



Course code: SIMT01-11

Faculty of Social Science
Graduate School

BETWEEN PRAGMATISM & HUMANITARIANISM
*- The Humanitarian Intervention Concept &
the NATO Intervention in Yugoslavia in 1999*

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Master's Thesis
Global Studies
Lund University

2010-08-16

ABSTRACT

The aim of this thesis is to study the legitimacy of interventionism which is based on human rights protection. In order to provide a wide and deep presentation of this complex phenomenon, this thesis is related to liberal democracy perspectives and the wider liberal tradition. To tie this study empirically this thesis provides a case study of humanitarian intervention in Yugoslavia in 1999. By seeking to overcome the contradiction between humanitarian intervention and state sovereignty, this thesis tries to find a balance as a compromise between solidarity and peace, a compromise which can avoid the abuse of the right on intervention and gross violations of human rights at the same time.

Besides established theoretical literature, this study includes sources and materials from the field, public statements and written works by actors and observers, political agreements and proposals. Special attention in this thesis was directed towards critical accounts of the unilateral humanitarian intervention concept, while Just war criteria as outlined by Wheeler were presented as essential parts of the humanitarian intervention doctrine. Apart from description, which aims to show positive and negative sides of this doctrine, this thesis offers some possible amendments in order to minimize risks of interventions. As possible solutions, this study argues for the necessity of extensive and impartial consultation among the involved states, transparent negotiations where peace and fair agreements with mutual benefits must be the final common goals, the free flow of information to disable war propaganda, and many other integrated elements.

Keywords: Humanitarian intervention, human rights, state sovereignty, just war, Yugoslavia, Serbia, Kosovo and Metohija, Rambouillet.

ABBREVIATIONS & ACRONYMS

HI	Humanitarian Intervention
KLA	Kosovo Liberation Army
KM	Kosovo and Metohia
NATO	North Atlantic Treaty Organization
OSCE	The Organization for Security and Co-operation in Europe
SC	Security Council, United Nations
SFRY	Socialist Federative Republic of Yugoslavia
UN	United Nations

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INTRODUCTION

The state sovereignty system, which leading scholars usually tie to the peace of Westphalia (1648), has started to show more and more weaknesses and disagreements with dominant ethical views and life styles. The period of US-American hegemony from the early 1990s was a unique opportunity to change the old principles, or at least adding new ones, and that way correcting traditional practices of noninterference in regards to the internal interest spheres of states. In a basically unipolar world order, absence of balance of power allowed one state to frame the international system in accordance with its beliefs, or at least using them as official approval for its foreign policy. One of the largest changes of the existing system in international politics in the early 1990s, which came with the collapse of the Eastern Block, was the limitation of state sovereignty with the obligation for all states to respect human rights, which is a principle that had developed in international law, especially since the United Nations was established. Humanitarian interventions as an example of direct military action with human rights protection as a main official goal is research focus in this study.

Research Aim

In this thesis my intention is to present the theoretical origins of humanitarian intervention, analyze established arguments in political science and law literature that support or oppose humanitarian intervention, compare dominant theoretical views about the protection of human rights with actions which have been taken in the name of it, present the consequences of humanitarian interventions and analyze legitimate aspect of this phenomenon. With this approach I aim to answer my research question:

When are humanitarian interventions legitimate?

In this study I approach humanitarian interventions as a direct military action taken to stop or prevent, or at least with approval to stop or prevent serious human rights violations. Here I chose to focus on the NATO intervention in Yugoslavia in 1999 for a number of reasons. Firstly, I will not be able to approach all cases equally and deeply or study them in practice. Secondly, I interpret this example as a very specific humanitarian intervention case. As a unilateral action, taken in the name of human rights, with many practical problems and controversies, this NATO intervention opened many new questions that will be approached in this study in order to understand the problem of humanitarian interventions in its full complexity. Some of them are:

Under what conditions can a country or a coalition of countries generate legitimate rights to intervene militarily in order to prevent human rights violations? This question in turn opens subsequent questions: How and what data and information are collected to make assessments and decisions to legitimize intervention, and who should make these assessments? Can someone separately act in the name of humanity? Where is the proper boundary between state sovereignty and human rights?

Disposition

My work is comprised by the following disposition: The Method part follows this Introduction, and the following first main thesis chapter covers the theoretical framework and dilemmas linked to humanitarian intervention. The second main thesis chapter covers the case study, and in the final chapter the study is ended with conclusions.

Following this introduction of my topic and research goals, the second part is devoted to research methods in order to explain how I have conducted my research. In the following part, the theoretical framework of humanitarian interventions is provided, and includes definitions of key terms and the theoretical origins of HI. This chapter aims to assist the reader in understanding the meaning of those terms and as well provide a wider theoretical context in which HI appears. In this chapter the dilemmas in regards to the legitimacy of HI are also outlined, while question of legality is presented only for understanding the whole context in which legitimacy debate appears. This part also includes Just war criteria as an attempt to make a clear division between legitimate humanitarian interventions and campaigns of aggression. The theoretical part in this study is followed by a case study that seeks to integrate the topic empirically. Following the study case presentation I integrated it with the theoretical chapter to propose new directions for HI and to develop theory in this field. In the final chapter my research findings are summarized and concluded.

METHOD

The research design in this thesis is organized with the ambition to achieve the research goals and to answer the research questions. Taking into consideration that I am trying to find an answer to when humanitarian interventions are legitimate, it is advantageous if such research undertakings include theoretical and empirical parts. The interconnection between theory and practice can be related to the interconnection of deduction and induction (Radosavljevic, 2006, p.226). According to Radosavljevic, induction is the most basic method because it allows us to direct awareness about the empirical reality that makes up our terms and attitudes. Still, theory has crucial role in every research endeavor or reality. To capture new knowledge we need to use previously obtained theories through deduction, which gives the sense of orientation among the abundance of facts. Theory and practice lead each other (Aneshensen, 2002, p.92). Still, data analysis contributes to the development of theory. Aspects of theory without empirical support are likely to be reformulated or revised. That way, data analysis connects the theoretical realm with the empirical world (Aneshensen, 2002, p.5).

Initially I analyze the internal coherence of the doctrine and then apply this concept on my study example of humanitarian intervention, namely the case of Yugoslavia (1999). Instead of doing classic theory testing, my aim is to develop theory using case study or arguments developed from practice. That way I am conducting a mixed method approach, which includes both deduction and induction. Through deduction I am using knowledge which has already been obtained about this problem. I am using it to collect and understand data from the field. On the other hand, I am also using induction because my research is also obviously theory driven, I am aware that my data can oppose or support arguments which have been presented in the theoretical framework. Conducting case study research is moreover necessary in this field, because it gives as direct contact with empirical reality, and questions like these cannot be only a matter of theoretical abstraction. Using the case study method for developing theory is a proper approach despite all the critique that comes with generalizations from case study results, because these generalization will be contingent (Yin, 2003, p.10-11.). I can make generalization for similar cases and at the same time I can oppose some theoretical views which are presented as universal. As Yin (2003, p.31) points out, appropriately developed theory is the level where the generalization of the case study results occurs. In other words, this case can present what might happen in some circumstances rather than what needs to happen in all HI cases.

In explaining the legitimacy of HI, I use the works of established authors and experts in this research field. By presenting different points of view, this allows the inclusion of a rich assortment of arguments in my analysis and to contrast those views with empirical data. In order to do so in a proper way, instead of relying on secondary sources in one language, some literature and data that was written in Serbian is also applied. Still, for the purpose of this thesis, data and materials from Serbian sources as well as data collected by NGOs and observers reports favored by Western institutions were not applied without critique and consideration of the potential existence of politically motivated interpretations.

Already in the part titled "Theorists about Humanitarian Interventions", I emphasize elements which can be related to the intervention in Yugoslavia in 1999. In the case study chapter, I concentrate on the works of researchers from the field, political observers, official documents, public statements of political actors and police

investigators, pathologists and others, as well as materials published by political actors. Taking into account that this matter is politically sensitive, I was especially careful with statistical data and tried to avoid unreliable sources. In these circumstances statistical data can sometimes be presented with the aim to attract public attention (Best, 2001, p 3, 99), or to approve certain political goals by misrepresenting reality.

Among the main literature sources that I used, the book "*Mission in Belgrade*", written by Martti Ahtisaari (2000) is the most relevant in my research because it offers view of key actors who was engaged in the war and directly describe his role and the roles of many other important political actors in this process. The article "*A very personal war*", written by James Rubin (2000), is used for the same reasons. Using this kind of material always requires paying special attention towards the author and his/her possible interests (Flick, 2006. p.246-249), which was also taken into account. UN-resolution 1244 and the Rambouillet agreement also plays essential roles in this research, while other materials such as video data was only used to include original statements of important actors, such as pathologists, police investigators, politicians, and observers.

Chapter I

THEORETICAL FRAMEWORK

Human Rights

Human rights protection is the official goal of humanitarian intervention. Even if there are some disagreements among authors about the definition of human rights, we can generally describe these rights as inalienable and basic rights necessary for life worth of human beings. While the human rights concept has a strong universal dimension by seeking to present an essential condition for all human beings, relativists refer to human rights as a category which varies from place to place depending on values, cultural and religious traditions (Wallace, 2005, p.225-226; Evans, 2005).

Human rights are traditionally divided into three categories or three generations of rights. Civil and political rights belong to the first set, economic, social and cultural rights are the second generation of rights, while the third generation refers to group rights. The last generation of human rights has been denied by some authors as human rights are presented only as a sub-category of human rights (Wallace, 2005, p.227). The importance of rights that belong to the first two generations are especially emphasized by the West, while previous socialist countries and most of the postcolonial world emphasized the third generation. Here one view is that civil and political rights alone merit the term human rights, while social, economic and cultural are only aspirations (Wallace, 2005, p.227). While this issue was traditionally observed as an internal matter of the state, now the position of international law is that several violations of human rights are not within the exclusive jurisdiction of states. Many conventions and covenants have been ratified on the international level, especially after the Second World War¹ (Wheeler, 2005, p.229-252). While for liberals universality of human right constitutes a victory of rationalism over the realist political thinking, critics usually regard the universality of human rights as an approval of US-American dominance in international politics after the Second World War and especially after the end of the Cold War (Evans, 2005, p.21; Avramov, 2006, p.190).

State Sovereignty

While the first absolute monarchies appeared in the late XV century, the acceptance of the sovereignty principle is foremost associated with the Westphalia Peace in 1648. This peace came about after thirty years of religious war, four years of negotiation and enormous losses of human life, especially in Germany (approximately 1/3 of the rural population), which strongly influenced the final outcomes. In Westphalia all parties –

¹ The most important moments for internalization of human rights were the adoptions of the following acts: The Slavery Convention (1926); The Universal Declaration of Human Rights (1948); Supplement Convention of the abolition of Slavery, the Slave trade and Institutions and Practices Similar to Slavery (1956); The International Covenant on Economic, Social and Cultural rights (1966); The International Covenant on Civil and Political Rights (1966); The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1991); The Vienna Declaration and Program of Action (1993).

Protestants and Catholics, monarchies and republics – were treated as having equal status in negotiations and in the treaty (Zepp-la Rouche, 1999). The new principle "Cuius region eius religio" ("whose rule, his religion") meant that people must share religion with their rulers, or they will be forced to leave the country. Additionally, the Westphalia peace established principles of state independence, nonintervention in internal matters of states, international law made by states and foreign politics as politics among states (Campbell, 1998, p.41). All of these became parts of the key principle: state sovereignty. The new system of rules was defined by secular law. While states became sovereign units, this also brought monarchs enormous power. Matters relating to inhabitants in states became an internal state matter, and state rulers became the highest authority.

The theoretical predecessor of the peace of Westphalia Peace could be found in Jean Bodin's thoughts (Bodin, 1945). The term sovereignty was first used by him at the end of sixteen century. Bodin saw sovereignty as an absolute and permanent power to give orders in the country. In this view, sovereignty is an essential characteristic of the state. Bodin put sovereignty in the hands of rulers, while the people in such societies should be submissive. He argued that the people only can resist rulers that came to power without elections, heritage, just war or a special call from God.

Jean Bodin's ideas of state sovereignty were later developed by Thomas Hobbes through his contractual and natural rights theory. According to him, the natural pre-state condition was war of all people against all. The main reason for this was human nature, because people are here viewed as egoistical. To respect the rights of others was considered to go against human nature (Hobbes, 1961). Anarchy comes with risks of great danger and if people are unable to change their own nature, people are considered forced to abandon their natural rights and freedoms by making a contract with a sovereign that will guaranty their security. People thus hand over their natural rights to the sovereign. In this way the state appeared. In this contract the sovereign must be tolerated even when he/she is not ruling in the interest of people and he is not even limited by civil law. Still, his/her state represents all people because earlier there was a free agreement with sovereign and it can't be changed. The only obligation for the sovereign is that he/she must respect everyone's rights to life. Still, Hobbes did not specify the right for rebellion. As there was only one contract which divided people from anarchy, opposing the sovereign's rights, for Hobbes this meant that war of all with all is going to come again. That way state sovereignty was presented not as a contrast to people's rights, but as an institution for its protection.

Today, authors mostly regard sovereignty as a supreme and independent authority over a particular territory which includes legitimate right to rule and make laws obligated for all people on that territory. Even the term absolute power was related to the first concepts of sovereignty and later often appeared in debates about this notion, from the middle of XX century and especially after the end of the Cold War, under the influence of global economic trends as well as the appearance of global and regional international organizations, the European Union and ratifications of many declarations which limited states in their traditional role, sovereignty started being regarded as limited. One of the main areas where state sovereignty has been challenged is the matter of human rights (e.g. Responsibility to protect, 2001).

Humanitarian Interventions

Humanitarian intervention is one of the most controversial concepts in global politics, and as such it is directly the opposite of the rule of non-intervention which has been

dominant in international politics since the Peace of Westphalia (Domagala, 2004, p.3). Few problems in international politics and law engage scholars and experts as much as HI (Krisch, 2002, p.324). Still, there is no universally accepted definition of humanitarian intervention. Ryniker defines HI as armed intervention in response to serious violations of human rights and of international humanitarian law (Ryniker, 2001). This definition recognized HI only if actions have actual humanitarian motives, which would exclude some interventions that are today referred to as humanitarian. On the other hand, some authors absolutely exclude the possibility that something like humanitarian intervention can exist at all, and therefore present HI as an oxymoron. According to Burkholder, the word humanitarian can describe only acts which are useful for mankind while intervention means war or interference in others internal matters, which means that they should not be part of the same terminology (Burkholder 2005). In this thesis, humanitarian intervention will refer to direct military action against a particular state with the official goal, or at least approval to stop gross human rights violation.

Strictly speaking humanitarian motives have not appeared in international politics and law recently. In the XIX century, the terminology *right to intervene* and *intervention on the grounds of humanity* were used in law literature to describe interference in domestic affairs of one state, mostly for the protection of inhabitants of one state in another state, but in some cases also for the reaction on particularly shocking acts perpetrated by a state over its own citizens (Ryniker, 2001, p.528). Humanitarian motives were more or less present as war goals and approvals in earlier wars. Russian interest in Balkan during the whole XIX and beginning of the XX century (especially during the Eastern Crisis 1875-1878) had as a main approval hard position of Christian (mostly Slavonic) population in the Ottoman Empire (Van der Oye, 2006). Still, even the biggest Slavophiles like Vladimir Corovic could not neglect the important geopolitical interests of the Russian empire in the Balkans, especially in taking the Bosphorus from the Ottomans (Corovic, 1997). Very similar combinations of motives were uplifted by Walzer regarding the US invasion of Cuba in 1898 where, according to the author, both the desperate position of Cuban inhabitants and American geostrategic interest influenced the decision to intervene (Walzer, 2005, p.102-105). Many other similar historical examples can be uplifted. Here we can therefore conclude that the HI concept, despite the general role of nonintervention, has certain historical origins that are not necessarily tied to the rise of US-American hegemony. Still, the period after Cold War made HI, for the first time, broadly more accepted.

The Theoretical Origins of Humanitarian Intervention

The doctrines of humanitarian intervention were developed as a part of liberal democratic thought, but they also have their roots in concepts of limited government as expressed in ideas of natural rights and contract theory and classic liberalism. The first ideas about mutual obligation between ruler and people are found in the Biblical story about the coronation of the Jewish King David Solomon. Here it is explained that the first ruler and people together made a contract with God, and thereafter the ruler made a contract with the people (Matic & Podunavac, 1995, p.116). From this author called “Junius Stefano Brutus”² concluded that the ruler must obey to the rules of God and administer justice to

² Historians and political thinkers are not sure about the name of author that wrote *Vindiciae contra tyrannos*. Junius Stefano Brutus is obviously only a pseudonym.

his/her people or they will not be obligated to follow his/her orders, because the first contract was with God and if they do not support God's rules they will break the first contract³.

These ideas are further developed in classic liberalism, especially by John Locke (1632-1704). Writing in the time of the Glorious Revolution, John Locke presented thoughts which were opposed to the dominant absolutistic views of his period and he is therefore considered to be one of originators of the modern ideas about human rights (Lok, 2002). Locke started from a positive vision of human nature and presented a relatively harmonic life where freedom and equality are features of the natural condition, before the creation of states. Still, even if the majority of people are good there are some which are not and in order to protect their natural rights (especially property rights) and be more efficient in all segments of life, people create states. If created for those reasons the state cannot be absolutistic or totalitarian. Furthermore, in this view people first created society and after that the state, which means they are able to avoid full anarchy if they choose not to comply with a sovereign that does not respect their natural rights. These thoughts have been substantial for developing ideas about human freedom and human rights.

In contrast to classic liberalism, which mostly emphasized the good nature of human beings, liberal democrats, taking into considerations the experience from two world wars, avoided to fully support these views and relied predominantly on the power of institutions, which means liberal democracy institution in internal politics and international institutions in international affairs (e.g. Smith, 1992). The politics of states according to them were not determined by the position of the state in international affairs – in contrast to realists thought – because states do not always fight for power. In this view ethical standards are possible and required in international politics much like in domestic state concerns. If it is possible to build democratic institutions in domestic areas, it is also possible, according to liberal democrats, to avoid struggle for power in the international area (Smith, 1992, p.201-203). These beliefs also have their equivalent in the economic sphere where private property was presented as automatically progressive while state property by definition was deemed inefficient (Hahn, 2009, p.143). Spreading democracy in this regard also means the promotion of free market ideology. Convinced by the supremacy of liberal democracy in all areas, Fukuyama concluded that victory of liberal democracy in Cold War presented the end of history. In this view humankind had reached its maximum potential thorough liberal democracy, while no other ideology was considered able to challenge liberalism on a global level (Fukuyama, 1992).

Even if they emphasize advantages of democratic government, not all liberals are ready to go further then insist on giving good example through democratic role. Still, proponents of the theory of democratic peace will defend the right for intervention conducted by liberal in non-liberal states, especially if they violate the basic rights of their citizens. By developing Kant's thesis of perpetual peace, Michael Doyle concluded that democratic states do not fight wars among each other, or at least they have not done this in about 200 years⁴. They only make wars with non-liberal states. Such wars are only conducted with honest and popular goals, like the promotion of freedom, protection of private property, or to support liberal allies against non-liberal enemies (Doyle, 1986, p.1160). That way, even when they start wars, liberal democratic states only spread democracy (in the sense of liberal democratic thought), which means that they are actually spreading the space of peace at the same time. That way, the right for

³ *A Defence of Liberty Against Tyrants*, written in 1579, and translated anonymously in 1648.

⁴ The data is from 1986

intervention and even the right to change the present system in other states came from the persuasion that liberal states have a moral superiority in comparison with the other non-liberal states (Smith, 1992, p.212-215).

Chapter II

LINKING HUMANITARIAN INTERVENTIONS WITH LAW & JUSTICE

The Legal Aspects of Humanitarian Interventions

The first matter that comes to mind about the legality of humanitarian intervention is that this doctrine contrasts the rules from UN Charter that prohibits intervention (UN Charter, 2 (4)) and the actual international order based on the sovereignty of states which date back to 1648. Furthermore, in the Nuremberg processes, aggression was recognized as the main crime, because all other crimes were seen as motivated by it. On the other hand, the same Charter provided an important space for human right protection. Evans noticed that human rights were put in the centre of world politics for the first time in the Charter, and mentioned them seven times (Evans, 2005, p.14-15). While the Charter gives authority to the SC to approve the use of force in order to secure international peace and security, it does not provide the same authority in order to protect human rights (UN Charter, 1945) unless we follow that human rights violation is a direct threat to peace. That is mostly the reason why HI apologists pay attention to the Universal Declaration of Human Rights from 1948 where individuals were presented as basic values of human society and provides precise rules as to how states should behave towards their citizens (The Universal Declaration of Human Rights, 1948, article 5). In reference to this, Chomsky noted: “Charter forbids use of force against state sovereignty; Universal Declaration guaranties right of individuals against oppressor states. The question of humanitarian intervention is based on that contradiction” (Chomsky, 1999).

The right of HI was developed in the report “Responsibility to Protect”, which was adopted by the International Commission on Intervention and State Sovereignty in 2001 after long negotiations and was established by the Canadian Government. According to the Article, states have a duty to intervene in order to provide safety to citizens of other states that abuse their rights. Simply speaking, the state has an obligation to protect the rights of people. If the state cannot do that, if there are people who suffer serious harm, or in cases of internal war, insurgency, repression of domestic state over its citizens or state failure, its sovereignty needs to be abolished in order to help the people in danger (Responsibility to Protect, Article 1). The article is also clear about what authority should ensure protection: the UN Security Council (Responsibility to Protect, Article, 3A). In order to make decision-making easier, it was recommended to the permanent members of SC not to use veto when their vital interests are not in danger and not to disturb the adoption of declarations which already have major support (Responsibility to Protect, Article 3). With the Responsibility to protect, state sovereignty became not just a privilege but also a responsibility.

While it may seem obvious that the legality of intervention depends of Security Council approval (or disapproval), scholars from the New Haven School argue that HI is both legal and legitimate even when HI is engaged without SC consideration. They emphasized that positive law is changeable, so legal concepts should be opened to deliberation in the light of changing of world order values, which means that the purpose of decision-makers is to act in interpreted spirit of the law even if that is against positive rules (Wheeler, 2004, p.194). One of the most direct legal approvals for military actions

without approval of Security Council came from Higgins (Higgins, 2004). According to her, international law cannot be seen only through previous decisions and positive rules. Rules play only a part of law. International law can be better described as normative system obligated for all with a purpose to secure the values that all people share – security, freedom and provision of sufficient material goods. In her opinion, legal decisions are those that were made by authoritarian bodies or organs in appropriate forums with the framework of certain established practices and norms (Higgins, 2004, p.1-12). Following this argument in conducting unilateral humanitarian interventions, apologists of this practice need only to claim that NATO is an authoritative body, while action is based on common values to claim legality of NATO interventions.

A small number of lawyers also pointed to UN Charter Articles 1(3), 55 and 56 which obligate states to respect human rights. Reisman and McDougal claim that states even have to react unilaterally if it is necessary to protect human rights, or otherwise they are behaving against the goals for which the UN were built (Wheeler, 2000, p.41). In other words, even against some positive norms, for them, humanitarian interventions are not illegal because they come from the spirit of UN Charter. Close to this option is Wheeler, who emphasizes that as a result of international law development there are clear limits for all governments in dealing with its own people and some of them are presented in the Charter (Wheeler, 2000, p.1). Also, many scholars saw humanitarian intervention as legal, recognizing it as a way of collective self-defense for threatened individuals. This is supported by the claim that there could not be a right without remedy, which means that if human rights are present in the Charter as a value and if states already are obligated by law to respect human rights, then, the action taken against the state in order to secure human rights protection must be legal (Krisch, 2002, p.326-327).

On the other hand, some scholars strongly oppose the legality of HI. In the legal debate humanitarian interventions critique was mostly concentrated on actions taken without Security Council permission. Friedrich Kratochwil approached the New Haven arguments and concluded that, though the relativism of law, HI can only be the approval of the most powerful states which are the only ones that are able to conduct interventions (Wheeler, 2004 p.195). Krisch criticized the thesis that humanitarian interventions are lawful by underlining that human rights are present in Charter, emphasizing that in international law there are many of rights without remedy and only a few rights can be implemented by force (Krisch, 2002, p.326-327).

In order to point out the weakness of New Haven School arguments, Noam Chomsky used a simple comparison. According to him, law is changeable only if specifically the USA takes action, but when others break it, then those are serious crimes (Chomsky, 2007, p.64). Here he further critically argues that such scholars usually deal with formulating complicated arguments in an absurd manner by covering them in intellectual formulations and “decorating” them with footnotes that refer to grand philosophers for persuasive reasons (Chomsky, 2007, p.65-66). In other words, he sees HI without SC permission as obviously illegal, while there is a desperate will of US-American politics defenders to present HI as legal through allegedly empty intellectual formulations.

Theorists about the Legitimacy of Humanitarian Interventions

The legitimacy of humanitarian intervention holds wider support than its legality. The basic argument which is used is that even if action could be illegal, we cannot simply let people die in order to show respect for state sovereignty. State sovereignty or even

international law in case of HI is, according to apologists directly opposed to morality and responsibility to protect people in danger. They note that sovereignty from one side is obviously a social construct or a capacity of the state, which means that it is only one political institution, while human rights are, on the other hand, the inherent rights of all human beings and they cannot be limited by political borders (Atack, 2005, p.126). In that sense, the order which is based on human rights instead of state sovereignty would, according to them, definitely recognize the right for HI (Krisch, 2002). Proponents of HI, who mostly belong to the liberal democratic tradition developed ideas of intervention starting from human centric visions of the world and human freedom as an essential value.

According to Wheeler, humanitarian interventions should even be considered the moral duty of states in cases which he describes as supreme humanitarian emergencies – i.e. when military intervention is the only way to protect human rights. That kind of intervention means breaking state sovereignty, but, on the other hand, the state which does not apply this principle could easily be accused for moral indifference. In the modern world, according to him, gross human rights violations must be a matter of legitimate international concern (Wheeler, 2000, p.7-28). Wheeler insists that state leaders can and should recognize moral responsibility to react in order to protect human rights without any hidden plans. That way, humanitarian interventions present a conflict between order and justice where certainly justice should be the priority (Wheeler, 2000, p.11).

Walzer (1995, p.101-108) walks on the same track when he concludes that the principle of non-intervention should be avoided in case that HI is a response (with reasonable expectations for success) to acts that shock the moral conscience of mankind. If that requirement is fulfilled, it should not be a problem even if action is conducted by one state. A coalition of states would not make it much different when we speak about the politics of self-interests, because coalitions which are composed of governments with motives which are not exclusively humanitarian can also have mixed motives. So, unilateral action at least is not morally unacceptable as long as there is no alternative solution to save people's lives. Passivity cannot be a moral standard, because, as he notes with irony, there is no moral law called "waiting for UN" (obviously referring to Samuel Beckett's novel, *Waiting for Godot*). Besides this, Walzer later argues that technological development and the emergence of "smart bombs" enables NATO to conduct an intervention that minimizes casualties, while civilian objects do not necessary need to be targets (Walzer, 2004, p.29). In order to support interventions, Walzer presented a hypothetical situation:

"Suppose that a great power decides that the only way it could continue to control a satellite state was to wipe out the satellites entire population and recolonize the area with "reliable" people. Suppose the satellite government agreed to this measure and establish the necessary mass extermination apparatus. Would the rest of the members of the U.N. be compelled to stand by and watch this operation merely because the requisite decision of U.N. organs was blocked and the operation did not involve an "armed attack" on any member state?" (Walzer, 1995, p.2007)

Instead of this, Walzer believes that any state capable of stopping massacre at least has a right to take such steps. Even in approving unilateral interventions, Walzer refers to HI very critically because states can cover attempts for domination over other states through humanitarian arguments and motives, while lives of foreigners are generally not ranked as high by domestic decision makers (Walzer, 1995, p.102).

This hesitation was not shared by Miller, who supported HI much clearly. He developed the idea of collective responsibility as an origin of intervention. For him, military actions are the collective moral responsibility of the community of national states in case of large scale human right violations (Miller, 2004, p.40). If states can stop massacres and other large scale human rights violations it is also their responsibility to do so. That way, intervention is presented more so as an obligation than as a right of states (Miller, 2004).

Popular example of humanitarian intervention in Yugoslavia which was conducted without permission from the Security Council was also defended. Giddens did not view the attack on Yugoslavia in 1999 as a war among nations, but rather as a conflict between old state territorial nationalism and new “ethically driven interventionism” (Giddens, 2002, p.18). Vaclav Havel, the former Czech Republic president, was even more certain about the legitimacy of this new principle. He proclaimed that the attack on Yugoslavia was probably the first war in history which was not conducted because of national interest, but rather because of values (Havel, 1999).

Opposition towards HI legitimacy was based on different motives. HI mobilized resistant from realists, leftist political forces, some pacifists, opponents of US-American politics in general, and in more moderate ways by pluralists. Some opposed the justice of any war⁵, while some were suspicious about the objective arbiter who could intervene with honesty of its motives for interventions. The realist school does not accept the use of force in the name of human rights. According to Mearsheimer (2001), an offensive realists, all states want to maximize their power in order to be more powerful than the others while their final goal is hegemony, not humanity. Waltz, a representative of defensive realism, concluded that all changes which appeared during and after the Second World War – like nuclear weapons, changes of numbers of great powers, intensified communications and interdependence – could be interpreted as changes in the system, but not as changes of the full system. Based on that, he opposed views that the time of realism has already passed with the claim that basic principles of defensive realism and self defense still frame the behavior of states in international politics (Waltz, 2000) Following this, it is clear that for realists, humanitarian interventions are only approved for self-interest politics of the great powers that benefit from it, otherwise they would not take on such actions.

In criticizing HI, Chomsky, as a well known left-orientated intellectual, was very “realistic”. Recognizing the United States as the main intervener (but not the only one), his critique of HI is well integrated with his critique of US-American politics. Because of the possibility that HI will only be an approval for aggression, Chomsky argues that human rights should be protected by other peaceful means, not by aggression which means destroying the basic principle of international law – prohibition of war (Chomsky, 1999). Chomsky is not very optimistic that states, especially the USA, can be moral agents. He refers to considerable assessments of US-American politics that are grounded in analyses about the direct actions of the USA. Chomsky presents US-politics in Latin America as politics led by capital (Chomsky, 1994). According to him there is more than enough evidence to charge any US-American presidents for war crimes. He argues that not only was the USA not protecting human rights, but they also worked against democratic governments in Iran in 1953, Guatemala in 1954 and 1963, the Dominican republic in 1963 and 1965, Brazil in 1964 and Chile in 1973 (Chomsky, 1994, p.22). On the other hand, they supported tyrants in Iraq, Romania, Indonesia, Zaire and many

⁵ For example Bittner, *Humanitarian Interventions are Wrong*, taken from Georg Meggle, *Ethics of Humanitarian Interventions*, 2004, p 207-215.

others, as well as terrorists in Nicaragua against the Sandinista government. Even during the elections in 1990 threats were stated to influence the Nicaraguans from not electing the “wrong side” – i.e. Sandinista (Chomsky, 1994, p.36-40; Chomsky, 2008, p.136-151). Based on this history, Chomsky concluded that the USA does not have the moral right to intervene in other countries by calling for human rights protection (Chomsky, 1999; 2004). According to him, scholars and Western reporters who defended the intervention in Iraq in 1991 referred to the facts about crimes committed by Saddam Husain, but they avoided to ad that those crimes, as well as many others were committed with US-support (Chomsky, 2008). On the other hand, crimes committed by Milosevic (actually Yugoslavia) before the bombing in 1999 were, according to Chomsky, much smaller – even much smaller than crimes committed by the “Kosovo Liberation Army” (KLA), which was a NATO ally on the ground (Chomsky, 2008, p.68-74). Instead of bombing, Chomsky concludes in general, it would be better if the USA could only stop supporting crimes and violence. That would be the most important step in finding peaceful solutions (Chomsky, 2008, p.67).

Pavkovic (Pavkovic, 2004, p.161-185), on the other hand, criticized humanitarian interventions from the aspect of pacifism. For him humanitarian intervention is military intervention in which the killing of innocent people is approved by saving another innocent people. The killing of people, other than in self-defense, is very hard to approve, especially in nationalist conflicts⁶ where foreign states react with political interest, enabling that way their allies to make crimes without risking punishment. In order to prevent the conflict in Kosovo and Metohia, which was Pavkovic’s case focus, a more viable solution according to him could have materialized if the USA offered the possibility of political agreement rather than bombing ultimatums in Rambouillet (Pavkovic, 2004, p.161-185).

Pluralists on the other hand argue for the necessity to defend the existing order from the right to intervene unilaterally. They note the danger that comes with a state or a group of them insisting on applying their own version of good on the rest of the world that does not accept it (Wheeler, 2000). Bull, who belongs to this tradition, accepts that in cases of non-intervention human rights could be easier violated, but his conclusion is that the well-being of individuals will still be better protected in cases of rejecting the right for unilateral humanitarian intervention and saving peace (Krisch, 2002).

Even if we would agree with the principle that state sovereignty could be broken because of human rights violations, the main problem has just been introduced. Who can/should assess if there are massive assaults on human rights on the ground and who needs to take action? From Walzer’s perspective this should not be done by anyone. Then what does this mean in a world with more than 200 actors? Would it not bring a considerable number of interventions in the name of human rights, but with political motives? Realists, on the other hand, would say that no particular state would do it for humanitarian reasons, but rather for self-interests which would make this action illegitimate to begin with. According to the Responsibility to protect, the only authority in can be UN, or more precisely the UN Security Council. For the USA it was not difficult to get approval from other SC members for the early post-Cold War interventions. However there was a shift in this trend when other countries rejected approving an attack on Yugoslavia in 1999. The Clinton administration therefore avoided asking the Security

6 Pavkovic still accepted that it is generally possible to have just wars, using Vietnamese intervention against Khmer Rouge government 1978/1979.

Council for approval, and instead summoned its NATO allies separately to engage the bombing campaign. In this way, the right to intervene, including the assessment of conditions and action therefore belonged to the most powerful actor in a still mostly unipolar world. This in turn brings up another important question: To whom is the USA accountable for starting humanitarian interventions? As no one could answer this question in regards to the way interventions have been conducted, scholars usually tried to apply criteria of just war on humanitarian intervention. Still, none of the classifications help us find answers in regards to the legitimacy of specific interventions. Scholars provide different perspectives on particular requirements, mostly depending on their personal experiences, ideological backgrounds, the behavior of their states in conflicts and the most important of all, according to the information from the field which they accepted as valid in circumstances when information were very diverse. Still, the exact criteria of just war can help us to analyze the legitimacy of particular cases and to answer when HI is legitimate.

Just War Criteria & Humanitarian Interventions

The necessity to clearly distinguish HI from classical aggression lead to theory development that included the old ideas of Just war. As the literature about Just war is very broad and only partly related to HI, only the criteria put forward by Nicholas Wheeler is presented here. Wheeler's Just war analysis is directly linked to HI, and he specifically studied the Yugoslavia case.

Wheeler identified four Just war criteria, which underline differences between these two terms. According to him, legitimate wars must have: just cause, be a last resort, fulfill criteria of proportionality and bring about positive humanitarian outcomes. As a first criterion for calling some wars "just wars", Wheeler argued that wars need to have just cause in the sense of supreme humanitarian emergency. Furthermore, Wheeler explains that this criterion cannot be judged by the number of victims or resettled people. Requirements are fulfilled if there is a crime against humanity, including genocide as its worst form. This way he distinguished reasons for military action from often present human rights violations (Wheeler, 2000, p.34). Still, the fact that there are no massive crimes at the moment when intervention has been taken does not mean that intervention is necessarily illegitimate. Intervention can also be based on intelligence information that serious crimes are already being prepared – which is actually what happened in Kosovo. In this view, the attack on Yugoslavia was a preemptive strike which helped to protect innocent people (Wheeler, 2000, p.34). This criterion was criticized by Krisch, because the definition of supreme humanitarian emergency was unclear, while it is also rather vague who is going to assess if conditions fulfill the requirements for a supreme humanitarian emergency (Krisch, 2002, p.329). Chomsky noted the same limitation for this criterion by underlining that in the case of Yugoslavia Wheeler did not even mention the intelligence sources that were used to approve the bombing (Chomsky, 2008, p.72).

Wheeler's second criterion is that the use of force must be the last resort. According to him that means that action is really necessary for human rights protection. On the other hand, politicians should hesitate to react immediately if there is a need for this (Wheeler, 2000, p.34-35). During the time that politicians spend to find non-violent measures for resolving the crisis, a lot of massacres and expulsions could have occurred. Instead of insisting on exhausting all peaceful measures, which he deemed to be too demanding, he suggest that it should be enough if actors are confident that they have explored all avenues that are likely to prove successful in stopping the violence. If there

is still some doubt about the necessity of intervention, state leaders are morally obligated to continue with non-violent measures. Describing this requirement as very weak, Krisch concluded that in fact, it only requires politicians to declare that all peaceful remedies are exhausted and thus offers to intervention proponents lots of space for using this doctrine (Krisch, 2002, p.328).

In his third Just war criterion, Wheeler argues that Just war needs to meet the requirement of proportionality. If there are doubts about this action it then must be avoided. The level of applied force and harm ought not to overreach the level of harm that is designed to prevent. Civilians can never be targets of intervention, but that does not mean that war is unjust if civilian victim exists. It is enough that civilians are protected as far as possible. This argument was used by proponents for an intervention in Yugoslavia (1999), and used terminology from the Vietnam War, collateral damage and collateral mistake, which refer to unintended civilian losses in war. Still, the main problem of this conception is already underlined by him. We can never be sure how many people are going to be saved, neither how many will die due to the intervention.

The fourth criterion for Just war, as argued by Wheeler (Wheeler, 2000, p.35), is that there must be a high probability that the use of force will achieve a positive humanitarian outcome. Wheeler further explains that this criterion is the most important, as decision makers need to assure that action will produce a humanitarian outcome. He agrees with Fernando Teson that this requirement means that intervention needs to rescue the victims of the operation and at the same time humanitarian rights need to be subsequently restored. In this view, the withdrawal of the intervening force therefore should not to lead to a resumption of the killing and brutality.

Chapter II

CASE STUDY – NATO INTERVENTION IN YUGOSLAVIA

The military attack on Yugoslavia in 1999 attracted vast attention both among the general public around the world and among intellectuals. The war was engaged by NATO through strong pressure from the USA, without approval of the UN Security Council or with a declaration of war. The fact that NATO member states (predominately the USA) engaged in this campaign with humanitarian motives is here applied to problematize unilateral humanitarian interventions that are supported by proponents as a moral need⁷.

Conflict Background & Context

The conflict that provoked the NATO intervention in 1999 has deep historical origins dating back to the end of XVII century when the first Albanians came to the demographically mostly Serbian areas of Kosovo and Metohia. These two areas are the spiritual centers of the Serbian people⁸. As Muslims, Albanians were more loyal to the Ottoman Empire and were broadly engaged in keeping the area under imperial control (Corovic, 1997; Hofbauer, 2009). While constant demographic changes⁹ made non-Albanians more frustrated, the culmination was reached after the questionable Yugoslavian constitution from 1974 (Ustav Socijalisticke Federativne republike Jugoslavije, 1974) which gave extensive rights to Albanians by making Kosovo and Metohia (KM) and Vojvodina federal units (officially still as parts of Serbia). According to this constitution, KM and Vojvodina representatives could influence decisions made in Belgrade, but the same principle was not allowed in the other direction. The matter that a great number of Serbs and other non-Albanians left KM during the “period of autonomy” started to occupy the attention of Serbian media and the Serbian Orthodox Church, which was also followed by the new appearing NGOs and parts of the intellectuals in Serbia from the 1980s. They presented demographic changes as a result of Albanian repression and especially unequal treatment of Albanians and non-Albanians in courts in the province (e.g. Zivancevic, 1989; Jevtic, 1990). On the other hand, some Western scholars (e.g. Kaldor, 2006/2007, p.113-115) tried to explain this process with economic factors, referring to the fact that “Kosovo” was the poorest region in Yugoslavia. Still, people that moved from KM in this period however mostly spoke about this quite differently, claiming that they were directly or indirectly forced to leave their homes¹⁰. According to

7 Explained in the previous chapter

8 Gazimestan in Kosovo was the place of historical battle with Ottomans in 1389, while the word Metohia means church's land, which refers to the large number of medieval churches in the area.

9 There is no valid proof as to when exactly Albanians became the majority in Kosovo and Metohia, and sources have varied from the beginning of the XX century to the end of WW2.

10 A good example for this is the book *Kosovo Dossier*, composed of life stories of non-Albanians who moved from the province foremost between 1974 and 1989 (Djokovic, 1990).

Spanish historian Francisco Veiga (2003, p.259), while it is very difficult to determine how many non-Albanians left KM due to repression, Albanian demographic pressure or because of poor economic conditions, both factors were definitely at play.

In 1989 the Yugoslav constitution was changed, and the KM “autonomy” was reduced. This change reduced Albanian influence in the province, while after 1989 Albanians were also disproportionately represented in the public sector. This influenced some Western scholars to later conclude that Albanians in KM did not have human rights in the province (e.g. Forsythe, 2006, p.64; Bellamy, 2002). However, the Serbian government even allowed Albanian journals where a terrorist group called “Kosovo Liberation Army” (KLA) was presented as heroes (Zerard, 2008), while the new constitution also guaranteed them rights to education, culture, freedom of religion and public expression, to use their language and express their ethnic identity (Trbovich, 2008, p.345). Many authors have also noted that, instead of the gross human rights violation explanation, the significant employment disproportion in state services and public enterprises could rather be linked to the fact that most Albanians in KM did not recognize the state where they were living, and established a parallel “democratic state of Albanian people” in KM in 1990, and those Albanians that accepted Yugoslavia were treated as traitors and even liquidated by the KLA (e.g. Hofbauer, 2009, p.96-100).

The first major KLA operations started at the end of 1997. During this time the KLA secured large weapon supplies that had emerged on the free market after the anarchy events (sometimes even called civil war) in Albania (e.g. Veiga, 2003, p.434-448). In 1998 KLA activities intensified, but at the same time they were removed from the CIA list of terrorist organizations. In the same year, after destroying major parts of the KLA, Yugoslavia was pushed by the USA to allow a OECD mission to enter the province and Serbia was demanded to withdraw major parts of its military and police from the province, barely avoiding bombing (Hofbauer, 2009, p.103-107). The head of the Kosovo Verification Mission (KVM) for the Organization for Security and Cooperation in Europe was William Walker. He was a former US-American ambassador in El Salvador in 1989, at the time when six Jesuit priests were liquidated by government forces, which belonged to a military regime strongly supported by USA (Chomsky, 1994, p.33-36). KVM sought to supervise the withdrawal of Serbian police and military, while no demands were set forward for the KLA. Even if this approach should have officially brought peace, Agim Ceku, one of the KLA leaders which later became “prime minister of Kosovo”, did not hide his satisfaction with the new roles claiming that formal cease-fire enabled them to get organized, to consolidate their position and expand their activities (Ceku, 2009). During the beginning of the following year William Walker came to play a crucial role in this conflict.

Justifying HI

The most popular story about KM before the NATO bombing in 1999, which also served as the approval of the NATO intervention, was what most of the Western media referred to as the “massacre in the village of Racak”. In January 15, 1999 Serbian police started attacking a KLA group that was, according to police records, responsible for killing 24 people in this area (Janicevic, 2009). Before the attack, the police invited two journalists from the Associate Press to follow their actions and they also informed the OSCE about these operations. After breaking KLA resistance, the police allowed OSCE observers to come to the village. None of the observers noticed anything unusual during the battle, such as war crimes, while the local Albanian radio broadcasted this story as heroic KLA

resistance in Racak (Gorin, 2009; Zerar, 2008; Hofbauer, 2009). According to Bellamy, their view from the hills was only partial (Bellamy, 2002), which makes their observation less valid. Still, the Serbian media soon showed trenches around the village as well as a large amount of drugs and weapons made in China, including artillery after the operation (RTS, 2009), but Western media in the meantime got a different version of these events.

William Walker arrived in the village one day after these events, and he found 45 bodies and he rapidly concluded that they were innocent people killed by Serbs (Walker, 2009; Gorin, 2009). Dead bodies were shown in civilian suits and this picture was quickly broadcasted around the world. The US president commented this with conviction that Walker's version of the events was accurate: "*We should remember what happened in Racak... Innocent men, women and children were taken from their homes to a gully, forced to kneel in the dirt and sprayed with gunfire – not because of anything they had done, but because of who they were*" (Gowans, 2001).

A Serbian-Belarus pathologist team conducted autopsies on 40 bodies (five were not even given to the pathologists), and their work was verified and supervised by pathologists from Finland. The results showed that 37 of the 40 liquidate people were shooting before being executed. Instead of children only one minor was found, and he was 17 years old while there was only one woman, and none of them were killed at close range (Bellamy, 2002, p 114-120; Dobricanin, 2009). According to head of the Serbian-Belarus pathologist team, Milivoje Dobricanin, the Finnish pathologists agreed with all their assessments (Dobricanin, 2009). Still, the empirical fact remains that they did not sign the report. The final report by the Finnish team was released by Helena Ranta, the head of the Finnish team, two months later. According to this report, where he quite oddly presented a lot of limitation to the conclusions and stressed that they are her personal opinion, there was no proof that the executed people were anything else than innocent civilians, and what had happened in Racak was described as crimes against humanity¹¹, which shocked the pathologists she was cooperating with previously.

In 2008 Helena Ranta published her diary. However, here Ranta changed her story dramatically. She explained that her report was written under very strong pressure by William Walker and other members of the OECD mission who constantly required "deeper conclusions" from her and criticized her because she did not use language sharp enough to describe the situation. According to Ranta, when William Walker learned during a meeting, after the events in Racak, that she was not ready to support his story, he broke his pencil and threw part of it on her¹² (Rusila, 2008).

Walker's version was not only contradictory to the assessments of journalists from the Associate Press, the results from the autopsy conducted by the Serbian-Belarus autopsy team, police reports and Helena Ranta's latter confession. His claims were also contradictor to NATO commander Wesley Clark's and Richard Holbrooke's statements. While they both claimed that they were speaking with him about what he saw before the conference (Clark, 2009; Holbrooke, 2009), Walker 'could not remember' that he was speaking with Holbrooke, while he was absolutely sure that he did not consult Clark before the media conference (Walker, 2009). Still, his conclusions were rapidly absorbed

11 Report of the EU Forensic Team on the Racak Incident. March 17, 1999.
<http://www.ess.uwe.ac.uk/kosovo/kosovo-massacres2.htm>

12 Original book was written in Finish-
Niemi, Kaius. 2008. *Helena Ranta - Ihmisen jälki*. Kustantaja: Kirjapaja.

by Western media and politicians as the true source, as well as Ranta's first report, while no other evidence was taken into critical consideration. Based on this, many Western authors¹³ concluded that the intervention was necessary because "massacres" needed to be stopped.

The NATO Military Intervention Prelude – The Rambouillet Talks

Before the NATO bombing campaign was initiated an official "peace conference" was held in Rambouillet, France, on February 6, 1999. Under the influence of the USA and as a leader of the Albanian delegation, Hasim Taci, KLA commandant, appeared (Bissett 2009). He was a very close friend with Madeleine Albright, US Secretary of State (Rubin, 2000), who was the head of the table during the meetings. At the end of the negotiation process The US-American delegation offered the Serbs an "agreement" adding Appendix B with the following content (Rambouillet document, 1999):

1) *NATO personnel shall be immune from any form of arrest, investigation or detention by the authorities in the FRY. NATO personnel erroneously arrested or detained shall immediately be turned over to NATO authorities (point 7).*

2) *NATO personal shall enjoy free and unrestricted passage and unimpeded access through the FRY including associated airspace and territorial waters. This shall include, but not be limited to, the right of bivouac, maneuver, billet, and utilization of any areas or facilities as required for support, training, and operations (point 8).*

3) *NATO is granted the use of airports, roads, rails, and ports without payment duties, dues, tolls, or charges occasioned by mere use (point 11).*

After this "negotiation", Madeline Albright publicly accused the Serbs of not wanting to agree with the "essential parts" of the proposal (Albright, 1999). President Bill Clinton went even further. After a short introduction in a new US-American version of Balkan history, where he even said that Albanians did not have the right to speak their own language in Kosovo, he informed the public in the USA that the Albanians had accepted the peace agreement even if it meant injustices for them¹⁴ and that they were not satisfied with it, but they wanted to avoid war. On the other hand, Clinton argued, Serbs refused not just to sign the agreement, but even to negotiate about peace (Clinton, 1999).

Still, there are apparent reasons to suspect that this "fair" agreement was actually a war ultimatum with a specific intent: sign the occupation of the whole country, or prepare to be bombed. Former US Secretary of State, Henry Kissinger could not avoid criticizing the proposed peace agreement. According to him, the Rambouillet agreement

13 Some examples for this are Seumas Miller (2004), Dave Averswald, Steve Saideman, Michael Tierney (2009), and Wheeler (2004).

14 The "agreement" in fact gave them rights to declare independence after three years, see *The Rambouillet Document*, 1999.

was not a document which could be accepted by any Serb, and it was a deplorable diplomatic document, which therefore should not have been shaped in this manner (Kissinger, 1999). Political-Military analyst, Michael Mccgwire argued that NATO inserted Annex B to make sure that the peace conference failed, after they realized that their expectations that the Serbs would refuse the first version of agreement backfired (BBC, 2000). Brian Barder and Richard Folk similarly concluded that the purpose of the Rambouillet talks was not to negotiate, but to contrive a set of proposals which the Serbs would be forced to reject, thus offering a bogus pretext for military action (Barder, 2005; Falk, 2002, p.21). With much more hesitation, Taylor Seybolt concluded that Rambouillet was rejected because it was highly favorable to the Kosovo Albanians, but he did not assess how favorable it was for NATO or the USA (Seybolt, 2007, p.80-81).

Besides the agreement text, another unusual matter during these talks was the treatment of delegates. US officials did not try to hide their sympathy for the KLA. This organization was engaged in for example drug dealing and weapons smuggling¹⁵. US Assistant Secretary of State for Public Affairs during the Rambouillet talks, James Rubin, for example, spoke of his relationship with the KLA leader Hasim Taci in this way: "*Taci and I were walking through delightfully made gardens of the castle, with sculptures. We were drinking coffee together in official dining room. We were speaking through translators, about how we like Italian suits, about everything which I could remember*" (Rubin, 2000). It is very unlikely that other similar organizations get such favorable treatment.

HI Justifications during the NATO Military Intervention & Aftermath

After the Rambouillet talks, the attack on Yugoslavia started on March 24. Yugoslavia¹⁶ was accused for ethnic cleansing (or even genocide) of Albanians from Kosovo (the whole name of the province - Kosovo and Metohia was almost always avoided), which according to US-American media and politicians and even many Western intellectuals was coined just before the bombing started. Besides this, many central actors (e.g. Clinton: CNN, 1999) referred to the abolishment of the province autonomy from 1974 as proof of the hard position towards Albanians. It was also explained that Serbs called their military campaign, "operation horseshoe". During that operation NATO, the USA and British functionaries, Western journalists and political "experts" were reporting huge numbers of Albanian deaths. Numbers varied from a few dozen thousands to 500.000 people. In a US State Department report from April 19, we can find a story about "genocide in Kosovo" and the killing of 500.000 Albanians. US Defense Secretary, William Cohen, claimed: "*We've now seen about 100.000 military-aged men missing... They may have been murdered* (CBS Television; May 16, 1999). Daily Mail news reports were titled in the same spirit: "*Flight from Genocide*", where Steve Doughty said: "*Half a*

15 Even CIA before 1998 viewed KLA as an organization engaged in this (Bissett, 2009).

16 Yugoslavia was a multiethnic federal state composed of Serbia and Montenegro. In 1999 Albanians were (and still are) the majority in municipalities of Bujanovac and Presevo outside of KM. Yugoslavia in that time, according to UNHCR still hosted more than 500.000 who still officially had the status of refugees, from other areas of former Yugoslavia after the civil war in this country 1991-1999 (<http://www.unhcr.org/3bfa31ac1.html>) . Even, mostly Serbs, refugees belonged to different ethnic groups (including Croats and Muslims) as well as people from mix marriages who mostly declared as Yugoslavians.

*million Kosovars*¹⁷ *flee their homes in terror from Milosevic, a haunting echo of another war 60 year ago* (Steve Doughty, Daily Mail, 1999). The most notable matter here was that the alleged number of victims was declining rapidly during the war, and towards the end of the war most intervention proponents settled with the number of 10.000 killed Albanians. Ten years after the NATO attack, in the one of the most intensive searches in the history of forensic medicine (Vukovic, 2009, p.38), about 2000 dead bodies that are allegedly Albanian were found. Beside civilians, this number includes KLA members, Albanians that were killed by the KLA because they were still loyal citizens, and Albanians that were killed by NATO bombs in village Koris (e.g. Savic, 2009).

During the war, comparisons were as well made with the Second World War. In this narrative, the Albanians in KM played the role of Jews, while Serbs, despite the history from WW2, were repositioned as Germans. Probably the strongest opposition to these claims during the war came from Jewish intellectual Todd Erhoff. According to him, it was the outmost cynical to compare Jews during the Second World War and Albanians in KM, because Jews did not have any army that provoked the Germans, nor did they insist on separating a part from Germany, and in contrary to the situation of the Jews, 200 000 Albanians lived very peacefully in other parts of Serbia (Erhoff, 2009). Besides this, as the same author noticed, Great Albania was created by fascist Italy in the Second World War, and the Skanderbeg division that was engaged in finding Jews was composed of Albanians, not Serbs (Erhoff, 2009).

Still, one decade after the NATO military intervention there is still no certain evidence that the so called operation Horseshoe was conducted. Operation Horseshoe was first mentioned by German diplomats, but as proof they only had one document that was written in grammatically incorrect Serbian where it said the plan was to exterminate the Albanian population (Hofbauer, 2009, p.108-112). Many critics (Chomsky, 2007; Savic, 2009; Pavkovic, 2004) pointed to the fact that UNHCR reported no data on refugees until three days after the bombing had started. Also, according to Serbian sources more Serbian soldiers and policemen were killed by the KLA during the bombing than by NATO. The commonly stated number of killed by NATO during the war was 248, while in the same period 252 of them were killed in battles with the KLA, which was often neglected in Western reports during the war (Beokovic, 2010).

While masses of Albanians (as well as many non-Albanians) during the bombing and due to fights with the KLA left their homes in KM, no such movements from other areas in Yugoslavia with Albanian majorities was noticed even by Western media. The Serbian government found enough refugees and observers to show that the refugees left due to the bombing and KLA pressure (e.g. RTS 1, April, 23th), while Western media concluded that Albanians, and only Albanians left KM, due to Serbian repression (e.g. CNN, May, 5th). Still, even some authors that did not neglect the crimes towards non-Albanians committed by KLA, relied on selective reports from the field and concluded that ethnic cleansing was organized and not as the result of fights with terrorists, still however underling that the cleansing started after the bombing, whereby the intervention failed to follow what it was supposed to prevent from happening (e.g. Bauman, 2001).

Some authors (e.g. Wheeler, 2004; Clark, 2002; Bellamy 2002), mostly followed reports by Human Rights Watch and explanations provided from NATO officials that used a positive war narrative, whereby NATO was continuously described as a careful organization that bombed in order to spare civilian lives. Civilian losses were treated by them as collateral and they were accounted to be only about 500. Still, even no one can be

17 This was the way how western media referred to Albanians from Kosovo and Metohia.

forced to consider Serbian sources¹⁸ more than HRW sources, what is missing in this literature is data about cluster bombs and bombs with depleted uranium which were used extensively during the bombing, even though these weapons are strictly forbidden in international law¹⁹.

In 1999 Martti Ahtisaari, at the time president of Finland, was called by Strobe Talbott, deputy to US Secretary of State Madeline Albright, and formally authorized by Gerhard Schröder and Kofi Annan, to deliver a new “agreement” to FR Yugoslavia. Martti Ahtisaari was known as one of the main proponent of the NATO attack (Ahtisaari, 2001). According to Elich and Oberg he started the meeting with the following words: “*We are not here to discuss or negotiate*”, and then threatened that NATO will make Belgrade “flat like a table” if Serbia does not accept giving up its Southern province – Kosovo and Metohia (Oberg, 2008). Even if he later denied the part about threats by explaining that this is not in his style, he confessed in his book that “Milosevic” (President of Yugoslavia) was not treated like someone who can discuss about the future of the his country, explaining that he had a chance to discuss but he did not make use of it (Ahtisari, 2001, p.76). This way he was referring to the Rambouillet document.

According to UN Resolution 1244 which was based on the agreements in Belgrade and Kumanovo²⁰, KM as a Serbian province came under international protection without Yugoslav military or other state representatives in the area (UN Resolution 1244). The International Security Force (KFOR), formally engaged in protecting peace, was mostly composed of military personnel from NATO countries that were involved in the bombing. Hasim Taci became the “Prime minister of Kosovo”, while KLA instead of being disarmed (UN Resolution 1244) only changed their name to “Kosovo Protection Corps”. Non-Albanians (except in the Northern Kosovska Mitrovica, where they organized self protection) escaped when KFOR and the KLA arrived. Veiga underlined that the cleansing of different ethnic groups (Roma, Gorani, Egyptians and a smaller number of Turks) together with Serbs occurred due to the Albanian perception that they were “loyal to occupiers”. According to him, the problem was that NATO neither could nor wanted to stop this ethnic cleansing (Veiga, 2003, p 478-479)²¹.

Today the second largest US military base outside of the USA is located in Kosovo, “Camp Bondsteel”, with a capacity of 70.000 soldiers. USA was one of the first countries to recognize “Kosovo“ as an independent nation, despite UN resolution 1244 (Ahtisaari, 2001; Rubin 2000) which defines KM as a part of Yugoslavia, while they also pressure other countries to recognize “Kosovo”. Some of the main proponents of the action, President Bill Clinton and the diplomat who delivered the ultimatum to

18 According to the Committee for the Collection of Data for the Crimes against Humanity and International law civilian loses of bombing were about 2000 (Beokovic, 2010).

19 Besides the cluster bombs were often showed in Serbian media and present in the literature (e.g. Trbovich, 2008, p 352-354) some of the bombs thrown on Yugoslavia can be even found in the Belgrade Military Museum.

20 Military- technical part of agreement was signed in Kumanovo (FYR Macedonia) in June 9, 1999. Text of agreement can be found on <http://www.nato.int/kosovo/docu/a990609a.htm> (22.6.2010). Document was signed between the International Security Force (KFOR) and Governments of the Federal Republic of Yugoslavia and the Republic of Serbia.

21 According to Veiga there is little less than 200.000 people which were forced to leave KM after KFOR came (Veiga, 2003, p 506), while according to UNHCR that number is about 250.000 (Hofbauer, 2009, p 123).

Yugoslavia in May 1999, Martii Ahtisaari, got the Nobel Peace Prize, while William Walker received a “Gold Medal for Contribution to Humanity”, which he got directly from the former KLA leader Hasim Taci and the new “president of Kosovo”, Fatmir Sejdiu, on the tenth anniversary of the events in Racak. At the same time, all Serbs with command responsibility and political power at the time of the NATO military intervention were taken to The Hague Court for war crimes.

JUST WAR CRITERIA IN THE CASE OF YUGOSLAVIA & LIMITATIONS TO HI

It is possible to write an academic study by relying on renowned Western authors and media and make it clear that all Just war criteria were fulfilled in the Yugoslavia intervention case. Still, by taking into account primary sources and the whole sequence of events there are many evident reasons to be skeptical and critical.

Even if we avoid all the data and materials that we cannot fully rely on, like Oberg and Elich claims (Oberg, 2008) or Serbian data and records about the number of killed people, there are still many obvious problems attached to the pro-intervention position. The Rambouillet document, the treatment of delegates in Rambouillet, Ahtisaari's confession that Yugoslavia was not treated as a negotiator (Ahtisari, 2001, p.76), the use of cluster bombs in the attack and drastic exaggerations of the numbers of victims on one side next to the absolute ignorance of the victims on the other side, and the inaccurate time period estimations of the events are at least enough significant reasons to be suspicious about the fulfillment of the three criteria of Just war as outlined by Wheeler: just case, proportionality and especially the use of force as a last resort (Wheeler, 2000, p.34-35). If we add that Walker's statements about "slaughter in Racak" were contradictory to the autopsy report, Helena Ranta's later confession as well as many eye witness reports and even statements by Wesley Clark, the Supreme Allied Commander Europe of NATO, and Richard Holbrooke, arguments for supporting the Walker version of events, which was the axiom to conduct the bombing, are even weaker.

Looking at Wheeler's fourth criteria of Just war (Wheeler, 2000, p.35) – positive humanitarian outcome – we cannot deny or overlook the ethnic cleansing of non-Albanians in the province and the fact that KLA leaders became the new authority in the province. At the same time, in military action, the abolishment of the more than questionable constitution from 1974 was taken as key evidence for the abused rights of Albanians, which needed to be returned to them. All of these matters do not support the potential conclusion that this criterion was fulfilled.

The case of Yugoslavia cannot show us how every humanitarian intervention needs to be conducted. Still, this case shows that a nominal declaration that the goals of military action are to protect human rights does not necessarily mean that the attack is legitimate or humanitarian, especially if it is followed by dilemmas similar to the ones which are linked to the case of Yugoslavia. Also, some guaranteed evidence later proved to be uncertain. The circumstance that the war was conducted and later won by liberal democratic countries did not bring liberal democratic outcomes to the space which was put under NATO control, despite the theory of democratic peace (Doyle, 1986, p.1160). On the other hand, political reasons for conducting the intervention as an official "moral agent", as underlined by Chomsky and Mearsheimer (Chomsky, 1994; Chomsky 1999; Chomsky, 2008; Mearsheimer, 2001) proved to be a possible problem for the HI concept due to the rapid establishment of the Bondsteel military base in KM.

What the case of Yugoslavia (1999) also showed is that in order to achieve a legitimate humanitarian intervention, it is necessary to have objective arbiters that can negotiate between the two sides before taking action, instead of primarily supporting hardliners on one of the conflict sides. That way the necessity is to have the same criteria for all involved parties and to be impartial, as argued by Pavkovic (2004, p.161-185), which is the first requirement for peaceful solutions under such conditions. Furthermore, instead of ultimatums, agreements should include the legitimate desires of both sides when there is space or opportunity to consider the conflicting parties' demands. If

someone believed that some great injustice was done particularly to Albanians and particularly in KM (while in the regions outside of KM there was no movement of Albanians even during the bombing) it was not reasonable to expect that any state, especially give the size of the state of Yugoslavian, that it would rather choose war as an option against the most powerful alliance in world history, and then to give autonomy to one ethnic minority.

In order to ensure fair treatment of sides in negotiation, it is also necessary to open media space between interventionist countries and the state that are accused for violating human rights. Opening media would mean that agreement texts can be discussed in front of the wider public, especially in countries ready for intervention that do not have any interest for pragmatic political action in the name of humanity. Only this way, democratic capacity of society in interventionist states can really be used for the cause of peace.

Furthermore, the case of Yugoslavia showed that before a bombing campaign is initiated, we need serious and transparent investigations which should include experts and observers that were not discredited in their previous undertakings and who must be delegated by neutral countries instead by interventionist (like William Walker). It is also important that humanitarian interventions are not followed by permanent military presence by the interventionists and changes of borders, then to strictly humanitarian outcome. Still, the main contribution of this case for the concept of humanitarian intervention is that HI pursues must be based on UN Security Council approval. Lack of approval can much easier be the result of doubts about the humanitarian character of the planned action than laziness or disinterest of other states for human suffering, like it was less or more directly presented by the biggest proponents of the HI (e.g. Wheeler, 2000; Miller, 2004). All of these, with popular Just war criteria make the difference between legitimate and illegitimate humanitarian interventions, or between real humanitarianism and pragmatic political action taken in the name of humanity.

Chapter III

CONCLUSIONS

The humanitarian intervention doctrine is based on a strong theoretical foundation. This doctrine is comprised by progressive ideas including cosmopolitan moral responsibility, solidarity, human freedom and liberal democracy. Arguments underlining that humankind must react during conditions of gross human rights violation in any part of the world, without fulfilling particular geopolitical goals of any of the involved actors with the obligation to rebuild the attacked state, seems very persuasive, especially in a world that is intensified by a multi-polar international order and globalized reality. Even if there always will be risks of taking the wrong steps or misinterpretations, collective humanitarian interventions are expected to follow a higher moral standard to stop intensified and systematic violence and injustices rather than to be driven by pragmatic political actions or ambitions. Besides this, state sovereignty was clearly a social construct, an institution which appeared as a result of specific historical circumstances, and it cannot claim absolute authority over human rights.

On the other hand, it would be overly simplified to present humanitarian intervention as a conflict between law and justice in all cases. Calling for justice and human right protection at least can (even certainly does not need) to bring injustice and negative humanitarian outcomes. The unilateral humanitarian intervention concept particularly showed considerable weaknesses, which are noted by critics and unfortunately confirmed in practice. Defenders of this practice from the legal side have not succeeded to explain persuasively why law is sometimes exact and sometimes changeable, or why some states have or take on rights that others do not have. Certainly the possibilities for using human rights protection justifications as approvals for political goals are much higher in this case, even if interventionists' internal politics can be described as democratic, which proved not to be the most important in the analyzed case of Yugoslavia.

In conclusion, instead of choosing absolute sovereignty from one side, or the right for intervention whenever interventionists say there is alleged necessity to protect human rights, it is rather necessary to establish specific boundaries to humanitarian interventions, which at the same time can show the limitations to state sovereignty, and these boundaries must simultaneously be based on attempts to avoid previous mistakes.

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