

# **THE CASE FOR THE LEGITIMACY OF HUMANITARIAN INTERVENTION IN SYRIA. A COMPARATIVE STUDY FROM THE STANDPOINT OF UK OF THE SYRIAN CONFLICT FROM 2013 TO 2015.<sup>1</sup>**

*Borja Fernández Burgueño<sup>2</sup>*

**SUMMARY. Introduction. 1. Legality. 1.1. UN Charter. 1.2. Beyond the Charter. 1.3. Legal uncertainty. 2. Legitimacy. 3. Criteria and thresholds. 4. Conclusion.**

## **RESUMEN**

Este artículo analiza desde la perspectiva de la política exterior del Reino Unido la legalidad y legitimidad de una intervención humanitaria en Siria en 2015, comparándola con la situación en 2013. Primero se examinará si la justificación del uso de la fuerza bajo términos de intervención humanitaria sin el consentimiento del Consejo de Seguridad puede ser considerada como legal; afirmando que actualmente el status jurídico de la intervención humanitaria es incierto y que, por tanto, es necesario distinguir entre legalidad y legitimidad. Más tarde se justificará que, mientras que la legitimidad para intervenir en 2013 era pobre, en 2015 el Reino Unido está legitimado para llevar a cabo una intervención humanitaria en Siria. Finalmente, se concluirá que, a diferencia de lo que convenientemente afirma el Reino Unido, no existe consenso internacional sobre el criterio necesario para justificar una intervención humanitaria.

## **ABSTRACT**

This Paper analyzes from the point of view of UK's foreign policy both the legality and legitimacy of humanitarian intervention in Syria in 2015, comparing it to the situation in

---

<sup>1</sup> Recibido con fecha 03 de junio de 2015. Admitido con fecha 20 de septiembre de 2015.

<sup>2</sup> Estudiante de último año de Grado en Derecho y ADE, Universidad Rey Juan Carlos de Madrid.

2013. First, it will be studied whether justifying a right to use of force without the approval of the UNSC under the doctrine of humanitarian intervention can be considered as legal. Finding that the legal status of humanitarian intervention is currently uncertain and, thus, it is necessary to differentiate between legality and legitimacy. This paper claims that despite UK's poor legitimacy to intervene in 2013, it is legitimised to do so in 2015. Finally, this article will conclude that UK's claim of an international consensus on the criteria and the level of severity required for humanitarian intervention to be legal is deceitful.

**Palabras clave:** intervención humanitaria, R2P, responsabilidad de protección, Siria, ISIS, Estado Islámico.

**Key Words:** humanitarian intervention, R2P, responsibility to protect, Syria, ISIS, Islamic State

## INTRODUCTION

On 29<sup>th</sup> August 2013, after the chemical weapons attack in Eastern Damascus on 21<sup>st</sup> August 2013, the UK issued its legal position on the use of force in Syria<sup>3</sup>. In this note, the UK justified its right to intervene in Syria under the doctrine of Humanitarian Intervention<sup>4</sup>. The UK stated that they will seek a UNSC's resolution under Chapter VII of the UN Charter "to condemn the use of chemical weapons by the Syrian authorities"<sup>5</sup>. However, if the resolution is blocked, they will still have the right to use of force under the doctrine of humanitarian intervention<sup>6</sup> if the circumstances meet certain criteria<sup>7</sup>. Although the UK Parliament ultimately rejected the possible UK military intervention against Syrian President

---

<sup>3</sup> PRIME MINISTER'S OFFICE. Guidance Chemical weapon use by Syrian regime: UK government legal position. Gov.uk [online]. 29 August 2013. [Accessed 1st April 2015]. Available from: <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>

<sup>4</sup> Ibid S.2

<sup>5</sup> Ibid S.3

<sup>6</sup> Ibid S.4

<sup>7</sup> Ibid S.4. (i), (ii) and (iii)

Bashar al-Assad's<sup>8</sup>, the UK still claimed that they had a genuine right to intervene in Syria under the doctrine of Humanitarian Intervention.

The situation of the non-international Syrian armed conflict has significantly changed from 2013 to 2015. The focus is no longer on Bashar al-Assad but on the self-proclaimed Islamic State caliphate (hereinafter Daesh), an Islamic extremist rebel group controlling territory in Iraq and Syria<sup>9</sup>. Within its territory, torture, sexual slavery and other hideous violations of human rights have become widespread. A UN report<sup>10</sup> released in 2014 documented a wide list of serious human rights violations committed by Daesh, including: “The direct, deliberate targeting of civilians in the conduct of military operations and disregard for the principles of distinction or proportionality in the context of military operations; Killings, including executions, of civilians, captured ISF personnel, and individuals associated with the Government of Iraq; Kidnapping of civilians, including of foreign nationals; Targeted killings of political, community and religious figures; Killings, abductions and other crimes and human rights violations against members of ethnic, religious and other minorities; Killing and physical violence against children; the forced recruitment of children; Wanton destruction of civilian property; robbery and plunder of civilian property; targeting and destruction of civilian infrastructure (including hospitals and schools); attacks on protected installations (such as dams); and attacks on places of cultural significance and places of religious worship.”<sup>11</sup>

According to Human Rights Watch, human rights abuses committed by Daesh in Syria have become systemic<sup>12</sup>. Daesh is perceived as a greater threat to the maintenance of international peace and security than the Bashar al-Assad's regime. Furthermore, some world powers have switched their view on Bashar al-Assad and see him now as part of the solution rather than as the epicentre of the problem<sup>13</sup>.

---

<sup>8</sup> BBC, Syria crisis: Cameron loses Commons vote on Syria action. BBC News [online]. 30 August 2013. [Accessed 28th May 2015]. Available from: <http://www.bbc.com/news/uk-politics-23892783>

<sup>9</sup> BBC, 'Battle for Iraq and Syria in maps. BBC News [online]. 18 May 2015 [Accessed 28th May 2015]. Available from: <http://www.bbc.com/news/world-middle-east-27838034>

<sup>10</sup> UNAMI/OHCHR, Report on the Protection of Civilians During the non-International Armed Conflict in Iraq: 5 June to 5 July 2014 (UN, Baghdad Iraq 2014)

<sup>11</sup> UN HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, 'UN report documents litany of human rights violations in Iraq, including possible war crimes and crimes against humanity. Baghdad/Geneva: OHCHR [online] 18 July 2014 [Accessed 26th May 2015]. Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14884&LangID=E#sthash.anMQipD3.dpuf>

<sup>12</sup> HUMAN RIGHTS WATCH. Syria. HRW-World Report 2015 [online] 2015 [accessed 17 March 2015]. Available from: <http://www.hrw.org/world-report/2015/country-chapters/syria>

<sup>13</sup> SHERWELL, Philip. John Kerry: US will have to negotiate with Bashar al-Assad to end Syrian civil war. The Telegraph [online] 15 March 2015. [Accessed 17 March 2015]. Available from: <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/11473715/John-Kerry-US-will-have-to-negotiate-with-Bashar-al-Assad-to-end-Syrian-civil-war.html>

Notwithstanding the geopolitical inconveniences of the UK carrying on a military intervention in Syria to fight Daesh, this article will attempt to evaluate both the legality and the legitimacy of a possible humanitarian intervention in Syria in 2015, compared to the situation in 2013.

This article will first analyse whether justifying the individual states' right to use of force, without the approval of the UNSC, under the doctrine of humanitarian intervention can be considered as legal. Finding that, as the matter stands, the legal status of humanitarian intervention is uncertain<sup>14</sup>. Due to the current uncertainty of this principle, this essay argues that it is necessary to distinguish between legality and legitimacy<sup>15</sup>. Finding that, although the UK's legitimacy to intervene in 2013 was poor, it is legitimised to intervene in 2015. Finally, this paper will focus on the criteria<sup>16</sup> and the level of severity stated by the UK<sup>17</sup> in 2013. Finding that the UK's claim of an international consensus on the criteria selected and the level of severity affirmed to be required is deceitful and misleading.

---

<sup>14</sup> ZAID Z.A. Humanitarian intervention in international law. *Acta Juridica Hungarica Akadémiai Kiadó*, Budapest [online]. 2013, vol.54, n°2, pp 185-199. [Accessed 1st April 2015]. Available from: <http://www.akademiai.com/toc/026/54/2>. Online ISSN: 1588-2616; HURD I. Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World. *Ethics & International Affairs* [online]. 2011, vol.25, no.3, pp. 293-313 [Accessed 1st April 2015]. Available from: [https://www.law.northwestern.edu/research-faculty/colloquium/international/documents/Spring2012\\_Hurd\\_Humanitarian\\_Intervention.pdf](https://www.law.northwestern.edu/research-faculty/colloquium/international/documents/Spring2012_Hurd_Humanitarian_Intervention.pdf). ISSN: 0892-6794; SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. pp. 1155-1158. ISBN 978-0-521-89929-1

<sup>15</sup> Find same approach in: MACKLEM, Patrick. Humanitarian Intervention and the Distribution of Sovereignty in International Law. *Ethics & International Affairs* [online]. 2008, vol.22, no.4 pp 369-393, 371. [Accessed 1st April 2015]. Available from: [http://journals.cambridge.org/article\\_S0892679400005815](http://journals.cambridge.org/article_S0892679400005815). ISSN 1747-7093

<sup>16</sup> UK MINISTRY OF DEFENCE. Intervention: When, Why and How?. Parliament.uk [online] UK Parliament Session 2013-14 Prepared\_28 November 2013 S.5 (a), (b) and (c). [Accessed 1st April 2015] <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmdfence/writew/intervention/int01.htm>; PRIME MINISTER'S OFFICE. Guidance Chemical weapon use by Syrian regime: UK government legal position. Gov.uk [online]. 29 August 2013 S.4. (i) (ii) and (iii). [Accessed 1st April 2015]. Available from: <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>

<sup>17</sup> PRIME MINISTER'S OFFICE. 'Guidance Chemical weapon use by Syrian regime: UK government legal position'. Gov.uk [online]. 29 August 2013 S.4.1. [Accessed 16th April 2015]. Available from: <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>

# 1. LEGALITY

## 1.1. UN Charter

Although humanitarian intervention challenges the principle of state sovereignty and the rule of non-intervention<sup>18</sup>, it is widely accepted that the UNSC can authorise a humanitarian intervention under Chapter VII<sup>19</sup>. However, this essay argues, that if the UNSC does not authorise the humanitarian intervention, the use of force will be in contravention with the Charter<sup>20</sup>. An alternative to the UNSC approval could be the Uniting for Peace resolution<sup>21</sup>, putting the decision before the UNGA<sup>22</sup>. However, it is highly unlikely that it will receive much support by the UNSC because it undermines the power of veto<sup>23</sup>.

## 1.2. Beyond the Charter

It has been argued that, although the UN Charter prohibits the use of force in absolute terms, except where authorized by the Charter itself<sup>24</sup>, the legality of the doctrine of humanitarian intervention rests upon other legal sources<sup>25</sup>.

---

<sup>18</sup> KAHLER M. Legitimacy, humanitarian intervention, and international institutions. *Politics Philosophy Economics* [online]. 2010, vol.10, no.1, pp 20-45. [Accessed 16th April 2015]. Available from: <http://ppe.sagepub.com/content/10/1/20.abstract>. ISSN 1470-594X; MACKLEM, Patrick. Humanitarian Intervention and the Distribution of Sovereignty in International Law. *Ethics & International Affairs* [online]. 2008, vol.22, no.4 pp 369-393, 371. [Accessed 16th April 2015]. Available from: [http://journals.cambridge.org/article\\_S0892679400005815](http://journals.cambridge.org/article_S0892679400005815). ISSN 1747-7093; WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 16th April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>19</sup> WHEELER, Nicholas J. 'Humanitarian Intervention after September 11, 2001' in LANG Jr Anthony F. (ed), *Just Intervention* 1st ed. Washington, DC: Georgetown University Press, 2003 p 240 ISBN: 9780878403417; BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs* [online]. 2005, vol.19, no.2 31-54, 37. [Accessed 18th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093

<sup>20</sup> It goes against articles 2(4), 2(7), 24(1), 27(3), 33, 39, and 42 of the UN Charter

<sup>21</sup> GA Res 377 (v), UN GAOR (302nd plen mtg), A/Res/377(v)A (1950)

<sup>22</sup> WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 18th April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>23</sup> Ibid 17

<sup>24</sup> Article 2 (4) UN Charter

<sup>25</sup> See: MCCOURT, David. Embracing Humanitarian Intervention: Atlanticism and the UK Interventions in Bosnia and Kosovo. *The British Journal of Politics & International Relations* [online]. 2012, vol.15, no.2, pp 246-262 [Accessed 18th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-856X.2012.00532.x/abstract>. ISSN: 1467-856X; HEINZE, EA. Humanitarian intervention: morality and international law on intolerable violations of human rights. *The International Journal of Human Rights* [online]. 2004, vol.8, no.4, pp 471-49 [Accessed 18th April 2015]. Available from: <http://www.tandfonline.com/doi/abs/10.1080/1364298042000283549>. ISSN: 1364-2987; WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law*

Custom is often the most cited legal justification of the doctrine of humanitarian intervention and the one that this essay believes has the most merit<sup>26</sup>. Therefore, this section will focus on determining whether the UK can legitimately rely on a customary norm of humanitarian intervention. Buchanan points out that states can render humanitarian intervention without UNSC's approval legal by being repeatedly doing so (state practice) and by framing their justification in legal terms (*opinio juris*)<sup>27</sup>. Therefore, we have to find both state practice and *opinio juris* in order to assess the existence of such customary rule<sup>28</sup>.

Bellamy argues that in the 1990's there was a brief period of acquiescence, mostly due to the absence of major arguments against it<sup>29</sup>. Moreover, during the UNSC deliberations about the Rwanda genocide no state claimed that the prohibition of the use of force<sup>30</sup> or the principle of non-intervention<sup>31</sup> should preclude states to intervene in order to prevent egregious crimes against humanity<sup>32</sup>. Furthermore, UN Secretary-General Kofi Annan stated that state sovereignty does not empower states to exterminate their population with impunity<sup>33</sup>. During the Cold War, three incidents appeared to fulfil the *standards* of

---

[online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 18th April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN: 1444-8602; GOODMAN, James. Humanitarian collective security: restoring order?. Global Networks [online]. 2013, vol.13 no.3, pp. 345-362, 358. [Accessed 18th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/glob.12026/abstract>. ISSN: 1471-0374; BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. Ethics & International Affairs [online]. 2005, vol.19, no.2 pp. 31-54, 37. [Accessed 20th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093; FIXDAL, Mona; SMITH, Dan. Humanitarian Intervention and Just War. Mershon International Studies Review [online]. Nov 1998 vol.42, no.2, pp. 283-312. [Accessed 20th April 2015]. Available from: [http://www.jstor.org/stable/254418?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/254418?seq=1#page_scan_tab_contents). ISSN: 1079-1760

<sup>26</sup> Nonetheless, some authors rely on other sources of legality. For instance, Heinze claims that the "principle of universal jurisdiction" can justify the use of force for humanitarian purposes. See EA HEINZE, EA. Humanitarian intervention: morality and international law on intolerable violations of human rights. The International Journal of Human Rights [online]. 2004, vol.8, no.4, pp 471-49 [Accessed 1st April 2015]. Available from: <http://www.tandfonline.com/doi/abs/10.1080/1364298042000283549>. ISSN: 1364-2987

<sup>27</sup> BUCHANAN, A. Reforming the international law of humanitarian intervention in HOLZGREFFE, J.L.; KEOHANE, R.O., EDITORS, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* 1<sup>st</sup> Ed, New York: Cambridge University Press, 2003, p. 364. ISBN: 9780521529280

<sup>28</sup> SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 74. ISBN 978-0-521-89929-1

<sup>29</sup> BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. Ethics & International Affairs [online]. 2005, vol.19, no.2 31-54, 37. [Accessed 20th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093

<sup>30</sup> Article 2(4) UN Charter

<sup>31</sup> Article 2(7) UN Charter

<sup>32</sup> BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. Ethics & International Affairs [online]. 2005, vol.19, no.2 pp. 31-54. [Accessed 20th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093

<sup>33</sup> UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION. The Responsibility to Protect: Who is responsible for protecting people from gross violations of human rights?. Programme on the Rwanda Genocide and the United Nations [online] March 2014. [Accessed 25th April 2015]. Available from: <http://www.un.org/en/preventgenocide/rwanda/pdf/Backgrounder%20R2P%202014.pdf>

humanitarian intervention: India's intervention in East Pakistan (1971), Tanzania's intervention in Uganda (1978) and Vietnam's intervention in Cambodia (1978)<sup>34</sup>. However, none of those countries justified the use of force under humanitarian intervention terms<sup>35</sup>, and therefore this essay argues that they did not give rise to a customary rule.

After the Gulf War, the UK, France and the USA established a no-fly zone over Iraq<sup>36</sup>. The UK claimed the existence of a customary doctrine of Humanitarian intervention in response to a situation of overwhelming human necessity<sup>37</sup>. In 1999, NATO intervened in Kosovo, acting without UNSC approval<sup>38</sup> but free from UN formal condemnation<sup>39</sup>. The UK reinforced its position by affirming that international law allows the use of force "in exceptional circumstances to avoid a humanitarian catastrophe"<sup>40</sup>. Yet, the Independent International Commission of Kosovo claimed that the intervention in Kosovo did not create a precedent for intervention elsewhere<sup>41</sup>. Nevertheless, it did sharpen the discussion on the legality of humanitarian intervention and on the necessity of use of force to defend human rights<sup>42</sup>. It is widely supported that the NATO intervention, if not legal, was morally legitimised<sup>43</sup>.

---

WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 20th April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>34</sup> WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 20th April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602; KAHLER M. Legitimacy, humanitarian intervention, and international institutions. *Politics Philosophy Economics* [online]. 2010, vol.10 no.1 pp 20-45. [Accessed 20th April 2015]. Available from: <http://ppe.sagepub.com/content/10/1/20.abstract>. ISSN 1470-594X

<sup>35</sup> KAHLER M. Legitimacy, humanitarian intervention, and international institutions. *Politics Philosophy Economics* [online]. 2010, vol.10 no.1 pp 20-45. [Accessed 20th April 2015]. Available from: <http://ppe.sagepub.com/content/10/1/20.abstract>. ISSN 1470-594X

<sup>36</sup> SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1155-1158. ISBN 978-0-521-89929-1

<sup>37</sup> UKMIL, 70 BYIL, 1999, pp 590 and UKMIL, 75 BYIL 2004 cited in SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1156. ISBN 978-0-521-89929-1

<sup>38</sup> See India, Russia and China's positions in: UN Doc S/PV.3988 (1999)2; UN Doc S/PV.3989 (1999)6. Cited in WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 20th April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>39</sup> SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1155-1158. ISBN 978-0-521-89929-1

<sup>40</sup> UKMIL, 70 BYIL, 1999, p 586 cited in SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1155. ISBN 978-0-521-89929-1

<sup>41</sup> INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO. *The Kosovo Report: Conflict, International Response, Lessons Learned*. 1st Ed. New York: Oxford University Press, 2000. pp. 163-201. ISBN: 9780199243099

<sup>42</sup> INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO. *The Kosovo Report: Conflict, International Response, Lessons Learned*. 1st Ed. New York: Oxford University Press, 2000. pp. 163-201. ISBN: 9780199243099; BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs* [online]. 2005, vol.19, no.2 pp. 31-54. [Accessed 20th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN: 1747-7093; WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2,

In 2001 the ICISS, under a Canadian request of establishing a common ground on the question of humanitarian intervention<sup>44</sup>, recommended moving from the concept of humanitarian intervention to the doctrine of “responsibility to protect” (R2P)<sup>45</sup>. Notwithstanding the particulars of R2P such as the responsibility to rebuild, prevent and reach<sup>46</sup> or the three levels of responsibility (first host state, second domestic authorities working in partnership with outside agencies and third international community<sup>47</sup>), the change in language did not bring consensus on the legality of it<sup>48</sup>. In 2011, NATO’s use of force in Libya was justified under R2P<sup>49</sup>. Nonetheless, unlike the interventions in Kosovo, Iraq or Syria, the use of force in Libya was authorised by the UNSC<sup>50</sup>.

Russia and China opposed to a humanitarian intervention in Syria in 2013<sup>51</sup>. However, seven months later, Russia justified its early intervention in Ukraine under R2P<sup>52</sup>,

---

No.2, pp 550-567. [Accessed 25th April 2015]. Available from: <http://search.informit.com.au/documentSummary?dn=318338034969378;res=IELHSS>. ISSN: 1444-8602; SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1155-1158. ISBN 978-0-521-89929-1; MCCOURT, David. Embracing Humanitarian Intervention: Atlanticism and the UK Interventions in Bosnia and Kosovo. *The British Journal of Politics & International Relations* [online]. 2012, vol.15, no.2, pp 246-262, 252 [Accessed 25th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-856X.2012.00532.x/abstract>. ISSN: 1467-856X

<sup>43</sup> FRANCK, TM. Interpretation and change in the law of humanitarian intervention. In HOLZGREFE JL; KEOHANE RO, EDITORS. *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. Cambridge: Cambridge University Press, 2003, 1st Ed., p. 31 ISBN: 0-521-82198-3; KAHLER M. Legitimacy, humanitarian intervention, and international institutions. *Politics Philosophy Economics* [online]. 2010, vol.10 no.1 pp 20-45. [Accessed 25th April 2015]. Available from: <http://ppe.sagepub.com/content/10/1/20.abstract>. ISSN 1470-594X; BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs* [online]. 2005, vol.19, no.2 pp. 31-54. [Accessed 25th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093

<sup>44</sup> EVANS, G.; SAHNOUN, M. 'Foreword' in INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, *The Responsibility to Protect: Report of the International Commission of Intervention and State Sovereignty*. 1<sup>st</sup> Ed. Ottawa: International Development Research Centre, 2001. p. 11 ISBN 0-88936-960-7

<sup>45</sup> INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, *The Responsibility to Protect: Report of the International Commission of Intervention and State Sovereignty*. 1<sup>st</sup> Ed. Ottawa: International Development Research Centre, 2001. p. 11 ISBN 0-88936-960-7; BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs* [online]. 2005, vol.19, no.2 pp. 31-54. [Accessed 25th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093

<sup>46</sup> INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, *The Responsibility to Protect: Report of the International Commission of Intervention and State Sovereignty*. 1<sup>st</sup> Ed. Ottawa: International Development Research Centre, 2001. p. 11 ISBN 0-88936-960-7;

<sup>47</sup> BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs* [online]. 2005, vol.19, no.2 pp. 31-54. [Accessed 25th April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093

<sup>48</sup> Ibid

<sup>49</sup> KUPERMAN, Alan. A Model Humanitarian Intervention? Reassessing NATO’s Libya Campaign. *International Security* VL [online] 2013, vol.38, no.1, pp. 105-136, 135. [Accessed 25th April 2015]. Available from: [https://muse.jhu.edu/journals/international\\_security/toc/ins.38.1.html](https://muse.jhu.edu/journals/international_security/toc/ins.38.1.html). ISSN: 1531-4804

<sup>50</sup> United Nations Security Council Resolution 1973 on the situation in Libya

<sup>51</sup> DROBAC, N; KIROVA, M; LUTKEHUS, L; STURTRIDGE, I; YIM, J. Intervention in Syria: an assessment of the options. In BUUS, M; CHARMAN, J; LAWSON, P; SMYTHE, O, EDITORS. *Now a necessity? to intervene in Syria on Humanitarian grounds?*. Exeter Grand Challenges [online]. 2014, 1st Ed., 2014. P. 8



giving merits to the argument that states would exploit the humanitarian exception to justify any military aggression<sup>53</sup>.

### 1.3. Legal uncertainty

The argument on whether state practice and *opinio juris* amount to the establishment of a customary norm is divided. Whilst some scholars affirm that customary international law does not authorise humanitarian intervention without the UNSC's approval<sup>54</sup>, other

---

[Accessed 22 May 2015]. Available from: [https://www.exeter.ac.uk/media/level1/academicserviceswebsite/grandchallenges/Syria\\_Human\\_Security\\_2013\\_INT026\\_INT\\_GC\\_bro.pdf](https://www.exeter.ac.uk/media/level1/academicserviceswebsite/grandchallenges/Syria_Human_Security_2013_INT026_INT_GC_bro.pdf)

<sup>52</sup> SCHULER, D. R2P Used to Justify Russian Intervention. The Glittering Eye [online]. March 4, 2014. [Accessed 23 May 2015]. Available from: <http://theglitteringeye.com/r2p-used-to-justify-russian-intervention/>; RUDOLPH, James P. How Putin Distorts R2P in Ukraine. Canadian International Council: OpenCanada.org, Canada's hub for international affairs [online]. March 7, 2014. [Accessed 23 May 2015]. Available from: <http://opencanada.org/features/the-think-tank/comments/how-putin-distorts-r2p-in-ukraine/>; KERSEN, M. Does Russia have a 'responsibility to protect' Ukraine? Don't buy it. The Globe and Mail [online] Mar. 04 2014 [Accessed 23 May 2015]. Available from: <http://www.theglobeandmail.com/globe-debate/does-russia-have-a-responsibility-to-protect-ukraine-dont-buy-it/article17271450/>

<sup>53</sup> GOODMAN, Ryan. Humanitarian Intervention and Pretexts for War. American Journal of International Law [online]. 2007. vol.100, no.1. pp. 107-141 [Accessed 29th April 2015]. Available from: <http://www.law.harvard.edu/faculty/rgoodman/pdfs/RGoodmanHumanitarianInterventionPretextsforWar.pdf>.

ISSN: 0002-9300; FRANCK, Thomas; RODLEY, Nigel. After Bangladesh: The Law of Humanitarian Intervention by Military Force. American Journal of International Law [online]. 1973, vol.67, no.2, pp. 275-305. [Accessed 29th April 2015]. Available from: [http://www.jstor.org/stable/2199432?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/2199432?seq=1#page_scan_tab_contents). ISSN: 0002-9300; SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1155-1158. ISBN 978-0-521-89929-1

<sup>54</sup> HOPPE, T. Just Peace as Leading Perspective: Towards the Concept and Task Profile of an Ethics of International Politics. Studies in Christian Ethics [online]. 2007, vol.20, no.1, p. 68 -75 [Accessed 19th April 2015]. Available from: <http://connection.ebscohost.com/c/articles/26394217/just-peace-as-leading-perspective-towards-concept-task-profile-ethics-international-politics>. ISSN: 1745-5235; IGNATIEFF M, Human Rights, Sovereignty, and Intervention (Amnesty International Lecture, Oxford, Feb 2001) as cited in WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. Melbourne Journal of International Law [online]. Oct 2001, vol.2, No.2, pp 550-567, ref. 10. [Accessed 29th April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602; RODLEY, Nigel. After Bangladesh: The Law of Humanitarian Intervention by Military Force. American Journal of International Law [online]. 1973, vol.67, no.2, pp. 275-305. [Accessed 29th April 2015]. Available from: [http://www.jstor.org/stable/2199432?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/2199432?seq=1#page_scan_tab_contents). ISSN: 0002-9300; BROWNLIE, I. Humanitarian Intervention. In MOORE, John Norton, EDITOR. *Law and Civil War in the Modern World*. Baltimore, MD: John Hopkins University Press, 1974, pp 217-228. ISBN: 978-1584777229; AKEHURST, M. Humanitarian Intervention. In Bull, H, EDITOR. *Intervention in World Politics*. Indiana: Clarendon Press, 1986, pp 95-118. ISBN: 019827498X; GOODMAN, Ryan. Humanitarian Intervention and Pretexts for War. American Journal of International Law [online]. 2007. vol.100, no.1. pp. 107-141 [Accessed 29th April 2015]. Available from:

<http://www.law.harvard.edu/faculty/rgoodman/pdfs/RGoodmanHumanitarianInterventionPretextsforWar.pdf>. ISSN: 0002-9300; MCMAHAN, Jeff. The Morality of War and the Law of War. In RODIN, D.; SHUE, H, EDITORS. *Just and Unjust Warriors: The Legal and Moral Status of Soldiers* 1st. Ed. New York: Oxford University Press, 2008. ISBN-13: 978-0199593231; TETZLAFF, K. Humanitarian intervention post Kosovo: Does a right to humanitarian intervention exist in Customary international law after Kosovo? If not, is there a trend towards the creation of a right to Humanitarian intervention in customary International law?. The New Zealand Postgraduate Law e-Journal [online] 2006, vol. 2, no.4, pp. 239-311. Accessed 19th. April 2015]. Available from: <https://cdn.auckland.ac.nz/assets/nzpglejournl/Subscribe/Documents/2006-2/2-KerryHIPOSTKOS.pdf>.

academics and states, the UK *inter alia*, take the opposite approach<sup>55</sup>. There is, however, a third approach taken by other scholars such as Zaid<sup>56</sup>, Hurd<sup>57</sup> and Shaw<sup>58</sup>, who postulate that the existence of the individual state right to humanitarian intervention is uncertain. Zaid and Hurd go even further in saying that humanitarian intervention exists in a space between legality and illegality<sup>59</sup>. This essay believes that, although the core of the doctrine of humanitarian intervention seems to be widely accepted (despite the limited state practice<sup>60</sup>), the current inapplicability of it, caused by an unreachd consensus as to the criteria and level of severity required, render the legality of this doctrine uncertain in practice. Therefore, the 2013 UK statement is not “legal nonsense”<sup>61</sup> but flawed with legal uncertainty. This legal uncertainty remains in 2015.

Moreover, this essay argues that states appear to have a *retroactive opinio juris* in favour of the doctrine; considering it legal when looking to past events, but being reluctant to accept it for future interventions. Byers and Chesterman approached this issue by stating that states that intervene without the UNSC approval should “admit that their actions are illegal and invoke humanitarian reasons as a way of mitigating the legal wrong they have committed”<sup>62</sup>.

---

<sup>55</sup> MCDOUGALL, Myres S.; REISMAN, Michael. ‘Response by Professors McDougall and Reisman. *International Lawyer*. 1969. p. 444 as cited in MACKLEM, Patrick. *Humanitarian Intervention and the Distribution of Sovereignty in International Law*. *Ethics & International Affairs* [online]. 2008, vol.22, no.4 pp 369-393, 371. [Accessed 29th April 2015]. Available from: [http://journals.cambridge.org/article\\_S0892679400005815](http://journals.cambridge.org/article_S0892679400005815). ISSN 1747-7093; FIXDAL, Mona; SMITH, Dan. *Humanitarian Intervention and Just War*. *Mershon International Studies Review* [online]. Nov 1998 vol.42, no.2, pp. 283-312, 286. [Accessed 29th April 2015]. Available from: [http://www.jstor.org/stable/254418?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/254418?seq=1#page_scan_tab_contents). ISSN: 1079-1760

<sup>56</sup> ZAID Z.A. *Humanitarian intervention in international law*. *Acta Juridica Hungarica Akadémiai Kiadó*, Budapest [online]. 2013, vol.54, n°2, pp 185-199. [Accessed 3th May 2015]. Available from: <http://www.akademiai.com/toc/026/54/2>. Online ISSN: 1588-2616

<sup>57</sup> HURD I. *Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World*. *Ethics & International Affairs* [online]. 2011, vol.25, no.3, pp. 293-313 [Accessed 3th May 2015]. Available from: [https://www.law.northwestern.edu/research-faculty/colloquium/international/documents/Spring2012\\_Hurd\\_Humanitarian\\_Intervention.pdf](https://www.law.northwestern.edu/research-faculty/colloquium/international/documents/Spring2012_Hurd_Humanitarian_Intervention.pdf). ISSN: 0892-6794

<sup>58</sup> SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1155-1158. ISBN 978-0-521-89929-1

<sup>59</sup> ZAID Z.A. *Humanitarian intervention in international law*. *Acta Juridica Hungarica Akadémiai Kiadó*, Budapest [online]. 2013, vol.54, n°2, pp 185-199. [Accessed 3th May 2015]. Available from: <http://www.akademiai.com/toc/026/54/2>. Online ISSN: 1588-2616; HURD I. *Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World*. *Ethics & International Affairs* [online]. 2011, vol.25, no.3, pp. 293-313 [Accessed 3th May 2015]. Available from: [https://www.law.northwestern.edu/research-faculty/colloquium/international/documents/Spring2012\\_Hurd\\_Humanitarian\\_Intervention.pdf](https://www.law.northwestern.edu/research-faculty/colloquium/international/documents/Spring2012_Hurd_Humanitarian_Intervention.pdf). ISSN: 0892-6794

<sup>60</sup> SHAW, Malcolm N. *International Law*. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1155-1158. ISBN 978-0-521-89929-1

<sup>61</sup> SCOBIE, I. *Why is David Cameron in this blog’s attic, naughtily rattling my cage?*. *EJIL: Talk! Blog of the European Journal of International Law* [online] 2 September 2013 [Accessed 28 May April 2015]. Available from: <http://www.ejiltalk.org/why-is-david-cameron-in-this-blogs-attic-naughtily-rattling-my-cage/>

<sup>62</sup> BYERS M; CHESTERMAN S. *Changing the Rules About Rules*. In HOLZGREFE, J.L.; KEOHANE, R.O., EDITORS, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* 1st. Ed, New York: Cambridge University Press, 2003. P. 177. ISBN: 9780521529280

## 2. LEGITIMACY

Since the legal status of humanitarian intervention is currently uncertain, we have to assess it also in terms of legitimacy. Moreover, Walter<sup>63</sup> and McMahan<sup>64</sup> controversially state that the morality of war cannot be expressed in legal terms, strengthening the importance of analysing the legitimacy. Holding to the debateable proposition that the lack of UNSC authorisation does not necessary entail illegitimacy<sup>65</sup>, this section will attempt to evaluate and compare the legitimacy of the UK to intervene in Syria in 2013 and in 2015.

Ignatieff claims that the use of force can never be a means to a humanitarian end<sup>66</sup>. Likewise, in the Nicaragua case<sup>67</sup> it was held that the use of force should not be used in order to secure respect to human rights<sup>68</sup>. However, this non-violent approach is difficult to defend when considering how the genocide of Rwanda or Cambodia could have been stopped<sup>69</sup>. The main concern of most academics is that the use of humanitarian intervention could be misused by powerful states to justify further military intervention<sup>70</sup>. A clear example can be found in the previously cited Russian position in relation to Ukraine. Another important issue in relation to the Syrian case is that a humanitarian intervention could have contributed to the escalation and perpetration of the conflict<sup>71</sup>.

---

<sup>63</sup> WALZER, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th Ed. New York: Basic Books, 2006. p. 106. ISBN: 0465037070

<sup>64</sup> MCMAHAN, Jeff. The Morality of War and the Law of War. In RODIN, D.; SHUE, H, EDITORS. *Just and Unjust Warriors: The Legal and Moral Status of Soldiers* 1st. Ed. New York: Oxford University Press, 2008. ISBN-13: 978-0199593231

<sup>65</sup> See same approach in MACKLEM, Patrick. Humanitarian Intervention and the Distribution of Sovereignty in International Law. *Ethics & International Affairs* [online]. 2008, vol.22, no.4 pp 369-393, 371. [Accessed 3th May 2015]. Available from: [http://journals.cambridge.org/article\\_S0892679400005815](http://journals.cambridge.org/article_S0892679400005815). ISSN 1747-7093

<sup>66</sup> IGNATIEFF M, *Human Rights, Sovereignty, and Intervention* (Amnesty International Lecture, Oxford, Feb 2001) as cited in WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567, ref. 10. [Accessed 3th May 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN: 1444-8602

<sup>67</sup> *Nicaragua V. United States of America* (Military and Paramilitary activities in and against Nicaragua)[76 ILR 349]

<sup>68</sup> *Ibid* Paras. 257 to 269

<sup>69</sup> WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 3th May 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>70</sup> GOODMAN, Ryan. Humanitarian Intervention and Pretexts for War. *American Journal of International Law* [online]. 2007. vol.100, no.1. pp. 107-141 [Accessed 3th May 2015]. Available from: <http://www.law.harvard.edu/faculty/rgoodman/pdfs/RGoodmanHumanitarianInterventionPretextsforWar.pdf>. ISSN: 0002-9300; counter argument in: ZIEGLER, Clemens E. Humanitarian Intervention and Pretexts for War - A Critique of Ryan Goodman. *Hanse Law Review* [online]. 2009, vol..5 p. 177-194. [Accessed 3th May 2015]. Available from: <http://www.hanselawreview.org/pdf8/Vol5No2Art03.pdf>. ISSN: 1863-5717

<sup>71</sup> KUPERMAN, Alan. A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign. *International Security VL* [online] 2013, vol.38, no.1, pp. 105-136, 135. [Accessed 3th May 2015]. Available from: [https://muse.jhu.edu/journals/international\\_security/toc/ins.38.1.html](https://muse.jhu.edu/journals/international_security/toc/ins.38.1.html). ISSN: 1531-4804

Wheeler reasons that in order to prevent states from exploiting this doctrine, the threshold of severity has to be narrowly construed<sup>72</sup>. This paper, agreeing with Wheeler's approach, argues that, notwithstanding the victims of the chemical weapons attack in Eastern Damascus<sup>73</sup>, the Syrian case in 2013 did not meet the level of severity required to entitle the UK with legitimacy to intervene and thus its justification was too "poor"<sup>74</sup>. This article believes that, in order to prevent further abuses of the doctrine, the humanitarian intervention exception should be limited to the most egregious crimes against humanity such as the Cambodian or Rwandan genocides. Establishing the threshold of severity for humanitarian intervention to be legitimate is not an easy task and there is no mathematical equation to determine how many slaves, deaths or torture cases are "enough". However this article considers that, unlike the Syrian crises in 2013, the egregious violations of human rights systemically committed by Daesh do legitimise the UK to intervene in 2015 under the doctrine of Humanitarian Intervention.

The next section will critically analyse the criteria and level of severity stated by the UK in its note in 2013.

### 3. CRITERIA AND THRESHOLD

The UK seems to be confident with the criteria and level of severity used to evaluate the legality of an intervention. However, this section will find that there is no consensus on the criteria and that the UK seems to be "making things up as it goes along"<sup>75</sup>.

Since NATO's intervention in Kosovo there has been an inconclusive debate over the criteria in the UN. The 1999 UK draft paper on the guidelines of humanitarian intervention<sup>76</sup>

---

<sup>72</sup> WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. Melbourne Journal of International Law [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 3th May 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>73</sup> WARRICK, J. More than 1,400 killed in Syrian chemical weapons attack, U.S. says. The Washington Post [online] August 30, 2013 [Accessed 11<sup>th</sup> April 2015]. Available from: [http://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5\\_story.html](http://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5_story.html)

<sup>74</sup> GOLDSMITH, J. UK Legal Position on Humanitarian Intervention in Syria. Lawfare Hard National Security Choices [online] 2 September 2013 [Accessed 11<sup>th</sup> April 2015]. Available from: <http://www.lawfareblog.com/2013/08/uk-legal-position-on-humanitarian-intervention-in-syria/>

<sup>75</sup> BBC, Syria crisis: Robust response needed, David Cameron says. BBC News Politics [online] 30 August 2013 [Accessed 16th April 2015]. Available from: <http://www.bbc.co.uk/news/uk-politics-23898551>

<sup>76</sup> COOK, Robin. *Guiding Humanitarian Intervention* (Paper presented at the American Bar Association, London, 17 July 2001) cited in WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. Melbourne Journal of International Law [online]. Oct 2001, vol.2, No.2, pp 550-567. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

is of particular relevance for this case because it identified similar criteria than the ones stated by the UK in 2013. Those criteria are: “the existence of an extreme humanitarian emergency; the exhaustion of all peaceful remedies; an ‘objective determination’ that force is the only means to avoid a humanitarian catastrophe; and conduct of a military operation so that it meets the requirement of proportionality”<sup>77</sup>. However, the UNSC did not reach any agreement. Another important document to take into consideration is the ICISS report on R2P<sup>78</sup>. In this case the ICISS identified six criteria: right authority, just cause, right intention, last resort, proportional means and reasonable prospects<sup>79</sup>. Yet, the change in the language from humanitarian intervention to R2P did little to forge a consensus. Until now, there has been no international agreement on the criteria to follow or on the threshold of severity required.

The debate is also intense between academics. For instance, Wheeler<sup>80</sup> and Fixdal and Smith<sup>81</sup> believe that restoring the criteria of the framework of Just War would be beneficial in the context of humanitarian intervention. Nonetheless they disagree on the substantive principles. Whilst Wheeler substitutes the ICISS principle “right authority” by “good over harm”<sup>82</sup>, Fixdal and Smith add two more criteria to the list: “relative justice” and “open declaration”<sup>83</sup>. Thus, currently there is neither academic nor international consensus on the criteria.

---

<sup>77</sup> WHEELER, Nicholas J. *Legitimizing Humanitarian Intervention: Principles and Procedures*. Melbourne Journal of International Law [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 7th May 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>78</sup> INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, *The Responsibility to Protect: Report of the International Commission of Intervention and State Sovereignty*. 1<sup>st</sup> Ed. Ottawa: International Development Research Centre, 2001. p. 11 ISBN 0-88936-960-7

<sup>79</sup> INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, *The Responsibility to Protect: Report of the International Commission of Intervention and State Sovereignty*. 1<sup>st</sup> Ed. Ottawa: International Development Research Centre, 2001. p. 12 ISBN 0-88936-960-7; BELLAMY, Alex J. *Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq*. Ethics & International Affairs [online]. 2005, vol.19, no.2 pp. 31-54. [Accessed 7th May 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093

<sup>80</sup> WHEELER, Nicholas J. *Legitimizing Humanitarian Intervention: Principles and Procedures*. Melbourne Journal of International Law [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 7th May 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>81</sup> FIXDAL, Mona; SMITH, Dan. *Humanitarian Intervention and Just War*. Mershon International Studies Review [online]. Nov 1998 vol.42, no.2, pp. 283-312. [Accessed 7th May 2015]. Available from: [http://www.jstor.org/stable/254418?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/254418?seq=1#page_scan_tab_contents). ISSN: 1079-1760

<sup>82</sup> WHEELER, Nicholas J. *Legitimizing Humanitarian Intervention: Principles and Procedures*. Melbourne Journal of International Law [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 7th May 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

<sup>83</sup> FIXDAL, Mona; SMITH, Dan. *Humanitarian Intervention and Just War*. Mershon International Studies Review [online]. Nov 1998 vol.42, no.2, pp. 283-312, 286. [Accessed 7th May 2015]. Available from: [http://www.jstor.org/stable/254418?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/254418?seq=1#page_scan_tab_contents). ISSN: 1079-1760

#### **4. CONCLUSION**

This paper concludes:

- that the UK statement in 2013 was flawed with legal uncertainty and that the legality of Humanitarian Intervention remains uncertain in 2015;
- that the UK lacked clear legitimacy to intervene in 2013 but that it has legitimacy to intervene in 2015; and
- that it is reasonable to declare that the UK's claim in 2013 about the consensus on the criteria for Humanitarian Intervention is delusionary and misleading.

## CITED BIBLIOGRAPHY

AKEHURST, M. Humanitarian Intervention. In Bull, H, EDITOR. *Intervention in World Politics*. Indiana: Clarendon Press, 1986, pp 95-118. ISBN: 019827498X

BBC, 'Battle for Iraq and Syria in maps. BBC News [online]. 18 May 2015 [Accessed 28th May 2015]. Available from: <http://www.bbc.com/news/world-middle-east-27838034>

BBC, Syria crisis: Cameron loses Commons vote on Syria action. BBC News [online]. 30 August 2013. [Accessed 28th May 2015]. Available from: <http://www.bbc.com/news/uk-politics-23892783>

BBC, Syria crisis: Robust response needed, David Cameron says. BBC News Politics [online] 30 August 2013 [Accessed 16th April 2015]. Available from: <http://www.bbc.co.uk/news/uk-politics-23898551>

BELLAMY, Alex J. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs* [online]. 2005, vol.19, no.2 pp. 31-54. [Accessed 1st April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-7093.2005.tb00499.x/abstract>. ISSN 1747-7093

BROWNLIE, I. Humanitarian Intervention. In MOORE, John Norton, EDITOR. *Law and Civil War in the Modern World*. Baltimore, MD: John Hopkins University Press, 1974, pp 217 – 228. ISBN: 978-1584777229

BUCHANAN, A. Reforming the international law of humanitarian intervention. In HOLZGREFE, J.L.; KEOHANE, R.O., EDITORS, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* 1<sup>st</sup> Ed, New York: Cambridge University Press, 2003, p. 364. ISBN: 9780521529280

BYERS M; CHESTERMAN S. Changing the Rules about Rules. In HOLZGREFE, J.L.; KEOHANE, R.O., EDITORS, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* 1<sup>st</sup> Ed, New York: Cambridge University Press, 2003. ISBN: 9780521529280

DROBAC, N; KIROVA, M; LUTKEHUS, L; STURTRIDGE, I; YIM, J. Intervention in Syria: an assessment of the options. In BUUS, M; CHARMAN, J; LAWSON, P;

SMYTHE, O, EDITORS. *Now a necessity'' to intervene in Syria on Humanitarian grounds?.* Exeter Grand Challenges [online]. 2014, 1<sup>st</sup> Ed., 2014. [Accessed 22 May 2015]. Available from:

[https://www.exeter.ac.uk/media/level1/academicsserviceswebsite/grandchallenges/Syria\\_Human\\_Security\\_2013\\_INT026\\_INT\\_GC\\_bro\\_.pdf](https://www.exeter.ac.uk/media/level1/academicsserviceswebsite/grandchallenges/Syria_Human_Security_2013_INT026_INT_GC_bro_.pdf)

EVANS, G.; SAHNOUN, M., 'Foreword' in International Commission on Intervention and State Sovereignty (eds), INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, *The Responsibility to Protect: Report of the International Commission of Intervention and State Sovereignty*. 1st Ed. Ottawa: International Development Research Centre, 2001. p. 11 ISBN 0-88936-960-7

FIXDAL, Mona; SMITH, Dan. *Humanitarian Intervention and Just War*. Mershon International Studies Review [online]. Nov 1998 vol.42, no.2, pp. 283-312. [Accessed 1st April 2015]. Available from:

[http://www.jstor.org/stable/254418?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/254418?seq=1#page_scan_tab_contents). ISSN: 1079-1760

FRANCK, TM. Interpretation and change in the law of humanitarian intervention. In HOLZGREFE JL; KEOHANE RO, EDITORS. *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. Cambridge: Cambridge University Press, 2003, 1st Ed., p. 31 ISBN: 0-521-82198-3

GOLDSMITH, J. UK Legal Position On Humanitarian Intervention in Syria. *Lawfare Hard National Security Choices* [online] 2 September 2013 [Accessed 11<sup>th</sup> April 2015]. Available from: <http://www.lawfareblog.com/2013/08/uk-legal-position-on-humanitarian-intervention-in-syria/>

GOODMAN, James. *Humanitarian collective security: restoring order?.* *Global Networks* [online]. 2013, vol.13 no.3, pp. 345-362, 358. [Accessed 1st April 2015]. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/glob.12026/abstract>. ISSN: 1471-0374

GOODMAN, Ryan. *Humanitarian Intervention and Pretexts for War*. *American Journal of International Law* [online]. 2007. vol.100, no.1. pp. 107-141 [Accessed 1st April 2015]. Available from: <http://www.law.harvard.edu/faculty/rgoodman/pdfs/RGoodmanHumanitarianInterventionPretextsforWar.pdf>. ISSN: 0002-9300



HEINZE, EA. Humanitarian intervention: morality and international law on intolerable violations of human rights. *The International Journal of Human Rights* [online]. 2004, vol.8, no.4, pp 471-49 [Accessed 1st April 2015]. Available from: <http://www.tandfonline.com/doi/abs/10.1080/1364298042000283549>. ISSN: 1364-2987

HOPPE, T. Just Peace as Leading Perspective: Towards the Concept and Task Profile of an Ethics of International Politics. *Studies in Christian Ethics* [online]. 2007, vol.20, no.1, p. 68 -75[Accessed 19th April 2015]. Available from: <http://connection.ebscohost.com/c/articles/26394217/just-peace-as-leading-perspective-towards-concept-task-profile-ethics-international-politics>. ISSN: 1745-5235

HUMAN RIGHTS WATCH. Syria. HRW-World Report 2015 [online] 2015 [accessed 17 March 2015]. Available from: <http://www.hrw.org/world-report/2015/country-chapters/syria>

HURD I. Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World. *Ethics & International Affairs* [online]. 2011, vol.25, no.3, pp. 293-313 [Accessed 1st April 2015]. Available from: [https://www.law.northwestern.edu/research-faculty/colloquium/international/documents/Spring2012\\_Hurd\\_Humanitarian\\_Intervention.pdf](https://www.law.northwestern.edu/research-faculty/colloquium/international/documents/Spring2012_Hurd_Humanitarian_Intervention.pdf). ISSN: 0892-6794

IGNATIEFF M, *Human Rights, Sovereignty, and Intervention* (Amnesty International Lecture, Oxford, Feb 2001) as cited in WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567, ref. 10. [Accessed 1st April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO. *The Kosovo Report: Conflict, International Response, Lessons Learned*. 1st Ed. New York: Oxford University Press, 2000.pp. 163-201. ISBN: 9780199243099

KAHLER M. Legitimacy, humanitarian intervention, and international institutions. *Politics Philosophy Economics* [online]. 2010, vol.10 no.1 pp 20-45. [Accessed 1st April 2015]. Available from: <http://ppe.sagepub.com/content/10/1/20.abstract>. ISSN 1470-594X

KERSEN, M. Does Russia have a ‘responsibility to protect’ Ukraine? Don’t buy it. *The Globe and Mail* [online] Mar. 04 2014[Accessed 23 May 2015]. Available from:

<http://www.theglobeandmail.com/globe-debate/does-russia-have-a-responsibility-to-protect-ukraine-dont-buy-it/article17271450/>

KUPERMAN, Alan. A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign. *International Security* VL [online] 2013, vol.38, no.1, pp. 105-136, 135. [Accessed 1st April 2015]. Available from: [https://muse.jhu.edu/journals/international\\_security/toc/ins.38.1.html](https://muse.jhu.edu/journals/international_security/toc/ins.38.1.html). ISSN: 1531-4804

MACKLEM, Patrick. Humanitarian Intervention and the Distribution of Sovereignty in International Law. *Ethics & International Affairs* [online]. 2008, vol.22, no.4 pp 369-393, 371. [Accessed 1st April 2015]. Available from: [http://journals.cambridge.org/article\\_S0892679400005815](http://journals.cambridge.org/article_S0892679400005815). ISSN 1747-7093

McCourt D, 'Embracing Humanitarian Intervention: Atlanticism and the UK Interventions in Bosnia and Kosovo' [2012] 15 *The British Journal of Politics & International Relations*, 252

MCDUGALL, Myres S.; REISMAN, Michael. 'Response by Professors McDougall and Reisman. *International Lawyer*. 1969. p. 444 as cited in MACKLEM, Patrick. Humanitarian Intervention and the Distribution of Sovereignty in International Law. *Ethics & International Affairs* [online]. 2008, vol.22, no.4 pp 369-393, 371. [Accessed 1st April 2015]. Available from: [http://journals.cambridge.org/article\\_S0892679400005815](http://journals.cambridge.org/article_S0892679400005815). ISSN 1747-7093

MCMAHAN, Jeff. *The Morality of War and the Law of War*. In RODIN, D.; SHUE, H, EDITORS. *Just and Unjust Warriors: The Legal and Moral Status of Soldiers* 1st. Ed. New York: Oxford University Press, 2008. ISBN-13: 978-0199593231

PRIME MINISTER'S OFFICE. 'Guidance Chemical weapon use by Syrian regime: UK government legal position'. Gov.uk [online]. 29 August 2013 S.4.1. [Accessed 16th April 2015]. Available from: <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position-html-version>

RODLEY, Nigel. After Bangladesh: The Law of Humanitarian Intervention by Military Force. *American Journal of International Law* [online]. 1973, vol.67, no.2, pp. 275-305. [Accessed 1st April 2015]. Available from: [http://www.jstor.org/stable/2199432?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/2199432?seq=1#page_scan_tab_contents). ISSN: 0002-9300

RUDOLPH, James P. How Putin Distorts R2P in Ukraine. Canadian International Council: OpenCanada.org, Canada's hub for international affairs [online]. March 7, 2014. [Accessed 23 May 2015]. Available from: <http://opencanada.org/features/the-think-tank/comments/how-putin-distorts-r2p-in-ukraine/>

SCHULER, D. R2P Used to Justify Russian Intervention. The Glittering Eye [online]. March 4, 2014. [Accessed 23 May 2015]. Available from: <http://theglitteringeye.com/r2p-used-to-justify-russian-intervention/>

SCOBIE, I. Why is David Cameron in this blog's attic, naughtily rattling my cage?. EJIL: Talk! Blog of the European Journal of International Law [online] 2 September 2013 [Accessed 28 May April 2015]. Available from: <http://www.ejiltalk.org/why-is-david-cameron-in-this-blogs-attic-naughtily-rattling-my-cage/>

SHAW, Malcolm N. International Law. 6th Ed. New York: Cambridge University Press CUP, 2008. p. 1155-1158. ISBN 978-0-521-89929-1

SHERWELL, Philip. John Kerry: US will have to negotiate with Bashar al-Assad to end Syrian civil war. The Telegraph [online] 15 March 2015. [accessed 17 March 2015]. Available from: <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/11473715/John-Kerry-US-will-have-to-negotiate-with-Bashar-al-Assad-to-end-Syrian-civil-war.html>

TETZLAFF, K. Humanitarian intervention post Kosovo: Does a right to humanitarian intervention exist in Customary international law after Kosovo? If not, is there a trend towards the creation of a right to Humanitarian intervention in customary International law?. The New Zealand Postgraduate Law e-Journal [online] 2006, vol. 2, no.4, pp. 239-311. Accessed 19th. April 2015]. Available from: <https://cdn.auckland.ac.nz/assets/nzpglejournal/Subscribe/Documents/2006-2/2-KerryHIPOSTKOS.pdf>.

UK MINISTRY OF DEFENCE. Intervention: When, Why and How?. Parliament.uk [online] UK Parliament Session 2013-14 Prepared\_28 November 2013 S.5 (a), (b) and (c). [Accessed 1st April 2015] <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmdfence/writev/intervention/int01.htm>

UN Human Rights Office of the High Commissioner for Human Rights, 'UN report documents litany of human rights violations in Iraq, including possible war crimes and crimes against humanity. Baghdad/Geneva: OHCHR [online] 18 July 2014 [Accessed 26th May 2015]. Available from:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14884&LangID=E#sthash.anMQipD3.dpuf>

UNAMI/OHCHR, Report on the Protection of Civilians During the non-International Armed Conflict in Iraq: 5 June to 5 July 2014(UN, Baghdad Iraq 2014)

UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION. The Responsibility to Protect: Who is responsible for protecting people from gross violations of human rights?. Programme on the Rwanda Genocide and the United Nations [online] March 2014. [Accessed 25th April 2015]. Available from:

<http://www.un.org/en/preventgenocide/rwanda/pdf/Backgrounder%20R2P%202014.pdf>

WALZER, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th Ed. New York: Basic Books, 2006. p. 106. ISBN: 0465037070

WARRICK, J. More than 1,400 killed in Syrian chemical weapons attack, U.S. says. The Washington Post [online] August 30, 2013 [Accessed 11<sup>th</sup> April 2015]. Available from: [http://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5\\_story.html](http://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5_story.html)

WHEELER, Nicholas J. 'Humanitarian Intervention after September 11, 2001' in LANG Jr Anthony F. (ed), *Just Intervention* 1st ed. Washington, DC: Georgetown University Press, 2003 p 240 ISBN: 9780878403417

WHEELER, Nicholas J. Legitimizing Humanitarian Intervention: Principles and Procedures. *Melbourne Journal of International Law* [online]. Oct 2001, vol.2, No.2, pp 550-567. [Accessed 1st April 2015]. Available from: <http://search.informit.com.au/documentSummary;dn=318338034969378;res=IELHSS>. ISSN 1444-8602

ZAID Z.A. Humanitarian intervention in international law. *Acta Juridica Hungarica Akadémiai Kiadó, Budapest* [online]. 2013, vol.54, n°2, pp 185-199. [Accessed 1st April 2015]. Available from: <http://www.akademiai.com/toc/026/54/2>. Online ISSN: 1588-2616

ZIEGLER, Clemens E. Humanitarian Intervention and Pretexts for War - A Critique of Ryan Goodman. *Hanse Law Review* [online]. 2009, vol..5 p. 177-194. [Accessed 1st April 2015]. Available from: <http://www.hanselawreview.org/pdf8/Vol5No2Art03.pdf>. ISSN: 1863-5717