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978-1-107-07551-1 - The Emergence of Humanitarian Intervention: Ideas and Practice from the Nineteenth Century to the Present

Edited by Fabian Klose

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## I

### The emergence of humanitarian intervention

#### *Three centuries of ‘enforcing humanity’*

Fabian Klose

People begin to feel that not only is every nation entitled to a free and independent life, but also that there are bonds of international duty binding all the nations of this earth together. Hence, the conviction is gaining ground that if on any spot of the world, even within the limits of an independent nation, some glaring wrong should be done . . . then other nations are not absolved from all concern in the matter simply because of large distance between them and the scene of the wrong.<sup>1</sup>

Giuseppe Mazzini, 1851

#### THE DILEMMA OF INTERVENTION: A HISTORICAL AND RECENT POLITICAL DEBATE

How should the international community react when a government transgresses humanitarian norms and violates the human rights of its own nationals? If a responsibility for protecting people from gross human rights violations exists, which international actor should be responsible for counteracting such crimes? Is it legitimate to interfere from outside in the internal affairs of a sovereign state to prevent mass atrocities and to stop crimes against humanity? These controversial questions are inherent

I would like to thank Andrew Thompson, Martin Geyer, and Johannes Paulmann for their perceptive comments on the draft of this chapter. My essay was supported by the German Research Foundation (DFG) for which I am deeply grateful.

<sup>1</sup> Giuseppe Mazzini, ‘On Nonintervention (1851)’ in Stefano Recchia and Nadia Urbinati (eds.), *A Cosmopolitanism of Nations: Giuseppe Mazzini’s Writings on Democracy, Nation Building, and International Relations* (Princeton University Press, 2009), 217–18.

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to the issue of humanitarian intervention and reveal the existing conflict between two crucial pillars in international relations: the respect of state sovereignty and the defence of humanity. The debate revolves around the central problem of how to reconcile the humanitarian imperative with the idea of the inviolability of national sovereignty rights. This dilemma of intervention is not just a very recent one; it has a long history. Already at the beginning of the nineteenth century, an intense debate evolved over the issue of interfering in the rights of sovereign states ‘in the cause of humanity’. In order to stop massive violations of humanitarian standards, the European Great Powers intervened repeatedly by military means in various regions of the world, such as West Africa, East Africa, North Africa, the Near East, and the Balkans; amazingly, these are almost the same ‘geographic hot spots’ of humanitarian intervention as those of the twentieth and twenty-first centuries. Fighting the transatlantic slave trade and protecting religious minorities became the two major impulses for the emergence of a new kind of interventionist doctrine. Thus the aim of the chapters in this book is to present the evolution of the practice and theory of humanitarian intervention over three centuries, from the nineteenth to the twenty-first century.

First and foremost, the dilemma of intervention is regarded as a hot topic in an ongoing international political debate. In his Millennium Report in 2000, the then United Nations (UN) Secretary-General Kofi Annan described trenchantly the problem by asking:

I also accept that the principles of sovereignty and non-interference offer vital protection to small and weak states. But to the critics I would pose this question: 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>2</sup>

Annan purposely referred to the two most fatal failures of the international community, in general, and the deployed UN Blue Helmets, in particular, to prevent mass atrocities against civilians – the genocide of approximately 800,000 Tutsis in Rwanda by Hutus in 1994 and the massacre of over 8,000 Bosnian Muslims by Serbian troops in the so-called UN safe haven of Srebrenica in July 1995 – in order to argue for the moral duty of intervening actively against such horrendous crimes.

<sup>2</sup> Kofi A. Annan, ‘We the peoples’: *The Role of the United Nations in the Twenty-first Century. Report of the Secretary-General* (New York: United Nations, 2000), 48. For the full report, see [www.unmillenniumproject.org/documents/wethepeople.pdf](http://www.unmillenniumproject.org/documents/wethepeople.pdf) (last accessed on 18 May 2015).

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Thus, the Secretary-General incorporated the central recommendations of two UN reports of inquiry concerning both cases, which acknowledged the complete failure of the UN system and demanded, as a lesson for the future, the development of an effective concept to protect humanity.<sup>3</sup> Ensuing from the humanitarian catastrophes in Rwanda and Srebrenica, the controversy revolves in general around the topics of the responsibility to act, the related serious doubts about the role of the UN, and the existing deficiency of international law. This debate was once more intensified by the inaction of the Security Council in the Kosovo crisis and the related North Atlantic Treaty Organization (NATO) military intervention without UN authorization in 1999.<sup>4</sup>

In response to the pending dilemma of intervention, the International Commission on Intervention and State Sovereignty (ICISS), set up by the Canadian government, proposed in December 2001 the idea of ‘responsibility to protect’ (R2P), which was based on an alternative, reframed concept of sovereignty.<sup>5</sup> In its final report, the ICISS argued that sovereignty not only gave states the right to control their own affairs but implied as well their primary responsibility to protect the people living within their borders:<sup>6</sup> ‘Where a population is suffering serious harm, as a

<sup>3</sup> Report of the Secretary-General Pursuant to General Assembly Resolution 53/35. The Fall of Srebrenica, 15 November 1999, UNGA A/54/549; Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, 16 December 1999, UNSC S/1999/1257. For an eyewitness account by the Canadian Commander of the UN mission about the disastrous failure in Rwanda, see Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (London: Arrow Books, 2004). For Kofi Annan’s personal account on the failure of the UN in Rwanda and Srebrenica and the lessons to be drawn from it, see Kofi Annan, *Interventions: A Life in War and Peace* (New York: Penguin Press, 2012), 29–133. On the dilemmas of humanitarian interventions, see also Jonathan Moore (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (Lanham: Rowman & Littlefield, 1998); Luke Glanville, ‘Ellery Stowell and the Enduring Dilemmas of Humanitarian Intervention’, *International Studies Review*, 13, no. 2 (2011), 241–58.

<sup>4</sup> For a multidisciplinary study on the Kosovo crises and the related intervention, see Albrecht Schnabel and Ramesh Thakur (eds.), *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship* (Tokyo and New York: United Nations University Press, 2000); Aidan Hehir, *Humanitarian Intervention After Kosovo: Iraq, Dafur and the Record of Global Civil Society* (Basingstoke: Palgrave Macmillan, 2008).

<sup>5</sup> On this debate and related developments, see also Chapter 14 by Manuel Fröhlich in this book.

<sup>6</sup> The crucial new approach to sovereignty as responsibility, which the ICISS report follows, was articulated for the first time in the study by Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, and I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington: The Brookings Institution, 1996).

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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>7</sup> In other words, when a state failed to uphold the fundamental rights of its people, its sovereignty was suspended, and the responsibility shifted to the international community, which could, as a last resort, even forcibly interfere.<sup>8</sup> This concept was celebrated as a crucial watershed, a promising normative advancement in international politics and gained international recognition at the UN World Summit in 2005. On the occasion of the sixtieth anniversary of the foundation of the UN, all UN member states officially affirmed their acceptance of ‘the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity’.<sup>9</sup>

Two recent conflict scenarios became test cases for the consistency and value of the new R2P formula in international politics. Following widespread attacks against civilians by the regime of Muammar al-Gaddafi in Libya, the UN Security Council issued its Resolution 1973 on 17 March 2011, in which it referred for the first time explicitly to the principle of the responsibility to protect<sup>10</sup> and authorized the UN member states ‘to take

<sup>7</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), xi, [www.responsibilitytoprotect.org/ICISS%20Report.pdf](http://www.responsibilitytoprotect.org/ICISS%20Report.pdf) (last accessed on 18 May 2015).

<sup>8</sup> For the development of the R2P concept, see Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington: The Brookings Institution, 2008); James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford University Press, 2010); Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press, 2011); Ramesh Thakur, *The Responsibility to Protect: Norms, Laws, and the Use of Force in International Politics* (London and New York: Routledge, 2011); Cristina Gabriela Badescu, *Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights* (New York: Routledge, 2011); Aidan Hehir, *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* (Basingstoke: Palgrave, 2012); Melissa Labonte, *Human Rights and Humanitarian Norms, Strategic Framing, and Intervention: Lessons for the Responsibility to Protect* (London and New York: Routledge Chapman & Hall, 2013). On the development of the international law on the use of force since 1945 see especially: Claus Kieß, ‘Major Post-Westphalian Shifts and Some Important Neo-Westphalian Hesitations in the State Practice on the International Law on the Use of Force’, *Journal on the Use of Force and International Law*, 1, no. 1 (2014), 11–54.

<sup>9</sup> Resolution 60/1, 2005 World Summit Outcome, 24 October 2005, UNGA A/RES/60/1, 30, [www.un.org/womenwatch/ods/A-RES-60-1-E.pdf](http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf) (last accessed on 18 May 2015).

<sup>10</sup> The quote ‘Recalling the Libyan authorities’ responsibility to protect its population’ is in Resolution 1970 (2011), 26 February 2011, UNSC S/RES/1970, 2, [www.un.org/press/en/2011/SC10187.doc.htm](http://www.un.org/press/en/2011/SC10187.doc.htm) (last accessed on 18 May 2015).

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all necessary measures'<sup>11</sup> to protect the Libyan civilian population. As a result, NATO started to attack Gaddafi's forces with air strikes and thus contributed significantly to the victory of the opposition movement in the civil war. In a later interview, UN Deputy Secretary-General Jan Eliasson justified the armed intervention by arguing that Gaddafi's announced atrocities against civilians depicted a 'Srebrenica moment' that forced the international community to react.<sup>12</sup>

According to various reports of the international media, the recent civil war in Syria with the ruthless attacks against the civilian population also evokes memories of the Bosnian tragedy. For instance, both the desperate situation of the people in the besieged rebel stronghold of Homs and the appalling massacres of civilians in the town of Houla are repeatedly characterized as 'Syria's Srebrenica moment'.<sup>13</sup> Despite the ongoing humanitarian crisis, the international community shows no reaction similar to the Libyan case, is instead entirely divided over the issue, and abstains from the option of direct intervention. The UN Security Council remains paralysed by the division among the proponents and opponents of applying the R2P concept to the Syrian conflict. While the civil war continues to haunt the civilian population, the question of how to react to massive violations of human rights and ongoing humanitarian crises continues to be fiercely disputed within the sphere of international politics.<sup>14</sup>

<sup>11</sup> Resolution 1973 (2011), 17 March 2011, UNSC S/RES/1973, 3, [www.un.org/press/en/2011/scio200.doc.htm#Resolution](http://www.un.org/press/en/2011/scio200.doc.htm#Resolution) (last accessed on 18 May 2015).

<sup>12</sup> "Srebrenica-Moment": Der künftige UN-Vizechef über gute Gründe für Interventionen', *Die Zeit*, 22 March 2012. For a similar interpretation, see Brendan Simms, 'Road to Libya Runs through Srebrenica', *The Independent*, 29 May 2011.

<sup>13</sup> 'Syria's Srebrenica: Situation Grows Increasingly Grim in Rebel Stronghold of Homs', *Spiegel online International*, 23 February 2012, [www.spiegel.de/international/world/syria-s-srebrenica-situation-grows-increasingly-grim-in-rebel-stronghold-of-homs-a-817145.html](http://www.spiegel.de/international/world/syria-s-srebrenica-situation-grows-increasingly-grim-in-rebel-stronghold-of-homs-a-817145.html) (last accessed on 18 May 2015); Michael Dobbs, 'Houla Massacre Evokes Memories of Srebrenica', *The Washington Post*, 2 June 2012, [www.washingtonpost.com/world/europe/houla-massacre-evokes-memories-of-srebrenica/2012/06/02/gJQATaHs9U\\_story.html](http://www.washingtonpost.com/world/europe/houla-massacre-evokes-memories-of-srebrenica/2012/06/02/gJQATaHs9U_story.html) (last accessed on 18 May 2015); Fen Osler Hampson, 'Syria's Srebrenica Moment', *iPolitics*, 4 June 2012, [www.ipolitics.ca/2012/06/04/fen-hampson-syrias-srebrenica-moment/](http://www.ipolitics.ca/2012/06/04/fen-hampson-syrias-srebrenica-moment/) (last accessed 18 May 2015); Wolfgang Ischinger, 'Lehren aus Srebrenica', *Süddeutsche.de*, 28 August 2013, [www.sueddeutsche.de/politik/moeglicher-militaereinsatz-in-syrien-lehren-aus-srebrenica-1.1756462](http://www.sueddeutsche.de/politik/moeglicher-militaereinsatz-in-syrien-lehren-aus-srebrenica-1.1756462) (last accessed on 18 May 2015).

<sup>14</sup> For this ongoing debate, see Michael Staack and Dan Krause (eds.), *Schutzverantwortung in der Debatte. Die 'Responsibility to Protect' nach dem Libyen-Dissens* (Opladen and Berlin, Verlag Barbara Buderich, 2015).

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## A SHORT- OR LONG-TERM HISTORY OF HUMANITARIAN INTERVENTION? DEFINITION AND THE STATE OF RESEARCH

Despite the recent intense political debate, the academic discussion about the issue of humanitarian intervention is much older. It reaches back to the work of scholars in the nineteenth and early twentieth centuries, in which there was already controversy over legal arguments for and against an interventionist doctrine.<sup>15</sup> However, against the backdrop of the ban on the use of force and intervention explicitly established in the UN Charter,<sup>16</sup> this debate at first waned noticeably after 1945, and prominent legal scholars such as Ian Brownlie even expressed serious doubts about the validity of the whole concept. By pointing to the political abuse of humanitarian rhetoric to justify forcible interference in the past, especially in the case of the German assault on Czechoslovakia in 1939,<sup>17</sup> Brownlie concluded that no genuine case of humanitarian intervention had ever occurred. Moreover, he called it a beneficial development in international law and politics that this ‘institution has disappeared from modern state practice’.<sup>18</sup>

<sup>15</sup> For these early examples, see Henry Wheaton, *Elements of International Law: With a Sketch of the History of the Science* (Philadelphia: Carey, Lea & Blanchard, 1836), 82–94; Hermann Rotteck, *Das Recht der Einmischung in die inneren Angelegenheiten eines fremden Staates vom vernunftrechtlichen, historischen und politischen Standpunkt erörtert* (Freiburg a. Br.: Adolph Emmerling, 1845); Augustus Granville Stapleton, *Intervention and Non-Intervention or The Foreign Policy of Great Britain from 1790 to 1865* (London: John Murray, 1866); Egide Arntz and Gustave Rolin-Jaequemyns, ‘Note sur la Théorie du Droit d’Intervention’, *Revue de Droit International et de Legislation Comparée*, 8 (1876), 673–82; William E. Lingelbach, ‘The Doctrine and Practice of Intervention in Europe’, *Annals of the American Academy of Political and Social Science*, 16 (July 1900), 1–32; Lassa Oppenheim, *International Law: A Treatise*, vol. 1: *Peace* (London: Longmans, Green, and Co., 1905), 181–90; Antoine Rougier, ‘La Théorie de l’Intervention d’Humanité’, *Revue Générale de Droit International Public*, 17 (1910), 468–526; Henry G. Hodges, *The Doctrine of Intervention* (Princeton: Banner Press, 1915); Ellery C. Stowell, *Intervention in International Law* (Washington: John Byrne & Co., 1921); P. H. Winfield, ‘The Grounds of Intervention in International Law’, *The British Year Book of International Law* (Oxford 1924), 149–62.

<sup>16</sup> See Article 2, para. 4 and para. 7 of the UN Charter.

<sup>17</sup> On this case, see Chapter 10 by Jost Dülffer in this book.

<sup>18</sup> Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963), 340. An absolute exception was the prominent legal scholar Hersch Lauterpacht, who argued for the idea of humanitarian intervention as a way to protect human rights. See, Hersch Lauterpacht, *An International Bill of the Rights of Man* (New York and London: Columbia University Press, 1945), 169–78 and 207–13; Hersch Lauterpacht (ed.), Lassa Oppenheim, *International Law: A Treatise*, vol. 1: *Peace* (London and New York: Longmans, Green, and Co., 1948), 279–80; Hersch

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The issue of humanitarian intervention regained momentum on the occasion of specific political events at the end of the 1960s and the beginning of the 1970s. The crisis in Biafra in 1968<sup>19</sup> and the military intervention of India to stop mass atrocities against the civilian population in East Pakistan in 1971 prompted academics to pay considerable attention to the notion once again. After these significant cases, they began to raise the question of whether the idea of forcible interference for humanitarian purposes fit into international law and earned any legal recognition.<sup>20</sup> Especially the last twenty years have witnessed a significant intensification of the debate within international law and political science. During this time, both disciplines have produced and are still producing a burgeoning body of literature on the topic.

While working intensively in the field, scholars such as J. L. Holzgrefe managed to offer a sustainable definition of humanitarian intervention. According to Holzgrefe, the term refers to ‘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

Lauterpacht, *International Law and Human Rights* (London: Stevens & Sons Limited, 1950), 120–2.

<sup>19</sup> See also Chapter 15 by Andrew Thompson, 348–49, in this book.

<sup>20</sup> Already the US intervention in the Dominican Republic in 1965 evoked some echo in international law under the heading of ‘humanitarian intervention’: David S. Bogen, ‘The Law of Humanitarian Intervention: United States Policy in Cuba (1898) and in the Dominican Republic (1965)’, *The Harvard International Law Club Journal*, 7, no. 2 (Spring 1966), 296–315. Concerning the Biafra crisis, see: Michael Reisman and Myers S. McDougal, ‘Humanitarian Intervention to Protect the Ibos’ in Richard B. Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville: University of Virginia Press, 1973), 167–95. This legal memorandum was prepared as a petition to the UN in September 1968 and circulated after its submission for discussion among international legal scholars. Laurie S. Wiseberg, ‘Humanitarian Intervention: Lessons from the Nigerian Civil War’, *Revue des droits de l’homme*, 70, no. 1 (1974), 61–98. For the whole debate on the occasion of India’s invasion in East Pakistan, see Lillich, *Humanitarian Intervention*; Thomas M. Franck and Nigel S. Rodley, ‘After Bangladesh: The Law of Humanitarian Intervention by Military Force’, *The American Journal of International Law*, 67, no. 2 (April 1973), 275–305; Jean-Pierre L. Fonteyne, ‘The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter’, *California Western International Law Journal*, 4 (1973), 203–70. For additional articles on the subject, see B. de Schutter, ‘Humanitarian Intervention: A United Nations Task’, *California Western International Law Journal*, 21, no. 3 (1972), 21–36; Howard L. Weisberg, ‘The Congo Crisis of 1964: A Case Study in Humanitarian Intervention’, *Virginia Journal of International Law*, 12 (1972), 261–76; Farooq Hassan, ‘Realpolitik in International Law: After Tanzanian-Ugandan Conflict: “Humanitarian Intervention” Reexamined’, *Willamette Law Review*, 17 (1981), 859–912.



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rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied'.<sup>21</sup> Although this definition slightly varies in one form or another throughout the literature, most scholars agree on three key features in defining the term: the transboundary interference in the domestic affairs of a foreign state, the predominant humanitarian purposes, and the coercive nature of the engagement. Thus, most studies focus purely on the use of military force as humanitarian intervention and distinguish it clearly from other forms of civil humanitarian action, such as aid and relief operations by governmental and non-governmental agencies.<sup>22</sup> Accordingly, the various activities of prominent international organizations such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of

<sup>21</sup> J. L. Holzgrefe, 'The Humanitarian Intervention Debate' in J. L. Holzgrefe and Robert O. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge University Press, 2004), 18. This definition follows closely the general definition of the term 'intervention' as articulated by R. J. Vincent, who characterizes 'intervention as that 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'. R. J. Vincent, *Nonintervention and International Order* (Princeton University Press, 1974), 3–13, here 13. For a general approach on the issue of intervention and its various types, see Hedley Bull (ed.), *Intervention in World Politics* (Oxford University Press, 1986); Andrew M. Dorman and Thomas G. Otte (eds.), *Military Intervention: From Gunboat Diplomacy to Humanitarian Intervention* (Aldershot: Dartmouth Publishing Company, 1995); S. Neil MacFarlane, *Intervention in Contemporary World Politics* (New York: Routledge, 2002); Martha Finnemore, *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca and London: Cornell University Press, 2003).

<sup>22</sup> Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996), 8–20; Adam Roberts, *Humanitarian Action in War: Aid, Protection and Impartiality in a Policy Vacuum* (Oxford: Routledge, 1996), 19–31; Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague, London and Boston: Kluwer Law International, 1999), 18; Nicolas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press, 2003), 1–2; Jennifer M. Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford University Press, 2006), 3; Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford and New York: Oxford University Press, 2003), 2–3; Pattison, *Humanitarian Intervention*, 24–30; Wilfried Hinsch and Dieter Janssen, *Menschenrechte militärisch schützen: Ein Plädoyer für humanitäre Interventionen* (Munich: C.H. Beck, 2006), 29–34; Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford University Press, 2007), 5–6; Eric A. Heinze, *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention* (Albany: State University of New York Press, 2009), 7–10; Aidan Hehir, *Humanitarian Intervention: An Introduction* (Basingstoke: Palgrave, 2010), 11–21; Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Cambridge and Malden: Polity Press, 2012), 6–15.



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the Red Cross (ICRC), Médecins Sans Frontières (MSF)<sup>23</sup>, CARE, and Oxfam are characterized as ‘humanitarian aid’, ‘humanitarian protection’, and ‘humanitarian assistance’ rather than as ‘humanitarian intervention’.<sup>24</sup> As a matter of fact, various authors address the growing dilemma of intermingling military coercion and humanitarian action in this context. Thus ‘coercive humanitarianism’ can indeed undermine and endanger the genuine humanitarian enterprise.<sup>25</sup> For this reason, Didier Fassin and Mariella Pandolfi argue for a precise methodological distinction: ‘We need to be clear that the work of humanitarian organizations cannot be likened to the action of military forces. It is therefore important that analysis does not add to the confusion of categories that reigns on the ground by blurring the issues and by placing all actors and all logics on the same level.’<sup>26</sup>

The existing literature on international law and political science takes a distinctly normative approach in addressing the topic of humanitarian intervention. Among legal scholars, the overarching concern deals with the lawfulness of this kind of intervention. They concentrate on the questions of whether and under which legal conditions it is permissible to forcibly intervene in the name of humanity. In short, does a right to interfere in the internal affairs of sovereign state for humanitarian purposes exist according to the body of international law? Their foremost attention is on the legal dilemma of intervention, which rests on competing claims of state sovereignty as a guiding principle in international

<sup>23</sup> See also Thompson, Chapter 15, 348.

<sup>24</sup> For these humanitarian actions and the related organizations, see United Nations High Commissioner for Refugees (ed.), *The State of the World's Refugees: Fifty Years of Humanitarian Action* (Oxford University Press, 2000); Larry Minear, *The Humanitarian Enterprise: Dilemmas and Discoveries* (Bloomfield, Conn.: Kumarian Press, 2002); Fabrice Weissman (ed.), *In the Shadow of 'Just Wars': Violence, Politics, and Humanitarian Action* (London: Cornell University Press, 2004); David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge University Press, 2005); Michael Barnett and Thomas G. Weiss (eds.), *Humanitarianism in Question: Politics, Power, Ethics* (Ithaca: Cornell University Press, 2008); Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Ithaca and London: Cornell University Press, 2011); Johannes Paulmann, ‘Conjunctures in the History of International Humanitarian Aid during the Twentieth Century’, *Humanity*, 4, no. 2 (Summer 2013), 215–38.

<sup>25</sup> See Minear, *Humanitarian Enterprise*, 99–118; Didier Fassin and Mariella Pandolfi, ‘Introduction: Military and Humanitarian Government in the Age of Intervention’, in Didier Fassin and Mariella Pandolfi (eds.), *Contemporary States of Emergency. The Politics of Military and Humanitarian Intervention* (New York: Zone Books, 2010), 9–25; Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (Berkeley and Los Angeles: University of California Press, 2012), 223–42.

<sup>26</sup> Fassin and Pandolfi, ‘Introduction’, 14.

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relations and on the evolving idea of the promotion of human rights. In order to illuminate this problem, some law scholars purposely trace the legal origins of an interventionist doctrine back to the Christian medieval tradition of just war. In addition, they analyse the further development of the notion according to the emergence of natural law theory in the work of such prominent figures as Hugo Grotius and Emerich de Vattel during the seventeenth and eighteenth centuries and in relation to the growth of positive law in the nineteenth century.<sup>27</sup> By integrating early historical precedents in their legal analysis, they discuss whether a doctrine of humanitarian intervention existed in customary international law prior to 1945. Nevertheless, legal research remains definitely focused primarily on the discourse on forcible interference under the legal paradigm of the UN Charter and on the very recent debate about the development of the concept of intervention from a right to intervene to a responsibility to protect.<sup>28</sup> The NATO intervention in Kosovo in 1999, which had no UN mandate, thereby serves as the prime case study for discussing the two contesting issues of the legality and legitimacy of humanitarian intervention and the impact on the body of international law.<sup>29</sup>

<sup>27</sup> For references to historical precedents, see Murphy, *Humanitarian Intervention*, 33–64; Wilhelm G. Grewe, *The Epochs of International Law* (Berlin and New York: De Gruyter, 2000), 487–96; Abiwe, *Evolution of the Doctrine*, 21–59; Chesterman, *Just War*, 7–44; Mark Swatek-Evenstein, *Geschichte der 'Humanitären Intervention'* (Baden-Baden: Nomos, 2008); Hans Köchler, *The Concept of Humanitarian Intervention in the Context of Modern Power Politics: Is the Revival of the Doctrine of 'Just War' Compatible with the International Rule of Law?* (Vienna: International Progress Organization, 2001); Stephen Kloepper, 'The Syrian Crisis, 1860–1861: A Case Study in Classic Humanitarian Intervention', *The Canadian Yearbook of International Law*, 23 (1985), 246–60; Istvan Pogany, 'Humanitarian Intervention in International Law: The French Intervention in Syria Re-Examined', *International and Comparative Law Quarterly*, 35 (January 1986), 182–90; Christian Hillgruber, 'Humanitäre Intervention, Grossmachtpolitik und Völkerrecht', *Der Staat*, 40, no. 21 (2001), 165–91. Stefano Recchia and Jennifer M. Welsh (eds.), *Just and Unjust Military Intervention: European Thinkers from Vitoria to Mill* (Cambridge University Press, 2013).

<sup>28</sup> Fernando R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (Dobbs Ferry, N.Y.: Transnational Publishers, 2005); Thakur, *Responsibility to Protect*; Orford, *International Authority*.

<sup>29</sup> Louis Henkin, 'Kosovo and the Law of "Humanitarian Intervention"', *The American Journal of International Law*, 93, no. 4 (October 1999), 824–8; Jonathan I. Charney, 'Anticipatory Humanitarian Intervention in Kosovo', *The American Journal of International Law*, 93, no. 4 (October 1999), 834–41; Richard A. Falk, 'Kosovo, World Order, and the Future of International Law', *The American Journal of Law*, 93, no. 4 (October 1999), 847–57; Sean D. Murphy, 'The Intervention in Kosovo: A Law-Shaping Incident?', *Proceedings of the Annual Meeting* (American Society of International Law), 94 (5–8 April 2000), 302–04; Allen Buchanan, 'Reforming the International Law of