CROSSING THE RUBICON: THE ENVIRONMENT OF HUMANITARIAN EMERGENCY[1]

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> «Then suddenly the terrible nightmare faded, the roar of the cannons was stilled; the unbelievable had really happened - the World War had ended!»[2]
>
> *Fridtjof Nansen, 1922*
>
> *«'Humanitarian intervention' has been controversial both when it happens, and when it has failed to happen».*
>
> ICISS report "Responsibility to Protect"[3]

Peace, war and humanitarianism

The World War I ended up with massive losses to all sides, total death toll of 40 million people and huge devastations to the world economy. The first ever universal inter-governmental body – the League of Nations – was established in 1920 by the decisions of Paris Peace Conference, as member-states accepted their "obligations not to resort to war" and maintain justice among "organized peoples", with due respect to "international obligations" (Art. 13) and under the threat of universal

[1] This article has hugely benefited from feedbacks and insightful review by Dr. Judith Kelley, Associate Professor of Political Science at Sanford School of Public Policy, Duke University.

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[2] Presentation speech at Award Ceremony by Fridtjof Nansen, Peace Laureate for 1922, on December 10, 1926. http://www.nobelprize.org/nobel_prizes/peace/laureates/1926/presentation-speech.html.

[3] International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Canada, 2001), http://responsibilitytoprotect.org/ICISS%20Report.pdf, para 1.1.

sanctions (Art. 16). In a pursuit to do the homework, the US Secretary of State Frank Kellogg together with his French colleague, Foreign Minister Aristide Briand worked out what would later be remembered as the Briand-Kellogg Pact, meant to stop massive wars in the future, and in fact – outlaw wars of aggression. The contemporary world was so shocked by the atrocities and devastations of WWI, that Briand and Kellogg were awarded Nobel Peace Prizes (in 1926 and 1929 - respectively). However, two years after that an original signatory power – Japan – invaded in China/Manchuria (1931), and 10 years after that, Nazi Germany invaded Poland, triggering another World War.

The concept of aggressive war, however, remained in the international arena, and the victorious powers, full of determination and resolve, developed the UN Charter, *inter alia,* in the spirit of Briand-Kellogg Pact. Article 2(4) of the UN Charter put a comprehensive prohibition of the belligerent use of force between states, with only two well-known exceptions (self-defense and enforcement under Chapter VII). As Bellamy reminds, "historically states have shown a distinct predilection towards 'abusing' humanitarian justifications [for] what was anything but humanitarian…. most notoriously… Hitler's [1938] invasion in Czechoslovakia", when it was claimed to be in protection of "life and liberty" of ethnic Germans in Sudetenland[1]. In order to exclude any possible loopholes, the UN Charter was drafted to put "comprehensive ban" on the use of force with two exceptions mentioned above[2]. However, this did not lead to "abolition of war", as it had been dreamed by Briand and Kellogg, and did not manage to "save succeeding generations from the scourge of war" as naively the drafters of UN Charter would

[1] "The Responsibility to Protect and International Law", edited by Alex J Bellamy, Sara E Davies and Luke Granville, Martinus Nijhoff Publishers, 2011, pp. 8-9.
[2] Ibid.

believe. The wars in pursuit of national interests, pretty much institutionalized with the Treaty of Westphalia back in 1648, continued to play with destinies of nations – small and big, powerful and underdeveloped. In 1986 this was reiterated by the International Court of Justice in *Nicaragua v. United States* that the US acted "in breach of its obligation under customary international law not to use force against another State", which forms part of *jus cogens* norms of international law[1]. However, there have been some scholars who effectively claimed that non-interference "…is not a rule embraced by the international community [of states] as a whole, and therefore "it is not an *international* law" in its nature[2].

After the Armenian Genocide during World War I, and Holocaust in World War II, the Genocide Convention of 1948, authored by Raphael Lemkin, came forward to put internationally sound obligation on its signatories not only to condemn crimes of genocide wherever it occurs, but also *responsibility to prevent it* (Art. 1). Being developed in the system of the UN, of course, this obligation was limited by Articles 2(7), 24 and 25, which suggested that UN – and its Security Council as a «primary body» -- is the one to hold governments politically responsible (judicial powers have been exercised either by ad hoc tribunals or ICC after 2002).

The legal arguments in favor of interventions for human rights protection purposes are usually often exported from Universal Declaration of Human Rights (1948), which in Art. 3-5 established universal rights and freedoms of people, such as right to life, freedom, security,

[1] ICJ CASE CONCERNING THE MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA (NICARAGUA v. UNITED STATES OF AMERICA). Judgment of 27 June 1986. http://www.icj-cij.org/docket/index.php?sum=367&code=nus&p1=3&p2=3&case=70&k=66&p3=5.

[2] *Michael J. Glennon, "Law, Legitimacy, and Military Intervention";* ed. by Gilles Andréani, Pierre Hassner, "Justifying War?: From Humanitarian Intervention to Counterterrorism", published by Palgrave Macmillan, 2008, p. 155.

ban of slavery or torture. Although the UDHR and other treaties did not stipulate any measures of enforcement, other than free and voluntary goodwill of states, the whole framework of international humanitarian law has evolved in a way to make those obligations of governments imperative and *erga omnes*. Establishment of ad hoc tribunals to charge and hold accountable those who were responsible for grave crimes in the former Yugoslavia or Rwanda – is a sound fact in favor of this argument. Last but not least, the UDHR concluding article 30 establishes in an imperative way that "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein"[1]. Other guideline instruments of international law, upon which the Responsibility to Protect (R2P) Doctrine ultimately rests on, include the Convention on the Prevention and Punishment for the Crime of Genocide (1948), Geneva Conventions of 1966 (the Covenant on Civil and Political Rights, the Covenant on Economic, Social, and Cultural Rights and their optional protocols) as well as many other UNSC resolutions that created relevant practices and norms, such as UNSCR 1612 (2005) on the rights of children in armed conflicts or landmark resolution 1674 (2006) that incorporated R2P Doctrine into UNSC practice. Thomas Franck argued that humanitarian interventions are fully justifiable and lawful "if the unlawfulness perpetrated against part of the population is specifically (directly) prohibited by international treaty"[2].

[1] Universal Declaration of Human Rights, 1948. http://www.un.org/en/documents/udhr/index.shtml.
[2] *Thomas M. Franck,* "Recourse to Force", Cambridge University Press, 2002.

The issue of timing: threshold moment

The withdrawal of US forces from Somalia in 1993, the genocides in Rwanda (1994) and Srebrenica (1995); Darfur/Sudan still smoldering in 2012, as well as the dramatic increase in the speed of information and communication exchange – all these factors have shed light on the constraints of the great power politics on truly international matters. The great powers proved to be hesitant to care more than just rhetorically about regions that are only in the periphery of their national interests.

Although the question *"do we want to intervene?"* does not answer in any way our central issue – the threshold moment – realpolitik-ally thinking, the mentioned hesitation to commit has too often affected the evaluations of the emergencies. The most evident and often quoted case is US hesitation to use the term "genocide" about events in Rwanda in 1994, "at least partly because it did not want to act as obligated under the Genocide Convention"[1]. Studying the case of the United States and patterns when and why it resorts to military force abroad to "save strangers" (as Nicholas Wheeler phrased it) is of particular interest, as it has proven to be a pivotal state when it comes to such commitments. In an article, which many claim to be "influential and trend-setting"[2], Charles Ostrom and Brian Job argued, that US Presidents are more likely to use force abroad whenever they meet political crisis or economic hardship at home[3]. However, Colin Dueck dissented by saying that the "rally-around-the-flag" reasons for the military undertaking of US President are too short-lived to keep the public firm on support to the President[4].

[1] Moore, J. (2007). "Deciding humanitarian intervention". Social Research, 74(1), 169-0_3. Retrieved from http://search.proquest.com/docview/209673394?accountid=10598.
[2] "Neoclassical Realism, the State, and Foreign Policy", ed. by Steven E. Lobell, Norrin M. Ripsman, Jeffrey W. Taliaferro; Cambridge University Press, 2009, pp. 142-144.
[3] *Charles W. Ostrom, Jr. and Brian L. Job*, "The President and the Political Use of Force", The American Political Science Review , Vol. 80, No. 2 (Jun., 1986), pp. 541-566: http://www.jstor.org/stable/1958273.
[4] *Colin Dueck,* "Neoclassical Realism and the National Interests: Presidents, Domestic Politics, and Major Military Interventions " in *Neoclassical Realism, the State, and Foreign Policy*, pp. 170-204.

Central to any decision to use available measures of coercion, and specifically military force – either by the *rightful* government in protection of its citizens, or by the international community for the reasons of protecting civilians from domestic (intra-state) violence [once the former manifestly fails to achieve *legitimate success*][1], is the issue of ripe moment[2]. The Rubicon for the use of force "as a last resort" needs to be defined carefully to make the enforcement of peace, at least in theory, legitimately warranted and lawful.

To define the threshold moment objectively, we need [**a**] to describe an environment of humanitarian disaster/crisis; and [**b**] find out ways to assess its gravity[3] (in the spirit and frameworks of applicable international conventions)[4].

Environment of humanitarian crisis

In order to warrant a third party engagement to stop mass atrocity crimes, as well as to bring the perpetrators to justice, there shall be a cer-

[1] The Government of Serbia/Yugoslavia undertook a policy of "ethnic cleansings" in Kosovar villages in 1998 -99, which was justified by the hunt for terrorists hiding among civilians. The enforcement of the operation being neither legitimate in the region, nor lawful with international law standing, the scale and gravity of the casualties among civilian population had ultimately become primary justification for the NATO to intervene militarily in March 1999, most profoundly – after events in Racak village.

[2] Prof. William Zartman of Johns Hopkins University is the author of «ripeness» theory, which he applies to the timing for the proposals made at the peace negotiations among conflicting parties. Given that after foreign engagement – militarily or any other measure short of it – some efforts for peace- and nation-building will follow, the threshold moment of intervention should be "ripe enough" to stop the conflict from deepening any sort of enmity among different segments of society – religious, ethnic or other.
See more in: *William Zartman, «The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments»,* The Global Review of Ethnopolitics; Vol. 1, no. 1, September 2001, 8-18
http://www.ethnopolitics.org/ethnopolitics/archive/volume_I/issue_1/zartman.pdf.

[3] Elaborating over the third crucial component – target-government's role in the crisis – may be a matter for another contribution.

[4] The issue of gravity of any violation or a "grave breach" in respect to international humanitarian and human rights law is well elaborated in the applicable treaties of international law. For instance, the Art. 147 of Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) covers a lot. Other applicable treaties are explored in paras. 45-51 of the Report of the Commission of Experts on breaches to Geneva Conventions in the territory of former Yugoslavia (UN Doc S/1994/674, 27 May 1994).

tain *threshold* crossed and the responsible government failure or unwillingness to act clearly exposed – in breach to its international obligations[1].

So far the *threshold for intervention* has been described rather vaguely. Vast literature discussed rather wide range of issues: "legitimate authority, just cause, right intention, last resort, proportionality of objectives and means, noncombatant immunity, and reasonable expectations of success"[2]. The same was elaborated in the original ICISS report, but with different wording[3]. The report argued that "compelling need for human protection" by external actors was warranted when the state was "unable or unwilling to redress the situation", including by "political, economic or judicial measures", and "in extreme cases – but only extreme cases – they may also include military action" [para. 4.1]. The effectiveness of economic sanctions being questionable, they are also time-consuming when the violence is in progress. After all, the policy of sanctions – either enforced internationally or enacted by individual states, is a tool of persuasion upon target authorities to comply with certain standards of domestic or international behavior. However, there are no conflicts that have been solved, no governments/leaders' behavior amended by sanctions, instead – only the population has suffered greatly (e.g. the UN-backed "oil for food" program in Iraq)[4]. Same pessi-

[1] The issue of "consent" is hotly debated one in the academic community. Some scholars argue that "consent" of the Governments in question sometimes comes not "voluntary", but rather under pressure of many *external* circumstances, and also may shift during the operation (See: *Stanley Hoffmann, "World Disorders: Troubled Peace in the Post–Cold War Era"; Lanham, Md.: Rowman and Littlefield, 1998*). Later on, the Report of the Panel on United Nations Peace Operations (Brahimi Panel Report) argued that the importance of "consent" is shrinking as often it becomes a matter of manipulation by the parties engaged, though it "should remain the bedrock principle[s] of peacekeeping" [para. 48] (See: UN Doc A/55/305-S/2000/809. http://www.un.org/peace/reports/peace_operations/) It is important to emphasize, that consent-based operations so far have been in compliance of UN Charter Chapter VI, and that has never been contentious with its legal body.

[2] Moore, J. (2007). Deciding humanitarian intervention. Social Research, 74(1), 169-0_3. Retrieved from http://search.proquest.com/docview/209673394?accountid=10598.

[3] International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Canada, 2001), http://responsibilitytoprotect.org/ICISS%20Report.pdf.

[4] For more details on "oil for food" see: Sharon Otterman, "IRAQ: Oil for Food Scandal", Council on Foreign Relations, updated on October 28th, 2005. http://www.cfr.org/un/iraq-oil-food-scandal/p7631.

mism towards economic sanctions has been acknowledged in the initial ICISS report [para. 4.5]. When considering the policy of sanctions, most urgent and effective sanction against any war-torn society would be an internationally enforced arms embargo regime. However, even with this sanction enforced, the situation that causes deaths and sufferings to the endangered population would hardly stabilize in a short run. As military intervention in R2P Doctrine is considered a measure of last resort, a red line should be drawn, a threshold situation when the peace enforcement action would be warranted, lawful and legitimate[1].

The R2P report laid out the two principal threshold criteria for foreign intervention (para. 4.19): (1) deliberate state action, neglect or inaction; and (2) large scale "ethnic cleansing". This threshold also contained "overwhelming natural or environmental catastrophes" (para. 4.20) which was later on rejected by the 2005 consensus. However, neither the ICISS report, nor other contributions answered the core question: when is the threshold moment to consider intervention – ideally by UNSC or, in case the latter fails to reach consensus in a timely manner, then by "the coalition of the willing". "Just cause" is only part of the answer, albeit important.

Overall, the *threshold for action* would be comprised of three layers – political, moral and legal – which all are mutually complementary and reinforcing:

1. **Political –** it shall be determined what is considered as "conscience-shocking situation crying out for action"[2], employing the language of the Evans Commission report; as well as emerging political

[1] Issues of feasibility of a military, enforcement action falls beyond the scope of political science or law, so we would leave it to the military science.

[2] "The Responsibility to Protect", report by the International Commission on Intervention and State Sovereignty, (Canada, 2001), Available online at: www.iciss.ca/pdf/Commission-Report.pdf, para. 6.37.

consensus in international community of nations that inaction would cause more harm than [military] engagement. As shown by the example of initial US hesitation to characterize the 1994 events in Rwanda as genocide, evaluation of "conscience-shocking situation" per se takes much political determination, and is not purely a moral question, neither it is decided by the number of media-reports.

Some sort of political triggers to attach increasing attention to overseas conflicts lay in the nature of domestic politics, more specifically – in ethnic politics, which is very visible in democratic societies, where politicians want to get re-elected to the office. As such, ethnic or interest groups may trigger expectations about intervention by staging demonstrations and public awareness campaigns, which would raise the political costs of non-intervention to a level higher than that of the actual cost of engagement[1].

2. Political arguments shall be unavoidably coupled with **legal framework:** along with R2P Doctrine evolving in the international law[2], the state practice and rulings of *ad-hoc* tribunals shall be the primary sources to understand the limits of UN Charter Article 2(4) about non-intervention and absolutist assessments of sovereignty. Undoubtedly, UNSC referral to ICC in the case of Libya (Resolutions 1970 and 1973), a non-signatory power to the Rome Statute, created a crucial precedent for forthcoming cases.

3. **Moral** – some understanding must emerge in the international community, maintained and seconded by international media outlets,

[1] Alan J. Kuperman (2008), "The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans", International Studies Quarterly, Vol. 52, No. 1 (Mar., 2008), pp. 49-80.
Stable URL: http://www.jstor.org/stable/29734224, p. 53.

[2] This research does in no way claim that R2P Doctrine is a new norm in international law, instead arguing that it has been built up and developed with the already available apparatus of customary international law, politically reinforced by the level of development of international society.

human rights watchdogs and social activities, that *"saving strangers"*[1] is a must, even under considerable hardship to national budgets and domestic political considerations. Usually, human rights watchdogs, such as Human Rights Watch, Amnesty International and Freedom House are among the most vocal organizations to cry for action. Generally this happens with the active background support of mass media coverage on the issue – whether encouraged/directed by the relevant political authorities or not. It has to be noted that moral and political considerations are mutually reinforcing as well.

The ICISS report elaborated only about the operational criteria for intervention (right authority, just cause, right intention, last resort, proportional means and reasonable prospects [para. 4.16]), while it did not show in great detail whether intervention is warranted, just concluding that "there must be serious and irreparable harm occurring to human beings, or imminently likely to occur" [para. 4.18] and referring to Genocide and Geneva Conventions that shall be breached as a result [para 4.20].

Moral and political layers essentially constitute the *just cause* for employing the R2P doctrine. And there is nothing much new about it. Still Hugo Grotius wrote that wars were permissible only when the oppressed were not able to defend themselves against their rulers, and would request assistance of a foreign power[2]. For example, driven by political and moral considerations of leveraging on Ottoman Empire and saving Christian nations, the Treaty of Küçük Kaynarca (1774) allowed

[1] *"Saving strangers"* is the title of a book by Nicholas J. Wheeler, which is, to our mind, an absolutely correct interpretation of how those interventions are perceived in international community of states.
Nicholas J. Wheeler, "Saving Strangers: Humanitarian Intervention in International Society", Oxford University Press, 2003 - 352 pages.
[2] For more, see: Meron Theodor, "Common Rights of Mankind in Gentili, Grotius and Suarez", American Journal of International Law, vol. 85, 1991.

Russia to intervene whenever ethnic and national minorities under Ottoman rule were suppressed. As Christopher Hitchens notes, "West's views of human rights and humanitarian intervention were formed in opposition to the manifest cruelties and depredations of "the Turk"[1]. Quite in the same logics, with the development of the Law of the Hague (i.e. Hague Conventions on the Laws and Customs of War of 1899 and 1907), legal layer of international disputes was institutionalized. In our case, this layer will provide which breaches to international humanitarian and human rights law are against the international community *as a whole*, or in other words – a crime against international community. The term "crime against humanity" (in the absence of "genocide") was introduced into the political and legal vocabulary with the letter of ambassadors of Triple Entente states (Russia, France and UK) in Istanbul, dated back to May 24, 1915, where they argued that the atrocities against Armenians in Ottoman Turkey were "*crimes of Turkey against humanity and civilization*[2]. However, this types of crimes remained 'unnamed' up until 1933[3].

It is important to acknowledge, that environment of humanitarian catastrophe is a consequence of systematic events, and not just one action or inaction. Generally, those formal descriptions (in the form of eyewitness accounts, media and think-tank reports, UN reports, etc.) include all layers – they are politically 'crying for action' (language of the R2P), morally 'shocking' and are unlawful. Of course, it requires political will of foreign governments to acknowledge the gravity of situation (as shown in the case of Rwanda), which sometimes is missing.

[1] Christopher Hitchens, "Just Causes. The Case for Humanitarian Intervention", Foreign Affairs, September/ October 2008. http://www.foreignaffairs.com/articles/63587/christopher-hitchens/just-causes
Stable URL: http://www.jstor.org/stable/20699312(retrieved: 26-01-2012).
[2] Telegram from the U.S. State Department of the Consulate in Istanbul.
http://www.armenian-genocide.org/Affirmation.160/current_category.7/affirmation_detail.html
[3] *Samantha Power*, "A problem from hell", Harper Collins Publishers, 2002, pp. 17-31.

With the development of R2P Doctrine, the situation started to change positively. The UNSC Resolution 1970 (Feb 2011) contained altogether: moral concerns for the plight of refugees from Libya, political assessments of the situation on the ground, as well as referred the situation to ICC to criminally prosecute those responsible.

Alongside political developments, substantial evolution has taken place in the system of international justice as well – in order to ensure criminal responsibility of any individual for crimes against *"elementary dictates of humanity"* (to borrow a wording from Nuremberg Tribunal rulings).

In his Nobel Peace Prize acceptance speech US State Secretary Frank Kellogg argued that after the abolition of wars, "the adjustment of international questions by pacific means will come through the force of public opinion, which controls nations and peoples", to the contrary of those who had been advocating that «peace will not be attained until some super-tribunal is established to punish the violators of ... treaties»[1]. In the next decades only *ad hoc* tribunals had been established to try and punish major war criminals, most notably the tribunals in Nuremberg[2] and Tokyo. As Michael Struett argues (to the shame of political scientists), "no political scientist predicted that the world would witness the establishment of an International Criminal Court"[3]. However, since July 2002 the Rome Statute of ICC has become the most objective framework to punish – as former Chief Prosecutor of ICTY Carla Del Ponte pointed – "humanity's worst criminals"[4]. Entered into force in

[1] http://www.nobelprize.org/nobel_prizes/peace/laureates/1929/kellogg-acceptance.html.
[2] Charter of the International Military Tribunal; Nuremberg Trial Proceedings Vol. 1; http://avalon.law.yale.edu/imt/imtchart.asp.
[3] Michael J. Struett, [book review] Politicizing the International Criminal Court: The Convergence of Politics, Ethics, and Law by Steven C. Roach; Perspectives on Politics , Vol. 5, No. 2 (Jun., 2007), pp. 415-416; Article Stable URL: http://www.jstor.org/stable/20446487.
[4] Carla Del Ponte and Chuck Sudetic; "Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity", Other Press, 2009.

June 2002, this ICC Statute has established a universal jurisdiction to prosecute crimes against international community as a whole, whenever there is «sufficient gravity» (Art. 17/1/d). Articles 5-10 give the overall and detailed framework of those crimes with international character, which are crimes against the international community. It has been an extraordinary development for the system of universal criminal justice, when UNSC referred the situation in Libya to the ICC, even though Colonel Gaddafi rescinded from the Rome Statute years before. The unprecedented move proved the Rome Statute to have truly universal jurisdiction upon types of crimes that are considered *erga omnes*. Interestingly enough, the Brazilian investigator who was leading a United Nations commission of inquiry in Syria, Paulo Pinheiro, presented the latest report by his commission in mid-September 2012, suggesting a very similar procedure of handing the evidences gathered to the UNSC for it to refer the situation to the ICC, even though Syria is not a state-signatory to the Rome Statute either[1].

Another court with universal jurisdiction, the ICJ has its input to make. However, being a chamber of state-to-state disputes makes it more constrained with political considerations than the ICC. Still, ICJ is also improving its effectiveness over the time. For instance, regarding the application of the Convention against Torture (1984), which requires states to be signatories in order for ICJ to move ahead with judgment, the Court ruled in *DRC v. Rwanda (2006)* that "DRC cannot invoke that instrument" against Rwanda as the latter is not a state-party to the treaty[2]. Six years later, *Belgium v. Senegal* (July 2012) ICJ ruled in favor of extending the applicability of *erga omnes* character of grave

[1] http://www.nytimes.com/2012/09/18/world/middleeast/syria.html.

[2] ICJ Case Concerning Armed Activities on the Territory of the Congo; (Democratic Republic of the Congo v. Rwanda), 2006. http://www.icj-cij.org/docket/files/126/10435.pdf.

breaches to a critical treaty of international humanitarian law - the Convention on Torture, reiterating that "obligations *erga omnes*… in the sense that each State party has an interest incompliance with them in any given case…"[1]. Despite this universal jurisdiction, some states, including the US, have not only declined to ratify the Rome Statute, but entered into parallel treaty relations with third states to prevent its nationals from being surrendered to ICC[2].

In conclusion, it should be highlighted that the threshold situation for foreign intervention should arrive at a certain gravity to warrant a legitimate and lawful military intervention. This does not necessarily imply to go and count numbers of casualties in each and any case of massacre or grave crime, as then we will end up in quite a cynical posture towards humanitarianism at all. Although the Genocide Convention of 1948, for instance, considers killing of even one member of a targeted group, there are other aspects, such as: the criminal (a person acting on his/her own behalf, or on behalf of the government) shall have intent to destroy the group in whole or in part (ICTY, *Prosecutor v. Jelisic*)[3]. So, unless there are facts that the target-state's government or any other organized group (with or without government's consent and order) conspires or actually starts killing members of a designed group – there are no sufficient grounds to claim the gravity of acts reach to the level of *erga omnes*, i.e. crimes against international community.

[1] http://www.asil.org/pdfs/insights/insight120911.pdf.

[2] Judith Kelley, "Who Keeps International Commitments and Why? The International Criminal Court and Bilateral Non-surrender Agreements";*The American Political Science Review* , Vol. 101, No. 3 (Aug., 2007), pp. 573-589. Article Stable URL: http://www.jstor.org/stable/27644467.

[3] *Prosecutor v. Jelisic*, International Criminal Tribunal for former Yugoslavia, Appeals Chamber Judgment (2001), para. 46, http://www.icty.org/x/cases/jelisic/acjug/en/jel-aj010705.pdf .

Crafting the workable framework of emergency

Summarizing the issue of the humanitarian emergency environment, it should be noted that the two key issues for revoking R2P Doctrine in intra-state state conflicts are "why" (the *triggering factors* proven and *primary* aims legitimate enough) and "when" (the gravity of the atrocities) in order to keep the intervention legitimate; because otherwise we would risk to make *bellum omnium contra omnes* – paying tribute to the maxim of Hobbes on the nature of international affairs. In this regards it would be safe to argue, that for any foreign involvement to be lawful and legitimate *in the cases of UN Security Council stalemate*, the legitimacy of engagement must derive from both the environment of humanitarian catastrophe in the target-state and facts of grave breaches of *erga omnes* obligations by the target government. As portrayed above, the "environment" would derive from the gravity of the situation on the ground and a possible or actual list of indictments that the leaders of target-state or those acting under their command would get from ICC in the frameworks of Art. 5-10 of Rome Statute. The UNSC referral to ICC in the case of Libya (UNSC Resolutions 1970 and 1973) – a *non-signatory* state to Rome Statute – reinforced the so-called book-law that *erga omnes* crimes are prosecutable and that Rome Statute has universal application irrespective of the ICC membership of target-state.

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