

## Globalisation and War: The Historical and Current Controversy on Humanitarian Interventions

Josef BORDAT\*

### ABSTRACT

*In the debate about the question if, when, and how humanitarian interventions can afford peace and justice, military action needs to be taken into consideration. To discuss the meaning of justice in relation to military intervention, conclusions can be drawn from a historical view of the bellum iustum topic, as treated by the Spanish scholars Sepúlveda, Vitoria and Las Casas. Historical analysis reveals the principles both for the ius ad bellum and the ius in bello, that can be found in a recent proposal, the report The Responsibility To Protect (2001) of the International Commission on Intervention and State Sovereignty (ICISS). In addition, for the recovery of justice, a ius post bellum for the prosecution of "crimes against humanity," as intended by the International Criminal Court (ICC), seems important.*

**Keywords:** Globalisation, Humanitarian Interventions, War

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\* Technical University of Berlin

## Introduction

If there is a concept with which today's political and economic situation is described in an almost stereotypical way, then it is the concept of *globalisation*. Whatever happens is described, explained and excused by this term. In spite of its inflated use, what exactly constitutes the essence of this so called globalisation is not altogether clear. Anyone looking for a comprehensive definition must be satisfied with descriptions that only address certain political, cultural and economic developments from a specific point of view. A common element of all those approaches is the considering of globalisation as an expansion, condensation, and acceleration of worldwide relations, which nevertheless are understood only from a specific perspective, excluding strictly all other concepts, so that a holistic description that would stress the meaning of globalisation in all its aspects is still missing. The reason for the missing interdisciplinary concept of globalisation is the deep ideological infiltration that makes an open analysis impossible. Right from the beginning, rather as a condition than as an assumption, liberal enthusiasts only take into consideration the increase in liberty, profit and prosperity; meanwhile the sceptics recognise an upcoming anarchy that provides only the economically strong with the predicted benefits. Thus globalisation is used more as a term of ideological conflict than of sociological analysis. Only if interdisciplinary understanding concerning terms and methods gets into the frame will the complete picture of the phenomenon become visible.

The question of when globalisation started is controversial. Depending on the field of research, the beginning is identified with different historical dates: the discovery of America in 1492, the opening of the Suez Canal and the completion of a railway connection from the east to the west of the USA in 1869, the expansion of European colonial activities around 1880, the entry of the USA into world politics in 1917 (during World War I), the meeting at Bretton Woods in 1943, the lunar landing in 1969, the peaceful revolution in eastern Europe in 1989, or the collapse of the bipolar world with the ending of the Soviet Union in 1991.

### **1492 and 1989/91. Conceptual parallelity between two crucial phases of globalisation**

To me it seems justified to talk about two pushes towards globalisation: the first one at the beginning of the sixteenth century, starting with the discovery of America in 1492, and the second one in our times, initiated by the incidents in 1989 and 1991, from the breaking down of the Berlin Wall to

the end of the Soviet Union. I want to support this idea with the principal change in international law that happened as a consequence of both incidents. During the first stage of globalisation, the *ius gentium* ("law of nations" within the Roman Empire) is replaced by a *ius inter gentes* ("public international law" establishing relations between independent nations), that applied the relations of the Roman empire to the discovered New World as the basis of international law, not just to that empire's own inner constitution, as before. Nowadays international law is reconstructed again by means of several new "regimes:" in economics (namely the World Trade Organization), by a planned reform of the United Nations Organization, and by reinterpretation of existing international law, due to the new challenges of the second stage of globalisation.

There are several parallels between the promotion of a new world-order at that time and today, especially concerning the concept of a "just war" (*bellum iustum*) in relation to the problem of so-called "humanitarian interventions"—as both the *Conquista* (then) and the "war on terrorism" (today) was and is considered. Then and now the major purpose of humanitarian interventions is the protection of human beings from harm—at that time from religious human sacrifice and cannibalism, today from criminal regimes that rack their own people with terror, civil war, torture and oppression—once powered by a religious mission to provide Christianity by converting the people, today by a civil-religious motivation to provide human rights, freedom and democracy. But also economic and political circumstances did and do influence the decision whether or not to intervene. The articulated motives are noble, the reality banal, because intervention revolves around the economic values of the time—gold, then, and today, oil—as well as around political interests: the hegemony of the Hapsburgs historically, and today the "Pax Americana," have both attempted to support world domination, not least militarily. It seems as if wars of intervention have always had a geo-strategic meaning alongside their motives of rescue, of saving human lives and of "making the world a better place."

Because of these parallels it seems interesting to analyse how the topic of *bellum iustum* was treated in the past, and what we can learn for the treatment of this topic today. This comparative analysis between concepts of war, developed in relation to the first and second stages of globalisation, offers the possibility of devising contemporary solutions, and involves a fundamental rejoinder to those who criticise humanitarian interventions for their political and economical motivation. Therefore I want to demonstrate continuous lines of argument on the topic between, on the one hand, the Spanish Baroque scholasticism around Francisco de Vitoria, Bartolomé de

Las Casas and Juan Ginés de Sepúlveda, and on the other, a recent proposal developed in Ottawa by the International Commission on Intervention and State Sovereignty (ICISS). I would like to present the ICISS concept of humanitarian intervention, carried out by military action, against a background of historical analysis, to emphasise the role of justified interventions as a resistance to the harming of human rights in the world today, but also to uphold a right to resist wars of intervention that do not obey Las Casas' strict conditions taken up by the ICISS. In addition I want to point out the new approach concerning the *ius post bellum* ("legitimate post-war order"), represented by the prosecution of "crimes against humanity" according to the *Roman Statute* (1998) of the International Criminal Court (ICC).

### Historical understanding of *bellum iustum*

The argument referring to the legitimacy of the *Conquista* is based on the patrician and scholastic concept of *bellum iustum*, namely on the positions of Augustine and Thomas Aquinas. Augustine reflects on the question of whether Christians may fight in a war or not. He comes to a positive conclusion for those cases in which war is waged to restore peace. He modifies Jesus' request for a radical non-violent attitude, as expressed in the Sermon on the Mount (*Matthew* 5, 38-48), to an inner attitude, the *praeparatio cordis* ("attitude of the heart"), that does not demand strictly peaceful behaviour in every possible concrete situation, but allows the individual to take military action, e.g. in cases of self-defence. The prerequisite of a just war, for Augustine, is always the transgression of the other: "Iniquitas enim partis adversae iusta bella ingerit gerenda sapienti [...]" (Augustine 2001, l. XIX, c.7; "Only the injustice of the other side forces the wise into just wars"). Nevertheless, a just war remains a manifestation of evil, to Augustine, and may be carried out only after exhaustion of all peaceful means as an *ultima ratio* ("last resort"). The central element of the *bellum iustum* in Augustine is the function of the war as punishment, a concept expressed by the term *iustitia vindicativa* (punitive justice). Augustine builds up a bridge to the order; the Gospel teaches us about a loving attitude towards the enemy (*Matthew* 5, 43-45). With a just war, the enemy is prevented from performing evil, an evil that contributes indirectly to the eschatological benefit of the individual's soul, that again is orientated to right behaviour and to God. If the enemy is not prevented from doing evil by means of war, he would go on harming God's eternal law, and sooner or later—understood eschatologically—he would be exposed to worse punishment than that which he can expect as a worldly consequence of war.

In Augustine the *recta intentio* (right intention) sets its limit to the way of warfare. According to Augustine only such means are permitted as contribute to fast and direct victory and the refinement of the sinner, and not those that are meant only to carry out revenge, to promote greed, or to show cruelty, because revenge, greed and cruelty do not lead to peace but to irreconcilability. The exclusive authority to carry out a just war and to decide on the means always lies with the state (*auctoritas belli*).

Thomas Aquinas asks whether waging war is always a sin. Setting three conditions, he answers his question in the negative: there must be an authorisation by the monarch (*auctoritas principis*), a just reason (*causa iusta*), and a right intention (*recta intentio*), simultaneously, for a war to qualify as just, a *bellum iustum* (Thomas Aquinas 1962, II-II, q. 40, a.1). In addition to the three terms of the scholastic *ius ad bellum* (the right to wage war) Aquinas mentions the *debitus modus* (proportional means) that became the principle of *ius in bello* (the right manner of conducting war).

On the foundation laid by Augustine and Thomas Aquinas the question that emerges is whether the *Conquista* is a *bellum iustum* or not. The controversy arises between the *colonists* around Sepúlveda, whose arguments supported the *Conquista*, and the *Indian-defenders* around Las Casas, who demanded a missionary colonisation by peaceful means only.

The Indian-defenders were supported by Francisco de Vitoria, who also refused to accept any right to make use of violence to promote the Christian mission. Vitoria argued that the Amerindians\* were lawful owners of their belongings, in both a physical and a political sense, and that this property should not be stolen by the Spanish. By his logic, military action as an *ultima ratio* is acceptable only in cases of self-defence against possible Indian aggression and for the protection of the missionaries.

The dispute between Sepúlveda and Las Casas which took place in the *Junta de Valladolid* (1552), a committee of theologians and jurists, ended without any result, for the reported positions were too controversial for the participants to arrive at a final consensus. With regard to the question of who has the right to decide whether and how a war should be carried out,

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\* The terminology for designating the aboriginal inhabitants of the Americas is a sensitive matter, and subject to different cultural norms in different times and places. To the Spanish of the time, they were the Indians. In Anglophone central American countries such as Guyana in our time, Amerindian is a conventional usage, and is therefore used here. They were and are, of course, many peoples, with their own names for the discrete cultural groups.

however, Sepúlveda and Las Casas broadly agreed: the monarch alone had the right to wage a war as *auctoritas legitima* ("legitimate authority"). Sepúlveda, in particular, included the pope as the highest dignitary of the church in his concept of *auctoritas legitima*, because, in the case of the *Conquista*, Pope Alexander VI made use of this privilege by allocating to the Spanish crown the prerogative to subject the Amerindians for missionary reasons.

No common position could, however, be ratified on the question of the *Conquista's causae iustae*. According to the tradition Sepúlveda held, there are three *causae iustae* for a just war: first, *defence* against an unjust attack; second, *recovery* of unjustly stolen goods; and third, *punishment* of an unexpiated crime. The classification of the *attack* as *unjust* is important for the *just defence*. In the case of *recovery*, Sepúlveda refers to the book of *Genesis*, which describes how Abram waged war against Chedorlaomer, king of Elam, to bring back his nephew, Lot, whom Chedorlaomer had captured, and his possessions (*Genesis* 14). Using this example, Sepúlveda considers the right to *recover* stolen property, and also discusses the rehabilitation of allies. To Sepúlveda, the *punishment* finally is justified for reasons of deterrence.

Because, in the case of the *Conquista*, his three traditional *causae iustae* ("just reasons") were not applicable, Sepúlveda attempts to enumerate additional rationales: first, the *natural inferiority* of the Indians; second, the committed *sins against nature*; third, the *protection of innocents* from sacrifice and cannibalism; and fourth, a *faster and more secure distribution* of the Christian faith.

In connection with humanitarian intervention, the *protection of innocents* is significant. A duty to assist the suffering in an emergency situation arises from natural law, to which any brutal rites and practices run contrary. Thus, intervention involves not only punishment of the offenders but also protection of the (potential) victims. Sepúlveda enlarges the Augustinian *iustitia vindicativa* to an instrument of argument that also justifies the pre-emptive war that prevents the law-breaker's "ability to do wrong" (Sepúlveda 1951, 19). Sepúlveda argues both ethically, with the *societas* (community) of mankind, and theologically, by reference to the book of *Proverbs* ("Rescue those who are being taken away to death; hold back those who are stumbling to the slaughter," *Proverbs* 24, 11) and to the Parable of the Good Samaritan (*Luke* 10, 30-37).

Las Casas, who does not regard the war merely as an academic problem but brings into the discussion his personal experience, recognises war as “the worst thing on earth” (Las Casas 1988, 660); therefore a Christian is called to keep the peace as far as possible, according to the Epistle of Paul to the Romans: “If possible, so far as it depends upon you, live peaceably with all” (*Romans* 12, 18). He describes very impressively the consequences of war, and reminds the decision-makers in Spain, who lived far away from the cruelties, of all the atrocities, bloodbaths, devastation and destruction, revenge and retribution that affect everyone, soldiers and civilians, men, women and children, the poor and the rich.

But the *Conquista* is not only cruel but primarily unjust. Las Casas rejects Sepúlveda’s *causae iustae* of *natural inferiority*, the committed *sins against nature*, and the *faster and more secure distribution* of the Christian religion. The only *causa iusta* acceptable to him is the *protection of the innocent*: the liberation of suffering innocents indeed is a possible just cause for a war. In this context he judges the practice of religious sacrifice as a mistake, not as a crime, and suggests a strategy of liberation without punishment. He later rejects the application of this *causa iusta* to the war against *all Amerindians*, as Sepúlveda proposes, because only a few tribes practised religious sacrifice or cannibalism. A war against all Indians contravenes just reason, for in such a war the *potential* victims of religious rites to be saved become *actual* war victims. Las Casas consequently regards the *Conquista* as disproportionate and indiscriminate, i.e., unjust in terms of *ius in bello*, even though it might be considered as a possibility to protect and liberate innocent victims.

Sepúlveda, too, is concerned about justice not only in relation to the *ius ad bellum* but also in relation to the *ius in bello*. The *debitus modus* (“proportional means”) of the just war, to Sepúlveda, lies in moderation, regarding the means being used. With Augustine, he condemns the possible excesses of war in cruel acts of revenge. Instead, he brings to mind the necessity of keeping the means in correspondence with the principles of discrimination between military targets and civil installations, and of the proportionality of means, including the victor’s behaviour towards the enemy after completion of the war. Transferred to the *Conquista*, this concern leads to the conclusion that the number of expected victims during the humanitarian intervention should be smaller than the number of potential victims of religious practices. According to Sepúlveda, the annual number of victims of religious practices approaches 20,000 human beings. Because of that high number, the bloodiest *Conquista* still seems justified to him. That figure is rejected by Las Casas, who, in general terms, follows Sepúlveda in his opinion that the number of war victims must be lower than the number of potential victims of religious rites. However, Las Casas comes to a completely different number in the

case of the Amerindians: he talks of “less than 50” victims every year (Las Casas 1988, 368). For Las Casas, the *Conquista* in this respect cannot be a *bellum iustum*, and resistance to the cruel war of conquest, disguised as resistance to cruelty, becomes a duty.

Now I want to transfer these ideas about the *bellum iustum* topic into the situation today, in which we talk about “humanitarian interventions” for “protection” and “liberation” in the context of the so-called “war on terror.” On the historical background, especially on the position of Las Casas, I want to discuss and evaluate the argument of the study *The Responsibility To Protect*, from the International Commission on Intervention and State Sovereignty (ICISS), published by the International Development Research Centre (IDRC). The report formulates principles and measurements for a strategy of just intervention as resistance against the harming of human rights.

### **An actual understanding of *just war***

The report of the ICISS was published in December 2001, immediately after the terrorist attacks of 11 September 2001 aimed at New York and Washington, D.C. But the main part of the work was already done prior to the terrorist attacks, as the group had met initially in November 2000. Thus, the commission, led by its co-chairs Gareth Evans and Mohamed Sahnoun, dealt not only with the “war on terror” but with the question of humanitarian intervention generally, against a background of experiences in the Rwanda genocide (1994), and in the Kosovo war (1999). The terrorist attacks, however, certainly influenced the commission members deeply, a fact demonstrated early in the report by the following statement: “This report is about the so-called ‘right of humanitarian intervention:’ the question of when, if ever, it is appropriate for states to take coercive—and in particular military—action, against another state for the purpose of protecting people at risk in that other state. At least until the horrifying events of 11 September 2001 brought to center stage the international response to terrorism, the issue of intervention for human protection purposes has been seen as one of the most controversial and difficult of all international relations questions” (IDRC 2001, VII). Then follows the historical motivation and the practical definition of the topic and the aim: “With the end of the Cold War, it became a live issue as never before. Many calls for intervention have been made over the last decade—some of them answered and some of them ignored. But there continues to be disagreement as to whether, if there is a right of intervention, how and when it should be exercised, and under whose authority” (IDRC 2001, VII). Thus, the questions

raised by the report are the following: *When are military interventions permitted, and if they are carried out, how and under whose leadership?* With these questions the commission puts itself into the tradition of the *bellum iustum* topos by addressing, first, the *ius ad bellum* and, second, the *ius in bello*.

The result reveals many of these concerns and illustrates what Las Casas has written about this topic. The *protection of innocents*—to Las Casas the only reason for a humanitarian intervention—becomes the “primary purpose” in the commission report. By analogy with the historical *recta intentio* the report summarises the “right intention” according to the following basic principle: “The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned” (IDRC 2001, XII).

Only in the case of “serious and irreparable harm occurring to human beings, or imminently likely to occur” with “large scale loss of life, actual or apprehended, with genocidal intent or not,” is military intervention justified (IDRC 2001, XII). This definition means that pre-emptive military action is not justified without evident proof of forthcoming harm to human rights. But pre-emptive military action is exactly what Sepúlveda had suggested, and is currently a firm part of the US *National Security Strategy* (NSS) of 2002: “[T]he United States will, if necessary, act pre-emptively” (US Government 2002, ch. V, 15). The world was forced to observe what “necessary” in this context meant when, in March 2003, the USA and such European allies as Great Britain, Spain, and Poland, attacked Iraq to ensure that Saddam Hussein would be unable to make use of his reputed weapons of mass destruction, or to take away from him—in Sepúlveda’s words—“the ability to do wrong” (Sepúlveda 1951, 19). But, at the same time, Sepúlveda would have criticised the decision to wage war against Iraq because of a lack of evidence of the presence of weapons of mass destruction, which, as we now know, simply did not really exist. Sepúlveda points out the following: “*Princeps qui dubia causa bellum infert, in magno peccato est*” (Sepúlveda 1951, 114; “A monarch, who starts a war because of a doubtful reason, commits a serious sin”).

But if there is evidence that harm of human beings is likely to occur or is occurring, the “just cause” determines a duty to act, if the state concerned is unable (as in the case of a “failed state”) or unwilling (as in the case of a “rogue state”) to do so. Military action has to be carried out even despite reservations aroused by the United Nations Charter’s principles of sovereignty (Art. 2, 1), non-violence (Art. 2, 4), and non-intervention (Art. 2,

7): “The principle of non-intervention yields to the international responsibility to protect” (IDRC 2001, XI). Thus, humanitarian intervention in such cases is not only a *possibility* to be taken into consideration, but a *responsibility* from which a *duty* follows, given that the international community is willing to take its role in the globalised world seriously.

One point is not yet settled: who can lead the international community in its effort to fulfil the duty described? The answer is quite clear: only the United Nations can play the part of the *legitima potestas* (“legitimate authority”) today: “The UN, whatever arguments may persist about the meaning and scope of various Charter provisions, is unquestionably the principal institution for building, consolidating and using the authority of the international community” (IDRC 2001, 48). In other words, “There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes” (IDRC 2001, XII).

Even under a mandate of the UN Security Council, humanitarian interventions may be tackled only as *ultima ratio* (a “last resort”): “Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded” (IDRC 2001, XII).

Also, the *ius in bello* has to be respected. Non-observance of the *debitus modus* during a military intervention would run contrary to its just reasons. If the military intervention causes cruelties worse than those that made the war necessary to begin with, the intervention cannot be called a right solution, as Las Casas showed with reference to the *Conquista*. Like him the ICISS insists on proportionality, namely on “proportional means” (“The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective”, IDRC 2001, XII) and “reasonable prospects” (“There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction”, IDRC 2001, XII).

The decision as to whether proportionality and discrimination are ensured or not, should be made with the advice of such Non Governmental Organisations (NGOs) as are directly involved, just as Las Casas was personally involved with the *Conquista*. The NGOs have the empirical data and the experience that the decision-makers of the Security Council do not

have in every case. Their judgement has to be taken into consideration—and taken into consideration seriously—to avoid difficulties such as those that occurred during the operation “Restore Hope” in Somalia (1992). In this respect the ICISS is consistent when it demands the “maximum possible coordination with humanitarian organizations” (IDRC 2001, XIII).

According to the ICISS, the responsibility of the world community is, however, not only reactive, carried out by military means (“responsibility to react”), but also extends to political and economic prevention (“responsibility to prevent”) and post-war reconstruction (“responsibility to rebuild”), a quite decisive expansion of the concept of intervention, corresponding to the Christian ethics of Las Casas, that strives to build the trust and understanding that ensures a durable peace.

The *responsibility to prevent* means “to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk” (IDRC 2001, XI). The ICISS leaves no doubt concerning the importance of that task: “Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it” (IDRC 2001, XI).

The armistice obtained after a military intervention that in some cases becomes necessary, despite all civil prevention, is not yet a stable peace. The mission is not completed when violence ceases under the pressure of military superiority. It consists in the reconstruction not only of the infrastructure but also of the citizens’ broken confidence in government and the authorities. As a result, the duty to intervene covers the *responsibility to rebuild*, that is defined by the commission as the duty “to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert” (IDRC 2001, XI).

Morally, the decision for a humanitarian intervention still remains extremely difficult. Even more important for consideration are clear principles of what has to be considered as “just” and what must be judged as “unjust” in relation to contemporary *ius ad bellum* and *ius in bello* (humanitarian) interventions. Ultimately, it is necessary to strike a balance between, on the one hand, the paradox of a “global war for peace” without any clear perspective, and on the other hand, the certainty that criminal regimes, dictatorships, and terrorist groups will employ cruelty to violate human

rights, under the protection of the principle of non-intervention – fixed in the UN Charter.

To save the world from falling into the barbarism of both extremes, the civilised world community must grow together. The United Nations must become, in reality, strong enough to play the role of a contemporary *auctoritas principis*. The announced reform, therefore, has to improve the organisational conditions, especially by an enlargement of the Security Council and a concerted initiative for an advanced juridical procedure, that in future cases will structure and rule the debate about the decision for or against a humanitarian intervention.

The sovereignty of states has to be reconsidered, and reduced to the aspect of *responsibility*. In case of failure, sovereignty must not be an obstacle to *multilateral* action mandated by the United Nations as the subordinating power, that better sooner than later is able to carry out a “world domestic policy” in the name of humanity. This is the price to be paid for the real chance, if not of keeping “eternal peace,” at least of putting an end to “unjust wars.”

### **A new additional approach: *ius post bellum***

What is missing from both the historical and the current approach to the “just war” topic is a proper *ius post bellum*, that not only tries to create a framework for the rebuilding of political, social and economic institutions, but tries to do justice to the victims, in order to make possible a new start in a more peaceful society. So it is imperative, in this regard, that harm to human rights, once met by military intervention, has to be prosecuted world-wide and to be subject to legal punishment.

This thought finds its expression in the current venture of the International Criminal Court (ICC). The *Roman Statute* (1998) of the ICC closes an obvious gap between the morality of human rights and the legality of war crimes. With this statute of the ICC, violations of human rights can always and everywhere be punished in periods of “war” and “peace,” for the ICC is constituted as a permanent court. Its current manifestations include the International Criminal Tribunal for the former Yugoslavia (constituted 1993), and sister tribunals for Rwanda (1994) and Sierra Leone (2001), which are *ad hoc* courts, like the historical example, the Nuremberg criminal tribunal, but with this permanent institution for justice and peace, the ICC, a long-cherished wish is fulfilled.

The ICC statute includes regulations in 13 chapters and 128 articles, dealing with the crime of genocide, crimes against humanity, and war crimes. For these crimes the statute contains almost seventy individual definitions of criminal offences. The definition of genocide corresponds to the regulations in article 2 of the *Genocide Convention* (1948). The crime of genocide, just like crimes against humanity, can also be pursued by the international community if it was committed outside an armed conflict. War crimes are included, too, if they are committed in intra-state conflicts, which means that the problem of “new war” is taken into consideration. So, for the first time in history, a legal approach to international public law covers all possible manners of violating elementary human rights as crimes, and lists them precisely with several facts of criminal offences.

However, the ICC statute does not contain any specific punishment connected to each criminal offence. The court can impose the following punishments on a person who has been convicted of a crime mentioned in the statute: a prison sentence up to a maximum duration of thirty years, a life sentence, a fine, and the confiscation of earnings and property. Furthermore the criminal responsibility of individual persons is an important point of the statute—in this context it is significant that there are no exceptions for active office- or mandate-holders, such as members of government or parliament (art. 27, 2 of the Roman Statute).

A clear signal goes out from Rome: in the twenty-first century, impunity for the worst violations of human rights must be brought to an end world-wide. No other development in international public law is focused so much on the protection of human rights by the guaranteed prosecution of “crimes against humanity.” The ICC Statute, so far, is the latest institutional step of a basic transformation of modern international public law, from non-intervention to protection, and therefore matches exactly the aims of the ICISS. Hence it would be an important act, if the USA and other states like China, India and Israel ratified the Roman Statute of the ICC, and with that helped the court to get the power which is due to it as an efficient *ius post bellum*.

## Conclusion

In a globalized world there is no place for the violation of basic human rights. Despite all sceptical reservations against a “world state” and a “world government” it becomes nowadays a crucial point in the international relation context to discuss vehemently an obliging duty of the world community to compile clear criteria for reasons, means, purpose and the evaluation of so-called humanitarian interventions, and to bring this criteria

in a suitable legal form. At the same time the post-interventional peacebuilding should be strengthened by the prosecution of “crimes against humanity” carried out under the control of the International Criminal Court (ICC) to make sure that justice is brought into power, in order to provide this main precondition for sustainable political and economical development in the former conflict region.

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