup>34</sup> an assumption that is *inter alia* based on the fact that the strikes targeted at military positions remote from the attacks on civilians without showing any connection to them.<sup>35</sup> If that was indeed the case, this result would be highly problematic. From a legal perspective, several states argued that the NATO operation clearly went beyond the limits set by said resolution.<sup>36</sup> This claim is based on its paragraph four, which legitimated states “to take all necessary measures [...] to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya”. In other words, assisting the rebels in their coup d’état was not covered by the mandate since the assumption that toppling Gaddafi was necessary for the protection of the civilian population would overstretch the wording of this provision. In other words: the resolution only provided for supporting the rebels in defending their already conquered towns and territory, but not in attempts towards

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<sup>32</sup> Jean Bricmont, *Humanitarian Imperialism: Using Human Rights to Sell War*, Central Books, 2007.

<sup>33</sup> Thomas G. Weiss, “RtoP alive and well after Libya”, *Ethics & International Affairs* no. 25, 2011, p. 289

<sup>34</sup> Mark Leon Goldberg, *How Libya’s Success Became Syria’s Failure*, 2012 [<http://www.undispatch.com/how-libyas-success-became-syrias-failure>], 13 March 2013. See also David Rieff, *R2P, R.I.P.*, 2011 [<http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html?pagewanted=all&r=0>], 18 March 2013.

<sup>35</sup> Scott Horton, *Up in Smoke. Did the idea of a legal war die along with Muammar al-Quaddafi?*, 2011 [[http://www.foreignpolicy.com/articles/2011/10/25/up\\_in\\_smoke](http://www.foreignpolicy.com/articles/2011/10/25/up_in_smoke)], 18 March 2013.

<sup>36</sup> Secretary General Report, *Responsibility to protect: timely and decisive response*, 25 July 2012, UN Doc. A/66/874-S/2012/578, para. 54, referring to the statements of Argentina, India, Russia, South Africa, and Venezuela during the UN General Assembly Dialogue on the Responsibility to Protect: Timely and decisive response, all available at the Website of the International Coalition for the Responsibility to Protect [<http://tiny.cc/wskguw>], 20 March 2013.



expanding their control. In sum, a stalemate between the warring factions was – from a legal perspective – the preferable and ideal option to achieve the purpose of protecting the civilian population.<sup>37</sup> This restrictive reading is further supported by the explicit reference to the town of Benghazi, which was under rebel control at that time to and thus threatened to become an object of violent attacks by Gaddafi's forces, given that he publicly stated that he would show "no mercy and no pity".<sup>38</sup>

Worrying that Libya might have created a precedent for the Responsibility to Protect as a tool for foreign-induced regime change, both the Russian Federation and China repeatedly voiced concerns that Syria could ultimately lead to the very same outcome. In Security Council Meeting 6627 from 4 October 2011 for instance, the Russian delegate, after stating that the Russian and Chinese draft had relied on the "logic of respect for the national sovereignty and territorial integrity of Syria as well as the principle of non-intervention, including military, in its affairs", criticised the draft submitted by France, Germany, Portugal, and the UK as being based on "the philosophy of confrontation" since it constituted an "unilateral, accusatory bent against Damascus." Despite the fact that the it did not refer to the use of force or chapter VII,<sup>39</sup> the delegate referred to the case of Libya when he further highlighted that the proposals to include wording on the non-acceptability of foreign military intervention, which Russia had deemed necessary to avoid operation Unified Protector from becoming a "model for the future actions of NATO in implementing the responsibility to protect", were ignored. Here, he noted the detrimental impacts of resolutions 1970 and 1973, in particular the spill-over to other regions, and the fact that "a significant number of Syrians do not agree with the demand for a quick regime change and would rather see gradual changes."<sup>40</sup> China, then, emphasized the principle of non-interference as a

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<sup>37</sup> See Dapo Akande, *Does SC Resolution 1973 Permit Coalition Military Support for the Libyan Rebels?*, 2011 [<http://www.ejiltalk.org/does-sc-resolution-1973-permit-coalition-military-support-for-the-libyan-rebels/#more-3199>], 12 March 2013.

<sup>38</sup> See the statements of the UK and the French delegates in Security Council meeting 6498, UN Doc. S/PV.6498, p. 3.

<sup>39</sup> S/2011/612.

<sup>40</sup> Statement of the delegate of the Russian Federation at the 6627<sup>th</sup> meeting of the Security Council, 4 October 2011, UN Doc. S/PV.6627, pp. 3-4.

core element for the security and survival of weaker states<sup>41</sup> and stated its firm opposition towards regime change by the use of force as a violation of the foundations on which the UN Charter rests in the Security Council Meeting from 31 January 2012.<sup>42</sup> Needless to say, the Syrian delegate in the October meeting explicitly referred to the domestic jurisdiction clause of article 2(7) of the UN Charter, on the basis of which he declared all the calls for regime change an “irresponsible incitement aimed at undermining Syrian stability [...]” and “[...] a glaring violation of the Charter.”<sup>43</sup>

The stances remained unchanged also in connection with the vote upon the second draft resolution from 4 February 2012. Even although it still did not include any reference to legitimizing the use of force or chapter VII,<sup>44</sup> the notion of preventing regime change was more present than ever. As was indicated in the course of events, this meeting took place at a time the conflict was already present in certain areas at least. Here, the Russian representative stated that some powerful states, because of their early call for regime change and due to their support for the armed fighters, had undermined any possible political settlement from the very beginning. The delegate also re-emphasized that the proposed resolution “sent a biased signal to the Syrian sides” since the draft sponsors “did not take into account [the] proposed amendments [...] to the effect that the Syrian opposition must distance itself from extremist groups that are committing violence, and calling on States and all those with any relevant opportunity to use their influence to stop those groups committing acts of violence.”<sup>45</sup> Furthermore, he also voiced his regret that the amendments proposed by Russia which would have stated “that along with the withdrawal of the Syrian armed forces from the cities, there should be an end to attacks by armed groups on State institutions and neighbourhoods” had been ignored.<sup>46</sup> Outside of the Security Council context, a spokesman of Wladimir Putin stated that “Russia is strictly against a situation when a group of countries can play the role of a global judge, judging whose leader

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<sup>41</sup> *Ibidem*, p. 5.

<sup>42</sup> Security Council Meeting 6710, 31 January 2012, UN Doc. S/PV.6710, p. 25.

<sup>43</sup> *Ibidem*, p. 14.

<sup>44</sup> S/2012/77.

<sup>45</sup> 6711<sup>th</sup> meeting of the Security Council, *supra*, n 10, p. 9.

<sup>46</sup> *Ibidem*.

is legal and whose is non-legal, and that the Russians were deeply worried over the possibility of having the Security Council decide 'to get rid of wanted or unwanted leaders'.<sup>47</sup>

China agreed with the Russian proposals and, after having referred to the sovereignty and independence of Syria, stated that "undue emphasis on pressuring the Syrian Government for a prejudged result of the dialogue or to impose any solution will not help resolve the Syrian issue" but rather "further complicate the situation."<sup>48</sup> In an article in the People's daily, the main voice of the Communist Party of China, also referred to the situation in Libya, as offering a negative example since "NATO abused the Security Council resolution about establishing a no-fly zone, and directly provided firepower assistance to one side."<sup>49</sup> Further, a research fellow at the government-run China Institute of International Studies reportedly stated that "the Libya experience probably still stung Chinese officials, who also worry about possible Western or Israeli military strikes against Iran's nuclear facilities" and also that "[i]f the Libya model was applied to Syria, then it could be applied again and again, so China and Russia were more resolute this time".<sup>50</sup> Also, the assistant foreign Minister Le Yuchend stated that China "should not forget the lesson in Libya", were the military operation "resulted in the deaths of more than 20 000 civilians and the displacement of 900 000 people without bringing the country together or ending violence [...] Such 'protection' has been linked to a 'successful surgery that kills the patient' ... it is an irresponsible move that actually aims at intervening in other countries' affairs under the flag of 'protection'".<sup>51</sup>

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<sup>47</sup> Channel 4 News, *Libya one year on: Russia regrets*, 2012 [<http://blogs.channel4.com/world-news-blog/libya-one-year-on-russia-regrets/20316>], 20 March 2013.

<sup>48</sup> 6711<sup>th</sup> meeting of the Security Council, *supra*, n 10, p. 9.

<sup>49</sup> The Guardian, *China defends Syria veto in People's Daily article*, 2012 [<http://www.guardian.co.uk/world/2012/feb/06/china-syria-veto-peoples-daily>], 13 March 2013. Note however, that the translated version from the website of the People's daily does not contain the quotes as given in that article, Zhong Sheng, *Why China vetoes UN draft resolution for Syria issue* [<http://english.peopledaily.com.cn/90780/7723539.html>], 20 March 2013.

<sup>50</sup> *Ibidem*.

<sup>51</sup> Li Xiaokun, *Beijing's policy on Syria 'responsible'*, 2012 [[http://europe.chinadaily.com.cn/world/2012-04/11/content\\_15018253.htm](http://europe.chinadaily.com.cn/world/2012-04/11/content_15018253.htm)], 20 March 2013.

Lastly, the Syrian representative stated that the conflict would already have been over if outside States had not armed and financially supported the insurgents and further stressed that the League of Arab States had always urged to prevent an internationalization of the conflict.<sup>52</sup>

The last proposed resolution was the most detailed and the most far-reaching as it was the first to include a reference to Chapter VII and *inter alia* the future imposition of sanctions under article 41 in case of non-compliance with its paragraph 4, which enshrined the duty to “cease troop movements towards population centres, (b) cease all use of heavy weapons in such centres, (c) complete pullback of military concentrations in and around population centres, and to withdraw its troops and heavy weapons from population centres to their barracks or temporary deployment places to facilitate a sustained cessation of violence.”<sup>53</sup> However, this draft was firmly rejected by the Russian delegate, who stated that the vote should not have taken place at all since Russia had repeatedly its rejection of any document under chapter VII as opening gate for sanctions and subsequent military actions. Even although the Western states denied their intention to use force, he noted, they were unwilling to excluding it explicitly. In his wordy and forceful statement, he further accused the Western States, which he called “Pharisees”, of trying to advance their geopolitical intentions and thereby escalating the conflict and of acting in opposition to the will of the Syrian people. He further condemned the threatened sanctions as being biased since they were directed at the government only, and announced the Russian abstention from bringing its own resolution to vote due to the uselessness and counter-productivity of the continued confrontation in the Council.<sup>54</sup> The South African delegate agreed with the allegation concerning the bias of the draft by stating that “the text, in an unbalanced manner, threatens sanctions against the Government of Syria without realistically allowing any action to be taken against the opposition, which would be permitted to defy the six-point plan without consequence”.<sup>55</sup> Agreeing with these statements, the Chinese delegate further outlined that such action would further worsen the situation, with the possibility of

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<sup>52</sup> 6711th meeting of the Security Council, *supra*, n 10, p. 13.

<sup>53</sup> S/2012/538.

<sup>54</sup> Security Council Meeting 6810, UN Doc. S/PV.6810, pp. 8-9.

<sup>55</sup> *Ibidem*, p. 12.

spreading to other states in the region. The principles of sovereign equality and non-interference were also emphasized once more, while emphasising that China did not have any self-interest in the conflict. On a side note, he also argued that the draft jeopardized the unity of the council since its sponsors had “failed to show any political will or cooperativeness, adopting a rigid and arrogant approach to the reasonable basic concern of other concerned countries and refusing to make revisions.”<sup>56</sup> The Syrian delegate, then, *inter alia* referred to the involvement of terrorist groups like Al-Qaida and concluded his remarks with a full-scale rhetoric attack exposing Western hostility towards the Arab world as preventing them from acting in the interest of Syria.<sup>57</sup>

### **Political payback as alternative explanation?**

The importance China and Russia put on the prevention of any use of force is highly interesting since, barring some exceptions such as the statement of Hollande after the massacre in Houla, where he stated that he could not rule out military intervention upon Security Council authorization,<sup>58</sup> Western states have commonly rejected the possibility of directly using force to ouster Assad as it seems that „neither the West not the Arab league has the stomach to more themselves in the potential quagmire that Syria’s sectarian and ethnic divisions pose“.<sup>59</sup> In March 2012, for instance, US President Barack Obama stated “it is my belief that, ultimately, this dictator will fall, as dictators in the past have fallen. But the notion that the way to solve every one of these problems is to deploy our military, that hasn't been true in the past and it won't be true now.”<sup>60</sup> Obviously, caution is always due in connection with political statements, in particular since Obama had also rejected calls for regime change in Libya

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<sup>56</sup> *Ibidem*, pp. 13-14.

<sup>57</sup> *Ibidem*, pp. 16-17.

<sup>58</sup> Le Monde, *Hollande n'exclut pas une intervention militaire en Syrie sous mandat de l'ONU*, 2012

[[http://www.lemonde.fr/politique/article/2012/05/29/hollande-n-exclut-pas-une-intervention-militaire-en-syrie-sous-mandat-de-l-onu\\_1709252\\_823448.html](http://www.lemonde.fr/politique/article/2012/05/29/hollande-n-exclut-pas-une-intervention-militaire-en-syrie-sous-mandat-de-l-onu_1709252_823448.html)], 20 March 2012.

<sup>59</sup> Bennett Ramberg, *Applying the Responsibility to Protect to Syria*, 2012 [<http://yaleglobal.yale.edu/content/applying-responsibility-protect-syria>], 28 January 2013.

<sup>60</sup> Press Conference by the President, 2012, [<http://www.whitehouse.gov/the-press-office/2012/03/06/press-conference-president>], 20 March 2013.

right after the start of Operation Unified Protector. Given how the events in Libya unfolded, this statement is worth citing at length:

Now, just as there are those who have argued against intervention in Libya, there are others who have suggested that we broaden our military mission beyond the task of protecting the Libyan people, and do whatever it takes to bring down Qaddafi and usher in a new government. Of course, there is no question that Libya — and the world — would be better off with Qaddafi out of power. **I, along with many other world leaders, have embraced that goal, and will actively pursue it through non-military means. But broadening our military mission to include regime change would be a mistake. The task that I assigned our forces — to protect the Libyan people from immediate danger, and to establish a no-fly zone -- carries with it a U.N. mandate and international support. It's also what the Libyan opposition asked us to do. If we tried to overthrow Qaddafi by force, our coalition would splinter.** We would likely have to put U.S. troops on the ground to accomplish that mission, or risk killing many civilians from the air. The dangers faced by our men and women in uniform would be far greater. So would the costs and our share of the responsibility for what comes next. To be blunt, we went down that road in Iraq. Thanks to the extraordinary sacrifices of our troops and the determination of our diplomats, we are hopeful about Iraq's future. But regime change there took eight years, thousands of American and Iraqi lives, and nearly a trillion dollars. That is not something we can afford to repeat in Libya. As the bulk of our military effort ratchets down, what we can do -- and will do -- is support the aspirations of the Libyan people. **We have intervened to stop a massacre, and we will work with our allies and partners to maintain the safety of civilians.** We will deny the regime arms, cut off its supplies of cash, assist the opposition, and work with other nations to hasten the day when Qaddafi leaves power. It may not happen overnight, as a badly weakened Qaddafi tries desperately to hang on to power. But it should be clear to those around Qaddafi, and to every Libyan, that history is not on Qaddafi's side. With the time and space that we have provided for the Libyan people, they will be able to determine their own destiny, and that is how it should be.<sup>61</sup>

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<sup>61</sup> Remarks by the President in Address to the Nation on Libya, 2011) [<http://www.whitehouse.gov/the-press-office/2011/03/28/remarks-president-address-nation-libya>], 16 March 2013.

One may wonder whether this statement simply qualifies as political teabagging or whether the seemingly generally accepted assumption that Operation Unified Protector decisively and wantonly led to the regime change needs to be contested. Robert A. Pape, to name one of the fiercest proponents of this view, for instance interpreted the NATO operation as having been in conformity with the three tier strategy he proposed prior to the intervention. This strategy aimed at protecting the town of Benghazi, which was explicitly mentioned in above-mentioned paragraph 4 of resolution 1973, by destroying Gaddafi's military equipment and attacking his forces in the immediate surroundings in order to create a "line in the sand", granting economic help to the city and, as the last step, ensure the longevity of the protection lasts since the overall goal of this plan was to "sustain the people of eastern Libya without imposing regime change on Tripoli, invading Libya, or seizing its oil", while further providing "the core framework for a political transformation of Libya over time, with the West and the Arab world on the right side of history."<sup>62</sup>

Pape thus interpreted the actual overthrow of Gaddafi as a mere side effect, not the ultimate goal. In particular, he argued that, while the Obama administration and the other involved powers "did not object to the rebels seeking regime change and surely would have understood this as a likely outcome, if only because protecting civilians targeted by the regime creates opportunities for rebels to organize their own attacks to topple the local government", there was "little evidence of the kind of large-scale, dedicated efforts at imposing regime change, independent of rebel efforts, that the United States has waged historically". In opposition to the above-quoted presidential statement, he further backs these findings by pointing out that this very absence of dedicated efforts towards regime change is likely to have caused critics and the rebels to call for more far-reaching operations to that end.<sup>63</sup>

In this regard, one may also hold the view that resolution 1973 and the aim of protecting the civilian population did indeed provide for regime

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<sup>62</sup> Robert A. Pape, *How to Save Benghazi*, 2011 [[http://www.foreignpolicy.com/articles/2011/03/18/does\\_the\\_world\\_belong\\_in\\_libyas\\_war?page=0,6](http://www.foreignpolicy.com/articles/2011/03/18/does_the_world_belong_in_libyas_war?page=0,6)], 20 March 2013.

<sup>63</sup> Robert A. Pape, "When Duty Calls. A Pragmatic Standard of Humanitarian Intervention", *International Security*, Vol. 37, 41, 2012, p. 69.

change instead of a stalemate. Such an assumption is based on the fact that, even after the immediate threat to Benghazi had been eliminated, Libya's army continued its attacks against other cities under rebel control. Due to the behaviour of Gaddafi's forces and the dynamics of the war, the protection of all Libyans, not only those in the east and in Benghazi in particular, provided for interpreting resolution 1973 as meaning that the protection of civilians ultimately required toppling Gaddafi.<sup>64</sup> One may even go as far as reading resolution 1973 as actively taking sides since it condemned the regime of Gaddafi. Altogether, the specific mention of Benghazi, the rebellion stronghold, and the legitimization of force in order to protect civilian areas under threat of attack, may lead one to qualify it as being "designed to aid the Libyan rebels in their struggle against the government".<sup>65</sup>

From this angle, Erik Voeten doubts whether Russia and China indeed did not expect such a broad interpretation of resolution 1973 and argues that, on the contrary, they were perfectly aware of the possibility and high probability of regime change. Here, one must not forget that Sergei Lavrov, the Russian foreign minister had served as Russia's permanent representative for a decade, during which he has been involved in numerous deals that saw Russia and China deviate from their thus not so strict stance regarding non-intervention,<sup>66</sup> while there is also no credible basis to think that China does not understand the ways of the "wheeling and dealing" going on at the UN.<sup>67</sup> Furthermore, Voeten also puts emphasis on the fact that various NATO powers voiced their willingness to act even in absence of Security Council legitimization. In this scenario, it was better "to play along and cut a side deal" in exchange for not putting any obstacles to the legal stamp on a military intervention that would have

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<sup>64</sup> *The Economist*, "The lessons of Libya", 2011 [<http://www.economist.com/node/18709571>], 20 March 2013.

<sup>65</sup> Erik Voeten, *How Libya Did and Did Not Affect the Security Council Vote on Syria*, 2012 [<http://www.washingtonmonthly.com/ten-miles-square/2012/02/how-libya-did-and-did-not-affect-the-security-council-vote-on-syria>], 28 March 2013.

<sup>66</sup> *Ibidem*.

<sup>67</sup> Erik Voeten, *Why Did Russia and China Veto?*, 2012 [<http://www.washingtonmonthly.com/ten-miles-square/2012/02/why-did-russia-and-china-veto>], 20 March 2013.



occurred either way.<sup>68</sup> In sum, this view essentially holds that Russia and China, instead of trying to impede the possibility of abuse of the Responsibility to Protect for regime change at all costs, gambled on Western miscalculation that would benefit or at least not harm their interests and, after the operation ran surprisingly smoothly and cost-effective, felt betrayed because their abstention was not rewarded at all when it came to slicing up the Libyan pie.<sup>69</sup> Here, one needs to bear in mind that paving the way for regime change essentially meant sacrificing their economic ties with Gaddafi's regime: Russia had contracts on military arms, railroads,<sup>70</sup> and oil worth 10 billion dollars,<sup>71</sup> while China incurred losses because of its contracts on oil as well as weapons that even mounted to 20 billion dollars.<sup>72</sup> Most importantly, the Libyan oil company AGOCO announced "that they 'don't have a problem with Western countries, but may have political issues with Russia and China.'"<sup>73</sup> In essence, both of these countries arguably speculated on being compensated for giving up on these benefits only to end up with empty hands.<sup>74</sup>

Altogether, Voeten argues that the veto in Syria remains a direct consequence of the regime change in Libya, but for different reasons as those put forward in official statements. Instead of being owed to the fear of using the Responsibility to Protect as a pretext for regime change, the votes on Syria provided Russia and China an ample opportunity for political payback.

### Geostrategic interest

Obviously, the fear of foreign-induced regime change, regardless of whether it does or does not actually offer an explanation for Russia's and

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<sup>68</sup> *Ibidem*.

<sup>69</sup> *Ibidem*.

<sup>70</sup> Dmitri Trenin, *Russia's Line in the Sand on Syria*, 2012 [<http://www.foreignaffairs.com/articles/137078/dmitri-trenin/russias-line-in-the-sand-on-syria>], 20 November 2012.

<sup>71</sup> Kinan Jaeger and Rolf Tophoven, "Der Syrien Konflikt: Internationale Akteure, Interessen, Konfliktlinien", *Aus Politik und Zeitgeschichte* 8, 23, 2013, p. 26.

<sup>72</sup> Yun Sun, "Syria: What China Has Learned From its Libya Experience", *Asia Pacific Bulletin* 152, February 27 2012.

<sup>73</sup> Sun, *supra*, n 72.

<sup>74</sup> Kinan Jaeger and Rolf Tophoven, *supra*, n 71, p. 26.

China's behaviour, does not tell the entire story. The civil war in Syria is deeply embedded in the broader Sunni-Shiite conflict with Saudi Arabia and Iran, the key players on each side, both being heavily involved. As late as March 2013, reports indicated that Iran and Hezbollah have managed to help the government of Assad by establishing an army consisting of 50 000 fighters,<sup>75</sup> while Saudi Arabia provided the rebels with Croatian infantry weapons.<sup>76</sup> The conflict is thus essentially a proxy war and its outcome is of vital importance for the balance of powers in the entire region. Toppling Assad – Iran's last ally in the region – from power and establishing a Sunni, possibly Salafi government controlled by Saudi Arabia, would break up the Shiite axis running from Iran over the Shiite-dominated regions in Iraq until the Lebanese Hezbollah and cut off Iran from its access to the Mediterranean Sea.<sup>77</sup> The US also has a firm interest in overthrowing Assad, first and foremost due to his close ties with Iran and the Hezbollah.<sup>78</sup> In addition, the US is backing the various Sunni states (Saudi Arabia, the Gulf States, Egypt, and Turkey), and also keen on weakening Iran, which is seen as having become too powerful as a result of the 2003 war in Iraq. This entanglement also explains the Western double standard in dealing with the various states in the Middle East, where autocracies like Saudi-Arabia, Bahrain, Qatar are deemed as being crucial for the stability of the region despite their tacitly acknowledged support for the rebels, while calling for the end of the regime of Assad due in order to establish a democratic government.<sup>79</sup>

Russia, on the other hand, has had a rather bad standing among the Sunni states for long and would not gain anything from appeasing the Sunni camp or hopping on the bandwagon already occupied by the US for decades. Hence, standing by the "unloved" Shiite side, including Alawi Syria, still represents the only viable options to retain at least some power

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<sup>75</sup> The Guardian, *Iran and Hezbollah 'have built 50,000-strong force to help Syrian regime'*, 2013 [<http://www.guardian.co.uk/world/2013/mar/14/iran-hezbollah-force-syrian-regime>], 20 March 2013.

<sup>76</sup> New York Times, *supra*, n 28.

<sup>77</sup> Interview with Middle East expert Peter Scholl-Latour in the Frankfurter Rundschau, [<http://www.fr-online.de/aegypten-syrien-revolution/peter-scholl-latour-assad-regime--ist-auch-nicht-schlimmer-als-andere-7151782,11803188.html>], 18 March 2013.

<sup>78</sup> Kinan Jaeger and Rolf Tophoven, *supra*, n 71, p. 25.

<sup>79</sup> Todenhöfer, Jürgen, *Der syrische Knoten*, [<http://www.taz.de!/89947/>], 12 March 2013.

in the region. Seen through this lens, supporting Assad may send a message to every government that is concerned over Western influence and bolster the credibility of Russia as a more trustworthy ally than Western leaders, who are known for shaking hands with dictators only to let them fall over human rights-or democracy-related concerns at the next occasion.<sup>80</sup> Furthermore, Russia entertains its only military base outside the former Soviet Union in Tartus, a Syrian town close to the oil terminal of the Baku-Tiflis-Ceyhan pipeline from where huge amounts of oil are being shipped to Western Europe, a guarantor for Russia's possible rapid influence upon European oil supply at any given time.<sup>81</sup>

As to China, it repeatedly stated that its interest in Syria are virtually non-existent;<sup>82</sup> however, it obviously has no incentive to give legal assistance to the US and its allies in their ambitions in the Middle East, at least as long as such assistance is not rewarded accordingly.

## Conclusion

In sum, the civil war in Syria is too complex to allow for a simple explanation of the behaviour of any involved actor. Rather, all of the considerations outlined above, albeit to various degrees, assume merit when it comes to the behaviour of Russia and China. Thus, the international community's reaction to the civil war in Syria will probably be remembered as being the consequence of Libya, just like the failure to prevent the genocide in Rwanda is generally interpreted as being owed to the killing of US soldiers in Somalia. Yet, while the impact of the Libyan precedence cannot be neglected, its precise nature remains difficult to assess.

What does seem clear is that Russia and China have a strong tendency to protect the status quo, which is partly explained by their own domestic systems and the internal threats they are facing themselves. At the same time, the example of Libya, at least if one assumes that both states were perfectly aware of the implications of resolution 1973, shows that they

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<sup>80</sup> Mead, *op. cit.*

<sup>81</sup> Jaeger and Tophoven, *supra*, n 74, 26.

<sup>82</sup> Security Council Meeting 6810, *supra*, n 54, pp. 13-14; see also Qu Xing, "The UN Charter, the Responsibility to Protect, and the Syria Issue", in *China International Studies*, no. 33, 2012. p. 23.

are nevertheless not keen on outrightly rejecting regime change at all costs. Thus, it seems that ignoring their interests when it came to dividing the Libyan pie has showed the impossibility not only of creating an atmosphere of mutual trust in the Security Council but also of establishing an effective and coherent approach towards the implementation of the Responsibility to Protect. The case of Syria has therefore brought back sense of reality to the sometimes overly-naïve discussion on this concept. It also shows that every conflict is deeply related to preceding conflicts. Most importantly, it serves as a reminder that Security Council action, and humanitarian intervention in particular, is the exception, not the rule. Only if a variety of conditions are met, will the international community. As a final observation, one may thus agree with Gareth Evans who stated that

[t]he lesson of Libya is that R2P advocates have to define all over again, with more precision this time, the stringent prudential criteria which should have to be satisfied before coercive military force is authorized by the Security Council, and which should govern its subsequent application. Five such criteria (seriousness of harm feared; genuine intent to address that harm; nothing less than military coercion likely to succeed; force application proportional to the harm feared; and overall balance of consequences positive) have been long on the table. They should be adopted as formal Security Council guidelines, not as a guaranteed route to consensus but an aid to achieving and holding it in hard cases. They were all clearly applicable when the Security Council acted to prevent imminent massacre in Benghazi in March. But some – especially proportionality – were much less obviously so as the intervention wore on.<sup>83</sup>

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**USAGES LOCAUX D'UNE NOUVELLE MODALITÉ DE  
L'ACTION HUMANITAIRE. LES INTERVENTIONS  
PSYCHOSOCIALES EN BOSNIE-HERZÉGOVINE**

**LOCAL APPLICATIONS OF A NEW HUMANITARIAN  
APPROACH. PSYCHOSOCIAL ACTIVITIES IN  
BOSNIA AND HERZEGOVINA**

**Hélène Delomez\***

**Abstract**

*Psychosocial activities have become for several years a new approach of international humanitarian action as well as a tool of peacebuilding in the aftermath of violent conflict. This tends to reflect a greater consideration of the psychological consequences of major crisis. The article seeks to explore the different meanings of psychosocial support activities carried by the local civil society organizations in order to understand the diverse re-appropriations and the objectives they seek to achieve*

**Keywords:** psychosocial, humanitarian action, reconciliation, civil society, Bosnia and Herzegovina

**Introduction**

Le terme *psychosocial* a fait son entrée dans le langage humanitaire à la fin des années 1980, pour devenir aujourd'hui un critère incontournable de l'action humanitaire. Il traduit la volonté d'une meilleure prise en compte par les acteurs humanitaires des conséquences psychiques des crises sur les populations qui la vivent. Il tend à englober une variété de modalités d'action, de l'urgence à la réhabilitation après un conflit, autant qu'il tend à devenir un gage de qualité de l'action humanitaire. Parallèlement, le terme est aussi utilisé dans les répertoires des pratiques et théories de la construction de la paix après les conflits violents. Cette

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évolution est néanmoins marquée par l'absence de consensus autour de la définition de ce que recouvrent les interventions psychosociales<sup>1</sup>, certains auteurs prenant en compte cette évolution ont mis en garde contre l'inadaptation de l'utilisation de concepts occidentaux à des contextes culturels différents<sup>2</sup> ou ont démontré les risques de *pathologisation* des populations à travers les programmes d'action en santé mentale dans les contextes de conflit et de post-conflit<sup>3</sup>. Si les ONG internationales ont effectivement tenté d'intégrer dans leurs programmes d'action une meilleure prise en compte des souffrances psychiques des populations, il n'existe en revanche, pas de définition claire des objectifs de ce que recouvre le terme psychosocial ni des activités qui lui sont associées. Cette nouvelle norme de l'action humanitaire n'est pas le seul fait des organisations internationales mais le terme est aussi utilisé par les groupes locaux de la société civile dans les pays où interviennent les acteurs humanitaires internationaux.

Il s'agit ici de montrer à travers l'exemple de la Bosnie-Herzégovine, les différents usages du terme psychosocial à travers les pratiques des organisations locales de la société civile, principalement les organisations non gouvernementales, et d'autre part de souligner leurs ancrages dans des évolutions plus globales des champs de l'action humanitaire et de la construction de la paix.

En montrant les usages différenciés du terme psychosocial, l'article corrobore bien l'assomption concernant le flou quant à une définition de ce que recouvre le terme. Néanmoins, une prise de vue globale permet de montrer une évolution qui tend à considérer de plus en plus les individus

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<sup>1</sup> M. A. Clancy et B. Hamber, « Trauma, Peacebuilding, and Development: An overview of key positions and critical questions », 2008.

<sup>2</sup> P. J. Bracken, J. E. Giller et D. Summerfield, « Psychological responses to war and atrocity: the limitations of current concepts », *Social Science & Medicine*, vol. 40 / 8, 1995, p. 1073–1082. D. Summerfield, « A critique of seven assumptions behind psychological trauma programmes in war-affected areas. », *Social Science & Medicine; Social Science & Medicine*, 1999.

<sup>3</sup> V. Pupavac, « Therapeutic governance: psycho-social intervention and trauma risk management », *Disasters*, vol. 25 / 4, 2001, p. 358–372. V. Pupavac, « Pathologizing populations and colonizing minds: international psychosocial programs in Kosovo », *Alternatives: Global, Local, Political*, vol. 27 / 4, 2002, p. 489–511.

et leurs souffrances dans l'action humanitaire et dans la construction de la paix, à la fois comme une fin mais aussi comme un moyen.

### **La santé mentale en action humanitaire : entre protection et témoignage**

L'introduction de la santé mentale dans le champ de l'action humanitaire est relativement récente et est liée à l'émergence, en dehors de son champ d'action, d'une nouvelle catégorie de reconnaissance des victimes. La première mission de psychiatrie humanitaire est organisée en 1988 à la suite du tremblement de terre en Arménie. Médecins et psychiatres arméniens, vivant en France, se mobilisent, au sein d'organisations non gouvernementales médicales, comme MSF et MDM, pour venir en aide aux victimes de la catastrophe<sup>4</sup>. Les professionnels médicaux, après avoir répondu aux besoins urgents, reconnaissent la souffrance psychique des populations et décident pour la première fois de mettre en place des activités de soutien aux populations traumatisées. Cette évolution des modalités de l'aide humanitaire est issue de la reconnaissance sociale d'une catégorie médicale, le traumatisme, comme catégorie de référence pour signifier les « expériences individuelles et collectives liées à des événements dramatiques<sup>5</sup> ». Cette reconnaissance sociale du traumatisme, et plus spécifiquement du Syndrome de Stress Post-traumatique<sup>6</sup>, est le résultat de mobilisations sociales pour la reconnaissance d'un nouveau statut de victime<sup>7</sup>. Depuis lors, le traitement

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<sup>4</sup> Christian Lachal, Marie Rose Moro et Lisa Ouss-Ryngaert, *Comprendre et soigner le trauma en situation humanitaire: Définitions, méthodes, actions*, Dunod, 2003, 284 p.

<sup>5</sup> E. d' Halluin, « La deuxième vie du traumatisme psychique », *Revue française des affaires sociales*, vol. / 1, 2004, p. 57-75.

<sup>6</sup> Mieux connu sous le terme anglo-saxon PTSD, Post-traumatic stress disorder

<sup>7</sup> L'avènement du traumatisme et plus particulièrement du stress post traumatique, comme catégorie de référence est issu de la rencontre entre certains psychiatres engagés dans la refonte de la nosographie du traumatisme et certaines mobilisations sociales dans les années 70 et 80 au Etats-Unis, principalement la mobilisation des vétérans de la guerre du Vietnam aux Etats-Unis ainsi que les mouvements féministes américains. Pour les vétérans, il s'agit de montrer que les troubles psychiques dont ils sont victimes résultent des événements vécus pendant la guerre et qu'à ce titre ils doivent recevoir réparation et la reconnaissance sociale et politique de leur souffrance. Pour les féministes, il s'agit d'une part de contester l'explication dominante psychanalytique selon laquelle, les abus vécus dans l'enfance relèvent de fantasmes œdipiens, pour, d'autre part, démontrer qu'au contraire les troubles

des blessures psychiques constitue tant une nouvelle façon d'intervenir auprès des populations victimes de conflits violents et de catastrophe naturelle qu'une innovation éthique de l'action humanitaire<sup>8</sup>.

Il est possible de distinguer deux grandes fonctions associées à la prise en compte de la souffrance psychique dans les programmes humanitaires. La première fonction est associée aux objectifs traditionnels de protection de l'aide humanitaire, les souffrances psychiques s'insèrent ainsi dans les sept catégories de souffrances généralement reconnues, dont la population civile doit être protégée<sup>9</sup>. En effet, les ONG humanitaires internationales vont peu à peu considérer la souffrance psychique au même titre que les autres besoins des populations, et considèrent que le travail thérapeutique doit aller jusqu'à la réparation, ce qui consiste à reconnaître cette souffrance au même titre que n'importe quelle maladie physique. En parallèle, la souffrance psychique, les *blessures invisibles*<sup>10</sup> causées par la guerre se construisent comme une « catégorie morale<sup>11</sup> », une nouvelle façon pour les organisations humanitaires de témoigner de la souffrance des populations et de la nécessité d'agir. Cet aspect vient enrichir la mission de témoignage des situations de violence à l'encontre des populations civiles, endossée par les *ONG sans frontières* depuis la guerre du Biafra<sup>12</sup>. Ainsi pour les ONG internationales, la prise en considération des conséquences psychiques des violences permet d'une part de témoigner des violences subies et d'autre part permet de développer une approche élargie de la protection.

Si cette évolution des modalités d'action à l'intérieur du champ de l'action humanitaire est issue d'une évolution plus globale et d'une reconnaissance dans l'espace public du traumatisme psychique et du PTSD, en revanche les formes d'interventions liées à la santé mentale sur les

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psychologiques que l'on constate chez les fillettes sont bien les symptômes de ce qu'elles ont vécu.

<sup>8</sup> Didier Fassin et Richard Rechtman, *L'empire du traumatisme: Enquête sur la condition de victime*, Flammarion, 2007, 452 p.

<sup>9</sup> Hugo Slim, *Les civils dans la guerre: Identifier et casser les logiques de violence*, Labor et Fides, 2009, 378 p.

<sup>10</sup> Thierry Baubet, Karine Le Roch, D. Bitar [et al.], *Soigner malgré tout: Trauma, cultures et soins*, La Pensée sauvage, 2003, 259 p.

<sup>11</sup> Didier Fassin et Richard Rechtman, *op. cit.*

<sup>12</sup> Philippe Ryfman, *Histoire de l'humanitaire*, La Découverte, 2010, 130 p.

terrains humanitaires vont connaître des développements et des débats propres au champ de l'action humanitaire. Ainsi plusieurs *labels* sont donnés aux activités de santé mentale, *psychiatrie humanitaire, interventions psychosociales, psychiatrie de l'ailleurs*, avec un accent plus ou moins prononcé sur l'utilisation de la nosographie du PTSD. Le terme psychosocial tend à être le plus utilisé dans la mesure où il permet de se détacher d'une vision trop médicale du traumatisme ainsi que d'une approche trop occidentale de la psychologie ou de la psychopathologie qui tendrait à *pathologiser* les « réactions normales à une situation anormale <sup>13</sup>».

En effet, le terme psychosocial tente d'exprimer les interactions permanentes entre l'état psychologique d'un individu et son environnement social<sup>14</sup>. Les interventions psychosociales sont basées sur l'idée que c'est la combinaison des aspects psychologiques et sociaux, qui est responsable du bien-être, et que l'un ne peut être séparé de l'autre. Le psychosocial s'occupe donc du vécu subjectif de l'individu en relation avec le milieu dans lequel il évolue. Néanmoins, comme le souligne Vanessa Pupavac<sup>15</sup>, il n'existe aucun consensus autour de la définition de ce qu'est le soutien psychosocial ni même des activités qui lui sont associées. Les activités mises en place oscillent entre l'organisation de groupes de parole entre victimes d'abus, des psychothérapies individuelles et des activités récréatives ou de formation professionnelle visant à la réintégration sociale. Les activités dites « psychosociales » englobent une multitude d'activités et d'approches qui visent à soutenir, psychologiquement et socialement, les victimes de violence ou d'abus.

### **Les interventions psychosociales en Bosnie-Herzégovine : le contexte d'action**

L'action humanitaire internationale déployée en Bosnie-Herzégovine et dans les pays de l'Ex-Yougoslavie dès le début du conflit en

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<sup>13</sup> Définition parfois donnée du traumatisme, voir notamment Evelyne Josse et Vincent Dubois, *Interventions humanitaires en santé mentale dans les violences de masse*, De Boeck Supérieur, 2009, 308 p.

<sup>14</sup> M. Bergh, et P. Jareg, *Health and psychosocial aspects of complex emergencies: The Norwegian experience*, Oslo, 1998 cité dans Mimica Agger, *Psychosocial assistance to victims of war in Bosnia-Herzegovina and Croatia : an evaluation*, Brussels: ECHO, 1996

<sup>15</sup> V. Pupavac, *op. cit.*;

1992 intègre ces nouvelles configurations, et plusieurs missions dites de soutien psychosocial, sont mises en place par des agences de l'ONU ou par des ONG internationales. La Bosnie et la Croatie vont constituer les premiers vrais « terrains » d'interventions psychosociales des acteurs humanitaires<sup>16</sup> dans la mesure où les interventions psychosociales mises en place par les acteurs internationaux de l'aide humanitaire constituent les premières interventions de ce type, mises en place pendant un conflit. La proximité géographique et culturelle a certainement rendu plus aisée l'identification et l'implication des médecins<sup>17</sup>.

Il est intéressant à ce titre de souligner que l'Office Humanitaire de la Communauté Européenne (ECHO), dont la création intervient au moment du conflit en Ex Yougoslavie<sup>18</sup>, a créé en 1993 un groupe de travail spécialisé sur le psychosocial réunissant des professionnels chargés de former les ONG et les médecins locaux à l'assistance psychosociale des femmes et des enfants, ainsi que chargés d'évaluer les besoins en santé mentale des populations touchées par la guerre.

Ainsi on peut lire dans le rapport d'évaluation de l'action de la communauté européenne concernant le soutien psychosocial aux populations en Bosnie et en Croatie : « l'importance d'intégrer une assistance psychosociale dans l'aide humanitaire est devenue de plus en plus évidente pendant la guerre en Ex-Yougoslavie. Quand la guerre a débuté en 1991, les professionnels de la santé mentale ont immédiatement fourni une assistance aux réfugiés et aux populations déplacées. La communauté internationale s'est jointe à ces efforts, et en 1993 ECHO a commencé à financer des ONG fournissant une assistance aux femmes et

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<sup>16</sup> Marie Rose Moro et Serge Lebovici, *Psychiatrie humanitaire en ex-Yougoslavie et en Arménie: face au traumatisme*, Presses universitaires de France, 1995, 172 p.

<sup>17</sup>En comparaison avec le Rwanda, à la même époque où les médecins ont éprouvés de grandes difficultés à intervenir après le génocide, notamment par leur impuissance à comprendre la violence extrême. Voir le rapport de MSF, voir l'article de Michel Dechambre, *Bilan d'un échec. Mission exploratoire au Rwanda* (Avril 1995) Medical News, spécial Psy, 1998, n°2, pp. 64-66

<sup>18</sup> ECHO est créée par la Commission Européenne en 1992. L'action humanitaire européenne est ainsi séparée de l'aide au développement. ECHO est devenue en 2004 une Direction Générale de l'Aide Humanitaire et de la Protection Civile (DG ECHO) pour une analyse de l'action humanitaire de la Communauté Européenne voir Ryfman ou Le dossier spécial sur l'Aide Humanitaire dans Questions Internationales, juillet-août 2012, n°56, La documentation française.

aux enfants traumatisés<sup>19</sup>». L'implication des acteurs de l'action humanitaire internationale autour des interventions psychosociales ouvre une fenêtre d'opportunité pour les acteurs locaux notamment à travers le financement d'activités et la formation de personnels spécialisés dans le soutien psychosocial aux victimes du conflit.

La révélation pendant le conflit des violences sexuelles massives à l'égard des femmes en Bosnie-Herzégovine va aussi mobiliser différents acteurs internationaux à mettre en place des programmes de soutiens psychosociaux aux victimes. Dès le début du conflit, la situation des droits de l'Homme est évaluée par des experts chargés par l'Organisation des Nations-Unies, la Communauté Européenne, ainsi que d'autres observateurs internationaux comme Amnesty International. L'utilisation du viol et des sévices sexuels sur les populations civiles est dénoncée par Amnesty International dès 1992 dans un rapport couvrant la période d'avril à août 1992. Dans son deuxième rapport d'octobre 1992 Tadeuz Mazowiecki<sup>20</sup>, le rapporteur spécial de la Commission des droits de l'homme des Nations-Unies, affirme que la « purification ethnique n'(est) pas la conséquence de la guerre mais bien plutôt son but » et que les viols et autres sévices sexuels concourent à la « réalisation de ce but déjà en partie atteint <sup>21</sup> ». Les rapports de l'Union Européenne et diverses organisations présentes sur le terrain lors du conflit, font plusieurs constats. Premièrement que la pratique des viols est largement répandue, qu'elle relève deuxièmement d'un plan identifiable, et troisièmement, les violences sexuelles visent les femmes Serbes, Croates et Musulmanes, mais ces dernières représentent la majorité des victimes.

L'usage de la violence sexuelle dans le conflit est porté à la connaissance des acteurs humanitaires dès le début du conflit, grâce aux témoignages de rescapées dans les camps de réfugiés en Croatie. Néanmoins, c'est à la fin de l'année 1992, avec les publications des rapports des observateurs internationaux, et la couverture médiatique de ces

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<sup>19</sup> Mimica Agger, « Psychosocial assistance to victims of war in Bosnia-Herzegovina and Croatia: an evaluation », ECHO, Brussels, 1996, p. 9

<sup>20</sup> Reporters sans frontières (Association), *Le Livre noir de l'ex-Yougoslavie: purification ethnique et crimes de guerre: documents*, Arléa, 1993, 512 p.

<sup>21</sup> *Ibidem*. p. 306.



violences que plusieurs organisations humanitaires commencent à mettre en place des services de soutien aux victimes<sup>22</sup>.

Plusieurs organisations féministes, notamment allemandes, comme Sheerazade et Medica, vont se mobiliser et financer des programmes de soutien psychosocial aux femmes victimes de violence. Les ONG internationales vont alors former des professionnels de la santé locaux à intervenir pour soutenir les populations touchées par la violence, femmes violées et populations déplacées.

### **Les interventions psychosociales en Bosnie: soutien aux victimes et négociations de la normalité**

Des groupes de la société civile, notamment des groupes de femmes, sont nés de la guerre en réponse aux violences et à la déstructuration des liens sociaux. Il est possible d'identifier deux catégories d'activités mises en place par les organisations locales qui ont utilisé l'étiquette des activités psychosociales pour décrire les actions mises en place par leur groupe.

La première catégorie est issue de la mobilisation d'organisations non gouvernementales, la plupart en Europe, pour mettre en place un soutien aux femmes victimes de violences sexuelles. Ainsi sont créées en Bosnie-Herzégovine, des organisations locales dont les programmes d'action sont financés et assistés par des organisations extérieures. Les programmes d'action sont largement basés sur une méthodologie issue des pratiques de soutien psychologique aux victimes mis en place en Europe et aux Etats-Unis. Ainsi des psychiatres bosniens sont formés aux techniques de psychothérapie ainsi qu'à la reconnaissance et au traitement du Syndrome de Stress Post-traumatique. En parallèle sont mis en place des groupes de parole et des activités sociales visant à la réintégration des femmes victimes de violences sexuelles dans la société. Les interventions psychosociales mises en place pour les femmes victimes de violence suivent un schéma d'intervention similaire. La première étape du rétablissement consiste à la mise en sécurité, objective et subjective, par l'hébergement des victimes et une prise en charge globale, médicale et alimentaire. La deuxième étape vise au traitement psychologique du traumatisme à travers des thérapies individuelles et collectives. Enfin la troisième étape consiste en la

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<sup>22</sup> Mimica Agger, *op. cit.*

réintégration sociale des victimes à travers des formations professionnelles et la mise en place d'activités génératrices de revenu.

La deuxième catégorie d'organisations locales utilisant le terme *psychosocial* pour qualifier leurs activités sont des groupes de femmes dont les activités visent principalement à la reconstruction des liens sociaux après le conflit. Ces groupes de femmes se réunissent et organisent des activités occupationnelles, comme du tricot ou de la couture ou encore des promenades dans la nature. Les activités de ces groupes visent à négocier les frontières de la normalité après le conflit. Ces activités occupationnelles sont souvent qualifiées de *thérapie* par les femmes ou encore de « récréation psychologique » pour signifier les impacts que ces activités peuvent avoir sur les bénéficiaires.

Ces activités occupationnelles, parce qu'elles permettent de recréer un sentiment de normalité après les trois années et demies de guerre, ont certainement eu un effet bénéfique sur le moral des femmes. Cette « récréation psychologique » est en effet, importante pour recréer un sentiment de sécurité, indispensable à la reconstruction des liens sociaux dans les périodes d'après guerre<sup>23</sup>. En effet, les aspects psychologiques d'une sorte de retour à la normale par la mise en place d'activités, interrompues pendant la guerre, le café pour discuter, le tricot ou les promenades, ont certainement eu une influence quant à la reconstruction du sentiment de sécurité. Judith Herman considère ces deux aspects, la sécurité et le retour à la vie normale comme deux étapes indispensables du processus de guérison des personnes touchées par la guerre<sup>24</sup>. Ces activités occupationnelles sont caractéristiques de ce que, Ivana Maček<sup>25</sup> appelle « les négociations de la normalité ». L'auteur décrit les stratégies mises en place pendant le siège de Sarajevo par les habitants pour recréer un sens de la normalité, dans une période de grands bouleversements. Ivana Maček

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<sup>23</sup> Pascaline Gaborit, *Restaurer la confiance après un conflit civil: Cambodge, Mozambique et Bosnie-Herzégovine*, Editions L'Harmattan, 2009, 405 p.. K. A Maynard, « Rebuilding community: Psychosocial healing, reintegration, and reconciliation at the grassroots level », *After Civil War*, p. 203.

<sup>24</sup> Judith Herman, *Trauma and Recovery: The Aftermath of Violence—from Domestic Abuse to Political Terror*, Reprint, Basic Books, 1997, 304 p.

<sup>25</sup> Ivana Maček, " 'Imitation of Life' : Negotiating Normality in Sarajevo under Siege", in Xavier Bougarel, Elissa Helms et Gerlachus Duijzings, *The new Bosnian mosaic: identities, memories and moral claims in a post-war society*, Ashgate Publishing Ltd., 2007, 352 p.

montre bien dans son étude, que ces négociations de la normalité ont été nécessaires aux habitants, soumis à de très nombreux stress, pour créer une forme de sentiment de sécurité. Ces négociations de la réalité – c'est-à-dire le processus par lequel les membres d'une société définissent et redéfinissent leurs codes de conduite et leurs perceptions de la réalité en fonction de leurs expériences de vie – tendent, dans l'après guerre en Bosnie, à réutiliser des pratiques culturelles préexistantes.

Les activités des organisations de femmes mises en place pendant et après la guerre peuvent être définies comme des activités de protection humanitaire, c'est-à-dire « la protection du bien-être fondamental des individus touchés par un conflit ou par une catastrophe humanitaire<sup>26</sup> ». En effet, les activités de soutien psychosocial tentent de répondre à la souffrance de plusieurs catégories de victimes. Les activités mises en place pendant la guerre visent à prendre en charge les victimes de violence sexuelles tandis que les activités liées à la « récréation psychologique » visent à répondre aux souffrances subsistant après la fin de la guerre et liées aux modifications de la vie quotidienne engendrées par le conflit. Ces deux types d'activités correspondent au deuxième et septième cercle de la souffrance des populations civiles dans le modèle d'Hugo Slim<sup>27</sup>, et s'intègrent dans les activités de protection propres à l'action humanitaire.

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<sup>26</sup> D. P. Forsythe, « Humanitarian protection: The International Committee of the Red Cross and the United Nations High Commissioner for Refugees », *INTERNATIONAL REVIEW-RED CROSS*, vol. 83, 2001, p. 675–698.

<sup>27</sup> Les violences directes (meurtres, atteintes physiques, blessures, torture) constituent le premier cercle de souffrance, viennent ensuite les viols, l'exploitation et les sévices sexuels. Le troisième cercle représente les souffrances liées aux déplacements forcés de population (déportation, fuite, travail, forcé, détention), vient ensuite l'appauvrissement par la perte des biens et des moyens de subsistance, les famines et les maladies résultant de l'appauvrissement et du pillage des populations. Le sixième cercle représente les souffrances d'ordre psychologiques liées à la perte, à la peur, à la douleur, aux mauvais traitements ou aux séparations, et enfin le dernier cercle, le plus large, concernent les souffrances ressenties ou subsistant après la guerre, qui peuvent être occasionnées par le deuil, les disparitions de personnes, l'adaptation aux nouvelles situations ainsi que les carences éducatives, sanitaires, personnelles découlant d'opportunités manquées à cause de la guerre. Hugo Slim, *op. cit.*

## Le psychosocial et la construction de la paix

La fin de la guerre en 1995 va mobiliser une multitude d'acteurs dans la reconstruction matérielle et sociale du pays. Les conséquences sociales du nettoyage ethnique pratiqué par les parties au conflit sont importantes. L'UNHCR estime en 1998, que plus de la moitié de la population a été déplacée de son lieu d'habitation au cours du conflit, soit environ 2 700 000 personnes<sup>28</sup>. Le pays est divisé politiquement et géographiquement entre les différents groupes ethniques, croates, serbes et bosniaques. Dans les années qui suivent la fin du conflit sont mises en place des activités dites de rétablissement psychosocial par des organisations non gouvernementales locales<sup>29</sup>, financées par la communauté internationale. Aujourd'hui encore, certaines organisations locales sont financées sur la base d'un travail psychosocial auprès des communautés.

Ces activités visent pour la plupart à permettre aux communautés de dépasser les conséquences traumatiques du conflit et à reconstruire des relations sociales entre les groupes ethniques. La plupart des activités ont été mises en place par les ONG dans le cadre du retour des populations sur leurs lieux d'habitation d'origine. Les stratégies de nettoyage ethnique pendant la guerre, outre les nombreux déplacements de population, ont engendré de nouvelles dynamiques sociales. Certaines villes se trouvent complètement « vidées » d'une partie de leurs habitants et des symboles qui leur étaient associés, bien souvent par la destruction des édifices religieux ou culturels associés à un groupe ethnique. Ces complètes modifications de la composition ethnique sont visibles partout en Bosnie-Herzégovine après guerre, et sont le fait des politiques de nettoyage ethnique pratiquées par les Croates, les Serbes et les Bosniaques. Ainsi, les réticences individuelles au retour sont aisément compréhensibles. En outre, les déplacements de population ont été accompagnés dans la plupart des situations par des faits de violence extrême, des exécutions sommaires, des détentions en camps de concentration, des violences sexuelles<sup>30</sup>. Ces lieux

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<sup>28</sup> [<http://www.unhcr.org/414ad5707.html>]

<sup>29</sup> Les ONG internationales présentes en Bosnie-Herzégovine après le conflit mettent en place pour la plupart leur programme d'action en finançant les activités et en formant des organisations locales. Néanmoins certaines implémentent directement leurs programmes en Bosnie, c'est le cas par exemple de Care International.

<sup>30</sup> Reporters sans frontières, *op. cit.*

sont donc marqués par les souvenirs de guerre, ils sont associés à de sérieux traumatismes et drames familiaux. La peur et les sentiments d'insécurité sont des facteurs cruciaux de la décision de ne pas rentrer sur les lieux de domicile d'avant guerre.

Les activités mises en place par les ONG dans le cadre de l'accompagnement du retour des populations sont elles aussi labélisées comme accompagnement psychosocial. Elles consistent à aider les populations à *faire face au passé* et à dépasser les traumatismes liés au conflit. Pour les ONG impliquées, les freins au retour et à la réintégration sociale sont liés aux conséquences sociales et psychiques du conflit, comme les sentiments de peur et de méfiance, les syndromes dépressifs et les deuils traumatiques. Ainsi sont organisés des groupes de parole et des psychothérapies ainsi que des activités récréatives afin de permettre aux populations de se réinsérer socialement. De même que pour les communautés qui doivent accueillir les populations retournées, les traumatismes liés à la violence, les sentiments de peur et de méfiance sont autant de freins pour le rétablissement des relations sociales. D'autres activités visent spécifiquement le rétablissement du contact entre les groupes ethniques, et sont organisées de façon à rétablir la communication entre les groupes ethniques.

Cette autre facette des interventions psychosociales s'insère dans le cadre plus global des théories et pratiques de la construction de la paix et plus spécifiquement dans celles de la réconciliation et de la résolution des conflits. Les méthodes de résolution des conflits ont pour objectif de faire « changer dispositions individuelles et mentalités collectives. Le dialogue est en effet supposé avoir un effet direct : permettre à des groupes en conflit de dépasser leurs représentations mutuellement stigmatisantes en s'accordant sur une atténuation des inégalités structurelles<sup>31</sup>». Pour prévenir un regain de violence et construire une paix durable, le travail sur les conséquences psychologiques et sociales de la violence et du conflit

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<sup>31</sup>Sandrine Lefranc, « Pacifier scientifiquement », in Marc Le Pape, Johanna Siméant et Claudine Vidal, *Crises extrêmes: Face aux massacres, aux guerres civiles et aux génocides*, La Découverte, 2006, 334 p. 240.

constitue un aspect important du processus de réconciliation<sup>32</sup>. Ainsi la « guérison » (« healing ») des blessures psychologiques constitue un point d'ancrage de la construction de la paix dans la mesure où la guérison ne concerne pas seulement les individus traumatisés mais l'ensemble des réponses individuelles, politiques, sociales, culturelles d'un évènement traumatisant<sup>33</sup>.

La réconciliation est généralement définie comme l'acceptation mutuelle des groupes entre eux<sup>34</sup>. Si le traité de paix peut marquer le début du processus de réconciliation, pour Ervin Staub « l'essence de la réconciliation est un changement d'orientation psychologique envers les autres. La réconciliation signifie que les victimes et les auteurs, ou les membres de groupes hostiles, ne voient pas le passé comme définissant le futur, comme une simple continuation du passé. Cela signifie qu'ils voient l'humanité dans l'autre, s'acceptent les uns les autres, et voient la possibilité d'une relation constructive <sup>35</sup> ». Cette évolution s'inscrit dans la lignée des courants de pensée de la *Conflict Resolution* et de la *Peace Psychology*<sup>36</sup>, qui les premiers ont souligné, l'importance des subjectivités dans la résolution des conflits et la construction de la paix. Plus généralement, les activités de réconciliation, autant qu'elles visent la restauration et l'amélioration des relations entre les groupes<sup>37</sup>, soutiennent cet aspect de la construction de la paix. Les activités mises en place par les ONG locales correspondent bien à la définition que Brandon Hamber donne du *healing*, c'est-à-dire « toute stratégie, processus ou activité qui

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<sup>32</sup> Ervin Staub, "Reconciliation after Genocide, Mass Killing, or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery, and Steps toward a General Theory", *Political Psychology*, vol. 27 / 6, 2006, p. 867–894.

<sup>33</sup> M. A. Clancy et B. Hamber, *op. cit.*

<sup>34</sup> Yaacov Bar-Siman-Tov, *From conflict resolution to reconciliation*, Oxford University Press, 2004, 310 p. Ervin Staub, « Genocide and Mass Killing: Origins, Prevention, Healing and Reconciliation », *Political Psychology*, vol. 21 / 2, 2000, p. 367–382.

<sup>35</sup> Ervin Staub, *op. cit.* p. 868.

<sup>36</sup> Pour Rachel Mac Nair la Peace psychology « étudie les causes et les effets de ce qui maintient la paix et étudie ce qui doit être fait pour éviter la violence » Rachel M. MacNair, *The Psychology of Peace: An Introduction: An Introduction*, ABC-CLIO, 2011, 279 p. Daniel Mayton, *Nonviolence and Peace Psychology*, Springer, 2009, 299 p.

<sup>37</sup> David Bloomfield et Luc Huyse, *Reconciliation after violent conflict: a handbook*, International IDEA, 2003, 188 p.. Daniel Philpott et Gerard Powers, *Strategies of Peace*, Oxford University Press, 2010, 394 p.

améliore la santé psychologique des individus après un vaste conflit violent. Les activités, processus ou stratégies qui visent à réhabiliter et reconstruire la communauté au niveau local et national participent aussi au processus de guérison. Ainsi, il ne s'agit pas seulement de prendre en considération les besoins psychologiques des individus, il faut au contraire les intégrer dans un contexte plus large car ils sont dépendants du contexte social et de la reconstruction des liens sociaux et des communautés. Cela implique de restaurer une vie quotidienne normalisée qui permet aux individus de recréer et de confirmer leur sentiment d'appartenance<sup>38</sup>».

Les théories et pratiques liées à la réconciliation et à la résolution des conflits intègrent une perspective de construction de la paix *par le bas*, venant accompagner des programmes de construction de l'Etat et de démocratisation. Comme le souligne Sandrine Lefranc, ces perspectives de construction de la paix par le bas ont largement été investies par le secteur des ONG. Il s'agit de modifier les représentations, les sentiments, les pratiques sociales qui soutiennent les divisions issues de la guerre de l'ensemble de la population afin de construire une paix durable.

## **Conclusion**

Les différentes pratiques liées aux interventions dites psychosociales mises en place par les associations locales en Bosnie-Herzégovine répondent à des évolutions plus globales. La première est l'insertion dans les pratiques humanitaires de la notion de traumatisme qui permet de qualifier les victimes de la violence. Pour les femmes victimes de viols en Bosnie, il s'agit pour les organisations humanitaires de témoigner de ces violences particulières à travers le témoignage de la souffrance des victimes, souffrance qui nécessite une intervention spécifique. La création d'organisations locales pour soutenir les victimes de violences sexuelles est largement le fait de la volonté d'agir d'ONG internationales ou féministes européennes en faveur des femmes violées. Ainsi les modalités d'intervention sont très similaires à celles que l'on trouve en Europe pour les victimes de violences sexuelles.

La deuxième évolution est l'implication de la communauté internationale après la guerre froide dans les activités de peacebuilding. En

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<sup>38</sup> Brandon Hamber, "Healing", in David Bloomfield et Luc Huyse, *op. cit.*

effet, l'affaiblissement des antagonismes entre les deux grands blocs accorde au Conseil de Sécurité une plus grande marge de manœuvre qui permet à certains acteurs de la communauté internationale de s'investir dans la reconstruction des pays après un conflit violent. Ainsi la Bosnie dont l'implémentation des accords de paix a été confiée à une institution ad hoc, l'Office du Haut Représentant, dont les membres sont pour la plupart issus des pays de l'Union Européenne, n'est pas exempte de cette évolution. Certes, une grande partie des activités relevant de la construction de la paix vise à la construction de l'Etat et au renforcement des institutions démocratiques, néanmoins, une partie des activités de construction de la paix est endossée par les associations de la société civile, et vise à la reconstruction des relations sociales entre les différents groupes ethniques.

Si les pratiques locales des interventions psychosociales relèvent bien de l'évolution de deux champs distincts, sur le terrain il existe une certaine continuité à la fois dans les pratiques et dans les acteurs impliqués. En effet, les groupes impliqués dans les activités de *récréation psychologique* juste après la fin du conflit sont souvent les mêmes qui vont s'investir pendant plusieurs années dans les activités de rétablissement psychosocial et de réconciliation dans les communautés. Ces groupes ont en effet, été identifiés par les bailleurs internationaux comme des acteurs potentiels de la construction de la paix. Il est d'ailleurs probable que le label psychosocial ait été apposé rétrospectivement sur leurs activités, lorsque soutenus par des bailleurs internationaux, ces groupes ont modifié leurs répertoires d'action pour s'engager dans des activités psychosociales de construction de la paix. D'autre part, les groupes de femmes spécialisées dans le traitement des traumatismes des femmes victimes de guerre, ont plusieurs années après, réutilisés leurs compétences spécifiques pour travailler sur tous les traumatismes de guerre, notamment ceux des hommes ayant combatus.

L'apparition et le succès du terme psychosocial sont liés à une plus grande prise en compte des subjectivités et de la souffrance des individus. Dans les activités de construction de la paix, il est considéré dans les activités liées au rétablissement psychosocial des communautés que l'ensemble des individus nécessite un soutien dans la mesure où les



traumatismes liés à l'expérience de la guerre constituent un obstacle à la construction d'une paix durable.

Les activités de soutien psychosocial considèrent à la fois le soutien comme partie intégrante de la protection humanitaire c'est-à-dire de la protection de l'intégrité des individus, mais aussi comme un moyen d'atténuer les résistances d'un retour à des relations sociales normalisées.

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## NATO'S INTERVENTION IN LIBYA: THE PATHWAY TOWARDS A LEGITIMATE HUMANITARIAN INTERVENTION

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### Abstract

*As a military organization with regional or even global influence, NATO is one of the few international actors capable of performing large scale humanitarian interventions. Moreover, its new post-Cold War outlook, with an emphasis on peacekeeping and crisis management operations make it one of the most suitable candidates to handle such a task. However, since there are no clear guidelines with regard to the conditions under which humanitarian interventions are to be considered legitimate, there is always room for speculation that political interests are behind this sort of interventions. Consequently, the present paper plans to investigate why NATO's intervention in Libya was considered legitimate in comparison with other past interventions (mainly Kosovo) which were not. In this way, the study will be able to identify the nature of the changes which determined such a legitimizing effect: was it NATO's behavior that shifted gears or did the international perception on humanitarian intervention (the conditions which made it legitimate) change as well?*

**Keywords:** humanitarian intervention, NATO, Kosovo, Libya

Although quite fashionable within the past few years, the notion of humanitarian intervention is still a highly disputed concept both in theory and in practice. As many scholars rightfully acknowledge (Baer, 2011; Chesterman, 2011; Faer, 2003), "humanitarian intervention is more talked about than done"<sup>1</sup>. In general, most of these discussions focus on issues such as the legality, morality, practice and, of course, politics of

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<sup>1</sup> Tom J. Farer, "Humanitarian Intervention before and after 9/11: Legality and Legitimacy", in J.L. Holzgrefe; Robert O. Keohane (eds.) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge: Cambridge University Press, New York, 2003, p. 55.

humanitarian intervention, making it one of the hottest topics in Political Science today.

However, another very important aspect of humanitarian interventions, one that is often taken for granted and not given much thought (but the one aspect which makes it possible to have all the above mentioned discussions in the first place), is the military angle of the issue and its effective enactment; in other words, the capability of the international community (through various international actors) to intervene efficiently and coherently in crises situations<sup>2</sup>. It is this coordinated action and the way in which it is performed that triggers the debates surrounding legality, morality and so on.

It is equally true that humanitarian interventions do not have to be military, but, "its accepted definitions certainly include military interventions, and, for most people, such interventions constitute the hard case, worthy of moral, legal and political justification"<sup>3</sup>. In fact, as already outlined above, it is more or less commonsensical to assume that humanitarian interventions entail military action. This can be depicted even from the various standard definitions of the concept:

- "coercive action by one or more states involving the use of *armed force* in another state without the consent of its authorities and with the purpose of preventing widespread suffering or death among the inhabitants"<sup>4</sup>
- "*military action* of a state or group of states within the borders of another state without its permission and with the immediate aim of preventing or ending massive violations of human rights or widespread human suffering"<sup>5</sup>

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<sup>2</sup> Simon Chesterman, "Leading from Behind': The Responsibility to Protect, the Obama Doctrine and Humanitarian Intervention after Libya", *Ethics and International Affairs*, Vol. 25, No. 3, 2011, p. 279.

<sup>3</sup> Daniel Baer, "The Ultimate Sacrifice and the Ethics of Humanitarian Intervention", *Review of International Studies*, Vol. 37, No. 1, January, 2011, p. 306.

<sup>4</sup> Adam Roberts, "The so Called 'Right' of Humanitarian Intervention", in *Yearbook of International Humanitarian Law*, T.M.C. Acer, The Hague, 2002, p. 5.

<sup>5</sup> Baer, *op. cit.*, p. 302.

As Weiss concludes, "humanitarian interventions and virtually all contemporary peace operations require the same approach as war. They certainly do not lend themselves to best-case planning"<sup>6</sup>. This means that humanitarian interventions are serious business and require careful thought, adequate capabilities and coordinated action. As related literature has shown, they can be performed by states, regional organizations, international organizations, or any other entity capable of mounting a sustainable response to a humanitarian catastrophe. Yet, given the complexity of the task, there are not many bodies out there that really have what it takes in order to pull off such an endeavor. Thus, as it has been already argued, "amongst the vast range of regional arrangements potentially available for peace enforcement purposes" NATO is by far "the most operationally capable and potentially effective". Although the Alliance does not possess military assets of its own (it merely has access to the military resources of its member states) it most certainly masters an intricate "infrastructure through which such forces may be operationally deployed and directed"<sup>7</sup>.

Therefore, it is no wonder that NATO was asked to intervene in several instances when grave abuses of human rights took place (Bosnia, Kosovo, Libya to name the most important). As the broad audience knows, some of these interventions were more successful than others, both with regard to the outcome and with regard to the legality and righteousness of the operation. Now, a logical question in this sense would be "Why"? Why were interventions such as the one in Kosovo perceived as illegal and morally questionable and interventions like the one in Libya regarded as legal, legitimate and morally acceptable? Was it NATO that behaved so differently as to produce two antagonistic outcomes just 12 years apart, or did the international view on humanitarian intervention (the conditions which made it legitimate) shift gears so abruptly?

These are the main questions which this paper plans to address, thus investigating and hopefully shedding some light on how the performance and perception of humanitarian interventions has evolved

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<sup>6</sup> Thomas G. Weiss, "Researching Humanitarian Intervention: Some Lessons", *Journal of Peace Research*, Vol. 39, No. 4, 2001, p. 425.

<sup>7</sup> Hilaire McCoubey, "Kosovo, NATO and Humanitarian Law", *International Relations*, Vol. 14, No. 5, 1999, p. 37.

based on the experience and practice of one of its most important proponents

As a result, in order to set the analysis into context, I begin by offering a short historical overview on the way in which humanitarian interventions have come to bear the status and significance they have today.

When it comes to the modern era, it was the First and Second World Wars which made people and governments aware that grave atrocities against humanity cannot be overlooked and that their impact and effects stress way beyond the borders of a single state. Consequently, starting with the War Tribunals of Nurnberg and Tokyo, individual human rights, or better yet, the human rights of individuals have begun to be acknowledged internationally<sup>8</sup>. However, “the body of laws introduced since 1945 (which refers to humanitarian intervention), though comprehensive, primarily constituted the commitments states have given to uphold their own citizen’s rights and do not refer to what states should do to uphold the rights of foreign citizens in other states”<sup>9</sup>. Basically, the UN Charter (which began to be perceived as a sort of international constitution or at least a conduct book of international relations) clearly prohibited the threat or use of force against member states, pointing out just two exceptions: self-defence and action authorized by the Security Council<sup>10</sup>. As we all know, the Cold War power politics did not make it very easy for the Security Council to issue such authorizations and thus, in spite of its founding role, that of an international security provider, the UN remained unable to exercise its collective security attribute through much of the bipolar era. As McCoubrey eloquently points out, in spite of the “dubious exception of the Korean War, in practice, the (mis)use of the veto power in the Security Council meant that the supposed collective security system became in fact a more or less classical balance of power system (focused on personal interest). Thus, the UN was effectively disempowered from intervention in

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<sup>8</sup> David Held; Anthony McGrew; David Goldblatt; Jonathan Perraton, *Transformări globale. Politică, economie și cultură (Global Transformations. Politics, Economy and Culture)*, Polirom, Iași, 2004, p. 86.

<sup>9</sup> Aidan Hehir, “NATO’s ‘Humanitarian Intervention’ in Kosovo: Legal Precedent or Aberration?”, *Journal of Human Rights*, Vol. 3, No.2, 2009, p. 248.

<sup>10</sup> Chesterman, *op. cit.*, p. 281.

several grave international crises like the Cuban Missiles crisis, the Hungarian and Czechoslovakian uprisings, the war in Vietnam or the one in Afghanistan"<sup>11</sup>.

In the 1990s however, states finally came to realize that when it comes to human suffering and the abuse of human rights it is not only a theoretical right, but also a practical duty that they possess and must enact in order to prevent situations as those mentioned above<sup>12</sup>. Consequently, once the Cold War power politics disappeared, there was an increasing international pressure to "do something" in response to the numerous interstate humanitarian crises<sup>13</sup>. Yet, the concept of humanitarian intervention and what exactly it entailed was still a novelty even in the 1990s and thus responses were often weak and not very prompt as can be seen in Bosnia and especially Rwanda, not to mention Somalia<sup>14</sup>. Nevertheless, the great achievement of the 1990s in terms of preventing humanitarian catastrophes has been the increasing presence and acknowledgement of the idea that the nation state is no longer a sacred space where national governments can treat their people as they please. If gross violations of human rights take place, the international community should have the moral right to intervene, although the legality of the action was still questionable at the time.

Having mentioned Bosnia earlier, I feel I need to abide a bit from the issues discussed above and clarify why I did not choose to include it in the analysis as it is preferably known for its connection with NATO and the topic at hand. The reason is quite simple actually and it concerns itself with practical motives. When it comes to NATO, the operation in Bosnia was a mere peacekeeping operation and not a full blown humanitarian intervention<sup>15</sup> as those that the paper plans to investigate. As such, it is only natural that my focus concentrated on Kosovo rather than Bosnia more so as the intervention there proved to be one of the most controversial and publicly discussed humanitarian interventions to date.

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<sup>11</sup> McCoubrey, *op. cit.*, p. 31.

<sup>12</sup> Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force*, Ithaca: Cornell University Press, 2003 p. 80.

<sup>13</sup> Hehir, *op. cit.*, p. 246.

<sup>14</sup> McCoubrey, *op. cit.*, p. 31.

<sup>15</sup> *Ibidem*, p. 30.



In order to continue on the note outlined prior to my above divagation, it is important to underline here, before presenting the context of the Kosovo operation itself, the moral and legal conditions under which humanitarian interventions were considered legitimate and acceptable at that time. As already stated previously, in spite of growing concern with regard to the prevention and countering of human rights abuses, there were still no clear cut guidelines or preconditions which would allow or deem necessary a humanitarian intervention. Everything was still context related and did not entail a certain practice according to a particular code of conduct. Basically, everything revolved around the UN and Chapter VII of the UN Charter, namely articles 39 and 42 (also mentioned previously) which practically left it to the Security Council to determine and define the existence and the nature of the threat as well as the appropriate response to it.<sup>16</sup>

In spite of this apparent looseness in establishing the grounds for humanitarian interventions, the International Community managed to mount a few ground rules which would support such an action. First, there needs to be convincing evidence, generally accepted by the International Community...of extreme humanitarian distress, on a large scale, and requiring immediate and urgent relief<sup>17</sup>. Second, if it's objectively clear that there is no practicable alternative to the use of force and if, through this use of force, lives are to be saved. Thirdly, the action should be limited in time and scope to this aim and not involve any other political or economical interests<sup>18</sup>. Finally, it has become "unequivocally clear that the enforcement action" needs to bear the consent and authorization of the UN Security Council<sup>19</sup>. Surprisingly as it may seem, this does not necessarily confer legality to the action since the dominant perspective on humanitarian intervention was and maybe still is that it is illegal<sup>20</sup>. However, even from

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<sup>16</sup> United Nations, Charter of the United Nations, 24 October 1945, Chapter VII, articles 39-42, available at [<http://www.unwebsite.com/charter>], accessed 10<sup>th</sup> of October 2012.

<sup>17</sup> James Pattison, "The Ethics of Humanitarian Intervention in Libya", *Ethics and International Affairs*, Vol. 25, No.3, 2011, p. 273.

<sup>18</sup> *Ibidem*; see also, Hehir, *op. cit.*, pp. 247-248.

<sup>19</sup> McCoubrey, *op. cit.*, p. 33.

<sup>20</sup> Hehir, *op. cit.*, p. 246.

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the time of the Cold War period, interventions authorized by the Security Council have been neither legally, nor morally contested<sup>21</sup>.

In this respect, even without studying the facts about the Kosovo mission, we realize that we find ourselves on very shaky terrain, prone to subjectivity and interpretation. Yet, what we are investigating here is the general perception with regard to the legality and morality of humanitarian intervention and this general perception is based on the pillars presented above, which have a strong dose of objectivity in my view.

As such, coming back to the Kosovo intervention, one should begin by mentioning that the situation in the province was just a sort of resurrection of the problems from former Yugoslavia, in more of a vicious, media-covered form. Kosovo, an autonomous province of Serbia until 1989 when Milosevic abrogated that autonomy, has a large Albanian majority population. The supposed and eventually proven oppression and persecution of the Albanian population following Milosevic's actions in 1989 led to the emergence, within Kosovo, of a resistance force – the Kosovo Liberation Army (KLA) – campaigning for either total independence or, at a minimum, meaningful autonomy within the Federal Republic. The KLA, like most liberation armies, involves peaceful as well as more aggressive fringes, both trying to counter the oppressive policies of the Serbian government. Its existence and attempt to fight back spurred even more abusive policies of ethnic cleansing, going as far as driving the Kosovar Albanian population out of the province and in its course, increasing evidence of kidnap, forced labor and mass murder in a manner that reminds us of a bygone era<sup>22</sup>. Internationally sponsored negotiations between the KLA and the Milosevic regime at Rambouillet collapsed in early March 1999 when Serbia-Montenegro refused to accept the international supervision or monitoring of any agreement reached (as they knew from previous experience that such an agreement was a prerequisite for meaningful application). At this point, NATO, who was already playing a major peace support role in former Yugoslavia (in Bosnia through SFOR), undertook a campaign of air strikes against Serbia with the purpose of ending the ethnic cleansing in Kosovo<sup>23</sup>. This operation however, took place

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<sup>21</sup> *Ibidem*, p. 247.

<sup>22</sup> McCoubrey, *op. cit.*, p. 30.

<sup>23</sup> *Ibidem*, p. 31.

without any prior UN authorization (in other words unilaterally) and, as a result, sparked an entire wave of contestation and ignited one of the most fierce debates with regard to the idea, the legality, the morality and the exercise of humanitarian intervention.

Right from the onset, if we are to refer to the unofficial criteria presented above (which should justify the subsequent humanitarian intervention) we realize that not all conditions were met. It is true that the international community recognized the existence of a humanitarian threat in the region (Hehir, 2009; Pavehouse/Goldstein, 2008) and the potential of further human suffering, as well as the fact that, upon the breakdown of the Rambouillet negotiations, a peaceful resolution to the situation was doubtful and thus the loss of further lives seemed inevitable<sup>24</sup>. What's more, at a first glance, NATO, the intervening body, did not seem to have any direct interests in the region, apart from the fact that Serbia was situated at the borders of the Alliance, an Alliance which, after the Cold War, took on the role of a security guarantor in Europe<sup>25</sup>. Consequently, the conflict in Kosovo was perceived as a potential threat to European security and thus determined NATO to intervene. In spite of this, the official NATO position was always that the intervention was done strictly to protect the Kosovar Albanians and to stop the actions of ethnic cleansing performed by the Milosevic regime<sup>26</sup>. Proof of this lays in the fact that, as we all know, NATO limited itself to aerial strikes and did not consider sending in ground troops (on the other hand it can be argued that NATO did this to protect its own soldiers rather than the Kosovar Albanians). But even if we take for granted this motive, NATO's undeniable mistake was that it acted without the approval of the UN Security Council, thus giving up the only possibility of conferring some legality and justification for the intervention (as shown above).

In this regard, NATO officials and members tried to highlight the exceptional character of the situation underlining the moral imperative of

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<sup>24</sup> Baer, *op. cit.*, p. 323.

<sup>25</sup> Frank Schimmelfennig, "NATO enlargement: A constructivist explanation", *Security Studies*, Vol. 8, No. 2, 1998, pp. 198-234.

<sup>26</sup> Karina Z. Butler, *A Critical Humanitarian Approach*, United Kingdom: Palgrave MacMillan, 2011, p. 5.

aiding the Kosovar Albanians (whose lives were in danger)<sup>27</sup> and through it, the Alliance even went as far as advocating the legality of the action on grounds of “overwhelming humanitarian necessity”<sup>28</sup>. In spite of this attempt, “in terms of objective assessment, the dominant, but by no means unanimous, legal view is that NATO acted unlawfully”<sup>29</sup>. Moreover, further confusion is added by the Independent International Commission on Kosovo (IICK), put together to analyze the entire Kosovo intervention, which declared the operation “illegal but legitimate”<sup>30</sup>, in other words, illegal from an international law perspective, but legitimate from a moral perspective<sup>31</sup>.

This paradoxical conclusion left the issue suspended in “an international legal limbo”<sup>32</sup> and highlighted once more the uncertain character of humanitarian interventions and their suspended status, somewhere between contemporary legal doctrine and evolving conceptions of human rights and ethical state behavior<sup>33</sup>.

Basically, what the Kosovo intervention left behind was an operation whose practical success was only partial (it determined Milosevic to accept a form of international supervision, but did not manage to guarantee a safer living space for the Kosovar Albanians)<sup>34</sup>, whose legal justification was denied and whose moral imperatives were accepted but placed under scrutiny. The only upsides were the fact that humanitarian intervention was for the first time officially used as a reason for military action<sup>35</sup>, thus bringing it to the forefront of international relations. Moreover, due to its controversy and the deficiencies exposed by NATO's intervention, the issue of humanitarian intervention was put under scrutiny

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<sup>27</sup> *Ibidem*.

<sup>28</sup> Hehir, *op. cit.*, p. 248.

<sup>29</sup> *Ibidem*, p.249.

<sup>30</sup> Chesterman *op. cit.*, p. 281.

<sup>31</sup> Baer, *op. cit.*, p. 313.

<sup>32</sup> McCoubrey, *op. cit.*, p. 34

<sup>33</sup> International Commission on Intervention and State Sovereignty, 2001, in Hehir, *op. cit.* p. 246.

<sup>34</sup> McCoubrey, *op. cit.*, p. 38

<sup>35</sup> *Ibidem*, p. 30.

by the UN in an attempt to bring about some coherence with regard to the nature and conditions of such an act<sup>36</sup>.

As a result, immediately after the Kosovo tensions cooled off, “an International Commission on Intervention and State Sovereignty was convened in order to determine the legitimacy of acting across national borders to stop grave human-rights violations. In 2001, the Commission issued its report, *The Responsibility to Protect (R2P)*”<sup>37</sup>. Within it, the ICISS noted “the issue of international intervention for human protection is a clear and compelling example of concerted action, urgently being needed to bring international norms and institutions in line with international needs and expectations”<sup>38</sup>. A more radical and controversial recommendation was that, when states failed in their responsibility to protect their own citizens, the responsibility is transferred to the international community<sup>39</sup>. As the report underlines, “states should only qualify as legitimate, if they meet certain basic standards of common humanity”<sup>40</sup> and further, “if the Security Council does not act when faced with a humanitarian crisis it is unreasonable to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations”<sup>41</sup>. Such assertive recommendations can be considered the first attempts of finally attributing a sort of legal standard to humanitarian interventions with or without Security Council authorization. However, in itself, the document had no legal value and thus did not do much to change the “standing prohibition on the use of force outside self-defence and Security Council authorized enforcement action”<sup>42</sup>.

The opportunity came with the 2005 World Summit, held in New York. This event marked the 60<sup>th</sup> anniversary of UN and the subsequent Outcome document endorsed most of the R2P’s core ideas underling that, “each individual state has the responsibility to protect its populations from

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<sup>36</sup> Hehir, *op. cit.*, p. 250.

<sup>37</sup>David Hollenbach, “Humanitarian Intervention: Why, When and Now”, *Commonweal*, November 5<sup>th</sup>, 2010, p. 1.

<sup>38</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, Ottawa: International Development Research Centre, 2001, p. 3.

<sup>39</sup> *Ibidem*.

<sup>40</sup> ICISS, *op. cit.*, p. 136.

<sup>41</sup> ICISS, *op. cit.*, p. 5.

<sup>42</sup> Chesterman, *op. cit.*, p. 282.

genocide, war crimes, ethnic cleansing, and crimes against humanity,” and that “should any state fail to meet this responsibility, the international community has the right and responsibility to act in its stead—by peaceful means if possible, and if necessary by armed force”<sup>43</sup>.

However, it is important to outline the nuances of the document in the sense that it stipulates that the UN has a responsibility to act when faced with humanitarian crises, not an obligation<sup>44</sup>. In other words, the Security Council is free to determine “what, if needed any, action to take in response to a humanitarian crisis thereby removing any obligation to act in all situations where the threshold was breached”<sup>45</sup>. Therefore, what the outcome document certifies is basically what the Security Council has been doing anyway for the past few decades<sup>46</sup>. The only novelty it brings is the fact that humanitarian intervention is now given an accepted, legally tolerated position within the political spectrum although it does not yet possess a clear legal status from an international law perspective.

As such, the dubious status of the concept was still quite high, reason for which interventions such as those in Sudan or East Timor reminded audiences of the problems and difficulties in avoiding humanitarian catastrophes, witnessed both during and immediately after the Cold War. It seems humanitarian interventions were more of a discourse or a pretext (as can be seen in the attempt to portray the war in Iraq as such) instead of a well established international practice.

It is under these conditions that the Libya crisis emerged as part of the revolutionary domino effect which swept North Africa and the Middle East at the beginning of 2011<sup>47</sup>. Still, unlike the revolutions in Tunisia and Egypt, which were tense, but eventually brought to a peaceful end, the Libyan revolt took a violent turn when Colonel Gaddafi tried to brutally repress the protests<sup>48</sup>. What followed will be detailed below, but before diving into the account, it would be ideal to check again, based on what

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<sup>43</sup> Hollenbach, *op. cit.*, p.1.

<sup>44</sup> Hehir, *op. cit.*, p. 251.

<sup>45</sup> *Ibidem*, p. 252.

<sup>46</sup> Chesterman, *op. cit.*, p. 280.

<sup>47</sup> North Atlantic Treaty Organization, “NATO and Libya – ‘Operation Unified Protector’”, available [http://www.nato.int/cps/en/SID-EFE2027E-9021C30F/natolive/topics\_71652.htm], 2011, [accessed 16<sup>th</sup> of May 2011].

<sup>48</sup> *Ibidem*.

was presented above, if the conditions or criteria for a “legal”, moral and internationally accepted humanitarian intervention have changed much since the operation in Kosovo.

Indeed, we have seen how the events of 1999 have influenced the general perception on humanitarian interventions and how the Kosovo experience determined the international community to try and establish a more certain and coherent status for operations such as the one performed by NATO. However, as showed above, initiatives like the R2P and the 2005 Outcome Document failed to bring a substantial change with regard to a legitimate humanitarian intervention *modus operandi*. Consequently, the conditions for a righteous humanitarian intervention remained more or less the same: (1) the scope of the operation would be the protection of civilians against an unavoidable humanitarian catastrophe; (2) the military action would have to be the last resort and used only when other, more peaceful options, are no longer available; (3) the international community would have to recognize and acknowledge the gravity and urgency of the situation and finally, (4) the intervention would have to bear the authorization of the UN Security Council<sup>49</sup>.

Taking a look at the unfolding of the Libya events, we realize that the crisis situation and the gravity of it were immediately recognized by the international community, which, through the UN, passed on two resolutions against Libyan leaders. The last of these resolutions, resolution 1973, underlined the “responsibility of the Libyan authorities to protect the Libyan population”<sup>50</sup> and invited “member states and regional organizations to take “all necessary measures”, if the case, to protect civilians in Libya”<sup>51</sup> (conditions no. 3 and 4). Based on these suggestions, the operations against Libya began as an ad hoc coalition of the willing led by AFRICOM, which slowly passed on the lead to French and British units<sup>52</sup>.

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<sup>49</sup> Pattison, *op. cit.*, p. 272.

<sup>50</sup> Chesterman, *op. cit.*, p. 280.

<sup>51</sup> United Nations Security Council, *Security Council resolution 1973 [on the situation in the Libyan Arab Jamahiriya]*, 17 March 2011, S/RES/1973(2011), available at: [<http://www.unhcr.org/refworld/docid/4d885fc42.html>], accessed 13 October 2012.

<sup>52</sup> Michaels, *op. cit.* p. 56.

However, as the situation escalated for the worse, with Qaddafi threatening to kill rebels like rats<sup>53</sup> and cleanse the city of Benghazi<sup>54</sup>, NATO was invited to take command of the operations and avoid a potential humanitarian catastrophe (and thus the first requirement is met). With regard to the possibility of a peaceful settlement of the situation, Qaddafi made it perfectly clear that he is not open for discussion, having already "demonstrated his willingness to use force against his own people, given that an estimate 1,000 to 10,000 had already been killed. The subsequent indiscriminate shelling of Misrata, provides further evidence of the regime's willingness to use force against its people"<sup>55</sup> (condition no. 2). Consequently, NATO entered the conflict in order to protect rebel held areas (targeted by Qaddafi) and assure the safety of civilians all throughout the country<sup>56</sup> (condition no. 1). Proof of this stems from NATO's overall conduct in the sense that the Alliance tried as much as possible to do everything by the book: "the military targets selected were those threatening civilians; allies did not bomb Qaddafi's troops wherever they found them with disregard to civilian impact; the allies did not arm the rebels and did not go in on the ground targeting Qaddafi"<sup>57</sup>. Indeed, in the end, not everything went on smoothly (NATO had its share of collateral civilian casualties) but nevertheless the entire operation was not only accepted as legitimate, moral and even "legal" (in a strange humanitarian intervention sort of way), but NATO was also praised for its actions and gained worldwide recognition for the handling of the crises. As Brzezinski notes "operation Unified Protector prevented a brutal massacre in Benghazi, helped the Libyan opposition to route Qaddafi and his regime from Tripoli and thereby enhanced the prospects that Libya's future will be decided by its citizens"<sup>58</sup>.

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<sup>53</sup> Margaret O'Brian Steinfels, "Hazardous Means: Libya and the Ambiguity of Humanitarian Intervention", *Commonweal*, 17<sup>th</sup> of June, 2011, p. 6.

<sup>54</sup> Pattison, *op. cit.*, p. 273.

<sup>55</sup> *Ibidem*.

<sup>56</sup> Michaels, *op. cit.* p. 56.

<sup>57</sup> Pattison, *op. cit.*, p. 273.

<sup>58</sup> Ian Brzezinski, "Lessons from Libya: NATO Alliance Remains Relevant", *National Defense*, November 2009, p. 18.



## Conclusion

The purpose of this article has been to try and determine whether or not a certain pathway towards legitimacy (understood both from a legal and moral perspective) exists when it comes to humanitarian interventions based on the events and experiences of the last decade or so. The subject of the study was the North Atlantic Treaty Organization (due to its adequacy and probability of carrying out such operations) and its antagonistic experiences so far, namely the Kosovo intervention (which was generally perceived as morally and legally questionable) and the Libya intervention (which was commonly perceived as down right legitimate). The idea was to investigate what were the reasons behind this antithetical perception and if it was determined by either a change in the “laws and moral standard” of how humanitarian interventions should be carried out or simply by a behavioral shift in NATO’s conduct.

Looking back at our investigation, it seems that both at the time of the Kosovo intervention and in the wake of the Libya crisis, the legal status of humanitarian interventions was equally uncertain and shady. The only significant difference is that in 1999 humanitarian intervention was a theoretical possibility, while in 2011 it became a practical responsibility (due to the Responsibility to Protect report). Indeed, when placed on paper and in these terms the shift may seem huge, but we must not forget that responsibility does not mean obligation as there is no official act ratifying this. As a result, humanitarian intervention remains arbitrary and selective (in 1999, the international community chose to intervene in Kosovo and not East Timor; in 2011, it chose to enter Libya, not Bahrain or Syria).

However, as mentioned above, we cannot understate the positives or the changes for the better. As many scholars have already acknowledged a selective and arbitrary humanitarian intervention is better than no humanitarian intervention at all (Pattison, 2011; Chesterman, 2011; Baer, 2011; etc). Based on the experiences presented here we realize that the Kosovo operation, in spite of its problems and criticisms, was actually the event which placed humanitarian interventions on the map of international relations, so much so that upon it, almost all interventions were presented as being to some extent humanitarian<sup>59</sup>. This sudden awareness of crises which could be alleviated did not only ignite political pretexts to wage war

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<sup>59</sup> Hehir, *op. cit.* p. 256.

but also political will to try and establish legal grounds for intervention. The R2P and Outcome Document presented here, although somewhat failed attempts, did actually manage to emphasize the demise of the "sacredness" and untouchable character of national sovereignty, by acknowledging the possibility of disregarding state borders if gross cases of human rights violations are reported.

Finally, the intervention in Libya and the way in which NATO performed it comes to certify that the idea of humanitarian interventions has been internalized by international actors along with a certain type of conduct when it comes to conducting them.

If during the Kosovo operation NATO acted more or less on its own, while the international community did not have a clear sense of direction as well (failed to authorize the intervention, then declared it illegal, but legitimate, etc), in Libya we find an almost flawless international cooperation, involving AFRICOR, the UN, NATO and even the Libyan rebels. What's more, the leading actor in the operation, NATO, proved to be extremely careful, taking every possible step to ensure that all of its actions are to the benefit and protection of civilians.

As such, it would be safe to conclude that in the period between Kosovo and Libya the perception around humanitarian intervention has indeed changed, making the concept a constant and accepted presence in the international political arena. Not only that, but from what I have managed to show here, it seems that the phenomenon has been internalized and even unofficially institutionalized by international actors alike. The only step now would be an official, legal acknowledgement and acceptance, since from a moral perspective humanitarian interventions seem to have already passed the popularity test.

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## LA SOLIDARITÉ TRANQUILLE. COMMENT LA FRANCE A AIDÉ LE PEUPLE POLONAIS PENDANT LES ANNÉES SOLIDARNOŚĆ

### LA SOLIDARITÉ TRANQUILLE. FRANCE'S SUPPORT TO POLAND DURING THE SOLIDARNOŚĆ ERA \*

Marius Mitrache\*\*

#### Abstract

*Le 13 décembre 1981, le général Jaruzelski imposait en Pologne l'état de guerre, suite aux revendications du peuple polonais autour du syndicat Solidarnosc. Pour beaucoup de leaders occidentaux, la police polonaise était préférable aux chars soviétiques. Parmi eux, le Président français François Mitterrand qui trouvait Jaruzelski comme un vrai patriote pour avoir sauvé son pays d'une invasion de l'Armée Rouge. Le gouvernement Mauroy (où siégeaient quatre ministres communistes) n'avait aucune intention d'intervenir militairement contre la Pologne, mais avait demandé la libération des personnes incarcérées, dont le leader Solidarnosc, Lech Walesa, et la reprise du dialogue entre les parties représentatives du peuple polonais. Malgré l'impression d'une réponse désintéressée, la France ne cessera d'offrir aide humanitaire en nourriture et aide économique au peuple polonais tout au long des années '80. A travers une société civique forte et active, regroupant artistes (Simone Signoret et Yves Montand) et intellectuels (Jorge Semprun, Michel Foucault, Jacques Le Goff et autres) et des contributions financières gouvernementales, la France réussissait d'établir une solidarité à la fois symbolique et concrète avec un pays appelé autrefois « la France du Nord. » Le cas français nous montre comment une intervention humanitaire peut être une réussite même si elle n'implique pas une dimension militaire.*

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\* This work was possible with the financial support of the Sectoral Operational Programme for Human Resources Development 2007-2013, co-financed by the European Social Fund, under the project number POSDRU/107/1.5/S/76841 with the title „Modern Doctoral Studies: Internationalization and Interdisciplinarity”.

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**Key words:** Solidarnosc, syndicalisme, autogestion, dissidence, la CFDT, aide humanitaire

### **Le contexte politique de la France pendant la crise polonaise**

En 1980 lorsque la crise polonaise commençait, la France se trouvait dans des négociations complexes avec l'URSS pour la construction d'un gazoduc, étant déjà sous fortes pressions de la part des Etats-Unis pour renoncer aux projets. La marge de manoeuvre de la France était assez restreinte, mais Mitterrand voulait faire preuve de fermeté. En septembre 1981 lors d'un sommet franco-britannique, il déclarait (dans l'assentiment de Madame Thatcher) « tant que le Parti communiste tiendra bon, le danger d'intervention soviétique ne sera pas réel. Paradoxalement, c'est le degré de résistance du parti communiste à Solidarnosc qui, s'il est suffisant, pourra empêcher l'invasion.<sup>1</sup> » Quand le général Jaruzelski devient Premier secrétaire du Parti communiste polonais, le président se demandait : « Un militaire au pouvoir : est-ce que l'annonce de l'arrivée des Russes ou l'ultime protection contre eux ?<sup>2</sup> »

Claude Cheysson, ministre français des Affaires Etrangères, s'était déplacé en Pologne pour rencontrer les autorités gouvernementales et Lech Walesa. Comme soutien aux autorités de Varsovie, le ministre français promettait un rééchalonnement de la dette polonaise et un nouveau crédit de 300 millions francs. Cheysson quittait la Pologne très pessimiste, et dans sa place le Premier Ministre, Pierre Mauroy se préparait pour visiter ce pays, dont tout le monde ne cesse pas de parler. Mais cette visite prévue entre 16 et 19 décembre 1981 ne verra pas le jour, car les autorités polonaises voulaient la reporter sous le prétexte des travaux de la Diète. En réalité, le 13 décembre l'état de guerre est déclaré et Walesa arrêté. Le lendemain, Mauroy affirmait : « la France n'est pas en mesure de mettre un terme aux rapport de force sanctionnés par les accords de Yalta, elle ne peut intervenir tant qu'il s'agit d'une action nationale sans intervention étrangère massive » et lors d'une session du Conseil des Ministre, le 16 décembre, le plus proéminent ministre communiste, Georges Fiterman, affirme qu'il est « tout à fait solidaire de l'attitude du gouvernement.<sup>3</sup> » De

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<sup>1</sup> Jacques Attali, *Verbatim. Première partie 1981-1983*, Fayard, Paris, 1995, p. 128.

<sup>2</sup> *Ibid.*, p. 178.

<sup>3</sup> Michèle Cotta, *Mitterrand, carnets de route*, Editions Pluriel, 2011, p. 484.

son côté Mitterrand soulignait : « Qu'attend-on de nous (les protestataires et l'opinion publique) ? Des mots ? Des vivres ? Des armes ? Pour les mots je suis preneur, pour les vivres je suis d'accord. Pour les armes, pas question.<sup>4</sup> »

Cheysson, dans la présence de l'ambassadeur polonais déclarait que « l'affaire polonaise doit être traitée entre Polonais.<sup>5</sup> » Le même jour, après avoir discuter avec le secrétaire américain de la Défense, Caspar Weinberger, interrogé par le poste de radio Europe 1 sur ce que la France l va faire, il répondait : « Naturellement, nous ne ferons rien. » Plus tard il ajoutera qu'il voulait dire que de point de vue militairement la France ne fera rien. Mais sa réponse va provoquer un véritable tollé, une vague de protestation et accusations venues de la part de l'opinion publique, qui vont accuser le gouvernement de trahir le peuple polonais.

Mitterrand de son côté essaiera de faire preuve d'une attitude, certes concernée, mais tempérée, et dans son discours de fin d'année dira : « Il n'est pas de plus grande solidarité que celle qui nous unit au peuple de Pologne. Prouvons-le en refusant le système qui l'opprime et la domination qu'il engendre<sup>6</sup>. » En utilisant le terme système, il trouva un moyen général de faire référence au bloc communiste de l'Est sans nommer directement l'influence de l'URSS sur ces pays.

Malgré leur prudence de naviguer à travers une situation si sensible et épineuse, le président et son gouvernement ne réussiront de satisfaire l'opinion publique, surtout en ce qui concernait la question de l'aide économique et alimentaire à la Pologne. Se posait le demande, très populaire dans la presse française, si cette aide ne devrait-elle être interrompue, et remplacée par des sanctions, voire un embargo. Aux ces questions tant véhiculés par les journaux hexagonaux, Mitterrand répondait : « Nous ne soutenons pas un régime, nous aidons des gens assaillis par la famine et la misère. Il n'y a pas lieu, jusqu'à nouvel ordre, de changer notre politique et de recourir à un blocus alimentaire.<sup>7</sup> » Pour lui il

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<sup>4</sup> Pierre Favier, Michel Martin-Roland, *La décennie Mitterrand*, t. 1: *Les ruptures (1981-1984)*, Seuil, 1995, p. 375.

<sup>5</sup> Mario Bettati, *Le droit de l'ingérence : mutation de l'ordre international*, Odile Jacob, 1996, p. 23.

<sup>6</sup> Hubert Védrine, *Les mondes de François Mitterrand*, Fayard, Paris, 1996, p. 201.

<sup>7</sup> Interview de M. François Mitterrand, Président la République, au journal « Ouest-France », notamment sur les relations Ouest-Est, la politique gouvernementale en matière de fiscalité et d'agriculture, lundi 21 décembre 1981



ne faut pas faire confusion entre les dirigeants politiques polonais et le reste du peuple, qui se trouvait en souffrance. D'ailleurs avec un blocus alimentaire ou des sanctions économiques qui serait réellement puni ? Était-il vraiment efficace et utile de prendre des telles mesures qui seront nuisible pour la population, d'autant plus que le pays se trouvait dans un état de guerre ? Evidemment le président français jugeait que non, étant donné le fait que les prix auraient été payé par les démunis. Sa volonté d'éviter un blocus était déterminé aussi le désir de compenser l'incapacité d'aider les Polonais dans une autre manière.

Malheureusement pour lui ses opinions ne seront pas partagés outre-Atlantique, et le président Ronald Reagan (soumi à la pression des lobbys polono-américains) dresse déjà une liste des sanctions économiques pour être infligés à la Pologne. En janvier 1984, Claude Cheysson réussissait à convaincre les Ministres des Affaires Etrangères des Dix (c'est-à-dire les dix pays composant la Communauté européenne) de continuer l'aide alimentaire destiné au peuple polonais. Dans le cadre de l'OTAN, les ministres prends quelques mesure : la restriction aux déplacements des diplomates soviétiques et polonais, la réductions des échanges scientifiques et techniques, le non-renouveaulement de certains accords d'échanges, et la suspension des crédits commerciaux autres que ceux liés aux produits alimentaires<sup>8</sup>. Des mesures plutôt symbolique parce que personne n'osait faire plus.

En effet, Mitterrand se trouvait dans une certaine mesure dans la même situation que Valéry Giscard d'Estaing a dû gérer. Comme chef de l'opposition il était facile pour lui de critiquer les prises de positions de son adversaire et sa complérence envers l'Est. Mais dans le fauteuil de l'Élysée il lui était plus difficile d'agir dans une direction voulue par l'opinion publique qui sympathisé avec les protestataires.

Premièrement, parce qu'il croyait qu'une escalation des troubles amènerait à une invasion soviétique, qui pour lui signifierait le pire. Deuxièmement il voyait d'un oeil favorable le général Jaruzelski, au moins au début, dont l'intervention rapide avait sauvé son pays. D'ailleurs il n'était pas le seul de penser ainsi, car le chancelier autrichien socio-démocrate, Bruno Kreisky préférait plutôt le police polonaise, que les chars

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[<http://lesdiscours.vie-publique.fr/pdf/817169600.pdf>] accessé le 25 septembre 2012.

<sup>8</sup> Hubert Védrine, *op. cit.*, p. 203.

soviétiques<sup>9</sup>. Bien sûr, une autre conception avaient ceux qui formaient l'opinion publique française ; des intellectuels, tels Michel Foucault, Jorge Semprun, André Glucksman, Alain Touraine, Jacques Derrida, Jacques Le Goff, et des artistes, les plus célèbres étant sans doute, le couple Yves Montand et Simone Signoret<sup>10</sup>. La chercheuse Karolina Pietras dit que l'intelligentsia française avait eu avec la crise polonaise son propre chatarsis, après des décennies d'idolâtrie soviétique. Ils avaient vu dans le soulèvement des Polonais leur propre révolte, et ils s'étaient approprié la contestation du syndicat Solidarnosc contre le système communiste<sup>11</sup>. Pour eux il s'agissait d'une véritable croisade personnelle. Derrière leur enthousiasme pour la cause des protestataires se trouvait le sentiment de corriger les fautes des dernières années, quand ils étaient hypnotisés par les promesses utopiques d'une idéologie décevante qui au lieu du Paradis sur terre avait apporté le goulag. Le seul moyen de payer les péchés d'une crédulité jugée maintenant honteuse était de soutenir la lutte du syndicat Solidarnosc. Tout d'un coup, le silence et peut-être l'indifférence gardée pendant les invasions de Budapest et Prague semblaient vengées par le bruit médiatique fait pour la cause polonaise. Au vrai dire, ils avaient leurs propres comptes à résoudre avec le Communisme et l'URSS, et ils ne réalisaient pas qu'ils risquaient tomber dans une autre sorte d'idolâtrie. La plupart des intellectuels français avaient été marqués et par les événements de Mai 1968. Ce qui se passait en Pologne était un sorte d'épilogue pour leur révolution avortée<sup>12</sup>. La classe politique française était plus réservée, prudente, car pour elle, une dégénération de la situation aurait porté seulement des troubles et des ennuis, tant pour le reste du monde que pour la France. Les plaintes de duplicité et machiavelisme vont ressurgir, pour accuser son réalisme au détriment du moralisme, si cher à l'opinion publique. Toutefois son réalisme ne l'empêchera pas de demander la levée d'état de guerre, la libération des personnes en prisons, la réinstallation des

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<sup>9</sup> Günter Bischof, Anton Pelinka, *The Kreisky Era in Austria*, Transactions Publishers, 1994, p. 135.

<sup>10</sup> Karolina Pietras, « L'Europe de l'Ouest face aux tensions dans le bloc communiste. La crise polonaise des années 1980 », in Michele Affinito, Guia Migani, Christian Wenkel (dir.) *The Two Europes*, (Peter Lang, 2007, p. 83.

<sup>11</sup> I. Goddeeris, « Western Trade Unions and Solidarnosc. A Comparison from a Polish Perspective », in *The Polish Review*, No. 52/3, 2007, p. 314.

<sup>12</sup> Karolina Pietras, *op. cit.*, p. 86.

libertés syndicales et civiques et bien sûr la reprise du dialogue entre les parties du conflit<sup>13</sup>.

### **Une idolâtrie s'effondre**

En réalité en Pologne il y avait eu des troubles dès l'été de 1980, troubles conclus par les accords de Gdansk, reconnaissant le droit de grève, le droit à l'information et l'existence des syndicats indépendants, plus précisément « Solidarnosc ». Mais ces libertés étaient déjà menacées et l'opinion publique occidentale, et surtout française, se passionnait pour les événements qui suivront en Pologne. L'ancien président, Valéry Giscard d'Estaing, s'avait montré plus réticent et plus prudent à l'égard de cette crise. Le 21 janvier 1981, peu avant les élections présidentielles qu'il va perdre, il déclarait aux télévisions : « La Pologne se trouve à l'intérieur du bloc soviétique et les communications du bloc soviétique passent au travers de la Pologne. Celui qui ignorerait ces données géographiques et stratégiques n'a aucune chance d'être acceptable pour l'Union soviétique.<sup>14</sup> » Giscard d'Estaing était toujours soucieux de ménager les officiels de Moscou, avec lesquels il avait des excellent rapports. Sa défaite était mal ressentie à Kremlin, car on se méfiait de Mitterrand, comme on se méfiait généralement des sociaux-démocrates occidentaux. Pour les Russes c'était plus facile de coexister avec un droite conservatrice, pour laquelle l'anti-communisme ne signifiait pas nécessairement antisoviétisme, favorisant la raison d'Etat et les liens historiques partagés par les deux nations. Tel était le cas du Giscard d'Estaing, qui bénéficiait d'une assez forte popularité et appréciation parmi les dirigeants de l'Union soviétique. Sa faute se trouvait dans le fait qu'il ne se rendait pas compte que l'opinion publique française commençait à être de plus en plus hostile aux Soviétiques<sup>15</sup>. Au début de la Guerre Froide à cause de l'attitude pendant la Deuxième Guerre Mondiale, le Parti Communiste Français jouissait d'une grande popularité. Le voyage de 1944 du général Charles de Gaulle à Moscou pour rencontrer Staline et signer le 10 décembre un pacte franco-soviétique était fait dans l'assentiment presque total de la population

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<sup>13</sup> Hubert Védrine, *op. cit.*, 205.

<sup>14</sup> *Ibidem* p. 200.

<sup>15</sup> Thomas Schreiber, *Les Actions de la France à l'Est ou Les Absences de Marianne*, L'Harmattan, 2000, p. 167.

française. Le biographe du général, Jean Lacouture, donne une explication pour cette perception : « L'opinion française dans son ensemble, perçut le voyage en URSS et la face à face de Gaulle-Staline comme les manifestations d'une renaissance nationale. Une opération si classique, si traditionnelle, si bien inscrite dans le droit fil d'une histoire diplomatique qui court de Richelieu à Poincaré, ne pouvait que séduire un peuple en proie à la plus âpre nostalgie-sans parler de ce quart de la population française qui se reconnaissait dans le Parti communiste et voyait dans l'allié soviétique le constructeur du monde nouveau<sup>16</sup>. » Ensuite, suivait l'époque où presque toute l'intelligentsia française succombait au charme Slave des Soviétiques, car lors des événements de Budapest en 1956 et puis de Prague de 1968, les réactions étaient plutôt faibles et réservées. Quand les chars russes envahissaient la Tchécoslovaquie, le Premier ministre de l'époque, Michel Debré, se permettait encore de dire qu'il s'agissait d'un simple « incident de parcours ». <sup>17</sup> »

Mais les décennies s'écoulaient et les perceptions commençaient de changer. Après le moment Soljenitsyne et surtout après l'invasion en Afghanistan, il y avait eu en France une forte irruption anti-soviétique. L'URSS n'incarnait plus l'espoir messianique d'un nouveau monde, mais il devient de plus en plus associé aux termes de goulag, brutalités, invasions. Valéry Giscard d'Estaing ne se rendait pas compte du changement de temps, et petit à petit il se trouvait dans une position opposée à l'opinion publique française de 1980-1981. Maintenant personne ne voulait ménager plus l'Union Soviétique. Partisan de la détente et de la coopération, Giscard d'Estaing était soucieux de montrer son respect pour le droit de Moscou de disposer de sa sphère d'influence. Au vrai dire, il avait la mentalité d'un technocrate qui considérait que les échanges économiques et commerciaux entre l'Est et l'Ouest peuvent favoriser la coexistence pacifique du deux blocs antagoniste, mais pas forcément ennemis<sup>18</sup>. D'ailleurs il lui donnait grand plaisir et fierté de rappeler qu'il était le premier ministre français de l'économie à se rendre en URSS en 1964

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<sup>16</sup> Jean Lacouture, *De Gaulle*, t. 2, *La Politique, 1944-1959*, Seuil, 1990, p. 85.

<sup>17</sup> Marie-Pierre Rey, *La tentation du rapprochement: France et l'URSS à l'heure de la détente, 1964-1974*, Publications de la Sorbonne, 1991, p. 223.

<sup>18</sup> Maurice Vaïsse, « La Puissance ou l'influence ? (1958-2004) » in *Histoire de la diplomatie française*, t 2 : *De 1815 à nos jours*, Editions Perrin, 2007, p. 498.

et le premier président d'une Grande Commission destinée à surveiller ces échanges. Il commençait de se cramponner dans une politique bienveillante à l'égard de Moscou, se portant comme le garant de la volonté de paix de Léonid Brejnev, et faisant un titre de gloire de leur proximité<sup>19</sup>. Mitterrand en tant que Premier secrétaire du Parti Socialiste se montrait plus prudent et circonspect envers Brejnev. En 1975, il se déplaçait en Russie et répondait au leader communiste qui venait encore une fois de clamer sa volonté de paix, en disant « Je voudrais vous croire.<sup>20</sup> »

Giscard d'Estaing le croyait déjà parce que la même année, aux demandes de Brejnev, il donne son accord pour la signature de l'Acte final de la Conférence sur la Sécurité et la Coopération en Europe, c'est-à-dire, les Accords d'Helsinki. Pour les Soviétiques c'était un grande victoire, car depuis la fin de la Deuxième Guerre Mondiale ils cherchaient la reconnaissance officielle des nouvelles frontières de l'Europe de l'Est. Les pays de l'Occident avaient fait la signature de ce traité plus acceptable en raison du dispositions concernant les libertés et les problèmes humanitaires que l'Union Soviétique s'engage de respecter.

### **Le climat intellectuel avant la crise polonaise**

Néanmoins, les critiques avaient été nombreuses, pour considérer ces dispositions hypocrites. Pendant que Giscard d'Estaing voyageait en Russie, et décorait le tombeau de Lénine avec des fleurs (il était le seul chef d'Etat occidental à le faire) en clamant la nécessité d'une détente dans la compétition idéologique, le vent du changement soufflait, les années '70 étant ceux de la découverte de la littérature de dissidence par l'intelligentsia française<sup>21</sup>.

D'abord le premier à tirer un cri d'alarme était le scientifique et le futur dissident, Andreï Saharov qui avertissait l'Ouest de ne pas tomber dans le piège d'une détente unilatérale, avant de recevoir en 1975, l'année des accords de Helsinki, le prix Nobel de la Paix. Un an après cette victoire personnelle, l'écrivain Andreï Amalrik était autorisé d'immigrer et quitter le

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<sup>19</sup> Michel Tatu, « Valéry Giscard d'Estaing et la détente », in : Samy Cohen et Marie-Claude Smouts (dir.), *La politique extérieure de Valéry Giscard d'Estaing*, Presses de la FNSP, 1985, pp. 196-217.

<sup>20</sup> Hubert Védrine, *op. cit.*, p. 206.

<sup>21</sup> Thomas Schreiber, *op. cit.*, p. 147.

pays. Toujours en 1985, Vladimir Boukovski était échangé contre le communiste chilien Luis Corvolan. Les écrivains, Alexandre Guizbourg et Edourd Kouznetsov seront expulsés en Israël après avoir été libérés de leur captivité et dès 1978 Alexandre Zinoviev pouvait se rendre dans l'Occident<sup>22</sup>. Leur message était unitaire dans la transmission que l'Union Soviétique ne représentait pas du tout le pays des rêves, mais plutôt un pays concentrationnel, un société carcérale, qui étouffait et éliminait toute sorte d'opposition, de critique, un véritable universe-goulag. Leur témoignages offraient à l'opinion publique française les raisons d'un désenchantement spontanément, après des années de croire dans les promesses utopique soviétiques. Cette réaction se traduisait par une hostilité de plus en plus grandissante envers la politique giscardienne de détente et coopération. Ne se rendant pas compte des temps qui changeaient, Giscard d'Estaing signait et persistait dans son attitude envers l'URSS. Plus astucieux, plus malin, Mitterrand avait su surfer sur la vague de désillusionnement et se rallier plus tôt au courant des critiques envers les Soviétiques, traitant Giscard d'Estaing comme « le petit télégraphiste » de Moscou<sup>23</sup>.

Dans une certaine manière cette attitude de Fronde, de contestation lui ont valu beaucoup de votes, de la part des ceux qui voulaient une attitude plus ferme envers le colosse de l'Est. Mais après mai 1981 quand Mitterrand gagnait les élections présidentielles, il était obligé d'une façon ironique, de chercher un *modus vivendi* avec les Soviétiques. Il n'aimait pas du tout la gérontocratie de Kremlin, et les sentiments étaient réciproques tant en l'URSS que dans le bloc communiste. Les seuls pays de l'Est qui avaient reçu avec sympathie la nouvelle de son élection étaient la Hongrie et une Yougoslavie qui venait de perdre Tito, et espérait une France plus présente dans la région, comme autrefois<sup>24</sup>.

### **L'activité et l'implication des acteurs non-étatiques**

Si les réactions officielles de la France, de la présidence, du gouvernement doivent être prudentes, réservées, en revanche la réaction de

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<sup>22</sup> Jean-Louis Panné, « Dissidence » dans Stéphane Courtois (dir.), *Dictionnaire du communisme*, Polirom, pp. 224-230.

<sup>23</sup> Hubert Védrine, *op. cit.*, p. 108.

<sup>24</sup> Thomas Schreiber, *op. cit.*, p. 168.

l'opinion publique sera décidément plus forte et engagée en faveur de la cause des protestataires. Avec cette occasion on peut observer la force et les poids qu les acteurs non-étatiques peuvent avoir dans la gestion d'une telle crise, car eux aussi, dans une certaine manière trouvaient leur raison d'être. Par leurs prises de positions aux abus dont la faible « société civile » était soumise, dans ces pays communistes, autrefois plutôt courtoisées, les acteurs de la société civile occidentale peuvent légitimer leurs propres aspirations, accomplir leur statut d'opposition à leurs propres gouvernements (d'ailleurs timides et maladroits concernant cette crise) et contribuer à cette croisade envers le régime communiste, maintenant tellement décrié.

Déjà entre août et septembre 1980, c'est-à-dire avant la proclamation de la loi martiale, plusieurs associations avaient été créées, comme « Solidarité avec Solidarnosc » ou « Solidarité France-Pologne » qui existe encore aujourd'hui. La seconde regroupait parmi beaucoup d'autres, l'historien Jacques Le Goff, l'homme politique Jean-Louis Bianco ou l'acteur Andrzej Seweryn, et son but initial était de renforcer les liens entre les syndicats polonais et français. A part de cet objectif, cette association avait contribué au jumelages des plusieurs villes françaises et polonaises. Mais peut-être le plus important, à travers les activités et le lobby de cette association, des syndicalistes, et des spécialistes pouvaient aller en Pologne, tels Etienne Grumbach et Laurent Parleani<sup>25</sup>.

Une autre organisation, Le Secours Catholique venait de répondre à l'appel polonais à une aide matérielle (nourriture, médicaments, vêtements), un appel désespéré fait en juin 1981 par le Fond Social du Solidarnosc, dont les membres étaient des Polonais célèbres tels Lech Walesa, Andrzej Wajda, Bronislaw Geremek, Marek Edelman. C'est grâce aux efforts soutenus du Père Eugène Plater, que le Secours Catholique réussira d'envoyer plus de 500 tonnes de nourriture en Pologne avant la proclamation de la loi martiale<sup>26</sup>.

Quand même, parmi tous les acteurs non-étatiques qui s'étaient pleinement impliqués dans les malheurs de la Pologne, un s'est distingué du reste par le dévouement absolu et l'amitié sincère pour Solidarnosc et le

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<sup>25</sup> Marcin Frybes, « French Enthusiasm for Solidarnosc », in *European Review*, Tome 16, Numéro 01, février 2008, p. 67.

<sup>26</sup> *Ibid.* p. 68.

peuple polonais, s'agissant du syndicat Confédération Française Démocratique du Travail (CFDT).

A la fin des années '70 et au début du 1980 la CFDT ne comptait pas les pays de l'Europe de l'Est parmi ses priorités, étant orientée plutôt envers le Troisième Monde, comme Marcin Frybes lui-même le reconnaissait : « La CFDT n'était pas totalement insensible aux problèmes des libertés à l'Est, mais il faut reconnaître qu'elle était à l'époque sur ce sujet, relativement peu présente, principalement à cause d'une sorte de conditionnement idéologique, véhiculé d'un côté par le rapprochement avec la CGT et les projet d'une unité et de l'autre côté, par la place reconnue et acceptée à l'URSS et aux autres pays satellites du bloc de l'Est dans les rapports internationaux.<sup>27</sup> » Il faut préciser quand même que auparavant des contacts existaient. Au début des années '60, à l'époque quand il y avait encore la Confédération Française des Travailleurs Chrétiens, la CFTC, d'où plus tard en 1968 la CFDT se détachera, une délégation française, présidée par Gérard Espéret et René Lalande avaient fait un séjour en Pologne pendant lequel ils avaient rencontré et puis établi des contacts avec membres du milieu catholique, dont Tadeusz Mazowiecki. Ensuite, ils avaient eu l'opportunité de faire connaissance avec les membres de l'association des catholiques laïques ZNAK, qui dans leur majorité appartenait au Club de l'Intelligensia Catholique (KIK)<sup>28</sup>. Après cette visite, les liens étaient tenus à travers les émigrés polonais à Paris, membres du « Comité de soutien aux travailleurs polonais », parmi eux étant Pomian ou Karol Szurek<sup>29</sup>.

Le 25 juillet 1980, la Commission exécutive de la CFDT déclarait qu'elle était solidaire avec les grévistes polonais, pour qu'en août la même année de commencer à aider financièrement le syndicat, et le 2 septembre 1980 pendant sa première conférence en faveur de Solidarnosc (à laquelle participeront Pomian, Jacques Chérèque, Edmond Maire ou Raymond Juin) et partageant son crédo que le socialisme sans démocratie et liberté

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<sup>27</sup> Natalie Bégin, « Kontakte zwischen Gewerkschaften in Ost und West. Die Auswirkungen von Solidarnosc in Deutschland und Frankreich. Ein Vergleich », in *Archiv für Sozialgeschichte*, 45. Band, 2005, p.295.

<sup>28</sup> Andrzej Chwalba, Frank Georgi, « France : Exceptional Solidarity ? in Idesbald Goddeeris (dir.), *Solidarity with Solidarit: Western Trade Unions and the Polish Crisis 1980-1982*, 2010, p 194.

<sup>29</sup> Natalie Bégin, *op. cit.*, p. 296.



syndicale ne serait pas possible. Les premiers rencontres, le 17 septembre 1980 avec « leurs camarades » polonais avaient eu quelque chose très émouvant, comme Edmond Maire l'avait remarqué, car « Pour le Syndicat (Solidarnosc) la CFDT joue le rôle d'un intermédiaire, la CFDT en revanche intériorise de manière affective l'expérience de son partenaire polonais.<sup>30</sup> » Cette première déléation de la CFDT qui arrivait en Pologne rencontrera Adam Michnik, Jacek Kuron, Bogdan Lis, Tadeusz Mazowiecki ou Bronislaw Geremek. A la fin de leur rencontre, les deux syndicats, un communiqué de presse publié le 30 septembre affirmera : « La rencontre a permis de souligner les profondes convergences qui les lient et au-delà des rapports fraternels existant entre les travailleurs et les peuples des deux pays. Ces convergences s'affirment notamment par une volonté commune de voir les travailleurs prendre en charge leur avenir individuel et collectif dans une démarche autogestionnaire, par leur attachement à l'indépendance du mouvement syndical, facteur de démocratie dans la société, condition pour réaliser des réformes économique au service du plus grand nombre.<sup>31</sup> »

L'année prochaine, entre 18 et 25 octobre c'était le tour de Lech Walesa de visiter Paris où il rencontrerait tant les membres de la CFDT, mais aussi ceux de la Confédération de l'encadrement (CFE-CGC), de la Fédération de l'Education Nationale (FEN), et ceux de la Force Ouvrière (FO). Le but de sa visite était de renforcer les liens avec ses alliés de l'Occident, et de préparer l'arrivée des aides par des camions en Pologne. C'était aussi une excellente occasion et étendre ses réseaux et faire des amis. Le 3 décembre 1981 les premiers camions avec des aides partaient envers la Pologne. Quand même, peu après, le 13 décembre, un coup de tonnerre venait sur le ciel de l'Europe, car le Jaruzelski proclamerait l'état de guerre<sup>32</sup>.

En France, les réaction n'attardaient d'apparaître. Le lendemain, les cinq syndicats (la CFDT, la CFTC, la CFE-CGC, la FEN et la FO, sauf la CGT qui dorénavant va s'éloigner ) se trouvaient déjà devant l'ambassade polonaise à Paris pour réclamer l'action de Jaruzelski. Les déclarations de Claude Cheysson et Pierre Mauroy venaient d'être désavouées par André

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<sup>30</sup> *Ibidem*, p. 305.

<sup>31</sup> *Ibidem*, p. 307.

<sup>32</sup> Marcin Frybes, *op. cit.*, p. 68.

Bergeron (Force Ouvrière) et Jean Menu (CFE-CGC), Edmond Maire de son côté ajoutant : « Lorsque la liberté d'un pays est en cause il ne s'agit plus d'une affaire intérieure.<sup>33</sup> » Finalement, le 29 décembre 1981 une alliance entre les quatre syndicats sera formée sous la présidence de René Salanne, pour mieux gérer leur réponse face à la crise polonaise<sup>34</sup>.

Au début, ils organiseront des manifestations, entre le 13 décembre 1981 et le 20 janvier 1982, il y aura eu 130 manifestations organisées par la CFDT et 94 manifestations organisées par la FO. Après 1982, avec le déclin de la participation, la nécessité de trouver une autre forme de solidarité s'imposait. Il y avait besoin de trouver une formule pour garder l'opinion publique concentrée sur les événements de Pologne, et le sort des membres du syndicat Solidarnosc. Une formule de succès était l'organisation des Journées de la Solidarité, très en vogue en 1982 et 1983, qui offraient la possibilité de découvrir des dernières nouvelles de Pologne, condamner les représailles du gouvernement polonais, penser aux nouvelles initiatives, mais aussi voir des films sur la Pologne et son histoire, et vendre des petits calendriers ou montres, marchandises avec les symboles du Solidarnosc, le profit était destiné à eux. Un moyen ingénieux de toujours garder à l'esprit ce qui se passait en Pologne et en même temps de protester activement était d'envoyer des cartes postales avec les symboles Solidarnosc ou le portrait de Walesa (surtout après avoir gagné le Prix Nobel de la Paix) à l'ambassade polonaise en France. C'était une initiative très populaire car les premiers trois mois après février 1982 plus de 400 000 cartes postales avaient été envoyées. À travers l'organisation des différents « happenings » (match de rugby ou football, où les médailles portaient l'effigie de Walesa) dédiés à Solidarnosc, le but poursuivi par les organisateurs était de transposer le symbolisme du syndicat polonais dans l'espace public et d'atteindre la mémoire collective<sup>35</sup>.

Suivant cette logique, la station de métro « Stalingrad » sera rebaptisée « Solidarité », le drapeau rouge et blanc de la Pologne sera hissé sur la Tour Eiffel, des plaques commémoratives partout où Walesa avait passé en France ou en France seront mises, tout avec l'espoir de pouvoir maintenir l'attention et l'engagement des Français sur « la crise polonaise »

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<sup>33</sup> Natalie Bégin, *op. cit.*, p. 317.

<sup>34</sup> Marcin Frybes, *op. cit.*, p. 69.

<sup>35</sup> Andrzej Chwalba, Frank Georgi, *op. cit.*, pp. 204-205.

et de les rappeler toujours les dangers dans lesquels, les syndicalistes polonais se trouvaient. Un moyen assez ingénieux de le faire était par l'organisation des colonies pour les enfants des syndicalistes (tant français que polonais) d'une côté et l'autre du rideau de fer. Quand même cette pratique un peu controversée (surtout à cause des dangers dont les enfants français s'exposaient en allant en Pologne) connaîtra un résultat mitigé. C'est vrai que depuis 1985 jusqu'en 1989 plus d'un millier d'enfants polonais bénéficieront des colonies en France. En revanche le nombre des enfants français qui avaient été en Pologne était clairement plus bas, surtout après la tragédie de Tchernobyl<sup>36</sup>.

A part des efforts de propagande blanche pour garder les liens entre les deux pays et leurs syndicats, la plus importante aide que les syndicalistes français pouvaient offrir à leur camarades était sans doute celle financière. La plus grande partie d'agent venait des collectes faites par la CFDT et la FO, en 1982 la somme gagnée par la FO et versée dans le comptes bancaires (à Paris et à Bruxelles) de Solidarnosc étant de 8 324 060 FRF. Dans dix ans, en 1992, lorsque les comptes bancaires seront liquidés il y avait encore 10 102 000 FRF. Une grande partie de l'argent était dirigée pour la Pologne, principalement pour les familles des leaders Solidarnosc emprisonnés, l'autre partie restait en Occident pour le financement de la propagande blanche faite en faveur du syndicat polonais.

Outre les actions prise en Occident, il y avait aussi une dimension d'aide humanitaire, qui visée directement le peuple polonais, et qui signifiait des colis et des camions envoyés avec nourritures, médicaments, marchandises manquantes, produits d'hygiène surtout pour les enfants, mais aussi papiers, machines à écrire, encres et autres objets destinés à maintenir la résistance<sup>37</sup>.

Ce type de soutien continuera jusqu'à la fin des années '80, quand la Pologne arrivera au moment de la Table Ronde, aux négociations et finalement à la fin du communisme, tant dans ce pays, mais aussi dans toute l'Europe Centrale-Orientale. Les Polonais seront reconnaissant, mais il faut préciser qu'après 1989 le modèle d'outre-Atlantique, le modèle américain sera plus fort, du point de vue économique (l'économie de marché) mais aussi socio-culturel. Les idées de l'autogestion, théorisées

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<sup>36</sup> *Ibidem*, p. 206.

<sup>37</sup> *Ibidem*, pp. 206-207.

autrefois par les syndicalistes Polonais, si chers pour la Deuxième Gauche française (celle proche de la CFDT) seront abandonné en faveur « d'un capitalisme à l'américaine. » Ce qui demeura en revanche sera l'amitié entre les deux pays, qui en 1991 aboutira à la formation du « Triangle de Weimar », une coopération trilatérale entre la France, la Pologne et l'Allemagne. Les régimes changent, mais la solidarité, elle doit rester la même.

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## LES DÉFIS DE L'INTERVENTION HUMANITAIRE EN SYRIE

### CHALLENGES OF HUMANITARIAN INTERVENTION IN SYRIA

Oana Vintilă\*

#### Abstract

*Humanitarian intervention has long been considered as a righteous act, essential to the victims, with the noble goal to respect and guarantee human rights. On the other hand, the use of humanitarian argument in order to justify a military, political or economic intervention of the northern states in the South represents a very usual practice since always. But when a violation of human rights on a large scale has been made, who has the legitimate right to intervene on behalf of what values and by what means? These are a few questions around which this article is written.*

**Keywords:** humanitarian intervention, human rights, Syria, sovereignty, international community

#### Introduction

L'intervention humanitaire pose des grands problèmes à une société internationale qui est fondée sur des principes comme la souveraineté d'État ou la non-intervention. Immédiatement après l'Holocauste, la société des États a mis en place des lois interdisant le génocide, en interdisant aussi les mauvais traitements des civils et en reconnaissant leurs droits fondamentaux. En fait, l'une des fonctions des États est de garantir la sécurité de leurs citoyens, mais comment on doit agir quand l'État même transgresse les droits de ses propres citoyens, en considérant sa souveraineté comme une justification pour tuer ou mal traiter les gens? Il faut qu'on reconnaisse les États tyranniques en tant que membres légitimes de la société internationale or il faut intervenir au nom de la justice universelle?

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Des nos jours, le concept d'intervention humanitaire a presque toujours le sens de recours à la force armée, surtout après le 11 septembre 2001 et le début de la guerre à la terreur et le risque de revenir à la situation pendant la Guerre Froide, quand les questions géostratégiques ont été plus importantes que les droits de l'homme. Il y a deux perspectives sur ce problème. La première est une opinion sceptique qui soutient le fait que, dès lors que la guerre à la terreur a commencé, les États Unis ont mis sur le premier lieu ses intérêts stratégiques, aussi à l'étranger que sur son territoire. D'après cette vue, les États Unis et ses alliés savent le consensus sur l'intervention humanitaire en abusant de principe humanitaire pour justifier leur recours à la force. La seconde perspective est plus optimiste car elle naît de l'idée de base que les États occidentaux n'interviennent pas dans les autres pays si elles ne considèrent pas que des intérêts de sécurité vitaux sont en jeu. Mais l'utilisation du prétexte humanitaire pour justifier des interventions militaires, politiques et économiques d'États du Nord dans des pays du Sud ne date pas d'hier. Quand même, les demandes pour un devoir moral de l'intervention humanitaire sont basées sur la proposition fondamentale selon laquelle tous les individus ont droit à un niveau minimum de protection contre les préjudices, en vertu de leur humanité commune. Mais la vraie question qu'il faut se poser est si l'appel à la force est indispensable pour l'intervention humanitaire.

Tout d'abord, il faut qu'on fasse une distinction entre l'intervention humanitaire et l'action humanitaire, pour mieux comprendre de quoi s'agit une intervention humanitaire et pourquoi cela pose des problèmes depuis le début de son existence. Ainsi, au plan international, l'humanitaire d'urgence a pour finalité d'assurer la survie et la protection des populations, victimes de conflits, de catastrophes naturelles ou technologiques, et d'épidémies soudaines. Les actions qui en relèvent, ne s'inscrivent pas dans un cadre juridique unique. Du fait de la diversité des contextes dans lesquels ces actions se déploient et de la diversité des acteurs qui les mettent en œuvre, l'humanitaire d'urgence est au carrefour de systèmes de droit provenant du droit national et du droit international public (DIP). Il est tout particulièrement lié, dans le respect de sa finalité,

aux droits de l'homme et au droit international humanitaire (DIH) ainsi qu'au droit des réfugiés et au droit pénal international.<sup>1</sup>

De l'autre côté, l'« intervention humanitaire » - terme nouveau choisi pour désigner un phénomène qui n'est pas si nouveau que cela - est une intervention militaire multilatérale dans les affaires internes d'un Etat qui a pour but de protéger les populations civiles contre de graves violations des droits de la personne.<sup>2</sup> Elle peut aussi prendre un sens beaucoup plus large, en s'accompagnant de mesures de coercition économique telles que les sanctions. Le plus grand problème que pose l'intervention humanitaire est la tension existant entre, d'une part, la responsabilité qui incombe à la communauté internationale de protéger les populations civiles dont les droits fondamentaux font l'objet de violations graves et nombreuses, et, d'autre part, son devoir impératif d'éviter le recours à la violence - c'est-à-dire d'épuiser tous les autres moyens disponibles pour prévenir le déclenchement d'une crise.

L'intervention humanitaire armée n'était pas une pratique légitime pendant la guerre froide parce que les États mettaient l'accent sur la souveraineté et l'ordre et pas sur le respect des droits de l'homme. Il y avait un changement significatif d'attitude au cours des années 1990, surtout parmi les États démocratiques libéraux, qui ont ouvert la voie en ce qui concerne les nouvelles revendications humanitaires au sein de la société internationale. Kofi Annan, le Secrétaire General de l'Assemblée Générale d'ONU a déclaré en 1999 qu'il faut avoir une « norme internationale développer » pour protéger les civils exposés à un risque de génocide et massacre. Dans le même temps, cependant, un groupe d'Etats démocratiques libéraux et les organisations non gouvernementales (ONG) ont tenté d'établir un consensus autour du principe de la responsabilité de protéger. La responsabilité de protéger insiste sur le fait que les États ont la

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<sup>1</sup> Ryan Goodman, "Humanitarian Intervention and pretexts for war", *The American Journal of International Law*, no. 100:107, 2006, [<http://www.law.harvard.edu/faculty/rgoodman/pdfs/RGoodmanHumanitarianInterventionPretextsforWar.pdf>], 12 Octobre 2012.

<sup>2</sup> Ian Hurd, "Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World", *Ethics and International Affairs*, 2011, [[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1864895](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1864895)], 12 Octobre 2012.



responsabilité première de protéger leurs propres citoyens.<sup>3</sup> Toutefois, si elles ne sont pas disposées ou sont incapables de le faire, la responsabilité de mettre fin aux atrocités et les massacres est transféré à la «communauté internationale». Ce principe a été adopté par l'Assemblée Générale des Nations Unies dans une déclaration officielle au Sommet mondial de 2005 des Nations Unies. Ses partisans soutiennent qu'il jouera un rôle important dans la construction d'un consensus sur l'action humanitaire, tout en rendant plus difficile pour les États d'abuser de justifications humanitaires.

Il y a quelques objections à l'intervention humanitaire qui ont été avancées, à plusieurs reprises, par des chercheurs, des juristes internationaux et des décideurs. Ces objections ne sont pas nécessairement exclusives et peuvent être trouvés dans les écrits des Réalistes, les libéraux, les féministes, les théoriciens postcoloniales et autres. Premièrement, les juristes internationaux considèrent qu'il y a aucune base de l'intervention humanitaire dans le droit international. De même, ils insistent pour que le bien commun soit le mieux conservé par le maintien de l'interdiction de toute utilisation de la force qui n'est pas autorisée par le Conseil de sécurité.<sup>4</sup>

Deuxièmement, les États n'interviennent pas pour des raisons principalement humanitaires et ils ont presque toujours des motifs mixtes d'intervention et sont rarement prêts à sacrifier leurs propres soldats à l'étranger s'ils n'ont pas des raisons d'intérêt personnel pour le faire. Pour les réalistes, cela signifie que véritable intervention humanitaire est imprudente, car elle ne sert pas l'intérêt national. Les autres critiques soulignent l'idée que les puissants interviennent lorsque cela leur convient de le faire et que les stratégies d'intervention sont plus susceptibles d'être guidées par des calculs d'intérêt national que par ce qui est le mieux pour les victimes au nom desquelles l'intervention est apparemment en cours.<sup>5</sup> Donc, en l'absence d'un mécanisme impartial pour décider quand une

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<sup>3</sup> J.L. Holzgrefe, "The Humanitarian Intervention Debate" dans J.L. Holzgrefe et Robert O. Keohane, *Humanitarian Intervention. Ethical, Legal and Political Dilemmas*, Cambridge, Cambridge University Press, 2003, p. 17.

<sup>4</sup> *La Charte des Nations Unies*, 1945, article 2,

[<http://www.un.org/fr/documents/charter/chap1.shtml>], 12 Octobre 2012.

<sup>5</sup> Hans Köchler, *Humanitarian Intervention in the Context of Modern Power Politics*, 2001, [<http://i-p-o.org/koechler-humanitarian-intervention.pdf>], 12 Octobre 2012.

intervention humanitaire est autorisée, les États pourraient épouser des motifs humanitaires comme prétexte pour couvrir la poursuite de l'intérêt national.

Ainsi, l'intervention humanitaire est l'une des questions les plus disputées dans la politique mondiale. Alors que certains y voient la preuve que les affaires du monde sont guidées par de nouvelles idées cosmopolites, d'autres voient les interventions humanitaires comme profondément erronées et moralement confuses. Il y a donc aussi des arguments pro, que des arguments contre l'intervention humanitaire que je vais citer tout de suite. Tout d'abord, la responsabilité d'agir en relation avec les événements de l'autre côté du monde est augmentée par une reconnaissance de l'interdépendance mondiale. Les États ne peuvent plus agir comme si elles sont des îles et en conséquence l'intervention humanitaire ne peut plus être justifiée par des motifs d'intérêt personnel. De l'autre côté, comme soutiennent les réalistes, car les États sont toujours motivés par des préoccupations d'intérêt national, le fait que l'action militaire est motivée par des considérations humanitaires représente un bon exemple de mensonge politique. De plus, si une intervention était vraiment humanitaire, l'État en question aurait mis ses propres citoyens en danger pour sauver des étrangers, en violant ses intérêts nationaux.

Par la suite, comme un argument favorable à l'intervention humanitaire, on peut dire que cela fournit non seulement des preuves de l'engagement de la communauté internationale en faveur de valeurs communes (la paix, la prospérité, la démocratie et les droits de l'homme), mais aussi renforce ceux-ci par l'établissement de directives plus claires pour la façon dont les gouvernements devraient traiter leurs citoyens, qui se reflètent dans le principe de la «souveraineté responsable».<sup>6</sup> Mais, par contre, l'intervention humanitaire peut être considérée comme une forme d'impérialisme culturel, en ce qu'elle est fondée sur une notion essentiellement occidentale des droits de l'homme qui pourraient ne pas être applicables dans d'autres parties du monde.<sup>7</sup> Les différences

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<sup>6</sup> *La Charte des Nations Unies*, 1945, article 2,

[<http://www.un.org/fr/documents/charter/chap1.shtml>], 12 Octobre 2012.

<sup>7</sup> Alex J. Bellamy et Nicholas J. Wheeler, *Humanitarian Intervention in World Politics*, [<http://cadair.aber.ac.uk/dspace/bitstream/handle/2160/1925/Wheeler?sequence=1>], 12 Octobre 2012.

historiques, culturelles et religieuses peuvent donc rendre impossible d'établir des lignes directrices universelles pour le comportement des gouvernements, ce qui rend la tâche d'établir une « cause juste » pour l'intervention humanitaire presque irréalisable.

### **Les défis de l'intervention humanitaire en Syrie**

Tout d'abord, il faut mentionner que la révolte en Syrie est une série de manifestations anti-gouvernementales qui ont débuté en mars 2011, mais ses causes sont plus anciennes, après la prise du pouvoir par le parti Ba'as quand la nouvelle administration a fortement réduit les libertés civiles et le pouvoir a été concentré dans les mains des militaires. La première résistance contre le régime autoritaire viennent des Frères musulmans, un mouvement politique et sociale fondée en 1928 qui a été la principale force d'opposition politique au Moyen-Orient. Bannir ce mouvement en 1964 a conduit à sa radicalisation par des grèves et des manifestations de masse en 1964 et 1965, mais ceux-ci ont été brutalement réprimées par l'armée, en particulier dans la ville de Hama. En fin des années 70, les Frères musulmans prennent diverses attaques contre des responsables syriens et les institutions étatiques, et en Février 1982, ils ont mène une révolte contre le régime, prenant le contrôle de la ville de Hama. La réaction du régime du président Assad a été extrêmement brutale. Air Force bombarde la ville, qui a été attaqué par l'armée syrienne régulière, est estimé entre 10.000 et 30.000 morts. La répression de la révolte a marqué la fin de l'opposition des Frères musulmans comme force politique viable en Syrie.

Ensuite, après la mort du président Hafez Al-Assad en 2000, le pouvoir est pris en charge par son fils Bachar al-Assad qui, en bénéficiant d'une éducation en Occident, a suscité de nombreux espoirs du début des réformes et de la démocratisation. Le soi-disant Printemps de Damas (Juillet 2000 - août 2001) a été marquée par l'émergence de nombreux groupes qui ont discuté des réformes politiques et sociales. Le mouvement a été brusquement interrompu lorsque le régime a arrêté les principaux dirigeants du mouvement de réforme, qui déjà militaient pour des élections démocratiques et la désobéissance civile.

Pour revenir à ce qui se passe de nos jours, le Printemps arabe a commencé en Syrie le 15 Mars 2011 (Jour de colère), quand deux étudiants ont été arrêtés et torturés parce qu'ils ont créé des graffitis anti-gouvernementale dans une petite ville dans le sud du pays. Le peuple a manifesté pour leur libération, et le gouvernement a répondu par des manifestations violentes qui ont déterminé l'escalade du conflit. Le président Bachar al-Assad a oscillé entre la répression des mouvements et des tentatives de réformes de l'État.

Au fur et à mesure du printemps 2011, des protestations se sont répandues et sont devenues plus violentes, en particulier dans le sud, où la frontière avec la Jordanie a été fermée et plusieurs villes (Daraa, Baniyas) ont été soumises par des milliers de soldats syriens. C'était l'occasion parfaite de la renaissance des Frères Musulmans en Syrie, qui ont essayé de coordonner les manifestations et d'aider les réfugiés. De même, la première condamnation internationale du régime syrien et les sanctions ont commencé à couler, du côté des voisins de la Syrie (la Turquie, la Jordanie, le Liban), le pays étant exclu de la Ligue arabe en novembre 2011. Jusqu'à la fin d'année 2011, le conflit a escaladé vers une vraie guerre civile.

En outre, il y avait un gouvernement en exil, le Conseil national syrien, mais les divisions internes l'empêchent d'être reconnu comme tel par les gouvernements occidentaux et arabes. L'opposition syrienne reste toujours un ensemble hétérogène de groupes politiques, les exilés politiques, des bénévoles et des militants armés trop profondément divisés idéologiquement pour être capables de réaliser même une stratégie rudimentaire pour éliminer le régime de Bachar Al-Assad.

En Février 2012, l'Assemblée générale des Nations Unies a adopté une résolution condamnant la répression en Syrie, mais la Chine et en particulier la Russie, longtemps le protecteur de la Syrie, a empêché des peines plus sévères. Ainsi, on a encouragé le régime d'Assad de lancer en Mars des assauts sanglants pour éliminer les rebelles. Donc, les efforts pour parvenir à un cessez-le-feu ont continué en Avril, avec le plan Annan en 6 points, qui prévoit une trêve sans que le président soit obligé de renoncer à ses pouvoirs. La Syrie a accepté le plan, mais une semaine après sa mise en œuvre, le Secrétaire général Ban Ki-moon a déclaré que le gouvernement syrien n'a pas mis en œuvre toutes les dispositions du plan

et donc, en l'absence d'une alternative viable, l'ONU a envoyé 300 observateurs en Syrie.

En mai, après un nouveau massacre en Syrie, où la plupart des victimes étaient des femmes et des enfants, de nombreux pays occidentaux ont expulsé les ambassadeurs syriens. En plus, toujours en mai, apparaissent les premiers avertissements d'une intervention militaire. En Juin, l'ONU a suspendu sa mission d'observation en Syrie en raison de escalade de la violence. Les actions répressives du régime syrien a conduit à des dizaines de milliers de réfugiés dans les pays voisins. En Juin on a estimé à environ 44 000 au Liban, 24.000 en Turquie, 4.000 dans le Kurdistan irakien et 120.000 en Jordanie.

D'autre part, le conflit en Syrie a donné les premiers signes qu'ils pourraient élargir quand, en Juin 2012, un avion de chasse turc a été abattu par le forces syriens anti-aérienne. Bien que la Syrie a déclaré qu'il a violé l'espace aérien syrien après la réaction sévère de la Turquie qui a convoqué une réunion du Conseil de l'Atlantique Nord, qui a condamné l'incident, le président Bachar Al-Assad a exigé des excuses officielles pour l'action, en disant qu'ils on cru que l'avion appartenait à l'armée israélienne.

Maintenant, après avoir brièvement mentionner les plus importants aspects de la chronologie du conflit syrien, je voudrais parler un peu sur l'intervention humanitaire, à la fois celle armée, mais aussi sur l'aide humanitaire offert par les ONG et le contexte international.

Premièrement, en ce qui concerne les organisations internationales humanitaires, aussi bien occidentales qu'orientales, on doit dire que le gouvernement syrien n'accepte pas les interventions des ONG. Si elles étaient autorisées à agir sur le terrain, leurs compétences et expertise pourraient atténuer de façon significative l'impact des violences et alléger les souffrances endurées par des centaines de milliers de Syriens. Jusqu'à présent, les demandes d'accès émanant des ONG humanitaires indépendantes et impartiales ont été bloquées, mises en attente par des exigences administratives du ministère des Affaires étrangères syrien. Et les organisations présentes en Syrie sont handicapées par les restrictions de mouvements émanant des autorités syriennes, qui empêchent leur déploiement dans les régions qui en ont le plus besoin. Par exemple, les Médecins sans Frontières qui, alors que les violences contre les civils s'intensifient, poursuit ses actions d'assistance au Moyen-Orient, y compris

l'aide médicale et psycho-sociale aux réfugiés et appui au personnel médical prenant en charge les blessés syriens trouvant refuge dans les pays frontaliers. Faute d'autorisation officielle pour intervenir en Syrie, Mdm apporte un soutien matériel aux réseaux de médecins syriens.<sup>8</sup>

Deuxièmement, par rapport à la communauté internationale et les divers positions des Etats, la communauté internationale ne veut plus accepter en silence que la survie de centaines de milliers de déplacés et personnes vulnérables en Syrie soit pris en otage par l'impasse politique actuelle. Comment ne pas être frappé par les apparences d'une guerre froide "réchauffée": Moscou et Pekin, dans un camp, Washington et l'Union européenne dans l'autre? L'obstination des Russes, qui pensent avoir enfin trouvé grâce au dossier syrien un leadership prometteur sur les Chinois, ne se limite pas aux trois vetos opposés aux Occidentaux au sein du Conseil de sécurité de l'ONU ni au soutien armé offert à Bachar el-Assad. Elle vise à organiser un front antioccidental bien plus vaste, susceptible d'attirer en priorité l'Iran, mais aussi les pays d'Asie centrale et jusqu'à l'Indonésie. L'autre invariant historique s'applique à trois anciennes puissances. Il s'agit de la Turquie, de la France et du Royaume-Uni, trois pays qui ont exercé, chacun à son tour et à sa manière, une domination coloniale sur le territoire de la Syrie ou sur ses environs immédiats. Même si le respect du droit international et la volonté louable de porter secours aux résistants syriens conduisent Paris et Londres à privilégier l'action humanitaire et l'envoi sur place de moyens non létaux. Paris et Londres marchent main dans la main dans l'hypothèse d'un engagement plus poussé en Syrie. Quant à la Turquie, elle surveille au plus près sa frontière sud, très préoccupée par l'autonomie que pourraient acquérir les Kurdes de Syrie, lesquels pourraient donner des idées aux 12 à 15 millions de Kurdes de nationalité turque (16 % de la population nationale).

On propose maintenant un exercice d'imagination car je veux proposer 2 scénarios pour la Syrie en prenant en considération ce qui s'y passe à présent. Le premier scénario est sur la gestion de la transition de la Syrie. En ce cas-là, le président Assad et son gouvernement perd le pouvoir et on commence le processus de transition. Les principaux changements seront, en premier lieu, liés au fait que, même si la majorité de la structure

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<sup>8</sup> "Syrie" dans *Médecins sans Frontières*, [<http://www.msf.fr/pays/syrie>], 12 octobre 2012.

de l'État reste en place et sa capacité et sa crédibilité s'affaiblir au fil du temps, les dirigeants de l'opposition vont conjuguer leurs forces avec les transfuges militaires et les responsables du régime de rang inférieur pour former une transition gouvernement.

Ensuite, des conflit de faible intensité continue depuis plusieurs années en Syrie jusqu'à ce que l'opposition obtient un durable transition politique; les réfugiés vont rentrer progressivement en Syrie. Dans le cadre de ce scénario, Assad pourrait quitter le pouvoir dans plusieurs façons - y compris un règlement négocié avec l'opposition, une certaine forme d'intervention extérieure (peut-être dirigé par la Turquie) ou même un militaire coup. Peu importe comment on gère la transition politique de la Syrie, les institutions publiques seraient affaibli non seulement par des mois de conflit, mais aussi par la méfiance entre le peuple et le gouvernement qui datent d'avant la guerre civile.

Le deuxième scénario suppose qu'ASAD reste au pouvoir après une prolonge de la guerre civile. Ainsi, dans ce scénario, la Syrie est en proie à une longue guerre civile au cours de la prochaine année ou plus. Asad conserve pouvoir, soutenu par l'Iran et la Russie, mais en fin de compte un faible contrôle de l'Etat. Ainsi, les rebelles détiennent un territoire marginal dans les régions périphériques, mais Asad écrase la majorité de la opposition dans le cadre d'une campagne qui comprend des massacres, des exécutions, la torture et à l'emprisonnement des rebelles et sympathisants civils.

## Conclusions

L'année 2011 s'est ouverte par une série d'explosions fracassantes de colère des peuples arabes. À l'évidence, le Printemps arabe incarne les espérances, les rêves et les idéaux d'un peuple en quête d'une vie meilleure, d'une plus grande liberté, d'une plus grande dignité, et d'une répartition plus vaste et plus juste des ressources et des débouchés économiques. Ainsi, le printemps arabe n'est pas un simple mouvement anti-impérialiste<sup>9</sup>, même si ce que se passe en Moyen-Orient à présent représente une grosse opportunité pour l'Occident de plusieurs points de vue. Si on essaie de voir au-delà des intérêts géopolitiques que l'Occident a

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<sup>9</sup> Georges Corm, *Histoire du Moyen-Orient. De l'Antiquité à nos jours*, Paris, La Découverte/Poche, 2007, p. 115.

dans cette région, on verra qu'en fait il s'agit des nations, de peuples qui cherchent à trouver leur place dans la société internationale, à définir leur rôle sur la scène politique mondiale. Pour réaliser cela, il faut premièrement faire un peu d'ordre au niveau national, consolider l'État, pas nécessairement par l'instauration de la démocratie comme régime politique, mais en trouvant une solution optimale pour chaque État, en fonction de ses particularités historiques, culturelles, religieuses. Afin de faire cela, il faut établir quels sont ces particularismes et comment elles ont influencé les nouveaux conflits de monde arabe.

Pour conclure, dans le cadre de la vague de manifestations et révolutions dans le monde arabe, les manifestants anti-gouvernementaux en Syrie demandent la liberté politique et manifestent contre le parti unique dictatorial perpétué pendant les dirigeants du pays par les présidents Hafez et Bashar Hafez al-Assad et aussi contre le gouvernement et les dirigeants militaires et les organes de sécurité en condamnant le chômage, la corruption et violations des droits humains dans le pays. Des manifestations de masse contre lesquelles le régime a réagi sans beaucoup de réticence, par des coups de feu, d'arrestations et de raids axés sur les quartiers et les localités rebelles, ont tourné avec le temps en une véritable guerre civile. En conséquence, des manifestations et des actes de rébellion se sont propagées dans tout le pays par la participation des musulmans sunnites (qui représentent environ 73% de la population de la Syrie) religieux et laïcs, et des membres de minorités, notamment les Kurdes (aussi des sunnites, mais pas arabes).

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## L'AIDE HUMANITAIRE ACCORDEE PAR LA ROUMANIE A LA FRANCE PENDANT LA DEUXIEME GUERRE MONDIALE

### HUMANITARIAN AID GRANTED TO FRANCE BY ROMANIA DURING THE SECOND WORLD WAR

Adriana Bichiș\*

#### Abstract

*The aim of the present article is to provide an analysis of the humanitarian aid granted to France by Romania during the Second World War. The article proposes an analysis of this humanitarian action message which the Romanian side wanted to transmit to France, namely not to appear as a German ally, but old friends connected with France both sentimentally and culturally. The humanitarian aid granted both on the initiative of the Romanian government and of private persons was conducted in two waves during 1943. We place this episode in the context of the Romanian-French diplomatic relations analysis during the Second World War, considering it as a success of the cooperation between the two states.*

**Keywords:** humanitarian aid, Romania, France, diplomacy, Second World War

L'étude ci-après traite d'un aspect de l'évolution des relations diplomatiques franco-roumaines dans le contexte de la Deuxième Guerre Mondiale, c'est-à-dire l'aide humanitaire accordée par la Roumanie à la France au cours de l'année 1943. Dans le cadre des rapports entre les deux pays, il est à retenir ces actions à caractère humanitaire faites par la partie roumaine, et à les ajouter aux moments de collaborations qui sont

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intervenues entre les deux parties, qui sont considérées comme une réussite de la diplomatie de cette période si sombre de leur histoire.

Toute analyse d'une opération d'aide humanitaire, où qu'elle se déroule, doit s'appuyer sur une vision d'ensemble intégrant aussi bien des réalités locales (politiques, militaires, sociales, économiques, religieuses, culturelles) que des facteurs tels que les logiques institutionnelles, le contexte international, une argumentation propre aux acteurs humanitaires concernés.

L'approche sur l'aide humanitaire accordée par la Roumanie à la France pendant la Deuxième Guerre Mondiale intègre plusieurs notions en interdépendance et sans ordre particulier : le mouvement, l'acteur, l'opérateur, le temps, l'espace humanitaire, le bénéficiaire, l'assistance et la nature de celle-ci, la référence à des valeurs et idéaux.

On essaiera d'analyser le message de l'aide humanitaire que la partie roumaine a voulu transmettre à la France, c'est-à-dire, que les Roumains ne se présentaient pas comme les alliés des Allemands mais comme des vieux amis liés d'un point de vue culturel et sentimental. Donc, l'aide humanitaire était motivée surtout par le résultat d'une longue histoire d'amitié entre les deux peuples. L'action généreuse faite par la Roumanie doit être analysée dans le contexte des circonstances spéciales dans lesquelles elle s'était produite, c'est-à-dire la guerre contre l'Union soviétique, mais aussi par les dimensions de l'allocation. On essaiera d'analyser aussi, les acteurs de cet aide humanitaire qui ont été : l'État, les Associations, le personnel diplomatique, les hommes politiques, les personnes privées, voir quel a été leur rôle ? Comment ils ont agi ? Quel a été leur but ?

La recherche qui a abouti à la rédaction de cette étude a consisté, d'abord, à savoir exactement ce qu'on a pu trouver dans les Archives du Quai d'Orsay et au Ministère des Affaires Étrangères roumain, puis à placer tous ces télégrammes, notes, aide-mémoires, dépêches, dans le contexte du sujet étudié, aussi bien au plan des relations franco-roumaines qu'à celui de la Deuxième Guerre Mondiale.

La recherche se propose de répondre aux suivantes questions : *Quelle est la motivation et la justification de cette action humanitaire ? Quels ont été les intérêts des acteurs (États, Associations, personnel diplomatique, hommes*

*politique, personnes privées) ? Quels sont les rapports entre l'humanitaire et la politique étrangère ?*

On ne peut pas faire une analyse de l'aide humanitaire hors de l'évolution de la politique étrangère des deux pays pendant la période étudiée.

La politique extérieure de ces deux États pendant la Deuxième Guerre Mondiale s'inscrit dans un ensemble de données parmi lesquelles la coïncidence idéologique et politique des régimes d'Antonescu et de Pétain, les rapports des deux pays avec l'Allemagne, les pertes territoriales subies pendant l'été de 1940, etc. L'analyse de la correspondance diplomatique pendant cette période, confirme que la tension entre les deux pays a été présente, les cas les plus significatifs étant l'expulsion des ingénieurs français de Roumanie pendant l'été de 1940<sup>1</sup> ; la décision de Ion Antonescu du 11 septembre 1940, « de ramener au rang de Légation ses Ambassades à l'étranger<sup>2</sup> », donc aussi l'Ambassade de Roumanie en France ; la présence de l'attaché militaire français en Roumanie<sup>3</sup> ; la crise des ressortissants français de Roumanie, etc. On doit souligner que dans tous ces cas la tension a été due à l'intervention de l'Allemagne.

Malgré ces moments, les rapports diplomatiques ont été marqués par la longue histoire d'amitié qui existait entre les deux pays. Déjà en août 1940, Henry Spitzmuller<sup>4</sup>, le chargé d'affaires français en Roumanie informait Vichy que « l'opinion roumaine, à la différence du

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<sup>1</sup> Pour ce sujet voir Archives du Ministère des Affaires Étrangères français Paris (ci-après AMEF), Fonds Guerre 1939-1945-Vichy, série Commerciales, sous-série Roumanie, dossier n° 345 et n° 346; AMEF, Fonds *cit.*, série Z- Europe, sous-série Allemagne, dossier n°102.

<sup>2</sup> AMEF, Fonds *cit.*, série *cit.*, sous-série Roumanie, dossier n° 675, f. 49.

<sup>3</sup> Pour ce sujet voir Archives du Service Historique de l'Armée de terre (ci-après ASHAT), Fonds P, série 3 P – Vichy, 2<sup>e</sup> bureau : État - Major de l'armée, dossier n° 106.

<sup>4</sup> **Spitzmuller (Raymond, Armand, Édouard, Henry)**, né le 17 mars 1900, licencié en lettres et en droit, diplômé de l'École des Sciences politiques; chargé de l'intérim de fonctions de 1<sup>er</sup> secrétaire à Bucarest, 29 janvier-1<sup>er</sup> mai 1936; chargé des fonctions de 1<sup>er</sup> secrétaire à Bucarest; 1<sup>er</sup> avril 1938, secrétaire d'ambassade de 1<sup>e</sup> classe, 10 août 1939; conseiller d'ambassade de 2<sup>e</sup> classe, 26 août 1940; conseiller d'ambassade de 1<sup>e</sup> classe, 1<sup>er</sup> avril 1945; ministre plénipotentiaire de 2<sup>e</sup> classe, 4 mars 1946. Source *Annuaire diplomatique et consulaire de la République française pour 1947*. Nouvelle série, tome LI, Paris : Imprimerie Nationale, 1947, pp. 569-570.

Gouvernement, est restée francophile au sens le plus large de ce mot »<sup>5</sup>. Un télégramme de février 1942, trouvé dans les Archives de Quai d'Orsay précise que « Le Maréchal Antonescu [...] avait répété une fois de plus au Ministère des Affaires Etrangères du Reich que la Roumanie gardait ses sentiments de reconnaissance à notre pays (la France) et qu'elle désirait voir conserver la position intellectuelle et culturelle qu'il occupait auprès de la majorité des Roumains<sup>6</sup> ».

À partir du début de l'année 1943, l'évolution de la guerre a imposé des changements dans les rapports franco-roumains. En ce qui concerne la France, à partir de novembre 1942, les Allemands ont occupé sa zone du sud, tandis que la Roumanie a continué sa guerre à côté de l'Allemagne, malgré la défaite de Stalingrad de février 1943. Au mois d'avril 1943, Dinu Hiott<sup>7</sup>, le ministre roumain à Vichy, faisant une analyse sur les rapports franco-roumains, conseillait à Bucarest de renoncer aux activités politiques envers Vichy et que l'action de la Roumanie devait se limiter au domaine sentimental et culturel, pour éviter l'impression que la Roumanie participait à la victoire totale de l'Allemagne sur la France. Il propose donc, le changement de la propagande roumaine en France.

On considère que l'aide humanitaire accordée à la France doit être mise dans ce contexte, et on va voir dans quelle mesure elle a réussi être un instrument de la nouvelle propagande roumaine en France ?

### **L'aide accordée par le Gouvernement roumain au mois de juin 1943**

Les premiers témoignages trouvés dans les Archives sur l'initiative roumaine de venir en aide de la France, commencent à partir de mois de mars 1943. Un télégramme du Quai d'Orsay précisait que « le Vice-

<sup>5</sup>André Godin, *Une passion roumaine. Histoire de l'Institut Français de Hautes Études en Roumanie (1924-1948)*, Paris: Harmattan, 1998, p. 128.

<sup>6</sup>Télégramme n°119, le 18 février 1942, Bucarest, AMEF, Fonds Presse, dossier n° 96.

<sup>7</sup>**Hiott, Constantin Dumitru** (25 octobre/7 septembre 1896-1967) il a été le fils de Constantin Hiott (ministre de la Maison Royale de la Roumanie) et Constanța de Gramont ; il est licencié en droit et titulaire d'un doctorat en économie à Paris ; il entre dans la diplomatie en 1921 ; il a exercé les fonctions de Conseiller à Varsovie et de Consul général à Bratislava ; ambassadeur extraordinaire et ministre plénipotentiaire de Roumanie en France entre 1940 et 1944 ; après la Deuxième Guerre Mondiale il reste en France, il a été mis en disponibilité en 1947. Sources AMEF, Fonds Vichy Guerre 1939-1945, série Z-Europe, sous-série Roumanie, dossier n° 676, f. 9 et f.12 ; Ana-Maria Stan, *Relațiile franco-române în timpul regimului de la Vichy 1940-1944*, Cluj-Napoca : Argonaut, 2006, pp. 561-562.

Président du Conseil a fait savoir à notre Ministre qu'il avait l'intention d'offrir soit à l'Université de Paris, soit à la Faculté de droit de Paris 10 tonnes de vivres et de cigarettes<sup>8</sup> ». Il s'agit de l'offre faite par Mihai Antonescu, le Vice-président du Conseil des Ministres roumain qui voulait aider l'Université de Droit de Paris où il avait fait ses études. Étant donné la situation dans l'hexagone, la France a répondu favorablement remerciant pour cette initiative roumaine : « notre ambassadeur a transmis au Vice-Président du Conseil les remerciements de l'Université de Paris pour ses dons<sup>9</sup> ».

Le 22 juin 1943, la Roumanie a envoyé un premier transport, des Entrepôts d'INCOOP de Dealul Spirii (Bucarest), transport contenant 3 wagons d'aliments, destinés à l'Université de Paris, deux wagons ; et aux enfants de Paris l'autre wagon<sup>10</sup>. Le télégramme du 1<sup>er</sup> septembre 1943, a annoncé au gouvernement roumain que les wagons de vivres envoyés à l'Université de Paris étaient arrivés à destination.

Le don alimentaire fait par le Gouvernement roumain a été très apprécié, et on a dans ce cas les lettres de remerciement adressées par le préfet de la Seine, René Bouflet, et par le maire de Paris, Pierre Taittinger, qui ont exprimé des sentiments de reconnaissance pour un « geste infiniment délicat et précieux ». Le Consul roumain à Paris a communiqué à Bucarest que « le geste du Gouvernement roumain a été chaleureusement accueilli par les autorités françaises et, au cours du mois de novembre, à l'Université de Paris aura lieu une solennité spéciale d'amitié<sup>11</sup> ».

Le second transport des vivres offerts à la France s'est effectué à partir de l'automne 1943, dans le contexte de l'arrivée d'un nouvel ambassadeur français à Bucarest.

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<sup>8</sup> Télégramme reçu à Vichy le 18 mars 1943, AMEF, Fonds *cit.*, série C-État français, dossier n° 66, f.55.

<sup>9</sup> Télégramme arrivé à Vichy le 3 avril 1943, AMEF, Fonds *cit.*, série *cit.*, dossier n° 67, f.7.

<sup>10</sup> Gavriil Preda, « Nouveaux témoignages documentaires sur les relations entre la Roumanie et le gouvernement de Vichy pendant la Deuxième Guerre mondiale » in *Guerre et société en Europe*, Bucarest : Éditions Europa Nova, 2004, p. 213.

<sup>11</sup> Archives du Ministère des Affaires Étrangères roumain Bucarest (ci-après AMER), Fonds 71/1920 – 1944. France, vol. 74, f. 148.

### Dans quel contexte arrive Paul Morand en Roumanie ?

Après le départ de l'ambassadeur Jacques Truelle de Roumanie le 19 juin 1943<sup>12</sup>, Paul Morand<sup>13</sup> y est nommé ambassadeur : « par deux décrets en date du 20 juillet 1943 d'une part, vous avez été promu Ministre plénipotentiaire de 1<sup>ère</sup> classe, d'autre part, vous avez été nommé Envoyé Extraordinaire et Ministre plénipotentiaire à Bucarest<sup>14</sup> ».

Ce qui est intéressant à souligner, c'est que la nomination de Morand comme ambassadeur de France à Bucarest était déjà prise en compte depuis l'automne de l'année 1942. Le 22 septembre 1942, l'ambassadeur Dinu Hiott écrivait à Mihai Antonescu qu'à Vichy circulait la rumeur que « monsieur Truelle allait être rappelé afin d'être remplacé soit par M. Paul Morand, ministre plénipotentiaire, soit par André Demaison, écrivain bien connu, actuellement directeur de la Radiodiffusion nationale<sup>15</sup> ». Mais le Secrétaire général du Ministère des Affaires Étrangères n'a pas confirmé la rumeur affirmant que « M. Laval n'a pas manifesté son désir de changer l'actuel ministre de France à Bucarest<sup>16</sup> ».

<sup>12</sup> **Truelle (Jacques-Marie)** né le 20 septembre 1881 à Paris. Il fait des études de droit et il est diplômé de l'École des Sciences politiques. Le 22 septembre 1940, il est nommé par Vichy « *envoyé extraordinaire et ministre plénipotentiaire à Bucarest* » où il reste jusqu'au 19 juin 1943 quand il quitte son poste pour rallier la France Libre. Pour la carrière diplomatique de Jacques-Marie Truelle voir *Annuaire diplomatique et consulaire de la République Française pour 1939*. Nouvelle série, tome. I, Paris : Imprimerie Nationale, p. 359.

<sup>13</sup> **Morand, (Paul-Émile-Charles-Ferdinand)** (13 mars 1888-24 juillet 1976) ; il est licencié en droit et diplômé de l'École des Sciences politiques, il entre dans la diplomatie en 1912. Après une carrière diplomatique en différents endroits (Londres, Rome, Madrid) le 16 août 1940 il a été placé à la disposition en qualité de conseiller d'ambassade de 1<sup>ère</sup> classe. Le 1<sup>er</sup> juin 1942 il a été réintégré en activité. Par deux décrets en date du 20 juillet 1943 il est promu Ministre plénipotentiaire de 1<sup>ère</sup> classe et Envoyé extraordinaire et Ministre plénipotentiaire à Bucarest. Il reste en poste à Bucarest jusqu'en mai 1944, et en juillet 1944 il est nommé par le Régime de Vichy Ambassadeur à Berne ; il est mis en disponibilité du Ministère des Affaires Étrangères français en 1945 à cause de sa collaboration avec le Régime de Vichy ; le 6 juillet 1955 il a été remis en fonction. Sources AMEF, Fonds Personnel 3 nominative, dossier personnel de Paul Morand, dossier n°177 ; *Annuaire diplomatique et consulaire de la République Française pour 1939...* ; Ginette Guitard Auviste, *Paul Morand : 1888-1976, Légendes et Vérités*, Paris : Hachette, 1981.

<sup>14</sup> Le Chef du Gouvernement, Ministre secrétaire d'Etat aux affaires étrangères à Monsieur Paul Morand, Vichy, le 28 juillet 1943, AMEF, *Ibidem*.

<sup>15</sup> Télégramme n°3154 envoyé par D. Hiott à Mihai Antonescu, Vichy, le 22 septembre 1942, AMER, Fonds Paris, dossier n° 33.

<sup>16</sup> *Ibidem*.

Ana-Maria Stan affirme que cet épisode de mois de septembre 1942 peut constituer un indice que Paul Morand souhaitait obtenir le poste de Bucarest<sup>17</sup>.

Un autre témoignage qui confirme que l'arrivée de Morand en Roumanie n'a pas été une décision de moment prise par le Gouvernement de Vichy on le trouve dans le Journal de Jean Mouton, le Directeur de l'Institut français à Bucarest de 1938 à 1946. Avant de quitter la Roumanie, Jacques Truelle lui rend visite et lui annonce son départ, mais aussi sur l'arrivée de son successeur : « Dans quelques temps, vous verrez arriver mon remplaçant. Ce sera Paul Morand. C'est un homme charmant mais ne l'écoutez pas<sup>18</sup> ».

Dans un entretien avec Stéphane Sarkany, le 4 août 1964, Paul Morand a fait le témoignage suivant concernant sa nomination en Roumanie : « Je connaissais le Maréchal Pétain depuis vingt ans, depuis 1923 exactement, où je l'avais rencontré chez des amis communs, chez la duchesse de Rohan ; je connaissais Laval...et je savais que cela était tout à fait conciliable avec ses sympathies anglo-saxonnes car Laval et Pétain m'avaient toujours dit : « Jamais nous n'entrerons en guerre contre l'Angleterre ou contre l'Amérique ». Je n'ai pas désiré ce poste, on me l'a proposé...Les Roumains me disaient : nous avons besoin d'une présence française pour contrecarrer la propagande de Gobbeles. Laval m'a envoyé, non pas pour être un agent actif, mais simplement pour être un agent passif, faire de la présence. J'avais beaucoup d'amis, ma femme était Roumaine, elle avait des intérêts (en Roumanie) et je ne cache pas que j'ai essayé de les liquider avant l'arrivée des Russes-ce en quoi d'ailleurs je n'ai pas réussi<sup>19</sup> ». On peut incliner à lui donner raison car l'évolution politique et militaire après novembre 1942 avait sérieusement limité le rôle des représentants de France à l'étranger, fait reconnu d'ailleurs par les responsables politiques de Vichy.

On peut aussi soutenir l'hypothèse que Paul Morand a été choisi pour ce poste grâce à ses conceptions politiques. Adepte de l'idéologie de

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<sup>17</sup> Ana-Maria Stan, *La France de Vichy et la Roumanie (1940-1944)*, Académie Roumaine, Cluj-Napoca : Centre d'Études Transylvaines, 2007, pp. 76-83, pp. 156-157.

<sup>18</sup> Jean Mouton, *Journal de Roumanie : 29 août 1939-13 mars 1946 : la Deuxième Guerre mondiale vue de l'Est*, Lausanne: Édition L'Âge d'Homme, 1991, p. 57.

<sup>19</sup> *Entretiens avec Paul Morand*, Paris : La Table Ronde, 1992, p. 92.



droite, avec des orientations antisémites déclarées, il paraissait être l'homme indiqué pour représenter la politique du Régime de Vichy dans une période aussi difficile que celle des années 1943-1944<sup>20</sup>.

Paul Morand est arrivé en Roumanie le 28 août 1943, et il a remis les lettres de créance au Roi Mihai I, le 16 septembre 1943.

Bien qu'il ait été catalogué comme ayant des sympathies pour l'Allemagne, qu'il n'ait pas été bien reçu par ses collègues de la Légation de France en Roumanie, que son poste en Roumanie devait se limiter à « informer » et à être un agent passif plutôt qu'un agent actif, la mission de Paul Morand en Roumanie a connu aussi des réussites et des moments de collaboration parmi lesquelles on peut nommer l'aide humanitaire accordée par la Roumanie à la France pendant l'automne de 1943.

### **L'aide humanitaire accordée à la France pendant la mission de Paul Morand**

Dans une entrevue que Morand a eue avec le Chef de l'État Roumain au mois de septembre 1943, et dans le cadre de laquelle le Maréchal l'avait questionné sur le ravitaillement en France, Antonescu a exprimé son désir de venir à nouveau en aide aux intellectuels et aux enfants de France sous-alimentés en effectuant des envois réguliers de vivres : « Obtenez des Allemands le passage de wagons et nous vous enverrons toute la farine qu'il faut pour vos enfants et vos intellectuels. La Roumanie ne demande rien en échange [...] Elle n'oublie pas la dette qu'elle a envers la France...Je n'ai jamais cessé de dire au Führer, répète le Maréchal qu'il ne devait pas demander à mon pays de rien faire contre la France ni contre d'autres à qui il doit tout. Et depuis 3 ans, je lui répète: « Vous ne pouvez détruire la France. Vous ne pouvez rien construire dans le monde sans elle<sup>21</sup> ».

Le 5 octobre 1943, le Ministère de l'Education Nationale avait déjà reçu du Maréchal Antonescu l'ordre de prendre les dispositions nécessaires pour commencer les expéditions. Paul Morand écrit à Vichy qu'il « compte proposer au Gouvernement roumain que les envois aient lieu chaque mois et soient adressés au Comité de la Reconnaissance Française qui précéderait

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<sup>20</sup> Ana-Maria Stan, *op. cit.*, p. 161.

<sup>21</sup> Télégramme envoyé par Paul Morand, le 10 septembre 1943, AMEF, Fonds Vichy Guerre 1939-1945, série Z-Europe, sous-série Roumanie, dossier n°686, f. 218-219.

à la répartition entre les Universités, les Groupements venant en aide aux intellectuels et les institutions charitables s'occupant des enfants sous-alimentés<sup>22</sup> ». Le 16 octobre 1943, on a un télégramme qui confirme que « 70 wagons d'aliments ont été offerts à l'œuvre de la Protection de l'enfance de France par la Roumanie <sup>23</sup> ». On peut supposer que la proposition de Paul Morand a été acceptée par Vichy car tout au long de l'automne de l'année 1943 la Roumanie a envoyé des vivres à la France et dans ce cas on a le télégramme de 16 novembre 1943 qui parle des « envois réguliers de vivres par le gouvernement roumain aux enfants et aux intellectuels français<sup>24</sup> ».

Au mois de décembre à cette initiative du Gouvernement roumain s'ajoute celle de la princesse Alexandrina Cantacuzino<sup>25</sup>, car le 1<sup>er</sup> décembre on a un télégramme qui confirme que « 14 wagons ont été offerts par la princesse Cantacuzino<sup>26</sup> ». Le 12 décembre 1943, Vichy a annoncé de nouveau que le Gouvernement roumain offrira 2 wagons de vivres aux enfants et universitaires français<sup>27</sup>. Ces deux wagons ont été expédiés le 14 décembre 1943, et un jour après on apprend qu'à Vichy des « instructions nécessaires ont été données pour l'acheminement des 16 premiers wagons<sup>28</sup> ». Le 16 décembre 1943, on a un télégramme qui annonce des nouveaux wagons de vivres destinés aux enfants de la France<sup>29</sup>.

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<sup>22</sup> Télégrammes n° 531-532 de Paul Morand adressés à Vichy, le 5 octobre 1943, AMEF, Fonds Papiers, Série Bureau d'études Chauvel, dossier n° 1, f. 244.

<sup>23</sup> Télégramme reçu à Vichy le 16 octobre 1943, AMEF, Fonds Vichy Guerre 1939-1945, série C-État français, dossier n° 73, f.26.

<sup>24</sup> Télégramme reçu à Vichy le 16 novembre 1943, AMEF, Fonds *cit.*, série *cit.*, dossier n° 74, f.24.

<sup>25</sup> **Cantacuzino, Alexandrina** (20 septembre 1876- septembre 1944) - représentante du mouvement féministe en Roumanie; elle a été la fille de Theodor Pallady, officier de carrière et d'Alexandrina. En 1899, elle s'est mariée avec l'homme politique Grigore Cantacuzino. Elle a fait partie des diverses associations qui militaient pour l'émancipation des femmes. En 1910, elle a fondé la Société Orthodoxe Nationale des Femmes. Elle a conduit plusieurs associations et organisations féministes parmi lesquelles l'Association la Maison de la Femme, la Société La Solidarité ou le Conseil National des Femmes Roumaines. Source George Marcu (dir.), *Dicționarul personalităților feminine din România*, București: Meronia, 2009.

<sup>26</sup> Télégramme reçu à Vichy le 1<sup>er</sup> décembre 1943, AMEF, Fonds *cit.*, série *cit.*, dossier n° 75, f.1.

<sup>27</sup> Télégramme reçu à Vichy le 12 décembre 1943, *Ibidem*, f.25.

<sup>28</sup> Télégramme partis de Vichy le 15 décembre 1943, *Ibidem*, dossier n° 75, f.31.

<sup>29</sup> Télégramme reçu à Vichy le 16 décembre 1943, *Ibidem*, f.33.

Le 18 décembre 1943, Paul Morand informe Vichy que tous les grands journaux roumains ont consacré dans les derniers jours des articles plus qu'élogieux à la France, à la pérennité de sa culture, à sa mission morale. Il donne un passage du journal roumain « l'Echo » qui écrivait : « La crise politique française actuelle n'a aucune influence, sur sa grandeur spirituelle...Quelle que soit la tournure des événements, l'Europe aura toujours besoin du soutien moral de la France. La culture de la France d'aujourd'hui constitue pour elle la meilleure garantie d'un brillant avenir<sup>30</sup> ». Dans le même télégramme il ajoute « on retrouve en ce moment le même note dans tous les milieux à tous les degrés de l'opinion : hommes politiques, universitaires, artistes, journalistes, cherchent à nous envoyer des vivres ».

De l'autre côté, le 27 décembre 1943, à la Radiodiffusion nationale a été transmise une allocution sur les dons roumains faits à la France, et le remerciement du gouvernement français pour cette action humanitaire<sup>31</sup>.

La presse française a salué aussi l'envoi des vivres et a écrit sur « ce geste splendide d'aide mutuelle » qui prouve « la générosité de la nation roumaine », et qui faisait « la preuve de l'amitié roumaine envers la France si difficilement marquée aujourd'hui ». Parmi les plus importants articles on peut nommer celui paru dans « l'Éclaireur de Nice » qui caractérisait l'aide accordée par la Roumanie de « preuve de sympathie qui est d'autant plus précieuse qu'elle vient, après beaucoup d'autres, de la part d'un pays qui lutte difficilement [...] Pour la Roumanie, les valeurs spirituelles sont encore dominantes. On la remercie de l'affirmer d'une manière si touchante<sup>32</sup> ». « Le Petit Journal » notait que « grâce au bienveillant appui du Maréchal Antonescu et de son gouvernement, ainsi que grâce à monsieur Dinu Hiott, le ministre de la Roumanie en France, des plus pauvres pourront vivre des moments heureux et pourront retrouver leurs forces<sup>33</sup> ». Un autre article qui mérite d'être pris en compte est celui paru dans le journal « Lyon républicain » qui précisait que « lorsqu'on pense aux

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<sup>30</sup> Télégramme envoyé par Paul Morand, le 18 décembre 1943, AMEF, Fonds *cit.*, série Z-Europe, Roumanie, dossier n° 679, f. 85.

<sup>31</sup> Télégramme reçu de Vichy le 27 décembre 1943, AMEF, Fonds *cit.*, série C-État français, dossier n° 75, f.53.

<sup>32</sup> AMER, Fonds 71/1920 – 1944. France, vol. 74, f.180.

<sup>33</sup> *Ibidem*.

sacrifices faits et endurés par le méritant peuple roumain, dès le début de la guerre, on ne peut pas assez admirer le geste fait pour notre pays<sup>34</sup>». Le geste humanitaire de la Roumanie a été apprécié même par le directeur du journal « l'Action française », l'académicien Charles Maurras qui a caractérisé cet épisode avec les mots suivants : « Majestueux présents de la Roumanie pour la France, des cadeaux si précieux pour notre tristesse [...] ils sont le témoignage d'une amitié que, décidément, rien ne peut ébranler, ni la guerre ou la révolution, ni même les moments de joies ou de malheurs, lesquels, ensemble, touchent, désespèrent ou consolent<sup>35</sup>».

Excepté les vivres, le gouvernement roumain a offert au Chef de l'État français aussi de l'essence. Un télégramme d'octobre 1943 confirme que « le Maréchal accepte le wagon d'essence offert par M. Dinu Hiott<sup>36</sup> » et un autre de janvier 1944 parle d'une nouvelle « fourniture d'essence par la Roumanie pour le Maréchal Pétain<sup>37</sup> ». La Roumanie a offert aussi des vivres aux Français de Grèce au cours de mois du janvier et février de l'année 1944.

On sait que mi-janvier 1944, tous les wagons étaient arrivés en France. D'après le rapport officiel, pendant le trajet on a perdu seulement quelques kg de bonbons<sup>38</sup>.

### **Quels sont les rapports entre l'action humanitaire et la politique étrangère ?**

L'épisode de l'aide humanitaire a représenté un bon moment pour faire une analyse sur l'évolution des rapports politiques entre les deux pays.

*Où peut-on situer l'aide humanitaire dans l'évolution des rapports politiques entre la Roumanie et la France et quelle en a été l'importance ?*

Comme nous avons déjà vu, l'aide humanitaire a été accordée tant d'une initiative politique (c'est-à-dire le Maréchal Antonescu, le Vice-président du Conseil) que de l'initiative privée (la princesse Cantacuzino).

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<sup>34</sup> *Ibidem*.

<sup>35</sup> *Ibidem*, f. 268.

<sup>36</sup> Télégramme parti du Vichy le 15 octobre 1943, AMEF, Fonds Vichy Guerre 1939-1945, série C-État français, dossier n° 73, f.25.

<sup>37</sup> Télégramme reçu à Vichy le 27 février 1944, AMEF, Fonds *cit.*, série *cit.*, dossier n° 77, f.31.

<sup>38</sup> Gavin Bowd, *Paul Morand și Romania*, București: Corint, 2008, p. 138.

D'une part, la Roumanie a essayé de ne pas associer cette aide avec le fait qu'elle était l'alliée de l'Allemagne et qu'elle faisait la lutte contre l'U.R.S.S à l'Est, donc l'initiative apparaît dissociée de la position politique officielle de la Roumanie. D'autre part, Mihai Antonescu a insisté auprès de Paul Morand sur le rôle joué par le régime de Bucarest dans l'offre des vivres accordées à la France « M. Mihai Antonescu m'a dit aujourd'hui en ce qui concerne les récents envois de vivres qu'il [...] tenait à souligner que l'idée et la réalisation du projet venaient du Gouvernement roumain plus que de l'initiative privée. Je lui ai répondu que j'avais déjà signalé à Votre Excellence ce sentiment fort délicat, mais que je le lui rappellerais à nouveau<sup>39</sup> ».

*Pourquoi cette décision de Bucarest ?*

Analysant les rapports de l'ambassadeur Hiott, on voit que comme en avril 1943, à la fin de l'année 1943, il insistait pour que l'aide humanitaire ne soit pas considérée comme une action politique. Dans un rapport du 28 décembre 1943, le ministre roumain affirmait que « la formule de l'envoi d'aliments étant dépourvue de caractère politique, et rendant possible le contact direct avec la population française, elle me semble la plus adéquate pour notre action en France<sup>40</sup> ». Après l'arrivée des vivres en France et leur distribution, Hiott conseillait à Bucarest d'avoir une attitude précaire dans ses relations avec le Gouvernement de Vichy. Dans un télégramme envoyé au mois de janvier 1944 il précisait que « l'état d'esprit en France, les tendances et les espoirs de l'opinion publique font inutile –pour ne pas dire inopportune et même dommageable - une action politique et de propagande de la part de la Roumanie qui mettrait l'accent sur la lutte à l'Est, ainsi que sur le spectre du danger bolchevique. C'est pourquoi, comme j'ai souvent attiré l'attention dans mes rapports, si nous voulons maintenir et affirmer notre présence en France, il s'impose de montrer que si la Roumanie est engagée à l'Est dans une lutte pour son existence, et pas seulement qu'elle ne s'est pas éloignée d'une attitude de neutralité et d'amitié vis-à-vis des autres pays d'Europe, et que spécialement en ce qui concerne la France, elle veut développer au dessus des orientations politiques, les relations spirituelles traditionnelles. C'est

<sup>39</sup> Télégramme n°69 signé Paul Morand adressés à Vichy, le 17 janvier 1944, AMEF, Fonds Papiers, Série Bureau d'études Chauvel, dossier n° 1, f. 251.

<sup>40</sup> AMER, Fonds 71/1920 – 1944. France, vol. 74, f.160.

clair qu'ici nos préoccupations doivent avoir un caractère culturel et sentimental<sup>41</sup> ».

On ne peut pas analyser les rapports de l'ambassadeur Hiott hors du contexte dans lequel se trouvait la France après novembre 1942 quand elle a perdu sa souveraineté sur le sud du pays, sa flotte, son Empire et a vu restreindre son appareil diplomatique à l'étranger, soit par rupture des relations, soit par démission ou passage à la dissidence du personnel en poste. On ajoute aussi les effets économiques, d'après novembre 1942, quand l'Allemagne a augmenté les frais d'occupation imposés à la France pendant l'été de 1940 ; les travailleurs français demandés par l'Allemagne ; la baisse de niveau de vivre des français, etc. Donc, étant donné la difficile situation de ce pays, on trouve juste le message de l'ambassadeur Hiott disant que la Roumanie ne pouvait pas être associée à l'Allemagne, et à la guerre qu'elle faisait contre la France.

Si on met cet épisode dans le triangle « franco-roumain-allemand » on peut comprendre l'attitude et la position de l'ambassadeur Hiott.

*Quelle a été l'importance de cette aide humanitaire ?*

Morand expliquait à Pierre Laval l'importance de l'aide humanitaire avec les mots suivants : « À l'heure actuelle la Roumanie est, à côté du Portugal, le seul pays d'Europe que ne connaît pas de restrictions alimentaires. Les limites qui ont été imposées il y a deux ans pour la consommation du pain, du sucre et de la viande ont été abolies récemment. Bien que les prix aient augmenté vertigineusement, on trouve encore des produits alimentaires, et la belle récolte de cette année a accentué la prospérité. Le Gouvernement roumain, appuyé sans réserve par l'opinion publique, a essayé de profiter de cette situation pour manifester encore une fois sa sympathie active pour la France sous-alimentée. L'aide a pris deux formes : la concession de la quantité des produits exportables, destinés aux services français, et l'envoi de vivres, sous la forme d'une donation faite par le Gouvernement roumain ou autres autorités roumaines<sup>42</sup> ». D'après le ministre français, cet épisode « humanitaire » a représenté la seule occasion

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<sup>41</sup> Télégramme n°253 signé D. Hiott, le 25 janvier Vichy, *apud* Gavin Bowd, *op. cit.*, p. 135.

<sup>42</sup> Télégramme n° 196 envoyé par Paul Morand, le 17 décembre 1943, *apud* Gavin Bowd, *op. cit.*, p. 135.

qu'il a eue d'un contact direct avec le baron von Killinger<sup>43</sup>, et le seul but a été l'envoi des vivres en France.

Dinu Hiott affirmait que la signification de ce don devait rester celle d'une aide venue de la part d'une « nation affectée par des mutations territoriales et par une guerre sanglante » qui partageait donc le même sort que la France.

En ce qui concerne la position de Mihai Antonescu exprimée à Paul Morand, on peut lier cette attitude avec le fait que le Vice-Président du Conseil des Ministres roumain cherchait déjà en 1943 à entrer en contact avec les Alliés et à négocier la sortie de la Roumanie de la guerre. Donc, dans ce contexte on peut comprendre son attitude.

### Conclusions

L'aide humanitaire accordée par la Roumanie à la France représente un des aspects de l'évolution des rapports diplomatiques franco-roumains, et est considérée comme une réussite de la diplomatie de ces années marquées par le déroulement de la Deuxième Guerre Mondiale.

On est d'accord aussi avec l'affirmation de Gavin Bowd, qui dans le livre cité, soutient que ce geste humanitaire voulait masquer aussi la dure réalité des rapports commerciaux qui existaient entre la Roumanie et la France.

Cette activité humanitaire a représenté aussi un nouvel instrument de la propagande roumaine en France dans les moments où les domaines politique et économique passaient par une zone d'ombre.

Même si la Roumanie participait activement à la guerre, elle a trouvé les moyens d'aider le pays avec lequel elle était liée du point de vue

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<sup>43</sup> **Manfred von Killinger** (1886-1944) diplômé et homme politique Allemand. Il devient membre du NSDAP en 1928 où il occupe plusieurs fonctions dans le cadre de S.A. Entre 1933 et 1937 il a été commissaire du Reich et président de Conseil des Ministres au Land Saxe. En 1937 il entre dans le Ministère des Affaires Étrangères Allemand. Entre 1937 et 1939 il est nommé consul général à San Francisco. Il est promu ministre plénipotentiaire de première classe et il est envoyé spécial pour les problèmes balkaniques. Entre juillet et décembre 1940, il est ministre plénipotentiaire à Bratislava. Le 25 décembre 1940, on décide de l'envoyer en Roumanie, après la rébellion légionnaire de janvier 1941. Il a été le chef de la Légation allemande de Bucarest jusqu'en 1944 ; à partir de février 1941 il devient aussi consul général pour tout le territoire de la Roumanie. En août 1944, il se suicide avec sa secrétaire à Bucarest.

culturel et spirituel. Paul Morand résume très bien la situation de la Roumanie de cette période-là : « La Roumanie vit une sorte d'euphorie. La récolte a été excellente, on mange du pain blanc, l'inflation a rempli beaucoup de bourses, les affaires marchent, les traitements des fonctionnaires viennent d'être relevés de 30%. Panique et euphorie, voilà une singulière contradiction. Elle est celle de la Roumanie à la veille de l'hiver 1943-1944 [...] Les Roumains ont conscience d'être au bord de l'abîme, mais pas un d'entre eux ne doute qu'un miracle ne doive les sauver<sup>44</sup> ».

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Dossier n° 75- Idem (1<sup>er</sup> décembre 1943- 31 décembre 1943);

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<sup>44</sup> Télégramme de M. Paul Morand à M. Pierre Laval, Bucarest, le 23 octobre 1943, AMEF, Fonds Vichy Guerre 1939-1945, série Z-Europe, sous-série Roumanie, dossier n° 690, f. 84-87.



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## CORRECTIVE JUSTICE AND ITS ALTERNATIVES: AN ANALYSIS ON EUROPEAN CONSUMER LAW \*

Juanita Goicovici\*\*

### Abstract

*The article elaborates on the concept of corrective justice and its reverberations in European Consumer Law, by decoupling corrective justice from its alternatives – punitive justice and utilitarian justice – based on the role played by professionals' fault in the economy of each type of legal reasoning. The main objective is to deliver a set of characteristics for the applications of corrective justice in Consumer Law and to observe, through the means of a brief inventory of the legal remedies, the role played by corrective justice in erasing disequilibria existing between professional parties and profane consumers, in response to the presumably intrinsic vulnerability of the latter. The paper is centred on the way corrective justice theories overpass the traditional fault-based approaches to professionals' liability, thus court's sentence being meant to 'correct' an economic or a psychological harm, instead of punishing deviant behaviour. As opposed to 'punitive justice', avoidance of reference to professional's fault represents one of the major characteristics of 'corrective justice', along with the focusing on the eradication of inequitable harm, rather than on the preventive, educational or social impact of the judicial sentence. As opposed to the 'economic' or 'utilitarian' approaches of European Consumer Law, 'corrective justice' valorises the trial result not in terms of economic distribution of resources, but in terms of complete satisfaction of the victim, from the angle of recovered damages.*

**Keywords:** corrective justice, utilitarian justice, punitive justice, morality of duty, morality of aspiration, European Consumer Law

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\* This research was supported by the National Authority for Scientific Research CNCSIS – UEFISCSU, through project PN II-PD-RU 396/2010. E-mail:.

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## 1. Preliminary notes on the deontological theories of Consumer Law

Contemporary inequalities between the parties of commercial contracts, such as the professional vendors or service providers and the profane, unadvised consumers of goods and services represent one of the major themes, in contemporary legal thought. Such inequalities can be observed from an informational, psychological or financial angle. While in traditional Contract Law, buyers were requested to play a vigilant role, while accumulating by their own efforts the information needed for the clarification of consent, recent European Consumer law<sup>1</sup> changes the perspective, enhancing disequilibria existing between professional parties and profanes, in terms of information on characteristics of goods<sup>2</sup>, for

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<sup>1</sup> The references are made with respect to contemporary trends in European Consumer Law, though parts of the present analyse are allocated to the discussion of the Romanian Consumer regulations. See, for important discussions, Walter Doralt, "The Optional European Contract Law and Why Success or Failure May Depend on Scope Rather than Substance" in *Revue des Contrats* no. 4, 2011, p. 1321-1348; E. H. Hondius, "The Proposal for a European Directive on Consumer Rights: a Step Forward" in *European Review of Private Law* no. 1, 2010, p. 108-116.

<sup>2</sup> The recent Consumer Rights Directive 2011/83/EU published in the EU's Official Journal of 24 November 2011, includes an express provision that EU Member States will adopt and publish, by 13 December 2013, the laws, regulations and administrative provisions necessary to comply with this Directive. Under the new Directive, all EU consumers will generally be able to return products bought online within a fortnight of receiving them, in order to receive a full refund. While current laws give consumers the right to return distance-sold goods within seven days, Article 9 of the Consumer Rights Directive 2011/83/EU establishes that the consumer will have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than some supplementary delivery costs and the cost of returning the goods, unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them.

Customer-specified or personalised products are among the goods to which the new right of return will not apply. Under the new Directive, the right of withdrawal will neither apply to goods made to the consumer's specifications or which are clearly personalised such as tailor-made curtains, nor to the supply of fuel, for example, which is a good, by nature inseparably mixed with other items after delivery. Other contracts excluded from the incidence of the withdrawal rights are those referring to the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery; the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications and contracts concluded at a public auction. Current legislation also excludes the mentioned contracts from the domain of the consumer's right to revoke his or her consent. The traders will have to issue online

example, or on the manufacturing chain<sup>3</sup>. On the other versant, contractual culture has significantly changed over the last two decades. As observable for contemporary Consumer Law, provisions protecting the consumer, in one's quality of 'vulnerable party', are multiplying, especially in the field of hyper-dangerous contracts as generators of financial debts, alimeted by the amount of discrepancies present between professional and profane parties, in terms of information, finances or psychological balances of power<sup>4</sup>. Commandments such as the solidarity between contractual parties, the moralization of contractual relations, the transparency rule or the behavioural coherence became more and more stringent<sup>5</sup>.

Though consumption exacerbated or not, took a decisive place in all human cultures, it is only in the last decades that it began *foundational* for human societies, rather than being merely epiphenomenal. As underlined by scholars, in terms of availability of consumer goods, 'luxuries' came to be seen as mere 'decencies', while, later, 'decencies' came to be seen as 'necessities'<sup>6</sup>, serving as a kind of visual proof of social or financial status or merely as psychological means of deflation for fearful conduct. The wanting and desiring of goods became, in fact, a generalised mode of being, and an inner self-satisfactory activity, on a truly mass scale. Modern hedonism may seam different from traditional hedonism, at least in terms of intensity, also changing perspectives in terms of business morals.

Despite its apparent simplicity, the concept of contractual morals is able to hide multiple meanings. First, one of the fundamental approaches of contractual morals is *intuitional*, being constructed on the edges of an immutable paradox: moral rules concerning commercial contractual

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consumers with a 'model withdrawal form' set out in Annex I(B) of the Directive, that could be used to return the product. Other information traders must provide consumers includes details of the main characteristics of the products and services being sold, contact information such as name and geographical address of the business and the total price of what is being sold, including extra fees and charges.

<sup>3</sup> See, for a good account of the arguments of that debate, Jean Carbonnier, *Flexible droit*, Paris: L.G.D.J, 2001, p. 122.

<sup>4</sup> For further arguments, see Paul Vasilescu, "Un chip al postmodernismului recent: dreptul consumatorului", in Paul Vasilescu (ed.), *Consumerismul contractual. Repere pentru o teorie generală a contractelor de consum*, Cluj-Napoca: Sfera Juridică, 2006, p. 5-62.

<sup>5</sup> See G. Brunaux, *Le contrat à distance au XXIe siècle*, Paris: L.G.D.J, 2010, p. 122-126.

<sup>6</sup> Peter Corrigan, *The Sociology of Consumption*, London: SAGE Publications, 1997, p. 2.

relationships are articulated around the 'moral' indisposition experienced by contemporary European societies against cultural extravagances, false expectations and social disappointment. 'Intuitive morality' thus marks the profound post-modern hiatus between 'utility' and 'rightfulness', 'functional' and 'ethical', 'utile truth' and 'veritable truth'.

The second approach to morality of commercial contracts is a *historical* one, exploiting the individual's impulse of living in accordance with his or her *perfectibility*, despite societal discrepancies and dysfunctions<sup>7</sup>. Beyond Kant's idealism, each human being formulates the problem of moral conduct in terms of finality: 'respecting morals', naturally, but interrogating on the purpose and, more importantly, on the means of action.

From the beginning, contractual morality – both individual and collective – delivers a set of *prêt à porter* norms of conduct, implying a Moses' separation of waters between profit oriented commercial conduct and expected ethical behaviour. The concept of contractual morality has thus generated a fundamental dichotomy between 'judicial rule' and 'moral rule', corresponding to the classical opposition of 'judicial' or 'proven' truth and 'ethical' or 'substantial' truth. Are the two coincident, distanced or superposed, in contemporary Consumer Law? Traditionally, solving the mentioned dilemma preoccupied notorious authors, whose rhetoric discourse on Christian morality of business remains essential for posterior legal thinking<sup>8</sup>.

In the lines below, we attempt to develop on the main features of corrective justice applied to Consumer Law, which may be stated as follows:

(i) Corrective justice theories overpass the traditional fault-based approaches to professionals' responsibility, as court's sentence is

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<sup>7</sup> For the historical approach to the contractual deontology, see Eugeniu Sperantia, "Droit laïque, droit transcendant et obligativité" in *Analele Facultății de Drept din Cluj* no. 3, 1942, p. 91-103.

<sup>8</sup> See Georges Ripert, *La règle morale dans les obligations civiles*, Paris: L.G.D.J., 1949, p. 58-67. For a recent discussion, see I. L. Preston, "Interaction of Law and Ethics in Matters of Advertisers' Responsibility for Protecting Consumers" in *Journal of Consumer Affairs* vol. 44, no. 1, 2010, p. 259-264.

meant to 'correct' an economic or psychological harm, not to punish deviant behaviours;

(ii) Corrective justice is opposed to 'punitive justice', not only by avoidance of reference to professional's fault, but also by focus on eradication of inequitable harm, rather than on the preventive, educational or social impact of the judicial sentence;

(iii) As opposed to the 'economic' or 'utilitarian' approaches of Consumer Law, corrective justice valorises the trial result not in terms of economic distribution of resources, but in terms of complete financial satisfaction of the victim;

(iv) Corrective justice is centred on individual compensation and not on the social good provided by the judicial sentence, though not entirely ignoring the latter.

## **2. The moralities of duty and of aspiration in legal judgement**

Moral or deontological theories on European Consumer Law differ among themselves, but they have in common the fact that they begin with the postulate of individual justice, not with that of social good, as paradigm for consumer's right to just compensation in defective contractual relationships with the professionals of industries, commerce and services. They attempt to indicate the main borderlines of the idea of corrective justice, especially as it might contrast with a more utilitarian system of legal thought and, secondly, to decouple corrective justice and punitive justice by showing that, in the field of contemporary Consumer Law, the content of corrective justice might turn on conformity rights, safety rights or on contract rights, regardless the implications of professional's fault.

The topic of corrective justice finds its debut in the postulate of the existence of a wrong committed upon the consumer's person or goods by a professional of industries, commerce or services, the 'correction' of which the legal remedies implied are meant to ensure. One of the salient aspects of professionals' liability illustrating the application of the corrective justice theory is that of manufacturer's liability for defective products, entitling the prejudiced consumer to the full covering of his or her damage<sup>9</sup>, while

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<sup>9</sup> It should be noted that, in terms of manufacturers' liability for physical injury and economic harms caused to consumers by defective products, regulated at the European Union's level by Directive 85/374/EEC of the European Parliament and of the Council of 25



dispensing the consumer from the difficult burden of proving manufacturer's fault. Thus, in terms of corrective justice, defendant's fault does not represent an essential feature of responsibility, manufacturers' liability being a concept constructed on objective, fault-distanced premises. In each case in which a defect causing infirmity, death, physical or moral harm or merely collateral economic damages to the consumer may be related to the manufacturing process, the manufacturer is called to 'correct' the wrong caused to the victim, by covering the individual financial damages, as an risk associated to the business profit-orientation, without the need of investigating the eventual fault in the presence of the manufacturing defect.

In the following, the above considerations on the concept of corrective justice are juxtaposed with the broad lines of the moralities of duty and of aspiration, as applicable to the problematic of contemporary Consumer Law. Characteristically the morality of duty postulates the existence of basic legal rules without which an ordered relationship – contractual or extra-contractual – between professionals and profane consumers is impossible. In the perimeter of Consumer Law, due to the public (or generalised) nature of the interests at stake (all the members of society being consumers, at times), it is the legislator who would be charged with the responsibility of deciding whether certain commercial conducts are illicit or honest and thus permitted<sup>10</sup>. Shortly stated, the morality of aspiration describes individual's efforts to make the best use of his or her life, though failing to postulate what is the highest good of

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July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, modified and completed by Directive 1999/34/EC of the European Parliament and of the Council and transposed in the Romanian legal system by Law no. 240/2004 on manufacturers' responsibility for damages generated by defective products, legal research pertaining to the use of unsafe products typically addresses the differences between 'substantial defects' (defects due to the manufacturing process or to the product conception) and 'information defects' (consumers' misled, intended or negligent, by the use of incomplete information). See, for further comments, Georges Taormina, *Théorie et pratique du droit de la consommation*, Aix-en-Provence: Librairie de l'Université d'Aix-en-Provence, 2004, p. 212-228.

<sup>10</sup> See, for instance, the text of Romanian Law no. 363/2007 on repressing illegal commercial practices in contracts concluded by consumers and the harmonization of national law and the European Communities Law in the field of consumers' protection, as well as the Law no. 296/2004 (Consumer Code).

human existence. In terms of aspiration, the consumer is usually viewed as seeking to equalise the return for the money spent on goods and services.

As underlined by Fuller, “the morality of duty finds its closest cousin in the law, while the morality of aspiration stands in intimate kinship with aesthetics (...) the morality of aspiration starts at the top of human achievement; the morality of duty starts at the bottom.”<sup>11</sup> In this broad sense, there is an assumed implication of reciprocity to be observed in the very notion of ‘duty’, as consumption contracts are bilateral by nature, both parties – consumer and professional – having reciprocal rights and duties derived from the same contractual relationship<sup>12</sup>. For instance, from the angle of the conformity of products warranties, the consumer has the legal duty of addressing the professional vendor during a maximum period of two months since the manifestation of defectiveness, while upon the vendor’s shoulders lays the burden of remediation in a ‘reasonable’ period of time<sup>13</sup>, each party’s failure to compel with the legal conditions or duties being a source of legal responsibility.

While the majority of rules pertaining to Consumer Law are the epiphany of the morality of duty as applied to legal judgement, there are episodic judicial norms derived from the morality of aspiration as, for instance, professional’s obligation to surrogate his or her professional decision to consumer’s poor choice, every time respecting client’s preferences during the execution of the concluded contract (on services provided, for example) would potentially prejudice human life or physical integrity.<sup>14</sup> ‘Loyalty, solidarity, fraternity’ thus became the new slogan of

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<sup>11</sup> L. L. Fuller, *The Morality of Law*, London: Yale University Press, 1969, p. 15.

<sup>12</sup> Liviu Pop, *Tratat de drept civil. Obligațiile, Regimul juridic general sau Ființa obligațiilor civile*, Bucharest: C.H. Beck, 2006, pp. 214-215.

<sup>13</sup> As stated by the Romanian Law no. 449/2003 on commercialization of goods and associated warranties.

<sup>14</sup> It is, for instance, the case of engineering services that should have been refused to client due to poor technical conditions, in order to avoid the crumbling of the building and thus the endanger of human lives. See, for the French jurisprudence on the mentioned principle, as source of inspiration for the Romanian courts, Phillippe le Tourneau, Loic Cadiet, *Droit de la responsabilité et des contrats*, Paris: Dalloz, 2000, p. 1245. The same reasoning may be reiterated for medical interventions requested by the consumer, seen as unjustifiably dangerous by the professional provider of the medical services.

contractual liability, as observed by the scholars commenting recent jurisprudence.<sup>15</sup>

Curiously, several areas of Consumer Law permit the simultaneous application of both theories of morals, the morality of duty and that of aspiration, such in the case of gambling contracts, for instance. Contemporary legal regulation of gambling and games represents a territory that is shared in common by the concepts of aspiration and duty. Traditionally, the Romanian Civil Code, much like its source of inspiration, the French Civil Code, distinguishes between games of skill (a) and games in which the outcome is determined by chance<sup>16</sup>. While, in the first case, participants' duty to pay the sum at stake to the winner is compulsory, in the latter only the voluntary payment of the stake is licit, in the case of chance games the stake being not a licit object of judicial action. Consumer Law copies the major borderlines of the classic dichotomy, adding that, in the case of games and gambling with authorised organisation, it is in fact a contract of services agreed between each participant and the professional organiser. Confronted with the necessity of distinguishing between gambling for small stakes and games as innocent amusement, on one hand, and gambling in its more harmful and addictive forms, the legislator does not encourage gambling between individuals (games without a professional organiser), establishing that the stake could not be pursued in front of courts against the loser who has nor voluntarily paid the stake. From the point of view of the morality of aspiration, non sportive games are thus seen as an activity not worthy of man's capacities; for this type of morality, gambling is not seen as a violation of a duty, but as a form of human conduct unbecoming with human capacities.

There are however a few serious attempts to come to grips with the problem of defining the morality of aspirations as related to its 'poor cousin', the utilitarian vision of the legal norm, as once theorised by Jeremy Bentham. The latter's attempts of constructing a valid utilitarian matrix of legal reasoning have not being exempted from criticism, as already

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<sup>15</sup> See, for further comments, Denis Mazeaud, "Loyauté, solidarité, fraternité: la nouvelle devise contractuelle?", in Denis Mazeaud (ed.), *L'avenir du droit. Mélanges en hommage à François Terré*. Paris: Dalloz, Presses Universitaires de France, 1999, pp. 603-612.

<sup>16</sup> See articles 1636-1638 of the Romanian Civil Code, as well as Governmental Ordinance no. 99/2000, with regard to the advertising lotteries.

observed by Fuller: "Bentham's attempt to substitute for the goal of excellence that of pleasure was in effect simply to introduce into morality the same covert default that is inveterate in economics. It is impossible to maintain the assertion that all human striving is directed toward pleasure unless we are willing to expand the notion of pleasure to the point where it becomes, like utility in economics, an empty container for every kind of human want or striving."<sup>17</sup> A territory exists, therefore, that is shared in common by the concepts of utilitarian justice, contractual solidarity and the morality of aspiration. In the following, we will be focusing on the visibility of moral roots not only at the level of Romanian Consumer Law, but also in European Contracts Law, between the pathos of legal harmonisation and the prudence of integration.

Jamin proposes a four-sided classification of contractual solidarity reverberations over contemporary business relations<sup>18</sup>: (a) contractual liability for unethical behaviour, (b) professionals' duty to inform and advise then profane partners, (c) manufacturers' liability for defective products, (d) creditor's duty to actively minimise potential prejudice, aside debtor's efforts. The French specialised literature remains a salient reference point for Romanian Commercial Law, due to the common Romanist roots of both legal systems; thus the French Commercial Law is seen to be the generating field of a generous, ethically preoccupied matrix of Private Law, the main colonnades of which are the transparency principle and the rational concern for the commercial partner's best interests.

### 3. Moral indifference and contractual individualism

As opposed to the contemporary principles of jurisprudence, contractual individualism represented a pattern of contractual behaviour centred on unemotional, rational distribution of justice between creditor and debtor, in a process in which rigid application of legal norms was vacuumed of spiritual considerations. From the utilitarian point of view, dominant at the beginning of the twenty second century, contracts judicial

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<sup>17</sup> L. L. Fuller, *op. cit.*, p. 18.

<sup>18</sup> Christophe Jamin, "Plaidoyer pour le solidarisme contractuel", in Denis Mazeaud (ed.), *Le contrat au début du XXIe siècle. Études offertes à Jacques Ghestin*, Paris: L.G.D.J., 2001, pp. 441-449.

force was to be found in the idea of mere utility brought by the contractual arrangement on each party's interests: in terms of business relations, 'rightful behaviour' simply meant 'pragmatic behaviour'.

Often accused to be hedonistic in its most intimate nature, the utilitarian analyse of Contracts Law seemed to contradict the very idea of contractual morality, as criterion for courts of law's decisions in matters of contractual unlawful breakage or contractual misconduct. More recently, several jurisprudential trends both at national level (in legal systems of Romanic tradition, as those of France, Italy, Belgium etc.) and at the European Union's level, by adopting harmonised ethical standards for contractual behaviour between professionals and consumers<sup>19</sup>.

Harmonization of contract law at the European Union's level valorised, though indirectly, common deontological principles applicable to commercial relations, such as the transparency principle or the loyal information principle, as shown by the Principles of European Contract elaborated by the Lando group or of the University of Trento's studies on the subject of the Common Fund of European Private Law, as well as the series of casebooks sponsored by Professor Van Gerven or the ample project of The Study Group on an European Civil Code hosted by Professor Von Bar.<sup>20</sup> In addition to academic effort, the European Parliament adopted several resolutions inviting to a codification of the European Private Law, while the European Commission published on July 11, 2001, a communication regarding the *European Contracts Law*, inviting lawyers, academia, the civil society and all other interested parties to present their opinions concerning initiatives on harmonisation of European Contracts Law. What it is hoped is the elaboration of a European Civil Code, which is at the moment an extremely delicate mission, in the presence of multiple disparities and divergent traditions in national legal systems. Judicial mechanisms, such as repression of abusive clauses (i), professional's duty to discourage consumers' unsafe conduct (ii), manufacturers' liability for

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<sup>19</sup> As materialised, for instance, in the text of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts and Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising.

<sup>20</sup> D. Fasquelle, P. Meunier, *Le droit communautaire de la consommation. Bilan et perspectives*, Paris: La documentation française, 2002, p. 109.

damages caused by unsafe products (iii), commercial parties' duty of coherent conduct (iv) concretise moral principles once ignored by profit oriented, economic analyses of Contracts Law<sup>21</sup>.

Nevertheless, contractual solidarity represents more an egalitarian view over contractual relations than an infinitely tolerant one; in fact, Contracts Law disposes of a small margin of evolution when it comes to responsibility for contractual compliance and sanctioning of negligent debtor, as the judicial assistance of creditor implies an intrinsic right in obtaining contractual performance or, respectively, penalties infringed upon culpable debtor, rather than the application of the Christian principle of turning the other cheek or of endless forgiveness (of the other party's "seventy times seven" mistakes). Let us note, however, that though only Christian in part (and secularised in the other), contemporary trends in contractual jurisprudence are nonetheless influenced by traditional biblical spirituality. It is true that creditor's mere appearance in a court of law in pursuit of contractual compliance contradicts the Christian commitment of repeated forgiveness; this aspect represents, however no denial for the presence of other biblical principles in the conflict solving between commercial parties, such as the transparency principle (i), the contractual fidelity principle (ii), the rule of honest counselling of profane partner (iii) or the coherence principle (iv).

Thus the solidarity vision over Contracts Law is rather preoccupied of equity than of infinite indulgence. At least for the consumerist version of contractual solidarity, it may seem difficult to identify a firm moral trend, while the judicial assistance provided by the legislator for the "vulnerable party" represented by the consumer of goods and services is materialised in technical remedies for the counterbalance of informational, economical or psychological disequilibrium between professional vendors and profanes buyers. If warnings like 'beyond consumerism, there is nothing worse left to experience' are to be trusted, the 'new religion' of the latest century seems to be that of consumption, basically *a-moral*, though preoccupied of equitable justice.

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<sup>21</sup> Eugene Poillot, *Droit européen de la consommation et uniformisation du droit des contrats*, Paris: L.G.D.J, 2006, pp. 87-89.

#### **4. Is corrective justice the answer for contractual responsibility?**

To argue the connection between moral commandments of equal chances between contractual parties and contemporary multiplication of withdrawal rights consented to consumers by national legislator, we will introduce again in the discussion the progressive formation of agreements theory. One of the major areas of Consumer Law decisively influenced by the 'corrective justice' argument is that of withdrawal or retract rights allocated to consumers in the perimeter of contracts concluded online or distance agreements, thus re-equilibrating the informational and psychological disparities existing between the professional party and the profane one at the beginning of the contractual relationship<sup>22</sup>.

Online exchanges, by their very nature, are remote exchanges over which consumers have limited physical control and no physical access to those providing the service at the time. By the means of the legal rights of withdrawal, as those exercised in the case of distance contracts, the presumably vulnerable consumer has the possibility to renounce the effects of his or her undertaking, by sending notice within a period of not less than seven days from product receipt, in accordance with the procedure laid down by national law, the giving of the notice having the effect of releasing the consumer from any obligations under the cancelled contract. Retract of consent remains the cornerstone of consumers' protection at the conclusion of contracts producing, in the legislators' vision, dangerous or simply ample patrimonial effects. The legal rights of retract have the judicial nature of discretionary rights, by which we understand the fact that the reasons for the right exercise is not subjected to the judgment of courts, as the consumer is bind by no duty to motivate his/her retract. Furthermore, the non censurable exercise of consumers' right to retract the prior assent does not depend upon any action or reaction of the professional party to the contract and the notification of the professional upon the exercise of the unilateral retract right exonerates the consumer of any contractual obligation the denounced contract may have primarily generated, with the only exception of the consumer's duty to return the product to the vendor, subsequent to contract dissolution<sup>23</sup>.

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<sup>22</sup> It is also the case of off-premises contracts.

<sup>23</sup> The legislator presumes the insufficiency of information during pre-contractual relations, as the consumer needs a supplementary period if time in order to clearly evaluate the risks

The contractual formation process implies, in the mentioned cases, that the original consent provided by the consumer is insufficient for the contract to be legally binding, the legislator presuming the insufficiency of information during pre-contractual relations, as the consumer needs a supplementary period of time in order to clearly evaluate the risks and the opportunities attached to the respective contract. Accordingly, the consumer's prior assent needs to be doubled by a secondary (final) consent to the same convention, which is to be expressed during the period of 7, 10 or 14 labouring days since the provisional contracts had been signed. Only the secondary assent is able to finalize the bargain formation, as a confirmatory judicial acceptance act needs to take place in order for the bargain to become legally binding for the consumer, by non-using, upon his/her will, the retract discretionary right allocated by law. The retract right implies for the consumer a judicial power of control over the formation of the contract, the progressive character of which represents the most important feature.

From another perspective, the legal faculties of contract breakage have as an objective the retardation of the agreement making process, representing cases of progressive formation of consent. The proposed theory surpasses the traditional criteria of establishing the withdrawal rights main sphere of incidence, implying an analysis of the opposability between the restrictive thesis and the extensive thesis regarding the withdrawal rights main sphere of incidence.

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and the opportunities attached to the respective contract, as in the case of *off-premises contracts, contracts agreed at distance, including electronic bargains and credits offered to consumers*. Accordingly, the consumer's prior assent needs to be doubled by a secondary consent to the same convention, which is to be expressed during the period of 7, 10 or 14 labouring days since the provisional contracts had been signed. In our opinion, only the secondary assent is able to finalize the bargain formation, as the confirmatory judicial acceptance act needs to take place in order for the bargain to become legally binding for the consumer, by non-using, upon his/her will, the discretionary right of contract cancelling allocated by law. Notification of the professional upon the exercise of the unilateral retract right exonerates the consumer of any contractual obligation the denounced contract may have primarily generated, with the only exception of the consumer's duty to return the product to the vendor, subsequent to contract dissolution. Omission of professional vendor to inform the consumer on the existence of the legal right of retract is sanctioned by automatic extension of the legal period of retract to 60 labouring days, according to article 10 of Romanian Governmental Ordinance no. 106/1999 on off-premises contracts, modified.



Simply stated, the test is whether, if the judicial instrument of the retract rights is used by the legislator to temporize the formation of certain commercial contracts, considered to present a exceptional amount of economic risks for the consumer, as a contractual party, the excessive debt will be avoided to a substantial amount or, on the contrary, the lack of judicial education and of information would retain consumers from exercising their discretionary legal rights. A corollary to the matter mentioned above is that, since the professionals vendors are compelled to respect the discretionary character of the legal rights of retract, the legislator should be more preoccupied to elaborate future concrete norms describing the sanctions enforceable in case of rights violations, as contemporary legal texts do not always sufficiently stretch the legal powers allocated to the National Authority for the Protection of Consumers representatives and does not offer details on the concrete role allocated to the consumers' organizations, regarding the defence of individual or collective interests of their members.

Without going into detail, we only wish to point to the fact that the intensity of this already installed competition between 'corrective justice' and 'punitive justice' depends on whether legislator's first choice, with regard to a particular legal norm, is to banish certain business practices in the relationship between professionals and profane consumers, thus setting the grounds for a more educative and preventive judicial technique and favouring punitive justice or it is that of simply re-equilibrating the economic balance between the two parties of a commercial contract, thus opting for corrective justice. For instance, in the case of illicit comparative advertising or in that of misleading advertising<sup>24</sup>, it is punitive justice that prevails, implying as necessary the proof of the advertising beneficiary's or author's fault and being centred on the punishment of illicit or manipulating commercial messages. As emphasized by scholars with regard to legal repression of misleading advertising, "in the case of research on the consumer's interests, a manipulation check becomes even more important because critical public policy and consumer protection

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<sup>24</sup> As regulated, for instance, in Romanian Consumer Law by Law no. 148/2000 on advertising and by Law no. 158/2008 on misleading advertising and comparative advertising.

implications may emanate from the results of the research, and lack of a manipulation and/or a confound check could result in policy decisions based on invalid or inaccurate results. For example, in studying the perceptions of potentially misleading advertisements, two different messages may be developed for testing. The research may be assessing the level of potential financial or other harm that might result from consumer processing of one or both of these messages. In the design, it is important for the advertisements to be identical, with the exception of the specific “misleading” variable being manipulated.”<sup>25</sup>

In other words, the balance between corrective justice, directed at the re-equilibrating the two patrimonies of professional and consumer, and punitive justice, oriented towards the repression of fault does not cease to aliment the legal thought, as observable for various branches of Consumer Law.

### **5. Corrective justice vs. utilitarian approaches of justice**

The following paragraphs try to contrast corrective justice approaches to European Consumer Law issues with economic or utilitarian approaches. Indeed, the apparently irreconcilable opposition between corrective justice and utilitarian approaches of Consumer Law is only correct at certain specific levels of analysis. The main point shown by both these theories of Consumer Law is that professional’s fault is not essential to corrective justice regime, nor is it to utilitarian or economic justice.

As reminded above, recent developments of Consumer Law propose a more delicate and attentive perspective on consumers’ contractual position, professionals being called to favour transparency, loyalty and honesty in the relationship with profane buyers, with the risk of paying contractual damages for not compelling with the mentioned duties. The contractual solidarity thus offers the matrix of a virtuous and generous Contracts Law, a sort of judicial temple the main colonnades of which are the duty of mutual assistance between the contractual parties and the favouring of partner’s interests. Applied at first to civil liability for contractual damages, the contractual solidarity ended its evolution by being enforced upon professionals of industries, commerce and services in

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<sup>25</sup> M. B. Royne, “Cautions and Concerns in Experimental Research on the Consumer Interest”, in *Journal of Consumer Affairs* no. 3, 2008, p. 480.

terms of specific obligations, such as *the duty of information and consult, the duty of safety* and *creditor's duty to actively minimize the potential prejudice* resulting from debtor's failure to accomplish the contractual obligations.

Contemporary contractual solidarity finds its roots in the utilitarian analyses of law, as economic-impregnated visions of synthesis between the antagonistic interests of the contractual parties<sup>26</sup>, reunited on the field of altruistic and tolerant patience. Paradoxically, the original utilitarian theories of law, as applicable in traditional common law systems, had few of the amounts of beatitude and indulgence that its 'product', the continental contractual solidarity preaches, being more likely the source of unemotional, calculated business conduct. The criterion used to distinguish judicially enforceable contracts from merely principia agreements, and the non compulsory from imperative is the economic one: *the just is the utile*, in its pragmatic appearance.

Let us exemplify the antagonistic results of the application of the two systems of compensation in the field of manufacturers' responsibility for physical damages caused by defective or unsafe products. By the means of 'utilitarian justice', the professional defendant may be acquitted on the grounds of the social interest brought by the promoted technical innovation, even if in certain cases the consume of the product caused illness, injuries or the death of human beings, or in terms of the 'risk of development', the manufacturer may be exonerated by arguing that the level of scientific development at the time of the product launch on the market did not allow the manufacturer to discover the damaging defect, thus eventually testing its innovation on consumers. On the contrary, in terms of 'corrective justice, the fact that the launch on the market of an innovative product may represent a social progress represents no excuse for the eventual existence of an unreasonable risk associated to consume of that product and therefore justifies consumer's request for compensation, despite the potential progress brought for the society by that technical innovation; thus, 'corrective justice' postulates that an injured consumer should be completely and equitably financially compensated by the

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<sup>26</sup> See Cristiana Dana Enache, *Clauzele abuzive în contractele încheiate între profesioniști și consumatori*, Bucharest: Hamangiu, 2012, pp. 185-240, for a presentation of relevant jurisprudence on unfair contractual terms.

manufacturer and that the victim should not be forced to give up his or her claim for the sake of common good or societal welfare.

As stated above with regard to Consumer Law, corrective justice is preoccupied with the re-establishment of the equilibrium between the patrimonies of the two parties, the professional manufacturer, vendor or service provider and the profane consumer, without conditioning consumer's compensation by the proof of defendant's fault, usually difficult to reconstitute by the consumer, the only conditions of compensation remaining those of the proof on defect existence, the prejudice and on the direct relationship between the registered prejudice and professional's misconduct, in response to consumer's presumed vulnerability: "Consumer vulnerability is a state of powerlessness that arises from an imbalance in marketplace interactions or from the consumption of marketing messages and products. It occurs when control is not in an individual's hands, creating a dependence on external factors (e.g., marketers) to create fairness in the marketplace. The actual vulnerability arises from the *interaction* of individual states, individual characteristics, and external conditions within a context where consumption goals may be hindered and the experience affects personal and social perceptions of self."<sup>27</sup>

Other taxonomies were created in order to make sense of various theoretical developments in the legal application of moralities. Dobbs and Hayden<sup>28</sup> talk about three strategies of dealing with the diversity of moral approaches in legal thinking:

(1) *the corrective justice strategy* mainly employed in Consumer Law, which focuses on emphasizing the need for equilibrating consumer's patrimony, by condemning the professional to the payment of damages in order to fully cover consumer's prejudice, disregarding apparent differences in terms of defendant' fault, as long as the plaintiff manages to prove a manufacturing, design or informational defect, a prejudice and a

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<sup>27</sup> D. E. Garrett, P. G. Toumanoff, "Are Consumers Disadvantaged or Vulnerable? An Examination of Consumer Complaints to the Better Business Bureau", in *Journal of Consumer Affairs* no. 1, 2010, p. 3.

<sup>28</sup> See Victor Schwarty, Kathryn Kelly, David Partlett, *Torts*, New York: New York Foundation Press, 2000, p. 899.

direct relationship between professional's activity and the producing of prejudice;

(2) *the punitive strategies* that focus on ranking existing differences in stages of moral development and on the preventive and educational purpose of the judicial sentence, thus conditioning defendant's condemn on the proof of the latter's fault;

(3) *the moderate or utilitarian strategies* proposed in the economic analyses of law, that accept the plurality of views on morality and focus on the economic impact, as well as on the social reverberations of the punishment (as for instance, in the case of condemning the author of the misleading advertising to the payment of a certain percent of its business profit and to the publishing of the official judgment, thus affecting its commercial reputation).

To state the standard of duty for professionals of industries, commerce and services is first to decide whether the safety standard has been breached in the relationship with the consumer, a legal territory on which unreasonable risk becomes the central topic. What makes a risk unreasonable? Discussion can explore the question whether a risk-utility balance applied to the damaging product is a desirable way of judging professionals' responsibility than the criterion of manufacturer's fault – almost impossible for the consumer to prove, as the latter did not witness the manufacturing process.

From the angle of the Romanian Consumer Law, in cases when the defective product merely damaged itself, the plaintiff is not allowed to seek damage relief on the grounds of the manufacturers' responsibility for consume safety<sup>29</sup>, the only option remaining invoking vendor's warranty for products conformity<sup>30</sup>. Adequate protection of the consumer requires

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<sup>29</sup> In terms of Law no. 240/2004 on manufacturers' responsibility for damages generated by defective products, modified. Please note that, under the conditions of manufacturer's liability towards consumers, the imputable damage only includes: (a) the damage caused by death or by personal injuries; (b) the damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of 500 euros, provided that the item of property is of a type ordinarily intended for private use or consumption and was used by the injured person mainly for his own private use or consumption.

<sup>30</sup> As regulated by Romanian Law no. 449/2003 on sales of products and associated warranties; also see the text of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

compensation for death and personal injury, as well as compensation for damage to property; nevertheless, whereas the latter are limited to goods for private use or consumption and are subject to a deduction of a lower threshold of a fixed amount of 500 euros, in order to avoid litigation in an excessive number of cases, the European Directive provisions do not prejudice compensation for pain and suffering and other non-material damages payable, where appropriate, under the law applicable to the case. What is 'defective', in terms of manufacturers' liability towards consumers? Legal theory and practice on manufactures' responsibility retained that a product is 'defective' when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including the presentation of the product, the use to which it could reasonably be expected that the product would be put and the time when the product was put into circulation; however, a product is not considered defective for the sole reason that a better product is subsequently put into circulation.

Let us note that manufacturing defects describe an accidental flaw in the manufacturing process, usually non perceivable by manufacturer's representatives (*e.g.* engine defects, engine imperfections, accidental misconstruction of one component). Manufacturing flaws are easily measured against like products (safe products, manufactured as intended); in other words, in these cases, aberrations of manufacturing may be tested against the norm to determine whether a product is defective.

As to design defects, courts and authors have struggled with the concept of what constitutes defective design of a product, as in opposition to manufacturing products, where a safety standard already exists (represented by non defective products, manufactured as intended on a regular basis), design defects do not benefit from an objective / alternative standard. Originality or unique character of design usually complicates analyzes, as the courts weigh non homogenous factors, such as product functions, aesthetical aspects or presence of alternative design on the market. In addition, it is in the field of defective design that manufacturers may be exonerated on the basis of the 'risk of development' concept, as the manufacturer may free himself from liability if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered.

For instance, in the field of the manufacturers' responsibility for the prejudice caused by the consume of a pharmaceutical product presenting a manufacturing defect, the product concerned may be declared 'unsafe for human consume' simply if the risks resulting from its utilization are excessive, even if mentioned on the medicine prospect, only medicine representing the sole cure for a serious disease being excepted from the application of the mentioned rule. Additionally, it should be underlined that, in the field of pharmaceutical products safety, the 'unsafe for consume' character may result both from the lack of information offered to consumers by the manufacturer or the distributor, on the potential risks associated to consume and from the disproportionate character of the implied risks, in comparison with the benefits attributed to the consume of medical drug<sup>31</sup>.

At least originally, the system of manufacturers' liability for damages caused by unsafe or defective products thus has its roots in the theories of corrective justice. Ultimately, the moral content of the approach on manufacturers' responsibility is derived from the idea that an injured consumer should be completely and equitably financially compensated by the manufacturer and that the victim should not be forced to give up his or her claim for the common good. To this respect, all utilitarian arguments are abandoned: the fact that the launch on the market of an innovative product may represent a social progress does not excuse the eventual existence of an unreasonable risk associated to consume of that product and therefore justifies consumer's request for compensation, despite the potential progress brought for the society by that technical innovation. As reminded above, corrective justice – as illustrated by the case of manufacturers' liability for defective products – focuses on the individual need for equitable compensation associated to physical harm caused by the consume<sup>32</sup>, all social or collective interests becoming marginal.

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<sup>31</sup> As regulated by Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use.

<sup>32</sup> Let us note, however, that most of the compensations allocated to the injured consumer are obtained in practice from the professional's fund of insurance (as those for certain types of malpractice, for instance). See Rodica Diana Apan, *Protecția juridică a consumatorilor. Creditul destinat consumului și domeniile conexe*, Cluj-Napoca: Sfera juridică, 2007, p. 132; Stéphane Piedelièvre, *Droit de la consommation*, Paris: Economica, 2008, p. 34-57.

## 6. Conclusive remarks

Moral theories on European Consumer Law share the fact that they begin with the postulate of individual justice, instead of social good, as paradigm for consumer's right to just compensation in defective contractual relationships with the professionals of industries, commerce and services. These theories attempt to indicate the main borderlines for the idea of corrective justice, especially as it might contrast with a more utilitarian system of legal thought and, secondly, to decouple corrective justice and punitive justice by showing that, in the field of contemporary Consumer Law, the content of corrective justice might turn on conformity rights, safety rights or on contract rights, regardless the implications of professional's fault. Though still pre-eminent in areas such the regulation of comparative advertising and misleading advertising messages, 'punitive justice' constantly cedes the place to 'corrective justice' in other fields of European Consumer Law, as illustrated by the manufacturers' liability for defective products or the imperative conformity warranties.

As opposed to the 'economic' or 'utilitarian' approaches of European Consumer Law, corrective justice valorises the trial result not in terms of economic distribution of resources, but in terms of complete satisfaction of the victim, from the angle of recovery damages; as proved by the system of manufacturers' liability for damages caused by unsafe or defective products, the importance of the individual need for equitable compensation associated to physical harm caused by the consume surpasses that of social or collective interests in technical or economic progress. Corrective justice also contrast with 'punitive justice', not only but avoidance of reference to professional's fault, but also by focus on eradication of inequitable harm, rather than on the preventive, educational or social impact of the judicial sentence. Also in terms of corrective justice, defendant's fault does not represent an essential feature of responsibility, professionals' liability being usually a concept constructed on objective, fault-distanced premises. Far from being a mere legal 'extravagance', the corrective justice, at least in terms of European Consumer Law, allows national legislator and courts to close the door on any less tangible rationale for handling injuries resulted by consume, admitting consumers' intrinsic vulnerability and their need for equitable chances.



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**Laura Maria Herța, *De la relațiile româno-sârbe la relațiile româno-iugoslave. Interpretări constructiviste (Des relations roumano-serbes aux relations roumano-yougoslaves. Interprétations constructivistes)*, Cluj-Napoca : EFES, 2012, 182 p.**

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La thèse de Laura Herța, *De la relațiile româno-sârbe la relațiile româno-iugoslave. Interpretări constructiviste (Des relations roumano-serbes aux relations roumano-yougoslaves. Interprétations constructivistes)*, apporte une contribution significative à l'analyse de la pensée socio-constructiviste et constitue une excellente réflexion pour quiconque s'intéresse à l'évolution et à la dynamique des théories des relations internationales.

L'auteure nous fait bien comprendre dès le début son intérêt pour une thèse sur les relations roumano-yougoslaves ; de même, l'auteure a opté pour la segmentation de sa démarche scientifique en plusieurs volumes car, pour comprendre les continuités et les discontinuités dans les relations bilatérales, il a fallu une recherche sur une période beaucoup plus longue que celle initialement envisagée. Ainsi, le présent volume se concentre sur l'analyse des interactions entre la Roumanie et la Serbie, puis entre la Roumanie et l'Yougoslavie jusqu'au moment de l'instauration des régimes communistes en Europe de l'Est. Par ailleurs, le livre a été publié en 2012 sous l'Édition de la Fondation pour les Études Européennes (EFES).

L'auteure délimite aussi dès le début le périmètre scientifique couvert par sa thèse ainsi que la méthodologie utilisée. Par conséquent, dans un premier temps, il ne s'agit pas d'une démarche théorique ou synthétique mais analytique et explicative. Cela veut dire que l'auteure ne se propose pas de formuler une théorie des relations bilatérales qui soit ultérieurement exemplifiée par les relations roumano-yougoslaves; plutôt elle entend sélectionner ces relations bilatérales, les décrire, les analyser et expliquer leur évolution. Deuxièmement, les méthodes de recherche qui ont constitué la base de la documentation pour ce travail sont historiques. Mais troisièmement, l'auteure fait appel également à un certain

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instrumentaire conceptuel développé par les auteurs socio-constructivistes (Alexander Wendt, Nicholas Onuf et Friedrich Kratochwil) pour expliquer la manière dont les relations roumano-yougoslaves ont évolué. Finalement, l'intention de l'auteure n'est pas de tester la validité de la théorie socio-constructiviste par son applicabilité aux relations bilatérales étudiées, mais de démontrer que tout au long de l'examen des dynamiques de ces relations interétatiques et de l'observation de certains comportements, l'approche socio-constructiviste semble être la plus appropriée et la plus féconde en explications. Autrement dit, l'auteure n'entend pas faire l'éloge du socio-constructivisme en se servant de la nature des relations roumano-yougoslaves et en risquant ainsi de forcer l'applicabilité de la théorie sur l'étude de cas, mais son but est d'analyser l'étude de cas afin de démontrer que la plus convaincante approche est l'approche socio-constructiviste car elle offre le plus d'explications. Le caractère novateur de ce travail est conféré par l'approche constructiviste sur les relations interétatiques roumano-serbes et roumano-yougoslaves.

Dans la première partie du volume, l'auteure se demande comment la théorie socio-constructiviste peut nous aider à mieux comprendre les relations roumano-serbes et roumano-yougoslaves. Ainsi, Laura Herța nous fait tout d'abord une incursion, essentielle d'ailleurs pour une meilleure compréhension, dans la théorie socio-constructiviste, en évoquant sa genèse, ses précurseurs et ses représentants ainsi que ses principales hypothèses. Plus précisément, elle synthétise très bien l'évolution du concept en nous expliquant que la théorie socio-constructiviste est apparue dans le milieu académique aux années 1980 sur le fond du débat « néo-néo » (néoréalisme vs néolibéralisme), et elle a été perçue initialement comme une tentative fragile de comprendre la politique internationale, comme une approche réflexive, pas encore testée, qui ne contestait pas réellement les théories dominantes déjà existantes (le néolibéralisme mais surtout le néoréalisme). Après la guerre froide, le potentiel de validité de cette approche a commencé par être plus largement accepté justement parce que les théories dominantes n'ont pas réussi à surprendre la transformation politique majeure sur le plan international à savoir la dissolution d'un des centres de polarité. La décision de Gorbatchev d'affaiblir son empire a contredit l'hypothèse réaliste de

maximisation du pouvoir et l'ordre international émergent, fondé sur l'unipolarité, a mis en évidence les lacunes de la théorie néoréaliste.

L'auteure continue cette incursion en s'arrêtant sur les précurseurs de la théorie socio-constructiviste à savoir les membres de l'École Anglaise (Hedley Bull, Martin Wight, Adam Watson, James Mayall, Robert Jackson, R. J. Vincent, Tim Dunne et Nicholas J. Wheeler) mais aussi Peter L. Berger et Thomas Luckmann avec leur travail sur la sociologie du savoir, *The Social Construction of Reality* paru en 1966. L'auteure ne manque pas de nous préciser que le terme « constructivisme » a été employé pour la première fois dans la littérature de spécialité du domaine des relations internationales par Nicholas Onuf en 1989.

La thèse centrale de l'École Anglaise, nous dit l'auteure, est que le système international d'Etats est fusionné dans une société d'Etats qui comprend des normes, des valeurs, des règles et des institutions reconnues et acceptées par les Etats et qui rendent ainsi possible le fonctionnement du système. Les Etats, en tant que membres de cette société, comprennent et acceptent qu'ils ont certaines responsabilités les uns par rapport aux autres mais aussi par rapport à la société dans son ensemble; de ce fait, ils poursuivent leurs propres intérêts, non pas sous l'égide *gagne qui peut quels que soient les coûts et les moyens*, mais en vertu des responsabilités assumées et identifiées dans le droit international et dans la diplomatie. Autrement dit, dans la société internationale, les Etats sont conscients des valeurs et des intérêts communs et agissent dans les limites et contraintes imposées par un ensemble de règles acceptées, même s'ils se trouvent dans des conditions d'anarchie (au sens de l'absence d'une autorité politique placée au-dessus des Etats souverains).

En continuant cette réflexion, Laura Herța examine la contribution de Peter L. Berger et de Thomas Luckmann, deux auteurs de référence préoccupés par une nouvelle modalité à travers laquelle la sociologie doit étudier la réalité ainsi que par la construction sociale de la réalité (c'est d'ailleurs ce que nous montre le titre de leur travail). Ainsi, l'auteure surprend ce que les deux se proposent à savoir de « redéfinir la tâche de la sociologie du savoir » qui jusqu'à ce moment-là avait été préoccupée « par l'histoire intellectuelle au sens de l'histoire des idées ». La nouvelle tâche auto-assumée par Berger et Luckmann part du fait que les « idées » ne sont qu'une part de la sociologie du savoir et n'en forment donc pas la

centralité. En d'autres mots, le rôle des idées, entendu comme expression théorique sur la réalité, n'épuise pas ce qui est « réel » pour tous les membres d'une société; c'est pourquoi, « la sociologie du savoir doit donc se préoccuper par la construction sociale de la réalité ». Laura Herța avance ensuite que, pour Berger et Luckmann, la construction sociale est fondée sur la dualité objective et subjective de la réalité. « La réalité objective se présente à l'individu comme indépendante de celui-ci, même si elle est le produit de l'action sociale, alors que la réalité subjective réside dans la conscience de l'individu, est maintenue ou altérée par des interactions quotidiennes ». La thèse fondamentale du travail de Berger et de Luckmann est que, par les interactions, les individus créent des mondes sociaux par l'intermédiaire d'une activité linguistique et symbolique afin de donner de la cohérence à l'existence humaine. De ce fait, la société est plus qu'un système amorphe, elle est une construction composée de symboles, d'idées, de significations qui contraignent et rend possible l'action humaine mais qui est en même temps constamment modifiée par l'action humaine.

L'auteure insiste bien sur le fait que l'élément distinctif du socio-constructivisme est justement son engagement par rapport au pouvoir des idées, des normes et des valeurs partagées par les acteurs. En effet, le constructivisme met l'accent sur les faits idéationnels, sur le rôle des idées et des normes dans la constitution des comportements. Ainsi, le constructivisme s'arroge la revendication scientifique de révéler la modalité par laquelle le savoir, constitué d'idées, de symboles, de concepts, de significations et de pratiques discursives, modèle la façon dont les agents comprennent, interprètent et construisent le monde.

En suivant cette même logique, Laura Herța nous présente ensuite la démarche constructiviste d'Alexander Wendt, démarche qui se concentre sur l'idée selon laquelle les intérêts et les identités sont construits. Par ailleurs, cette démarche repose sur trois théories que l'auteure développe par la suite à savoir le réalisme scientifique, l'interactionnisme symbolique et la théorie de la structuration. Prenons-les séparément.

En ce qui concerne la théorie de la structuration, l'auteure note que celle-ci a été développée par Anthony Giddens dans son travail *The Constitution of Society*, le concept fondamental dans cette théorie étant la *routinisation*. En effet, la routine est l'élément de base de l'activité quotidienne, terme qui surprend justement le caractère routinier de la vie

sociale et qui s'étend dans l'espace et dans le temps. La répétitivité des activités menées quotidiennement crée ce que Giddens appelle « la nature récursive de la vie sociale ». Ainsi, pour Giddens, remarque l'auteure, les actions humaines sont, d'une part, prédéterminées, au sens où elles dépendent d'une structure sociale préexistante (qui, à son tour, est gouvernée par des règles, des normes et des lois), mais la structure et les règles ne sont pas permanentes, immuables et exogènes; elles sont maintenues, modifiées et recrées par l'action humaine.

L'interactionnisme symbolique représente la perspective sociologique qui dérive des préoccupations et de l'œuvre de George Herbert Mead, œuvre selon laquelle les individus, tout au long de leurs interactions sociales, opèrent avec des symboles et des significations associés aux actions des autres, à l'aide desquels ils définissent et construisent leur propre identité et comprennent certaines situations en fonction de la co-présence des autres; ainsi, « par l'interaction basée sur des symboles et par le maintien des significations partagées sur les objets sociaux, la réalité sociale est construite ». C'est pourquoi, la clé de l'analyse de Mead est le concept de *geste*. Pour Mead, l'interaction n'est pas une succession de faits ou d'actions mais un processus qui a lieu entre *gestes*. Ce qui me semble également important à retenir est que le terme d'« interactionnisme symbolique » a été ensuite théorisé par le disciple de Mead, Herbert Blumer. Dans son travail, *Symbolic Interactionism: Perspective and Method*, Blumer cherche à démontrer que « les individus agissent en lien avec les objets qui les entourent, sur la base des significations qu'ils attribuent à ceux-ci; que les significations attribuées aux objets dérivent de l'interaction sociale qui inclut la relation d'un individu avec les autres et avec la société; et que les significations sont modifiées par un processus d'interprétation auquel les individus ont recours au fur et à mesure qu'ils ont à voir avec ces objets. » Pour résumer, l'essence de la perspective de l'interactionnisme symbolique est que les individus, en tant qu'agents humains, ne réagissent pas de façon primaire à certains stimuli, mais, tout en conférant aux objets qui les entourent des significations, ils réagissent en construisant leur comportement sur la base de ces significations. Les significations sont, à leur tour, les produits de l'interaction entre les individus; ceux-ci ont l'habileté, voire même la propension de les transformer, clarifier, ajuster et recréer. Ainsi, « à l'aide des interprétations



par des repères ou des systèmes symboliques et par l'intermédiaire d'un processus d'interaction susceptible aux modifications, les individus se définissent Eux-mêmes, définissent l'Autre, la Société et, en dernière instance, la Réalité. »

Finalement, Wendt adopte la position du réalisme scientifique dans son interprétation de la politique internationale afin de se dissocier de la vision constructiviste radicale qui considère que les forces matérielles brutes n'ont aucun effet indépendant (de la construction sociale) sur la politique internationale. Wendt montre ainsi que les forces matérielles brutes ont des effets indépendants du rôle des idées ou de la pensée individuelle et soutient que, dans sa vision, les idées ne peuvent pas expliquer la politique internationale jusqu'à l'essence des choses ou des faits qui la compose. Laura Herța remarque le fait qu'Alexander Wendt développe sa démarche théorique à partir des arguments néoréalistes et qu'il construit sa thèse fondamentale sous la forme d'un contre-argument solide apporté aux œuvres de Kenneth Waltz et de John Mearsheimer. Ainsi, l'auteure souligne très bien que Wendt partage avec les néoréalistes la centralité de l'Etat dans l'analyse de la politique internationale (donc, le choix de l'Etat comme unité d'analyse pertinente), la condition anarchique du système internationale, le désir de survie des Etats, la possession des capacités offensives et la rationalité des acteurs. Néanmoins, à la différence des néoréalistes, Wendt considère que la manière dont la politique internationale est conduite est plutôt une manière socialement construite. De plus, même s'il admet que le système international est profondément marqué par l'anarchie et par son corolaire, l'entre-aide, Wendt soutient que l'anarchie n'est qu'une institution formée et maintenue par des processus et l'entre-aide, loin d'être une caractéristique obligatoire de l'anarchie est seulement la marque de certaines cultures anarchiques. Wendt comprend ainsi la structure anarchique à travers les coordonnés sociaux et non pas strictement matériels. Pour Wendt, et Laura Herța le souligne d'ailleurs bien, « *l'anarchie est ce que les Etats font d'elle.* » Autrement dit, l'anarchie néo-réaliste, fondée sur la trinité survie – entraide – politique du pouvoir n'est pas l'unique forme d'anarchie qui peut dominer la structure de la politique internationale. Le système international n'est pas uniquement marqué par une distribution des capacités matérielles ou militaires des Etats mais également par une distribution des idées ou du savoir. Wendt se

propose justement de démontrer la modalité selon laquelle la politique du pouvoir et l'entre-aide sont socialement construits dans des conditions d'anarchie et comment les identités égoïstes des acteurs (Etats), dominantes dans la vision néoréaliste, peuvent être transformées en identités collectives. Ainsi, les identités assumées par les Etats et les identités attribuées à d'autres Etats naissent des processus d'interaction mais, en même temps, elles peuvent aussi bien déterminer le type d'anarchie qui va dominer le système international: « serait-elle une anarchie fondée sur le soupçon et la méfiance et gouvernée par le dilemme de la sécurité ou bien serait-elle une anarchie basée sur la coopération, les intérêts collectifs et sur une certaine communauté de sécurité ? » Voilà comment Laura Herța réitère l'argument de Wendt selon lequel *l'anarchie est ce que les Etats font d'elle*.

Dans ce même esprit, l'auteure avance dans son analyse avec les trois types de structures que Wendt identifie pour l'anarchie. En effet, ces structures au niveau macro sont fondées sur le type de rôles qui dominent le système – ennemi, concurrent ou ami. Autrement dit, il s'agit de trois types de cultures avec des logiques différentes, identifiables tout au long de l'histoire de l'humanité dans des périodes distinctes: la culture anarchique hobbesienne, la culture lockéenne et la culture kantienne. Wendt traite ces trois types de cultures anarchiques comme des idéal-types (au sens weberien). Ainsi, le noyau de chaque anarchie réside dans les rôles des acteurs (ennemi pour la culture hobbesienne; concurrent, propre à la culture lockéenne; et ami pour la culture kantienne). Dans une condition anarchique de type hobbesien, fondée sur la logique *sauve qui peut*, les Etats vont avoir recours à tout moyen afin de survivre, ils vont s'appuyer sur l'auto-assistance et vont s'armer excessivement, car le pouvoir (traduit ici par les capacités militaires) devient la clé pour la survie. La culture lockéenne repose essentiellement sur la rivalité, une structure de rôle moins menaçante mais qui suppose toutefois l'utilisation de la force là où la situation la revendique. Mais, à la différence de l'état naturel dans lequel les Etats peuvent régresser (à savoir la condition anarchique hobbesienne), la rivalité est contrainte par la structure des droits liés à la souveraineté et elle est gouvernée par l'autorité de la loi. Laura Herța observe ici que le système lockéen décrit par Wendt renvoie à ce que Hedley Bull appelait la société anarchique, c'est-à-dire une structure plus complexe qu'un simple

système car les Etats se perçoivent réciproquement comme liés par un ensemble de règles même s'il n'y a pas d'autorité politique au-dessus des Etats souverains. La société des Etats est, autrement dit, un système anarchique (démuni d'une autorité centrale), mais elle n'est pas marquée par l'anomie. Enfin, dans la culture kantienne, les disputes seront résolues par des moyens pacifiques, donc sans des menaces ou des pratiques guerrières (la règle de la non-violence) et les Etats vont lutter comme une équipe au cas où la sécurité de l'un d'entre eux est menacée par un tiers (la règle de l'aide réciproque).

Pour synthétiser, l'auteure nous explique que, ce que Wendt veut montrer par les scénarios des trois cultures anarchiques est que l'anarchie comporte en fait des attributs et des éléments spécifiques, elle est constituée de rôles et d'identités assumés et reproduits ou modifiés par les acteurs étatiques.

Laura Herța conclut la première partie théorique de son travail avec quelques remarques sur les contributions de Nicholas Onuf et de Friedrich Kratochwil au domaine socio-constructiviste. Ainsi, de la perspective constructiviste de Nicholas Onuf, on retient surtout l'importance majeure que les règles et les normes jouent dans les relations sociales et dans la politique mondiale. Onuf part de l'hypothèse que « la politique internationale n'est pas fondée sur un ordre anarchique pré-social, mais sur un ordre construit par les agents sociaux qui agissent en vertu de certaines pratiques et règles ». Plus précisément, selon Onuf, les individus construisent la société et cette dernière construit les individus; en d'autres mots, les individus et la société se construisent ou se constituent réciproquement. Pour pouvoir étudier ce processus bi-directionnel et continu, Onuf introduit un troisième élément: les règles. Pour Onuf, les règles sont essentiellement sociales car, d'une part, elles expliquent et gouvernent le comportement des individus et, d'autre part, elles facilitent l'action des agents en mettant à leur disposition des options (de respect ou de non-respect de ces règles). Qu'ils acceptent de se soumettre aux règles ou qu'ils les ignorent, les individus se confrontent à des options et, ensuite, ils prennent des décisions, conscients de possibles conséquences de leurs actions. A leur tour, les individus influencent les règles soit en les préservant, soit en les éliminant de l'ordre social.

La perspective constructiviste de Kratochwil part de la critique envers le fait que « les approches dominantes sur la politique internationale emploient seulement des concepts circonscrits au monde matériel ou au monde des faits bruts en ignorant délibérément le monde de l'intention et de la signification ». Dans la vision de Kratochwil, les normes ont pour but de diriger ou d'amplifier une décision, mais elles ont surtout le rôle d'offrir aux actions une signification. Les règles ne devraient pas être traitées comme si elles existaient naturellement, car elles ne sont pas indépendantes du contexte; elles sont conçues et consolidées par les pratiques, par la communication entre les individus et par le succès de leur applicabilité à différentes situations. Par ailleurs, Kratochwil a théorisé et introduit dans l'étude des relations internationales la distinction entre les *règles régulatrices* et les *règles constitutives*. Les premières régularisent certaines activités déjà existantes, alors que les deuxièmes créent la possibilité même de ces activités.

Voilà pour le cadre théorique très rigoureusement présenté et analysé par Laura Herța. Voyons maintenant la deuxième partie dans laquelle l'auteure se propose d'identifier la pertinence de la théorie socio-constructiviste dans la compréhension des relations roumano-serbes/yougoslaves. Pour cela, l'auteure délimite dès le début la période qu'elle s'est proposée d'analyser à travers la perspective socio-constructiviste, période qui va de la fin du 19<sup>ème</sup> siècle jusqu'au début de la guerre froide. Sa démarche est analytique ce qui signifie que l'auteure ne se donne pas pour objectif de lancer une théorie sur l'évolution de deux Etats balkaniques, mais elle essaie tout simplement de fournir une perspective constructiviste sur les relations roumano-serbes/yougoslaves, c'est-à-dire d'interpréter la façon dont ces relations bilatérales ont souffert des modifications dans la période étudiée, tout en se servant du cadre conceptuel avancé et soutenu par certains auteurs socio-constructivistes. Ainsi, l'auteure spécifie clairement les questions de recherche à partir desquelles sa démarche va prendre contour. Plus précisément, il s'agit de questions causales (du type *comment?* ou *pourquoi?*) qui supposent l'observation empirique de certains phénomènes, leur récurrence ainsi que l'identification de certains modèles comportementaux, mais aussi de questions constitutives (du type *comment se peut?* ou *quoi?*) qui visent les facteurs ayant contribué à la formation de certains phénomènes. En effet,

d'une part, l'auteure soulève les questions causales suivantes: *Comment les identités étatiques de la Roumanie et de la Serbie se sont-elles formées? Comment ont évolué les relations bilatérales roumano-serbes de la fin du 19<sup>ème</sup> siècle jusqu'aux relations interétatiques roumano-yougoslaves du début de la guerre froide? Pourquoi peut-on observer cette évolution? Quels sont les modèles comportementaux des deux Etats, la Roumanie et l'Yougoslavie, observés sur cet axe temporel et qu'est-ce qu'a déterminé la configuration de tels modèles de comportement?* En même temps, l'auteure se dit également préoccupée dans sa démarche par les questions constitutives: *Comment la transformation des relations roumano-serbes/yougoslaves a-t-elle été possible et comment peut-on définir et expliquer les interactions à travers le binôme idéalisme-holiste? Comment les modèles comportementaux des deux Etats se sont-ils constitués? Comment s'est-il pu que les agents étatiques aient reproduit ou modifié la structure régionale des Balkans? Encore faut-il ajouter: Comment ont été constituées les identités des deux Etats par cette structure? Quelles significations partagées peut-on observer chez les interactions bilatérales analysées dans cette étude et dans quelle mesure « la distribution des idées ou du savoir » facilite ces observations?*

En adoptant la méthode analytique d'investigation et l'analyse comparative, la démarche de l'auteure se veut descriptive mais aussi analytico-explicative et interprétative. Ainsi, dans les interprétations constructivistes formulées, l'auteure insiste sur les processus de définition de l'Autrui par rapport à Soi-même dans le cadre de la structure internationale de la fin du 19<sup>ème</sup> siècle et du début du 20<sup>ème</sup> siècle.

Tout en ayant à l'esprit les théorisations constructivistes d'Alexander Wendt selon lesquelles les forces brutes (comme les armes, les armées ou les ressources matérielles) n'acquièrent de l'importance dans les actions des Etats que dans la mesure où ces Etats leur accordent des significations, l'auteure démontre que le scénario réaliste basé sur l'anarchie, sur la politique du pouvoir et sur la prévalence des identités égoïstes des Etats perd de sa validité dans le cas des interactions roumano-yougoslaves. En effet, la structure régionale (et internationale) dans laquelle ont interagit la Roumanie et l'Yougoslavie n'a pas reflété une politique de pouvoir compétitive, mais, tout au contraire, elle a indiqué un potentiel de sécurité collective. L'auteure valide cette interprétation par l'analyse empirique de la forte participation de la Roumanie et de l'Yougoslavie à la Petite Alliance et à l'Entente Balkanique. Laura Herța

déploie son argument en observant que le système international dans l'entre-deux-guerres comportait des éléments censés indiquer une forme d'anarchie: les grandes puissances de l'époque bénéficiaient de capacités militaires, leurs intérêts de politique étrangère visaient le contrôle sur les petits Etats et les revendications territoriales produisaient des menaces constantes. Dans un tel scénario, remarque l'auteure, l'anarchie peut conduire à une politique de pouvoir compétitive. Selon ces arguments, la Roumanie et l'Yougoslavie auraient du être exclusivement préoccupées par leur propre sécurité, leur propre survie ainsi que par l'entre-aide, sur base de la prévalence de leurs identités égoïstes et de la méfiance profonde quant au comportement et aux intentions de l'autre. Toutefois, sous un angle socio-constructiviste wendtien, l'anarchie par *elle-même* est un récipient vide; elle n'acquiert une logique interne que dans la mesure où les agents étatiques, à travers les pratiques et les interactions, lui donnent une certaine structure d'intérêts et d'identités. Cette structure d'intérêts et d'identités peut indiquer une anarchie porteuse d'une dynamique qui conduit à une politique de pouvoir compétitive, mais elle peut tout aussi bien refléter un potentiel de sécurité collective. Dans le cas analysé, la Roumanie et l'Yougoslavie, par leur participation intense à la Petite Alliance et à l'Entente Balkanique, n'ont pas agi en vertu des identités égoïstes, selon la prescription néoréaliste, mais plutôt dans la direction d'une configuration de certaines identités collectives. En d'autres mots, leurs actions ont été influencées par une distribution des idées concernant la sécurité collective, l'appui et l'assistance mutuelle, l'élimination de la guerre comme moyen de résolution des conflits.

Les prescriptions de la théorie réaliste des relations internationales fondées sur la primauté écrasante des forces brutes semblent, donc, être incomplètes dans le cas des interactions roumano-serbes/yougoslaves. L'auteure soutient qu'une analyse complète devrait inclure, en égale mesure, le rôle des *significations partagées* et des *forces idéationnelles* qui ont déterminé la relation interétatique jusqu'à ce moment-là et qui expliquent l'hésitation de la Roumanie dans la poursuite d'un intérêt transhistorique et récurrent dans la politique internationale (selon le réalisme), à savoir la maximisation du pouvoir par l'expansion territoriale.

Le périple à travers les différentes étapes historiques (de la période de l'acquisition de l'autonomie par la Roumanie et la Serbie dans les années

1860, au moment de la formation de la Grande Roumanie et du Royaume des Serbes, des Croates et des Slovènes après la Première Guerre Mondiale et jusqu'aux transformations survenues pendant la Seconde Guerre Mondiale, achevées avec la prise du pouvoir par les communistes) est censé indiquer les facteurs endogènes et exogènes qui ont généré, modelé et perpétué les relations entre les deux unités étudiées. La problématique envisagée par l'auteure est celle de la constitution des identités étatiques de la Roumanie et de la Serbie/Yougoslavie ainsi que celle de la définition de l'Autrui par rapport à Soi-même dans le cadre d'une structure internationale à son tour influencée par l'existence et les interactions des agents étatiques. Par conséquent, en paraphrasant Alexander Wendt, l'histoire des relations roumano-serbes/yougoslaves a de l'importance, car leurs intérêts et leur comportement ne sont pas inhérents ou fixes, mais ils émergent d'un certain contexte. « Si nous nous proposons de mettre en évidence la propension envers la collaboration dans la période de l'entre-deux-guerres – affirme l'auteure – et si nous argumentons que la Roumanie et l'Yougoslavie ont acquis maintenant des identités de *pays alliés*, nous ne pouvons pas soutenir que ces identités ont apparue *ex nihilo*. Elles ont représenté l'effet cumulatif des interactions entre les dirigeants politiques de Bucarest et de Belgrade jusqu'à ce moment-là. »

En effet, ce que l'auteure observe dans les relations roumano-serbes du 19<sup>ème</sup> siècle est l'absence d'un différend territorial censé rendre tendus les rapports entre les deux Etats et transformer un mécontentement temporaire en une source pérenne d'hostilité; elle remarque aussi une certaine forme de collaboration stratégique et, en quelque sorte, opportuniste: en effet, lorsque la Roumanie et la Serbie identifiaient des objectifs communs, la collaboration était étroite et semblait naturelle et, en ce qui concerne le reste de leurs objectifs, les deux Etats agissaient individuellement; certes, avec prudence, mais sans se considérer réciproquement comme des ennemis. On retient alors le modèle qui caractérise l'interaction roumano-serbe dans cette période: une collaboration stratégique et circonstancielle pour l'accomplissement des objectifs communs; de bonnes relations diplomatiques mais sinueuses (déterminées en partie par la personnalité ou l'agenda politique des agents serbes envoyés de Belgrade); l'absence d'un différend territorial ou d'une rivalité perpétuelle et insurmontable dans les ambitions de politique

étrangère des deux Etats; et une certaine intensification des relations commerciales. Par la collaboration stratégique et circonstancielle entend, donc, l'auteure surprendre la relation roumano-serbe: une collaboration marquée par une marge relativement réduite de manœuvres dans les relations internationales de la fin du 19<sup>ème</sup> siècle et du début du 20<sup>ème</sup> siècle, une collaboration entre deux entités étatiques jeunes, placées dans un cadre d'intersection des intérêts de grandes puissances de l'époque, et, enfin, une collaboration menée par l'existence des objectifs nationaux similaires et non-confliktuels. En effet, aussi bien la Roumanie que la Serbie avaient des objectifs territoriaux et cherchaient une certaine autonomisation en plan international, autonomisation mise cependant en danger par une dépendance inhérente d'une des grandes puissances pour la réalisation des objectifs nationaux. Pour atteindre leurs objectifs territoriaux, la Roumanie et la Serbie ne se disputaient pas les mêmes territoires et c'est d'ailleurs la raison pour laquelle l'auteure apprécie que les relations entre les deux Etats à l'époque n'avaient pas été irréconciliables ou gouvernées par des différends insurmontables.

L'auteure avance plus loin l'argument selon lequel les deux pays ont construit une réalité sociale (même si précaire en raison de la fragilité de leur position en plan international) fondée sur l'hypothèse qu' « ils n'ont aucun point de divergence pour se tenir à l'écart l'un de l'autre ». En analysant la période 1880-1900 à la lumière de la théorie constructiviste avancée par Alexander Wendt, l'auteure considère que la Roumanie et la Serbie ont réussi à construire une relation d'amitié à travers les interactions multiples et par l'identification des objectifs convergents. Certains événements ont temporairement opposé les deux Etats, d'autres ont produit des perceptions erronées sur les vraies intentions du voisin, tandis que d'autres ont fait poindre une exaltation concernant le bon voisinage (affichée avec enthousiasme dans les documents diplomatiques). Malgré tout, les actions des deux pays n'indiquent pas un soupçon insurmontable. Dans l'entre-deux-guerres, en raison de l'absence des différends territoriaux marquants et de la participation pro-active à la Petite Alliance et à l'Entente Balkanique, la Roumanie et l'Yougoslavie se sont, en conséquence, construit déjà des identités de *pays alliés*. Les interactions fréquentes entre les représentants des deux gouvernements ont contribué à



l'élimination des antagonismes et à l'identification des *connaissances partagées* concernant le besoin d'un système de sécurité régional.

Le péril provenant de l'extérieur, que ce soit bolchévique-soviétique, fasciste ou bien nazi, a créé des oscillations dans la politique étrangère de l'Yougoslavie et de la Roumanie, et a même déterminé un repli et un désengagement du pacte balkanique; toutefois, ces décisions et actions n'émanent pas de la nature endogène-litigieuse de la relation Bucarest-Belgrade, mais d'une situation internationale avec des conséquences du type « *sauve qui peut* » dans le sud-est de l'Europe. En termes constructivistes, continue l'auteure, l'argumentation insiste sur le fait que les interactions constantes entre les diplomates des deux pays non seulement ont influencé le comportement de ceux-ci, mais ont également configuré l'identité même de ceux-ci et leurs intérêts: la Roumanie et l'Yougoslavie s'identifiaient comme des pays vulnérables, préoccupés par le maintien des territoires obtenus à Versailles et par la maximisation de leur propre sécurité et se reconnaissaient mutuellement comme des Etats amis, comme de potentiels alliés face aux facteurs perturbateurs exogènes.

Par ailleurs, au-delà des facteurs matériels (traduits par le pouvoir militaire des deux Etats), les ressources naturelles, la superficie, la population ou bien la relation privilégiée avec l'une des grandes puissances de l'époque, bref, tout un complexe de perceptions, de significations, de symboles et d'idées a contribué à la constitution de la Roumanie et de l'Yougoslavie en tant qu'agents étatiques ainsi qu'à la configuration des relations entre les deux.

De surcroît, en employant le concept de *formation culturelle* théorisé par Wendt (et compris comme *structure de savoir partagé*), l'analyse de l'auteure sur les relations bilatérales roumano-serbes indique que les deux Etats ont partagé, notamment jusqu'à la Seconde Guerre Mondiale, la conviction qu'ils étaient de « bons voisins », n'ayant pas de différends territoriaux et coopérant dans la poursuite des objectifs de politique étrangère. Cette conviction partagée a été renforcée au fil du temps et a déterminé la constitution de leurs identités et de leurs intérêts. Dans une variété de situations, la Roumanie et la Serbie se sont réciproquement confirmés la propension envers la collaboration, reproduisant ainsi une sorte de *formation culturelle du bon voisinage*. La Seconde Guerre Mondiale allait néanmoins suspendre toute action censée renforcer *l'identité-rôle d'alliés* des

deux Etats est-européens. En effet, les discontinuités temporaires (méfiance par rapport aux intentions de l'autre, en ce qui concerne par exemple les relations avec la Bulgarie qui avait des différends territoriaux avec la Serbie et la Roumanie; désengagement du système d'alliance de l'entre-deux-guerres en raison de menaces de l'Allemagne nazie) ont interrompu la collaboration et ont dénaturé la relation d'Etats alliés, mais la Roumanie et l'Yougoslavie ne se sont réciproquement pas perçues comme des Etats ennemis et les identités égoïstes, fondées sur la survie ainsi que sur la maximisation du pouvoir, en raison de la méfiance rétrograde, n'ont pas pris le dessus dans les rapports roumano-yougoslaves.

Ensuite, tout en ayant à l'esprit les contributions de l'Ecole Anglaise, l'auteure fonde son argumentation sur l'observation que la Roumanie et l'Yougoslavie ont essayé de constituer, dans la période de l'entre-deux-guerres, une *micro-société d'Etats*, au sens que les membres de l'Ecole Anglaise (considérés comme des précurseurs du socio-constructivisme) attribuent au concept. En effet, Hedley Bull, le représentant de ce courant, distinguait entre le *système d'Etats* et la *société d'Etats* ainsi: « alors que le premier représente une situation dans laquelle deux ou plusieurs Etats ont des contacts suffisants pour produire un impact sur les décisions de l'autre, la *société d'Etats* se construit lorsqu'un groupe d'Etats sont conscients de certains intérêts et valeurs communs et se perçoivent réciproquement comme étant liés par un ensemble de règles dans leurs relations. » C'est à travers une telle *micro-société d'Etats* que l'auteure analyse la participation de la Roumanie et de l'Yougoslavie à la Petite Alliance ainsi qu'à l'Entente Balkanique. La structure idéationnelle de la Petite Alliance nous indique le fait que la Roumanie, l'Yougoslavie et la Tchécoslovaquie partageaient des valeurs communes et se percevaient réciproquement comme étant liées par un ensemble de règles. Par conséquent, sur la base de cette définition de Soi-même et de l'Autrui, les trois pays ont cherché à légitimer cette micro-société d'Etats en faisant appel aux règles et normes internationales. Ainsi, quoiqu'inefficace à long terme, la structure sociale de la coopération est-européenne ou balkanique a contenu une dynamique interne qui a indiqué un potentiel de sécurité collective.

En ce qui concerne l'épisode mis en évidence durant la Seconde Guerre Mondiale, lorsque la Roumanie n'a pas militairement participé à

l'occupation et à la répartition des territoires yougoslaves, l'auteure considère que les explications en termes de puissance militaire, menace nazie, maximisation du pouvoir par l'expansion territoriale (autrement dit les *faits brutes*) n'épuisent pas les explications concernant la décision de la Roumanie. La plus-value est offerte, selon l'auteure, par le rôle des *significations partagées* jusqu'à ce moment-là par les deux Etats. Malgré la conflagration mondiale (qui a signifié pour l'Yougoslavie le démembrement, la division des Slaves du Sud, l'occupation étrangère, et pour la Roumanie la participation aux luttes armées) où l'on retrouve des éléments indiquant un scénario de *la guerre de tous contre tous*, la Roumanie et l'Yougoslavie n'ont pas régressé à un *status naturalis* de type hobbesien. Par l'observation, au fil du temps, de l'évolution des relations roumano-serbes/yougoslaves, l'auteure apprécie que, jusqu'au moment de l'instauration des régimes communistes, la Roumanie et la Serbie se sont réciproquement perçues dans le cadre d'une *culture anarchique lockéenne*. Ainsi, la structure dans laquelle ont agit les deux Etats a comme point focal la *rivalité*. Les pratiques de rivalité sont gouvernées par une logique fondée sur la devise *Vis et laisse vivre les autres également*, mais, à la différence de l'état naturel dans lequel les Etats peuvent régresser dans la condition anarchique hobbesienne, la rivalité est contrainte par la structure des droits relatifs à la souveraineté, étant gouvernée par le règne de la loi. Encore une fois, les données historiques examinées par l'auteure ainsi que l'évolution des relations bilatérales roumano-serbes/yougoslaves ne nous offrent pas un tableau symptomatique d'une hostilité roumano-yougoslave ou d'une animosité pérenne. C'est en fait la conclusion à laquelle l'auteure est arrivée.

Incontestablement, le travail de Laura Herța représente, par son contenu complexe, un bon outil d'analyse et fournit un cadre cohérent, à la fois théorique et appliqué, pour des études ultérieures. La perspective offerte est également complète, systémique et généreuse du point de vue scientifique et pédagogique. Un autre aspect positif à noter dans la construction de cette thèse est sa clarté, la cohérence offerte par la structure organisée du discours, structure qui rend la lecture beaucoup plus facile. Le langage employé est relativement accessible à l'exception de quelques termes de spécialité (empruntés surtout de l'instrumentaire socio-constructiviste) que l'auteure prend d'ailleurs soin à expliquer. Ce que

j'apprécie le plus dans l'élaboration de l'ouvrage est que l'auteure apporte des arguments pertinents et très variés afin de soutenir ses idées en faisant chaque fois des parallèles et des comparaisons entre les différents courants ou théories des relations internationales pour mieux comprendre leur dynamique et leurs traits spécifiques. En plus, cela rend plus facile le suivi du fil rouge envisagé par l'auteure. La bibliographie mentionnée à la fin du livre, très rigoureusement classée, est d'ailleurs un quantificateur de l'information mise à la disposition du lecteur et de la véracité des faits présentés. Avec ces remarques à l'esprit, nous pouvons donc conclure que la contribution de Laura Herța laisse une trace significative sur l'étude des relations internationales et cela notamment grâce au caractère novateur de l'ouvrage, caractère qui est conféré par l'approche constructiviste sur les relations interétatiques roumano-serbes et roumano-yougoslaves.



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