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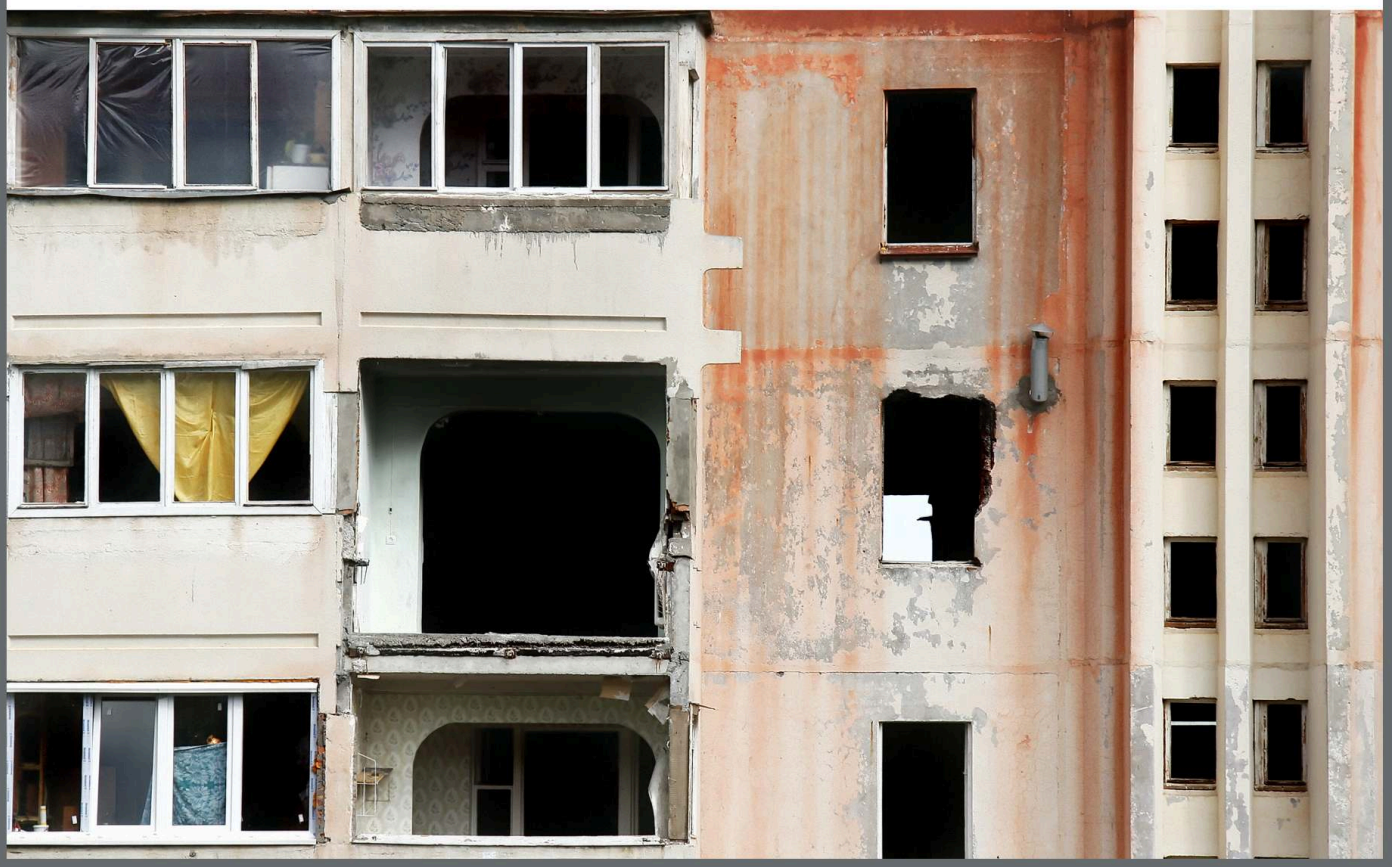

The Drama of Humanitarian Intervention

Unreliable Narration in an Age of (Ab)use of Human Rights

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ABSTRACT

This paper looks at the contentious debate surrounding humanitarian intervention through a critical, narratological lens. By questioning the roles cast and identities constituted, in what could be compared to a theatrical drama, focus is given to the unreliable narration of the most powerful characters on the international stage – from the US to the UN – and its impact on the political and legal stances taken in various contexts. On a meta-level, it examines the conditions that enable this unreliable narration, by pointing out a problematic flexibility owing to the paradoxes and conflation entrenched in human rights rhetoric; what some call a budding 'humanity's law'. Attention is meant to be drawn to the power of mental imagery conjured up by intervention narratives, based on the story of saving innocents, as embodiments of humanity. The goal is to foster self-reflection among readers working in humanitarian intervention, within the epistemic community of international lawyers, and beyond.

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1. Introduction

> So many of the stories we tell about human rights missions have a similar plot: a knight bursts forth from his domain, has a number of adventures crossing borders, foiling enemies or bonding friendships, and eventually reaches the land beyond the pale, returning with tales aplenty. Bad actors are exposed, shamed. Victims are avenged. (Kennedy 2009, 99)

1 In the drama of humanitarian intervention, the unreliable narrator will attempt to be cast in a particular role: the aim is to appear as the hero of the play, the saviour of humanity. If this prelusive story might have come to appear natural to us, it is far from the reality. The knight does not simply burst forth; they decide to do so with an aim in mind. His adventures may cause destruction and harm to the target population. Who the 'bad' actor is may not be so clear, and the victims might not feel avenged. The tales which are told will be constructed in such a way as to avoid tarnishing the shining armour of the knight. And the law? The law is only part of the script, and a prop in the play, which various characters might use and invoke for different purposes.

2 Using a critical narratological approach, this paper will attempt to unmask unreliable narration in the context of humanitarian intervention, through an analysis of both the political and legal rhetoric of the main characters. It begins by setting the scene and explaining the added value of this approach, which is linked to the centrality of cognitive frames. The chapter entitled 'Exposition' provides the reader with the necessary background information, explaining the roles cast and the rhetorical props of human rights and humanity law. Following the structure of classical dramas, the plot section will provide practical examples and trace the rhetorical shift from humanitarian intervention to the Responsibility to Protect (R2P). The final chapters focus on the unreliable narrator in a world of paradoxes and conflation, ending in a non-conclusion.

3 This summary of content is deliberately vague and is meant to appear facile. Without giving away too much of the moral of the story, the goal is to foster self-reflection. If it is true that one of the most telling features of the narrative dimension of law is that it creates authority, by establishing what we perceive as natural (Bianchi 2016, 292), it

should also go without saying that we need to delve deeper into the complex relationship between the told, the teller and its telling, to unearth questions buried by our own assumptions, and that we might not even be aware of.

2. Setting the scene

2.1 Narration in law

1 Law is a language, and as such, it conveys stories (White 1981, 415). It is intrinsically linked to rhetoric, lives through symbols and myths, and goes beyond a reflection of reality: a story told is reality constructed (Bianchi 2016, 287). Narrative refers to the structure and background of the story, as well as the creative exercise of shaping and impacting reality, since 'Narrative determines the emphasis put on certain elements rather than others, and the silences of unspoken statements or untold truths, which are buried under disciplinary traditions or set aside on the basis of vested interests' (Bianchi 2016, 292).

2 This selectivity determines which stories are told, and which ones are not, which characters are given centre stage, and whose voices are silenced. Narratives compete, which is especially visible in legal interpretation, where legal texts are interpreted, re-interpreted and applied over time (Olson 2014, 378). The aim of this paper is to look beyond the basic legal building blocks – composed of rules, principles and concepts – and focus instead on how narration unveils the discursive dimension of law, thus filling it with meaning that draws from personal, social and cultural beliefs (Bianchi 2016, 294). The temporal dimension of storytelling is a crucial one, since it points to the temporal modalities between the told and a story's telling (Brooks 2006, 24). One useful starting point is to consider that 'a *nomos*, as a world of law, entails the application of human will to an extant state of affairs as well as toward our visions of alternative futures' (Cover 1983, 7). The relevance of this statement will become clear in the next chapters, which present the vision of a legal and political order whose primarily premise is the protection of the individual. At the same time, narrative is in a certain sense retrospective, since a story is often consciously structured around the anticipated point or ending of the story (Brooks 2006, 16). Paul Ricoeur, coming from a background of literary and historical theory, has argued that narration involves, on the one hand, a chronological or episodic dimension, and on the other hand, a dimension that aims to unearth a meaningful totality out of scattered events (Ricoeur 2010, 3:274). This points to the question of perspective. There is no 'view from nowhere': no neutral perspective exists (Bianchi 2016, 292). This is true for the narrator, the audience, as well as the

characters that inhabit every story. Narratives can, and usually do, 'enable identities and institutions, and personify abstract entities', thus creating characters and endowing them with a certain role (Bianchi 2016, 294). This creative capacity illustrates the narratological links to institutions and discourses of and about power (Olson 2014, 380). Stories unfold within dynamics of power and hierarchy (Kennedy 2013, 23).

3 Narrative in legal scholarship has been captured by the law and literature movement. Still, many traditional international lawyers might feel uncomfortable with approaching the discipline of law from the narrative perspective. One reason for this was captured by Brooks, who contends that law attempts to hide its storytelling qualities in order to preserve the impression that law as a discipline relies exclusively on abstract, rational norms as well as logical reasoning, and this is seen by many as an important factor contributing to law's autonomy from other disciplines (Olson 2014, 372; as broadly explained in Brooks 2005, 415). The close relationship between law and the analytic branch of rhetoric, to which narratology belongs, is seen by some to upset the supposedly complete, hermetic system of legal discourse (Brooks 2006, 20). Many legal scholars consider narrative to be a vehicle of emotion, crashing into the logically constructed world of law (Brooks 2006, 5).

4 In contrast to this, instead of considering the narrative dimension of law as a pitfall, Robert M. Cover famously and convincingly stated that law is dependent on narratives to lend it meaning, since 'once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live' (1983, 4-5). The standpoint of the following chapters is hence that narrative in law is 'inevitable and irreplaceable', given that facts are given meaning within and by way of narratives, recounted from a certain perspective (Brooks 2006, 5). As *homo fabulans*, rationality is chiefly narrative and only secondarily theoretical or practical (Schultz and Ost 2018, 6).

5 A cursory glance at the available literature on storytelling in law tends to focus on trials, where narrative content is said to be policed by the judge, and the formal conditions of telling and listening (Brooks 2006, 21). But what about narratives within the law that roam free, outside of the courtroom? What if the story draws not only from legal texts, but is also influenced by speeches directed at audiences outside of legally trained circles, supported by pictures and footage capable of provoking emotional reactions?

6 For the purposes of this paper, which consciously explores the story of humanitarian intervention as an area of law – which is not just black and white, and where morality, politics and law collide – the thrust of a carefully constructed narrative is especially visible. Political action is commonly intertwined with expressions of and about legality and legitimacy, and rhetoric is played out on stages – the world stage as well as the domestic one. Often, the story contains elements reminiscent of a drama. What we will be looking at here is not the staging of law in theatre, but the idea of international law unfolding similarly to a drama, enacted by actors on a stage, supplemented by audio and visual effects; an angle that has barely been explored (for some examples to the contrary, see Gaakeer 2015, 76; Deutschmann 2015, 207–221). Couldn't one contend that opinions in the contemporary world, whether legal or not, are informed by a mixture of things written, spoken and seen? Law, in this sense, is also performed. This more expansive view marries the more traditional law and literature approach, preoccupied with physical texts, with a modern multimodal approach, which recognizes the

relevance of auditory, visual and spatial elements for the questioning of law-based stories (Olson 2015, 47). Although space constraints will not make it possible to truly explore this multimodality and its impact, it should be kept in mind that the physical text is just one medium for the transmission of a story, and surely not an exclusive one. Today's culture is one of images, and arguably, society has become one of spectacles (Carpi 2015, 111). The choice to take a dramaturgically-inspired view also reflects the recent turn in the law and literature movement to emotion and affect, where the new focus is on suffering and human rights claims based thereupon (Olson 2015, 49-50).

7 In all likelihood, the same professionals mentioned above would feel even more sceptical about the comparisons drawn here. One inference would namely be that in the unfolding of this drama, law might only be part of the script. Dramaturgy suggests that the impact on the audience is largely affected by the performance of the actors, specifically whether the actor suits the role he or she is playing. This opens up space to think about how characters depict themselves, and how this might not conform to their true nature behind the scenes. For this reason, the following sections will be concerned with seeing events through the prism of the 'unreliable narrator', although it hopefully will not be afflicted by the same fallacy.

2.2 Unreliable narration

8 As outlined above, narratology makes a distinction between events in the world and their presentation in narratives, with the facts viewed as being constituted by narrative (Brooks 2006, 2-3). The teller reorganizes events and portrays them in a certain way to give them intention, aiming to influence the audience. Attention must thus be paid to the 'possible omissions, distortions, rearrangements, moralizations, rationalizations' inherent in such a telling, because narrative discourse is not neutral or innocent, but always 'presentational and perspectival' (Brooks 2006, 25).

9 The concept of an unreliable narrator comes from literary theory, as coined by Wayne Booth.[1] The idea of an unreliable narrator can be approached from different perspectives. Booth's concept of an unreliable narrator inevitably involves the elusive figure of an implied author, vacillating between groundedness within authorial intention and interpretation by readers as the audience,[2] and adding this layer for our purposes might appear more confusing than useful. The choice to focus on the cognitive frames of the reader, and leave this concept behind, will be touched upon in the next chapter (see below 2.3 Importance of frames; Windsor 2015, 754). The core of the matter, however, is that by misreporting, misinterpreting, misevaluating/misregarding or underreporting, underinterpreting/underreading, underevaluating/underregarding, the narrator reveals their untrustworthiness, and causes their mask to slip (Phelan 2005, 31-65). Within these six kinds of unreliability, while the distinction between the 'mis-' and 'under-' categories lies in the difference between being wrong and being insufficient, these two categories can also naturally interact with or stem from each other (Shen 2011, 2; Phelan 2005, 49-52). This distinction sounds clearer than it probably is in practice, yet this basic grid of thought can be fleshed out if we look at the identifying features of unreliable narration, conceptualized by Shlomith Rimmon-Kenan, and summarized by Matthew Windsor as follows:

> Unreliable narration might exist where there is: (i) a contradiction between the narrator's views and the real facts, (ii) a gap between the true outcome of the action

> and the narrator's erroneous early report, (iii) a consistent clash between the views of other characters and the narrator, and (iv) internal contradictions, double-edged images, and the like in the narrator's own language. (Rimmon-Kenan 1983, 7-8; Windsor 2015, 753-54)

10 Related to this are the four types of unreliability, developed by Per Krogh Hansen; namely, intranarrational (within a single narrator's discourse), internarrational (where the contrast with other narrative depictions reveals a narrator's unreliability), intertextual (flowing from manifest character types) and extratextual (which depends on the knowledge a reader brings to the text) (Hansen 2007, 754). The transposability of this concept of unreliable narration to the performance of international law seems quite natural, as exemplified by Windsor, who provides valuable insight into this mechanism. In his words, 'unreliable narration is a mode of narration in which the teller of a story cannot be trusted or taken at her word, compelling the audience to "read between the lines"' (Windsor 2015, 752). He contends that unreliable narration as well as cognitive frames can bring added value to the table of international law, as they draw much-needed attention to subjectivities (Windsor 2015, 756).

11 In terms of theatre, it has been said that law is concerned with masks. As a substratum, law serves as a language into which situations are translated, so 'law can be seen as a mask we put on reality, emphasizing some of its traits, hiding others, retaining a version of the phenomenon to be accounted for which could easily be swapped for another' (Schultz and Ost 2018, 18). An additional layer is then constituted by the role assumed by the actor, which can hide their true nature or intentions. Actors might then wear 'masks of concern for their constituencies', underlining their link to authority (Schultz and Ost 2018, 19). Both masks and authority are connected to roles and their credibility. An assertion is perceived as authoritative, and believable, because it is uttered by a particular person wearing a specific, socially sanctioned mask (Schultz and Ost 2018, 25). Masks are hence deference-entitling properties (for more on marks of authority in international law and how authority creates a voice, see Zarbiyev 2018, 291), and a well-fitting mask will make the narrator appear more reliable.

12 The main audience of the narrators in international law can be described in reference to the interpretive community associated with legal practice. The notion of 'interpretive community' was conceived by Stanley Fish (1989, 304) as a vehicle for understanding the source of interpretive authority, in the context of literary studies. A useful starting point can be found in his emphasis on the fact that it is not the text's intrinsic qualities that determine meaning, but the cultural situatedness of the informed reader (Bianchi 2016, 305). However, this view gives the most attention to the relationship between the text and the audience. Although it leaves space for the teller, I would contend that the spotlight is not focused enough on the narrator, and their performative impact on the reception of the story they tell.

13 Despite the controversy surrounding the notion of interpretive community in legal theory, Ian Johnstone has developed a concentric model to explain this community, and determine the criteria and parameters for acceptable argumentation within international law (Johnstone 2005, 186; Bianchi 2016, 305). This community consists of an inner circle, composed of governmental and intergovernmental officials directly engaged in the act of adopting legal rules, a second circle of professionals concerned with the issue covered by the law, and an outer circle made up of a heterogenous group of various actors whose interests are affected (for example, transnational civil society

or the media) (Windsor 2015, 755-56; Johnstone 2011, 41-44). The interpretive community, or communities, themselves are far from neutral. To criticize one narrator as unreliable is to promote one's own narrative, with its own purposes and goals (Windsor 2015, 767). By acknowledging the various layers that the interpretive community consists of, it becomes clear that opinions within this community might diverge on different legal issues. Thus, in these contested areas of the law, some contend that one cannot speak of any meaningful interpretive community at all, although I prefer to see the matter as one of multiple interpretive communities (Johnstone 2011, 44; Windsor 2015, 756). In the same vein, Koskenniemi highlights that political conflict often concerns the competition of different narratives, which describe and re-describe aspects of the world so as to subsume these happenings under the jurisdiction of specific institutions (Koskenniemi 2007, 337; Windsor 2015, 755). Keeping this, and the importance of the wider audience in mind, in tales that deal with grey areas of the law, where the consensus of the interpretive community or communities are lacking, the influence of the potentially unreliable narrator on shifting contours and contents takes centre stage.

2.3 Importance of frames

14 Narrative analysis differentiates between the telling and the told, identifies types of tellers and also refers to 'frames of telling' (Olson 2014, 371). It is concerned with strategies of containment that curtail cognitive flexibility (Singh 2014, 309). Law is not an independent system of meaning, but intervenes in a particular cultural and social context. It is a way of talking about actual events and real people; it is a way of 'telling a story about what has happened in the world and claiming a meaning for it by writing an ending to it' (White 1985, 684, 691-692). Although it is doubtful to my mind that law actually manages to write such an ending, a story is surely told with an end in mind, and thus choosing the most fitting frame to persuade and to lead to this ending is important. A narrator might not always be aware of the connotations their telling might provoke, yet the default position shall be that they are, and that they thus consciously attempts to control the cognitive frames of the audience.

15 In sociology, frame theory analyses the frames of a reference a reader mobilises in order to interpret a text (Goffman 1974, 754). Today, frames are studied within various other disciplines, and the linguistic perspective examines the 'interaction of language, interpretation, abstraction, categorization, and our cognitive system' (Wählisch 2015, 333). In narrative terms, frames thus serve a gap-filling and sense-giving function, but in turn create their own blind spots, which an unreliable narrator might exploit (for more on cognitive narratology, see Jahn 1997; Windsor 2015, 754). In the interpretation of a story, frames allow a reader to streamline the facts into conclusions that fit within a pre-existing frame, blocking or downplaying other possible scenarios. Martin Wählisch (2015, 334-45) explains that cognitive frames contain images and emotions stored in memory, which are activated when certain titles are mentioned, 'initiating a "mind cinema" of assumptions, expectations, and beliefs' (Wählisch 2015, 333). The initiation and support provided by such mental backdrops gives power and authority to the narrator (Surel 2000, 495; Wählisch 2015, 336). Whoever manages to control the framing of information will invariably have the ability to manipulate the interpretation, and thus the meaning that recipients of the information will give to it

(Gross and Ní Aoláin 2014, 243). What is valid for the human mind generally also functions in the political and legal context. When certain terms are used in advancement of a policy interest, the underlying aim could be to accommodate or engage specific favourable mental frameworks in the audience (Wählisch 2015, 337). Executive legal interpretation, subject to public scrutiny, might even be bypassed: the 'real analysis and the one for popular consumption' (Goldsmith 2013, 230-31; Windsor 2015, 763).

16 At the same time, cognitive frames are also at work within the narrator. To advance a legal position might prove to be a tactical attempt to deliberately (re)frame a context and influence the audience (Wählisch 2015, 337), but the selectivity of the legal interpretation is also determined by the subconsciously active beliefs of the teller and the institutional framework they might operate in. An international court might interpret a matter differently to a governmental entity or an advocacy group, but all of them have predefined assumptions and inferences in common (Wählisch 2015, 331). It is not only their interpretive agenda, but also their cognitive frames, that derive partially from their personal as well as professional background and role (Windsor 2015, 766). A human rights lawyer will naturally approach a situation involving human suffering differently from a lawyer trained in international humanitarian law (IHL), which in turn will lead to diverging frame-consistent inferences (Windsor 2015, 766). To conclude, cognitive frames have an influence on perceptions and outcomes (Bianchi 2016, 306). They are not synonymous with cognitive biases, though – they are broader and more complex. The human mind is irreducibly imaginative, yet this imagination is not limitless.

FOOTNOTES

1. The narrator is defined by him as reliable when 'he speaks for or acts in accordance with the norms of the work (which is to say, the implied author's norms), unreliable when he does not.', see Booth (1961, 158).

2. For more information on the concept of the 'implied author' and its limitations, see references in Dan Shen (2011, 1–6) and in Windsor (2015, 743, 752–754).

3. Exposition

1 The exposition in a drama provides the audience with important background information needed to understand the conflict, such as the setting, the atmosphere and the characters (Rush 2005, 64).

2 The definition of humanitarian intervention, adhered to in the upcoming chapters, broadly speaking refers to an 'infringement of a state's sovereignty by an external agent or agents for the sake of preventing human rights violations'.[1] The choice of the more neutral term 'infringement' instead of 'violation' is not intended to lessen the fact that the intervention in the target state happens without its consent. A distinction should be made between forcible and non-forcible humanitarian intervention, and we will be focusing on the former. In the present storyline, the action goes beyond economic sanctions and implies the use of military force (Buchanan 2018, 157). In contrast, the provision of humanitarian aid falls under the notion of humanitarian assistance (Lowe and Tzanakopoulos 2011, paragr. 2). As autonomous grounds for justification, the conception of humanitarian intervention in the narrower sense adhered, and to in this paper, is defined as:

> The use of force to protect people in another State from gross and systematic human rights violations committed against them, or more generally to avert a humanitarian catastrophe, when the target state is unwilling or unable to act [...] The term is not one of art, however: it does not appear in any international treaties, and it cannot be said that its boundaries are yet clearly delineated.[2]

3 The principal roadblocks on the path to humanitarian intervention are the principles of sovereignty, non-intervention and the prohibition of the use of force, discussed below (Gordon 1996, 46).

4 Although humanitarian actors such as the International Committee of the Red Cross (ICRC) or Médecins Sans Frontières (MSF) can be considered the archetypical 'humanitarian saviours', their involvement, circumscribed by the principles of humanity, impartiality, neutrality and independence, does not fit the hero role cast in the play of humanitarian intervention.[3] The same can be said for human rights organizations such as Amnesty International (AI) or Human Rights Watch (HRW) who have a significant influence on the discursive field, but do not intervene militarily to protect human rights. Still, '[if] gatekeepers like Human Rights Watch or Amnesty International or the ICRC do not adopt an issue, its chances of reaching a global

audience are slim' (Hopgood, 2013, 172). In the context of humanitarian intervention, they are thus important actors within the interpretative community constituting the audience, yet not our focus.

3.1 The roles cast

The saviour

5 There are many names that could denote this role. We could call the character the hero, the knight in shining armour, the good Samaritan, 'the saviour, or the redeemer, the good angel who protects, vindicates, civilizes, restrains and safeguards' (Mutua 2001, 204).

6 Determining who could potentially be cast in this role refers us to the question of agency (this is what has been called the "agent-justifiability question", which pertains to the legitimacy of the actor, as elaborated by Pattison 2008, 397). The typical candidates identified in the literature are the United States as the dominant Western superpower, the North Atlantic Treaty Organization (NATO) or the UN. However, another state acting unilaterally or a 'coalition of the willing', as well as regional or even sub-regional organizations are other options (for more information, see Tan 2006, 84). At the outset, the choice appears as one between unilateralism or multilateralism, the latter comprising either a group of states or an international organization other than the United Nations (UN). Unilateral or multilateral humanitarian intervention refers to forcible action taken in a state, by another state acting alone or through a coalition of states, for stated humanitarian reasons, yet on their own authority (Lowe and Tzanakopoulos 2011, paragr. 8), The legally significant point is that the term 'collective humanitarian intervention' is reserved for action undertaken in accordance with the procedure established by the UN collective security system, which presupposes the acquiescence of the UN Security Council (UNSC) (Lowe and Tzanakopoulos 2011, paragr. 7-8).

7 The international community is presented as the guarantor of human rights, and related core progressive values – such as peace, justice and freedom – form the basis on which its identity is built, as an 'active, humane saviour intervening to help people in trouble spots' (Orford 2003, 165). At the intergovernmental level, the UN machinery functions as the guardian of the corpus of human rights, 'and its location at the heart of UN activities and purposes gives it the imprimatur of objectivity and neutral internationalism', so that the UN appears as the 'grand neutral saviour' (Mutua 2001, 237-38). As is well known, however, calls for a standing international humanitarian defence force, sometimes portrayed as the ideal institutionalized solution, have been left unanswered (Tan 2015, 135-36; *UNEPS Backgrounder* 2011). So, although the UN might appear to be the natural choice for the lead saviour role, this fact paired with the UN's past performance, has cast doubt on the appropriateness of giving it this position. Consideration must hence be given to individual states or coalitions of states who claim to fit the role.

8 The saviour acts as a heroic personification of the universal community of human beings (Moszkowicz 2007, 291). The audience reacting to the saviour is thus a very wide one, which goes beyond the interpretative community of international law. Specifically, intervention is said to be justified when acts 'shock the moral conscience

of mankind' (Walzer 2015, 107). Atrocities are publicized, and as Michael Walzer correctly stresses, 'there is very little which happens far away, out of sight, or behind the scenes', turning this wide audience into 'instant spectators of every atrocity' (Walzer 2002, 29). The conscience of ordinary people is taken as the reference point, which is horrified by the fact that our shared social understandings based on universal moral norms are being brutally trampled on (Moszkowicz 2007, 295). Walzer describes the situation as follows:

> Somebody ought to intervene, but no specific state or society is morally bound to do so. And in many of these cases, no one does. People are indeed capable of watching and listening and doing nothing. The massacres go on, and every country that is able to stop them decides that it has more urgent tasks and conflicting priorities; the likely costs of intervention are too high. (Walzer 2002, Ch. XIII.)

9 Against this background, the canon of conscience is repeated by the hero – unlike others, they are not only capable but willing to act and not look away. In this sense, they place themselves on the moral high ground. This shows that the discursive environment is not only inhabited by arguments centring around a saviour having a legal right to intervene, but is also very much permeated by the idea of a moral obligation to intervene (Rudolf 2013). This moral dimension, with the spotlight on legitimacy rather than legality, is central to the perception of reliability of the narrator (for more on the distinction supported here between legality and legitimacy, see Pattison 2008, 398-99). According to philosophy professor Kok-Chor Tan, the duty to protect rests upon the shoulders of the international community as a whole. Since there is no pre-determined single state agent who has the moral duty to act, he suggests solving the agency problem by conferring the responsibility to act on the 'most capable' among the potential candidates (Tan 2006, 86). Concerning the capability of the protector, 'effectiveness' in the sense of probability of success has been considered to be the primary determinant of legitimacy (Pattison 2008, 398-402). The military strength of the actor is one factor to be taken into consideration (Tan 2006, 100). James Pattison has developed a schema with three types of effectiveness to determine the overall legitimacy of a humanitarian actor. In simple terms, these criteria serve as tools necessary for unmasking an illegitimate intervener. The first, 'local external effectiveness', is equated with a likely improvement, instead of a worsening, of the situation of the political community on whose behalf the intervention is undertaken. The second criterion is 'global external effectiveness', which determines whether the actor's decision will benefit human rights in the world at large. The third, 'internal effectiveness', points to the consequences for the intervening state's own citizens, evaluated in its negative aspect of not being excessively costly internally (more details to be found in Pattison 2008, 399-402). In addition, Pattison states that 'an intervener's legitimacy will also depend on the degree to which it possesses other, non-consequentalist qualities, such as fidelity to the principles of *jus in bello* and internal or external support' (Pattison 2008, 402). This list of criteria remains suggestive and tentative. The conditions for the casting of the role of the saviour are not clear-cut, which means that candidates are not required to pass a formalized vetting procedure before stepping up to the stage. To a certain degree, the actors can thus cast themselves. This helps explain why the principal actors that have assumed this role, i.e. the UN, NATO and the USA, are often conceived as 'heroic agents of progress, democratic values, peace and security' (Orford 2003, 166).

The victim

10 We have examined the role of the saviour, but there will also naturally be someone who is considered to be in need of saving. Although its title refers solely to the victim, this subchapter also will touch upon the question of whom the victim ought to be protected from. Given the limited scope of the paper, the ability of non-state actors to fit the role of the villain is herewith acknowledged, but not developed further.

11 The relationship between the three roles of saviour, victim and villain has been examined within the framework of the 'savages-victims-saviours' paradigm.[4] The assumptive backdrop before which this paradigm unfolds is a world in which the universal enjoyment of human rights is not a given, and where victims are portrayed as in need of assistance in order to be brought into the folds of a law-abiding normality (Slaughter 2014, 60). Despite my choice to substitute 'savages' with the notion of 'villains', the commonality between the two can be found in the common characteristics of cruelty and disrespect for the victim's humanity that are attributed to both. The operational instrument then, would be the 'evil', illiberal, anti-democratic or broadly authoritarian state, who denies the victim-citizens the worth and dignity inherent to their humanness (Mutua 2001, 202-3). George Lakoff (1991) has described this as the 'A Nation is a Person' metaphor. The state is conceptually equated with a person, who enters into social relations within a world community. It has neighbours, friends and enemies; it has specific characteristics such as aggressiveness, immorality or cruelness (Lakoff 1991, 26). These traits endanger the human dignity of the innocent people exposed to the villain state, thus establishing a clear link with the core of the human rights edifice.

12 What does the role typically depicted by the victim in the play look like? To quote the powerful words of Makau Mutua, describing the quintessential victim:

> A basic characteristic of the victim is powerlessness, an inability for self-defence against the state or the culture in question. The usual human rights narrative generally describes victims as hordes of nameless, despairing, and dispirited masses. To the extent they have a face, it is desolate and pitiful... The language of the human rights reports suggests the need for help – most likely outside intervention – to overcome the conditions of victimization. (Mutua 2001, 229)

13 In contrast with the potent saviour, the victim is presented as a passive character. Postcolonial and feminist critiques have underlined that the victim tends to be structurally non-white, infantile and/or female (Mutua 2001; Orford 2003, 171-75). Broadly, children and women are believed to be more credible victims than men (Wilson and Brown 2008, 22). Humanitarian action is typically framed as a problem of empathy or sympathy (Slaughter 2014, 49). Three aspects of empathy relevant for our purposes have been identified in the literature: (1) the capacity to perceive others as sharing one's own goals, interests and affects, (2) imaginative identification with the other's experiences, and (3) the emotional response that accompanies experiencing this, which might spur action to ease the pain of another.[5] Theories of subjectivity have shown, through the construct of interpellation, how an individual can become a subject of ideology, and this is linked to cognitive frames (for a useful quick overview of the concept of interpellation, see Orford 2003, 160–162). Interpellation explains the influence of ideology and cultural representation on the ongoing process of reconstituting a person's sense of self, which is continuously being shaped by and through discourse (Orford 2003, 160). James Dawes (2009, 402) writes that the

'audiences of human rights narratives are deeply conditioned by this ur-narrative of innocent victims'. Consequently, they will probably react more favourably towards a narrator who claims to act on behalf of such victims. Faced with the flood of reporting on human crises, the saviour can portray themselves as fighting against 'compassion fatigue' (the risk of making these so visible victims invisible again; for more on the phenomenon of 'compassion fatigue' and the influence of the media in this respect, see Moeller 2002). Hence, the saviour's decision to act is portrayed as inevitable, since 'they come into a situation where the moral stakes are clear: the oppressors or, better, the state agents of oppression are readily identifiable; their victims are plain to see' (Walzer 2002, 31). This creates a difference between 'us' (protectionist states and their inhabitants on the side of good) and 'them' (or the 'others', as rogue and illegitimate states subjecting their citizens to suffering) (Denike 2008, 101).

3.2 The props

The ghost that was not dead: just war

14 The ghost that haunts the play is one which has been claimed by many authors to have been dead since at least the aftermath of the horrific Second World War: the doctrine of the just war (Brunnée and Toope 2004, 364). Originally couched in theological and ethical terms rather than in legal ones, just war theory predates the emergence of international law (for more on the emergence of the theory of just war, see Sloane 2009, 56; Robert Kolb 1997, 553). In this doctrine of *bellum justum*, legal analysis focused on the act of resorting to war, and the subjective causes put forward by the specific belligerent (Kolb 1997, 554).

15 While the just war theory was alive and well during medieval times, the 'dawn of the modern era' in the eighteenth century and the rise of the sovereign state has been claimed to have brought about the concomitant demise of the just war doctrine.[6] In the nineteenth century, where every sovereign had the right to wage war, the causes of war were no longer considered a primary concern (Kolb and Hyde 2008, 22). For a long time then, international law did not distinguish between legal and illegal war, since there was no general prohibition on resorting to war in interstate relations (Clapham 2012, 451).

16 The law governing when a state should resort to force in international relations is subsumed under the heading of *jus ad bellum*, which delineates when and by whom such —force may be used (Kolb and Hyde 2008, 21). The later nascence of *jus in bello* in the nineteenth and twentieth centuries further stipulated appropriate conduct for belligerents and regulated their use of force during an armed conflict (Kolb and Hyde 2008, 21; Sloane 2009, 56). The historical conception of a just war meant that there could be no general and independent *jus in bello*, as it is now generally understood, given that 'the rights and obligations of belligerents were unequal and depended exclusively on the causes which they claimed to be pursuing and on the material justness of those causes' (Kolb 1997, 555). However, the equal right of every state to declare war led to a necessary principle of equality, in relation to the belligerents during armed conflict (Kolb and Hyde 2008, 22-23). With the effort to reduce the recourse to force after the two World Wars, an increasing number of voices called the doctrine of just war to be strongly curtailed (Brunnée and Toope 2004, 364). The former

'freedom to go to war' under the *jus ad bellum* regime changed fundamentally with the advent of the United Nations (UN) system, and was replaced with a law generally prohibiting the use of force (*jus contra bellum*) (Kolb and Hyde 2008, 23). Today, article 2 (4) of the Charter of the United Nations Charter[7] – which prohibits the use of force – is considered to be the cornerstone of the Charter system and customary law (Clapham 2012, 451). The exceptions recognized hereto, namely self-defence (UN Charter, art. 51) and collective law enforcement action authorized by the Security Council under Chapter VII, were said to be the last remnants of the just war doctrine. Still, it has been claimed that there have been modern efforts to 'resurrect a far more expansive doctrine of just war, one that gives pride and place to moral, rather than more restrictive legal assessments', in an attempt to break free from the inhibiting Charter framework (Brunnée and Toope 2004, 365).

17 Although the accounts of just war theorists differ, there seems to be a general consensus on these six principles: just cause, legitimate authority, right intention, last resort, reasonable prospect of success, and proportionality (Luban 2013). Some authors add the principle of noncombatant immunity or the goal of the war as separate ground (Lango 2014, 2-3; Johnson 2014, 644:27), even though these can be subsumed under the aforementioned principles. We shall encounter most of these elements further on in the analysis, but at this point I would like to highlight an argument put forward by David Luban (2013), that academic and political debates seem to focus primarily on the topic of 'just cause'. This has led to a shrunken field of debate, with the concurrent effect of narrowing the spoken and heard arguments within the relevant discourse, and shifting attention to legitimacy rather than legality. Disputes also arise regarding the question of legitimate authority, which translates to the issue of who may decide on the use of force in pursuit of a humanitarian goal (Matheson 2001, 28).

18 How does this focus on just cause fit into the narrative of humanitarian intervention? As George Lakoff (2003) states, in fitting terms for our purposes, the 'basic idea of a just war uses the Nation as Person metaphor plus two narratives that have the structure of classic fairy tales: The Self Defense Story and The Rescue Story'. Although 'the primary just cause in an era of nations and states is a nation's response to direct aggression' (Elshtain 2001, 7), the drama of humanitarian intervention discussed here does not focus on self-defence. This implies that the argument which accepts a right to humanitarian intervention based on the collective self-defence of threatened individuals is deemed unconvincing (in line with Krisch 2002, 326). Consequently, the spotlight is on what Lakoff calls 'the rescue story' and the contemporary use of the doctrine of just war, where 'saving the innocent from certain harm' is recognized as a just cause (Elshtain 2001, 8). Nevertheless, the ghost of just war enters the scene in a different guise, at least nominally. States do not rhetorically claim to be waging a 'just war' or a 'humanitarian war' in the name of protecting humanity (Jahn 2012, 38). The word 'intervention' is preferred by the saviour over the word 'war', even if humanitarian intervention 'frequently has all or most of the behavioural features of war' (Coady 2002, 16).

19 What positions are then adopted, in order to resolve the contentious issue of legitimate authority, and how are these positions broadly linked to the concept of sovereignty? Those opposed to unilateral or multilateral humanitarian intervention, regardless of a stated humanitarian just cause or not, stress that international law does not permit such action without Security Council authorization, given that the latter device serves

the purpose of safeguarding the 'peace and integrity of the legal structure' (Matheson 2001, 29). The potential of just war theory to destabilize state sovereignty, arguably still at the heart of that structure, is apparent. The debate draws attention to the issue of whether – and if so, to which extent – sovereignty and non-intervention as traditional concepts are changed or confined by human rights (Brunnée and Toope 2004, 380). Article 2 (1) of the UN Charter proclaims the sovereign equality of all member states, article 2 (4) prohibits the threat or use of force against the territorial integrity or political independence of another state and article 2 (7) contains the non-intervention principle. However, this seemingly stable edifice based on state sovereignty is rattled when the villain state violates the human rights of its own citizens on a large scale and the saviour state or states invoke the just cause of intervening to protect the humans behind those human rights violated (Luban 2013). The traditional interpretation of sovereignty, stipulating that neither a state alone nor a group of states (within an international organization or otherwise) has a responsibility to prevent or face the 'evil acts of others' occurring exclusively within their borders, no longer remains unquestioned (Brunnée and Toope 2004, 381). In simple terms, this reconfiguration of the relationship of state sovereignty and human rights can be distilled into the following statement: '[drawing] on one strand of the just war tradition, force would be authorized... to bolster a moral claim that people are more important than state sovereignty' (Brunnée and Toope 2004, 382). This shows how the rescue story linked to just war thinking can open the door to reflections and justifications that do not properly separate legal, political and ethical considerations (Elshtain 2001, 3). I would even contend that this conflation is the discursive characteristic of such stories. The 'just cause' argument is an embodiment of this enmeshment: it might be used in the context of legal argumentation, yet it is not a law-based argument *per se*. Indeed, 'for the just war thinker, moral appeals are at the heart of the matter' (Elshtain 2001, 6).

20 The just war doctrine, especially the issues concerning just cause and legitimate authority, are tied up with the main positions adopted in the legal argumentation on humanitarian intervention. Clearly, its ghost still haunts arguments in the literature that attempt to situate humanitarian intervention within the existing legal framework, and that claim that such forcible action does not fall within the scope of the prohibition of the use of force (Lowe and Tzanakopoulos 2011, 12). Simply put, this school of thought advances the position that international law does not prohibit military intervention in these cases, and acknowledges that such a decision may well be politically and morally justifiable (Matheson 2001, 4). The assertion that military intervention actually advances the purposes of the UN, among which is the promotion of human rights (UN Charter, art. 1 (3), 55 (c), 56), seems to use just cause thinking in order to claim that humanitarian intervention is *ipso facto* not prohibited by article 2 (4) of the Charter. The latter article is construed in a narrow sense, by maintaining that intervention offends neither the territorial integrity nor the political independence of the target state (Lowe and Tzanakopoulos 2011, paragr. 12).

21 Alternatively, the lines of reasoning favourable to humanitarian intervention seek to subsume it under the two established exceptions to the prohibition, or point to the emergence of a new, additional and customary exception from article 2 (4) of the UN Charter (Lowe and Tzanakopoulos 2011, paragr. 11). As noted above, the first self-defence exception based on article 51 of the UN Charter can be quite easily discarded if there is no threat to the saviour-state itself. The second option of a collective humanitarian intervention, flowing from an authorization by the Security Council

under Chapter VII of the UN Charter, is at first glance legally unproblematic. Security Council practice has established that egregious and widespread human rights violations within the boundaries of a state, encompassing internal armed conflicts, may constitute a threat to the peace (Lowe and Tzanakopoulos 2011, paragr. 15). Hence, the use of the just cause argument is not really necessary, given that '"just war" comes within the purview of the Security Council as an action of law enforcement', and a decision by the Security Council in this domain draws legitimacy from the collective process which led to it (Brunnée and Toope 2004, 377-78). It rather gains importance when the saviour or saviours act unilaterally or multilaterally, in the sense of deciding to intervene without clear Security Council authorization. We will delve into the matter later, but it suffices to state here that the question of whether evidence exists to support a potentially new customary law rule is contentious, notwithstanding that intervening states typically do not argue that their action is justified due to a right allowing intervention for humanitarian reasons (Lowe and Tzanakopoulos 2011, paragr. 29). Even if the existence of such a customary rule is denied, this does not mean that the just cause argumentation cannot bolster those voices which call for a change *de lege ferenda*, or in future law (Matheson 2001, 29). More importantly, it can be used to endorse the position that unilateral recourse to force might be unlawful, yet could or should be 'tolerated', 'mitigated' or 'excused' by the international community because it was legitimate and morally justified (Lowe and Tzanakopoulos 2011, paragr. 44).

Human rights rhetoric and humanity's law

22 The props of human rights rhetoric and of 'law of humanity' or 'humanity's law'[8] are central to the legitimization discourse of humanitarian intervention. Both aim at protecting humankind, while the latter rests upon the premise of the 'universal laws of humanity', which exhibit an amorphous nature (Gozzi 2017, 186). When action is founded on the law of humanity it is given a disinterested, apolitical appearance – or better, the pretence of an action merely interested in the protection of the innocent victims (Gozzi 2017, 189). In the words of Ruti Teitel, 'humanity posits the core defining line; in law as in morals, it circumscribes the legitimate exercise of force in the international realm' (Teitel 2004, 225). Before turning to the idea of a law of humanity, an introduction to human rights rhetoric aims to underline the importance of this discursive tool to justify actions undertaken to protect others abroad.

23 As Fernando Tesón (1995, 330) summarizes, the 'proposition that human rights are no longer a matter of exclusive domestic jurisdiction is indisputable, independently of the legal grounds for the obligation of states to respect human rights'. Given that stories of progress are endemic to the discourse of human rights, triumph is considered to reside in the weakening of the bulwarks of sovereignty, with the consequence that villain states can no longer find refuge behind those walls, despite the violations they commit against individuals (Denike 2008, 100). A striking feature of the literature on humanitarian intervention is how it is permeated by the notion of human rights, but often fails to clearly identify the abstract threshold of violation deemed necessary for intervention in a cogent and unchanging manner. Should it be set at systematic human rights violations (e.g. systematic discrimination), or higher at egregious crimes (i.e. ethnic cleansing, war crimes, crimes against humanity) or even mass extermination and genocide (compare references in the relevant footnote mentioned in Heraclides and Dialla 2016, 5)? This issue is blended out by the acceptance of the broad argument

that the saviour is following an ethical mandate to support the advancement of human rights. The invocation, directly or indirectly, of the Universal Declaration of Human Rights (UDHR)[9] seems to be the main source of authority and unity that allows certain statements to claim a 'human rights identity' (Gaete 1993, 41). The entitlements are formulated as rights that belong to human beings as such, rather than to states.[10] Still, some scholars claim that, attached to the universal character of international human rights as obligations *erga omnes*, is the conferral of authority on all other states to enforce these, since customary international law has arguably acknowledged that all states have a vested interest in ensuring the respect of human rights abroad (Criddle 2015, 299-301). In line with the saviour-victim narrative, this is sometimes explained due to the lack of effective remedies that individuals could realistically invoke at the international level. One author paints the picture as one of fiduciary representation: 'Just as children and incompetents who lack legal capacity depend on others to assert claims on their behalf, human rights holders depend upon states to bring countermeasures to enforce their human rights' (Criddle 2015, 301).

24 There is thus a clear link between human rights and humanitarianism: relieving human suffering is the humanitarian dimension, whereas human rights violations serve as the basis for legitimising the use of military force (Geyer 2016, 31). Geoffrey Robertson (2000, 446ff) believes that the world is entering the stage of human rights enforcement, part and parcel of which is the readiness of states to help create and secure this new era. This 'muscular… new breed of humanitarianism' (Orford 2003, 7) reflects a shift in the human rights movement, one that replaces pleading with going on the offensive to counter the villain (Robertson 2000, 453). So if the goal is to ensure the effectiveness of human rights norms, they in a sense pre-fill the gap which many still claim to exist when it comes to the question of whether humanitarian interventions are lawful or not. The test whether such action is justified then turns less on legality, and more on the 'dimension of evil' that ought to be countered by the intervention (Robertson 2000, 444). Humanitarian intervention is seen as a means to ensure the ideals of freedom from oppression, respect of human dignity and the value of human life, thus drawing 'its powerful appeal from the revolutionary discourse of human rights, which promises liberation from tyranny and a future built on something other than militarized and technocratic state interests' (Orford 2003, 34).

25 At the same time, human rights constitute a building block for what Ruti Teitel (2011, 206) calls 'humanity's law': 'Humanity law – as a basis for a universal, global rule of law – depends on a discourse and a structure of claims-making that has become the lingua franca, surpassing while also encompassing human rights law and norms'. Teitel (2011, 225-27) introduces the emergence of a new, budding transnational legal order, reflecting a shift away from the system of sovereign states towards a 'more fragmented global politics, constrained only by the threshold of preserving 'humanity' as a normative limit. Humanity is thus placed at the epicentre of this system, and functions as both a subject and object of action. As a vision of the international legal order, it proposes a way of speaking, reading and interpreting international law from a particular perspective. In the language of humanity law, a bridge is built between 'the discourse of state power and that of transpolitical moralism' (Teitel 2008, 35). The law of humanity impacts perceptions of legitimacy and operates at the core of foreign affairs, as a structuring element of the normative discourse surrounding foreign policy-making (Teitel 2008, 137; Callejon-Sereni, 2014). While the saviours might not explicitly reference this conception of humanity's law, the spirit of it can be discerned in the

narration of the tale of humanitarian intervention. The thrust of the legal argumentation justifying the action is inspired by its vocabulary as well.

26 But what is the content of this law of humanity, which Teitel (2008, 668) boldly calls the 'dynamic unwritten constitution' of the contemporary legal order? The humanity law framework encompasses international human rights law, international humanitarian law, as well as international criminal law (for an overview of these main building blocks, see Teitel 2011, 3-6). Although criminal justice is a crucial tool for the enforcement of humanity rights, this strand will have to be left aside due to space constraints. In the current debates on the expansion of international human rights and IHL, the main argument is that these two branches of law have merged into a distinctive set of norms (Teitel 2008, 667; Leebaw 2014, 262). This fusion has resulted in a 'bounded minimalist morality' which includes the core prohibitions as well as standards in human rights and humanitarian law (Teitel 2011, 36). These 'humanity rights' stem from and revolve around the 'right of preservation' (Teitel 2011, 136).

27 Firstly, humanity rights include common article 3 of the Geneva Conventions,[11] which stipulates the basic norms of humane treatment and therefore establishes 'a minimum code of conduct' for all parties involved in any armed conflict (for more on common article 3, also in the context of the war on terror, see Teitel 2011, 136ff; Kolb and Hyde 2008, 78). Secondly, they encompass the non-derogable provisions of human rights (Teitel 2011, 47). The ICRC Commentary to the Additional Protocols[12] states that 'this irreducible core of human rights, also known as "non-derogable rights" corresponds to the lowest level of protection which can be claimed by anyone at any time' (ICRC 1987, paragr. 4430). Teitel (2011, 59) then goes on to present recognition for the 'crime against humanity' as a value of the global rule of law, predicated on these core human rights, which ensures that there are no gaps left in the protection of humanity law. Thirdly, the international security concept is defined broadly and reconfigured in the sense that it becomes 'part and parcel of human security' (Teitel 2011, 109-10). In turn, human security is entangled with the notion of global justice, which gives ample ground for sweeping claims justifying action on behalf of humanity. In Teitel's words:

> The coherence of a theory of human security as global justice depends on its capacity to prioritize human impacts – a notion of the most vulnerable, and the most affected – that results in a case for intervention... when effects attain a certain gravity or intensity, gauged in terms of the human or humanitarian sensibility. (Teitel 2011, 158)

28 This triggers a duty to assist in a humanitarian crisis, which might primarily be placed upon the home state itself, yet shifts to other actors when the former fails to discharge this duty (Teitel 2011, 158-62). This goes hand in hand with the 'duty of protection' inherent in humanity law (Teitel 2011, 12). Human security thus becomes the charge of the international community, or a saviour state within this community willing to act. Humanity law is thus a way of framing political conflict, with the argument for the 'key neutrality' of this regime in close reach (Teitel 2011, 112). And because these minimal humanity rights are not as extensive as a rhetoric calling for the protection of human rights generally, they 'differ from human rights in that they enjoy a broader, more universal appeal as a result of their inherent minimalism and pragmatism' (Leebaw 2014, 273).

FOOTNOTES

1. Among others, this definition is followed by Donnelly (1984) and Buchanan (2018, 156–157).

2. The protection of nationals abroad, which some consider humanitarian intervention *stricto sensu*, and the stated humanitarian intent, are not considered to fall under or count as elements of the definition, see Lowe and Tzanakopoulos (2011, 3-9).

3. For more information on the relatedness between humanitarian and human rights actors, see Comninos (2016, 3–5).

4. Cultural critics have pointed out that, problematically, those designated as savages and victims are often non-white and non-Western, whereas the saviours are often the opposite. For more information on this paradigm, see Mutua (2013).

5. See Massaro (1988, 2101), who thus summarized the findings of Henderson (1987, 1579–1582).

6. Which is also explained by reference to the fact that the formerly recognized organs who determined whether such a war was just, specifically the Pope and the Holy Roman Emperor, were no longer unquestionably recognized as having such an authority, see Kolb and Hyde (2008, 22).

7. Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter).

8. 'Law of humanity', 'humanity's law' and 'humanity law' are treated as synonyms, the latter two as used interchangeably by Teitel, 2011.

9. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

10. ILC, 'Third Report on State Responsibility by Special Rapporteur James Crawford' (2000) UN Doc A/CN.4/507 and Add. 1-4, 30 para 89.

11. Article 3 common to Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (Convention I); Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces at sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (Convention II); Geneva Convention relative to the treatment of prisoners of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (Convention III); Geneva Convention relative to the protection of civilian persons in time of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Convention IV).

12. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (Protocol II).

4. The plot

1 The assignment of events to the plot structure of inciting incident, rising action, climax, falling action and resolution is a personal choice for presentational purposes, and can thus be debated.

2 In the dramatic plot structure, the 'inciting incident' describes the moment where the story is set in motion, the 'call to adventure' (for more information on the 'inciting incident' element of plot structure, see Campbell 2008, 41ff; Rush 2005, 44-48). Even though precedents in the history of humanitarian intervention dating back to the 19th century prove that it is not merely a post-Cold War phenomenon (a detailed analysis of these 19th century precedents can be found in Heraclides and Dialla 2016), thus arguably constituting the inciting incident, military interventions with the goal of primarily saving the lives of innocents in other countries from massive human rights violations 'entered public consciousness around 1990 as never before' (Heraclides and Dialla 2016, 1).

3 Set in the middle of the play, the 'rising action' describes the struggle or crises of the main protagonists, where successes and failures build up to a moment of great interest (climax) (Rush 2005, 52ff). In this section, the 1991 action led in Northern Iraq, and some of the subsequent events will be briefly examined as the rising action, whereas more time will be devoted to the 1999 Kosovo intervention and its aftermath, which is often presented in scholarly accounts as the moment of highest tensions.[1] Kosovo has been dubbed a 'context-breaking' action that triggered increased discussions about the use of military force to protect human rights abroad, and what role authorization by the UN Security Council was or should be in such cases (White 2000, 27). The action in this period is framed as interventions to advance the human rights-based interests of the international community, because 'acting states in principle claimed a right to unilateral enforcement of that collective will' (Krisch 1999, 60).

4 In the last part, the 'falling action' following the climax, the story is moved towards apparent resolution. It is usually defined as a de-escalation in tensions, yet it might also introduce or lead to new conflicts (Bergman 2017). In this context, the rhetorical shift from humanitarian intervention to 'Responsibility to Protect' (R2P) will be traced. The case of the 2011 intervention in Libya as well as its consequences in relation to Syria will be touched upon.

5 For stylistic reasons, even though it technically constitutes the final element in the dramatic plot structure, the resolution, or *dénouement*, will be dealt with in the next section, which discusses the unreliable narrator in a world of paradoxes.

4.1 Rising action

6 The 1991 intervention in Northern Iraq has been presented as a landmark case that introduced the humanitarian exception into the normative vocabulary of states.[2] In the midst of this conflict, which due to space constraints which cannot be described in detail here, the deployment of American, French and British military forces to set up safe havens on Iraqi soil under 'Operation Provide Comfort' arguably followed an explicit humanitarian goal of protecting the repressed and fleeing Kurdish minority population from Saddam Hussein (for more details, see Adelman 1992). In line with the metaphor of the 'rescue story', the war was widely perceived as just, because it was framed as protecting civilians from the villain – in the sense of the State-As-Person metaphor – Saddam Hussein (Lakoff 1991). The mission was largely qualified as a success: even the UN High Commissioner for Refugees branded the safe havens a successful case of humanitarian intervention (on the overall success of the mission, see Wheeler 2010, 170).

7 The literature on humanitarian intervention tends to argue that each crisis and the response to it is historically contingent and unique, therefore requiring a case-by-case assessment (Binder 2017). Still, this positive reaction facilitated the casting of the US and the UK in the role of the saviour, and lent them an initial credibility as narrators outside of the specific context. Certain authors even claim that it was the decisiveness of these saviour nations that allowed the UN to appear as a force in countering the aggression emanating from Iraq, thus making them central to the self-identification of the UN. One very vocal supporter of this stance asks: 'Everyone likes to criticize US pretensions to being the constable of the world. But when people need the cops, who do they call?' (Reisman 1991, 206).

8 In the post-Soviet era, the UN and even NATO were portrayed as 'essentially benevolent and able to bring not only peace and security, but also human rights and democracy, to the world' (Orford 2003, 20-21). In the early 1990s, the most obvious choice for the hero role seemed to be the UN, since the rather positive peacekeeping record of the 1970s and 1980s created hope that the scope of UN action might be expanded to encompass actual peace-enforcing and peace-creating (Kurth 2006, 91). Yet the upcoming humanitarian crises in different countries changed this perception, as mirrored in this dismal account of UN failures by one sceptical author:

> As it turned out, each of these UN interventions in failed states became notorious failures themselves. In Somalia, the UN forces first had to be rescued by US forces, and then both withdrew and left the Somalis in chaos... In Bosnia, the UN forces did not stop the ethnic massacres, which culminated in the murder of 7,000 men and boys in Srebrenica in 1995. In Sierra Leone, the UN forces had to be rescued by British forces, who then carried out an effective intervention. And in Rwanda, the UN forces were prevented by the UN leadership in New York from stopping the genocide of 800,000 Tutsi. (Kurth 2006, 91)

9 The Rwandan genocide shocked the world. There, UN action did not simply fail, it never happened: the Security Council did not authorize military intervention.[3] While hopeful voices had described an enhanced sensitivity and willingness to combat human rights

abuses on the part of the Security Council in the early 1990s (Tesón 1995, 368; Murphy 1994, 230), these failures painted the picture of a defeated hero who was more of a passive observer to the conflicts than an active saviour. On the international stage, the audience asked why the UN and the international community neglected to 'defend the defenceless' (Clapham 2012, 460). Simultaneously, those parts of the audience charged with implementing the original humanitarian idea of restraint – denoting unarmed, impartial and neutral relief and protection of civilians in armed conflict – suffered from increasing 'bystander anxiety' and 'humanitarian shame' (Slim 2001, 328). In this climate, the discursive boundaries of humanitarianism became malleable due to practical and moral concerns, and although the initial reaction might be to deplore a resort to force by states without Security Council assent, the concept thus became capable of accommodating violent actions deemed inescapable for ensuring protection (Banta 2017, 429-30). While the main responsibility to protect those in need of saving might still lie with the international community, the growing support for a 'global humanitarian imperative' entailing a duty to interfere was accompanied by the realization that the international community as a hero might not be reliable (Orford 2003, 169).

4.2 Climax

Kosovo intervention (1999)

10 The plot arguably reaches its peak with the 1999 Kosovo intervention, as an emblematic case of the fusion of war logic with humanitarian ends. During the break-up of the Federal Republic of Yugoslavia (FRY), the Kosovo conflict pitted the Kosovo Liberation Army (KLA) against the FRY (for a very detailed and comprehensive source on the Kosovo conflict and its background: Krieger 2001). The armed conflict – characterized 'both as an armed insurgency and counter-insurgency, and as a war (against civilians) of ethnic cleansing' – lasted from February 1998 to June 1999, when Milosevic capitulated and the FRY withdrew from Kosovo (Qualified as such by the Independent International Commission on Kosovo 2000, 2). On the 24th of March 1999, NATO initiated military operations in the air against the FRY (for more on this campaign, see Arkin 2002). This led to an escalation of the non-international armed conflict already underway and also triggered an international armed conflict (Independent International Commission on Kosovo 2000, 30). Prior to the NATO bombing campaign,[4] the Security Council had determined that the situation of violence in Kosovo constituted a threat to the peace and voiced concern due to the grave humanitarian situation.[5] Although one position contends that the military force used was implicitly covered by a UN mandate, the NATO members clearly did not act upon explicit authorization from the Security Council, nor even seek it (Latawski and Smith 2018, 12). However, article 53 of the UN Charter unquestionably subordinates the use of force by regional organizations such as NATO to Security Council authorization. Kofi Annan framed the dilemma as follows: 'On the one hand, is it legitimate for a regional organization to use force without a UN mandate? On the other, is it permissible to let gross and systematic violations of human rights, with grave humanitarian consequences, continue unchecked?' (Annan 1999)

11 In Iraq and Kosovo, the main justification advanced by the states involved pointed to the protection of the human rights of the innocent victims, chiefly the right to life (White 2000, 27). The military intervention on behalf of the Albanian population of Kosovo thus arguably 'represents the final disappearance of the narrowing divide between humanitarianism and politics: a war initiated for humanitarian principles' (Woodward 2001, 331). At the time, the mood on stage was that Western policy-makers had shifted the emphasis from national interests to an 'ethical' foreign policy in a selfless manner.[6] Many in the interpretive community of international lawyers considered the intervention in Kosovo to be the first ethical humanitarian war, one fought out of concern for others with no apparent domestic or international self-interested reasons (for example Klug 2000; Falk 1999). As Orford reports, early media depictions of NATO were in line with the character of a benevolent guarantor of humanitarianism and human rights, outlined above (Orford 2003, 169). The theory of interpellation holds that the ability to appear as a symbolic defender of unifying values is crucial for a leader and the nation they personify. The president of the US at the time, Bill Clinton, aptly played the role of the rhetorical mouthpiece of the hero alliance, in the name of humanity, delivering speeches on human rights reminiscent of 'sermons, very much in the saviour mode' (Mutua 2001, 239). The 'Clinton doctrine',[7] with its clear moralistic and universal ring, was used as a justification to use force in the name of humanity itself and intervene military in the internal affairs of other states, yet failed to establish any clear criteria for humanitarian intervention (Elshtain 2001, 19). The US government never offered a clear legal justification for the NATO campaign, instead leaning on 'an amorphous listing of factors that together justified the intervention as a matter of policy' (Koh 2015, 977). The prime minister of the UK, Tony Blair, justified the action in Kosovo in terms of reliability, as a saviour narrator who made a promise of protection directly to the Kosovar people: a failure to act would not only destroy NATO's credibility, but also be a 'breach of faith with thousands of innocent civilians whose only desire is to live in peace, and who took us at our word'.[8] Tony Blair also elevated the Albanian refugees to symbols of humanity, framing the intervention on their behalf as a battle for humanity (Chandler 2003, 301).

12 The rhetoric by the allied forces is clearly haunted by the ghost of just war. The intervention appeared largely anticipatory, the just cause lies in the goal of preventing a humanitarian tragedy.[9] Concerning legitimate authority, NATO claimed to act on behalf of the international community (White 2000, 34). Some commentators even considered that NATO had more legitimacy than the Security Council, because 'it comes closest to representing the liberal alliance, the community of nations committed to the values of human rights and democracy' (Tesón 2008, 45). The element of last resort was stressed by NATO forces when they underlined in statements that negotiations had failed, and that thus a military solution had substituted the failed political one (for some of the statements made by NATO forces, see Latawski and Smith 2018, 14-15). Right intention, as primarily an altruistic motive to intervene, is epitomized in this quote by Fernando Tesón (2008, 42): 'This is the correct way to understand humanitarian intervention: not as a unilateral decision unrelated to the wishes of the victimized population, but as assistance to revolutionaries seeking freedom from tyranny'. The allies considered that their intervention would successfully prevent the humanitarian situation deteriorating even further, in line with the element of the reasonable chance of success in just war theory (Wheeler 2001, 556). Concerning

proportionality, the allies defended their targeting practices as legal (Wheeler 2001, 557).

13 Still, this 'battle for humanity' was not explicitly called a war. As General Wesley Clark, the commander of the Alliance's military operations in Kosovo recalls in his memoirs, 'we were never allowed to call this a war. But it was, of course' (Clark 2001, xxiii). Even if asymmetrical or arguably a 'limited war'[10] or a 'humanitarian war',[11] there was without a doubt a large-scale use of force directed against a foreign state and its armed forces. Yet, the word 'war' was replaced by the less conspicuous-sounding notion of 'humanitarian intervention' (Elshtain 2001, 5). So, why not call the 'intervention' by its actual name?

14 Generally, to use the terminology of war heeds direct legal and political ramifications beyond the application of international humanitarian law: avoiding this terminology can also be an attempt to de-escalate inter-state tensions and to avoid the domestic architecture of actors that need to be constitutionally involved in a declaration of war (Gross and Ní Aoláin 2014, 263-64). The importance of the latter point in the US is illustrated by Harold Koh, who explains that according to the US Constitution, Congress has the exclusive competence to declare war, but a use of force below that threshold can be initiated by the president without congressional approval (the text contains a detailed analysis of US law, however a short introduction to the separation of powers in this context can be found elsewhere in the book: 2015, 978-79). The rhetoric of war is thus addressed to domestic and international audiences simultaneously. Importantly, however, war is not just about these legal categories and the discourse does not focus solely on the law. Especially in the today's multimodal world, the word 'war' evokes powerful mental images – precisely the mind cinema mentioned in the subchapter about frames (see Chapter 2, 2.3 Importance of frames). Andrea Bianchi (2011, 18) explains that armed conflict is not only about rules of international humanitarian law, but also about 'death, wounds, blood, maiming, bereaved persons, hatred, madness, terror, fury, angst, vomit, urine, stench, disease, annihilation, death again'. Hence, governments choose their words carefully. Filters serve as mental short-cuts, and the imagery of violent crisis coloured by urgent events and reactions underline the problems associated with the mind's ability to process and evaluate such information.[12] Frames thus affect the legality and perceptions of governmental actions domestically, and of state decision-making from the point of view of outside observers (Gross and Ní Aoláin 2014, 244-45).

Reactions reflecting dissonance

15 As with the 1991 intervention in Northern Iraq, the issue is whether military action for humanitarian ends may be undertaken 'in support' of Security Council resolutions, which qualify a particular situation as a threat to, or breach of peace, yet do not contain an express authorization to do so (White 2000, 27). This question becomes especially compelling when the Security Council's remit to give explicit authorization is incapacitated by a threatened or existent veto. *In casu*, NATO's use of force against the FRY was considered a blatant breach of the core UN Charter principles of non-intervention, sovereignty and the non-use of force by the powerful characters of Russia, India and China.[13] Yet in the wake of the intervention, Kofi Annan questioned the traditional vision of sovereignty, inviting those members of the UN General

Assembly (UNGA) who considered the use of force without Security Council authorization to be the gravest threat to the international order, to self-reflect: 'If in those dark days and hours leading to the genocide [in Rwanda] a coalition of States had been prepared to act in the defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?'[14]The crux of the matter is thus that 'humanitarian intervention exposes the conflict between order and justice' (Wheeler 2010, 11). In other terms, there is the problematic question of illegality versus legitimacy (Burke 2008, 61).

16 The order referenced in Annan's statement clearly refers to the UN Charter. As mentioned above, article 2 (4) of the UN Charter has only two exceptions: the right of self-defence (UN Charter, art. 51) and enforcement action sanctioned by the Security Council under chapter VII. The UN Charter does not refer to an additional exception allowing states or regional organizations to use force as a remedial action in the case of gross human rights abuses (Burke 2008, 61). Clearly, the NATO states had not suffered an armed attack by the target state FRY. Despite attempts within the North Atlantic Assembly to extend the right of self-defence to include 'defence of common interests and values, including when the latter are threatened by humanitarian catastrophes, crimes against humanity, and war crimes',[15] this interpretation is far from corresponding to actual international law (Lowe and Tzanakopoulos 2011, paragr. 24). The same can be said for the argument that article 51 UN Charter should not only cover attacks on states, but attacks on populations as well (Henkin 1999, 833). The preceding pages have also shown that it is unconvincing to state that the action was implicitly covered by previous Security Council resolutions (a recap of these attempts can be found in Lowe and Tzanakopoulos 2011, paragr. 19). The alternative assertion that the Security Council provided an *ex post facto* authorization through either an absence of condemnation or Security Council Resolution 1244,[16] are equally problematic. Accordingly, it 'is one thing to accept the status quo based on a pragmatic attitude towards the situation on the ground, which is what 1244 actually did, and another to endorse an action explicitly' (Lowe and Tzanakopoulos 2011, paragr. 21). In any event, these justifications would ground NATO action in Chapter VII of the UN Charter and would then portray it as a legal, collective enforcement action – they thus cannot support a supposed existent or emerging rule of customary law introducing an additional exception to the UN Charter's prohibition of the use of force. Custom is comprised of two basic elements: the material element (state practice) and the subjective element (*opinio juris*).[17] This route considers that there either already exists such a customary right to unilateral or multilateral intervention when the Security Council fails to authorize the use of force in response to gross, systematic breaches of human rights, or that such a right is in the process of emerging (an overview of proposed instances of practice that supposedly support such a position are given here: Lowe and Tzanakopoulos 2011, paragr. 28).

17 Concerning the exigencies for the formation of such a customary rule, Olivier Corten establishes a difference between the 'restrictive approach' and the 'extensive approach', which display diverging understandings of how law is formed, and what purpose it ought to serve (Corten 2010, 10-39; Clapham 2012, 456-60). Under the restrictive approach, a state must explicitly invoke a right to humanitarian intervention and claim that a modification of the applicable rule occurred, whereupon this contention must be accepted by the other states (Corten 2010, 29). With regard to

the first element, the vast majority of states involved in the bombing campaign never argued that their actions were legal due to a new customary law exception allowing intervention on humanitarian grounds (Lowe and Tzanakopoulos 2011, paragr. 29; Cassese 1999, 792). Rather, they justified their action by pointing to the overwhelming need to put a stop to and avoid further atrocities, stressing that the decision was not taken unilaterally by one state but was instead supported by a group of democratic states within the intergovernmental organization of NATO, and underlined that the role of the Security Council continued to be central and that this exceptional measure was only taken due to stalemate (arguments summarized by Cassese 1999, 791-95). The only countries that could be claimed to have taken a different standpoint are Belgium and the UK. During oral proceedings before the International Court of Justice, where FRY ultimately failed to obtain an end to the bombing operation through provisional measures, Belgium stated that the intervention could be based on the relevant Security Council Resolutions, but then continued by alleging that it had been under a legal obligation to intervene.[18] The UK had already invoked the doctrine of humanitarian intervention during the Northern Iraq incident, yet arguably did not rely on it as sole justification in the Kosovo crisis (White 2000, 34). In a note by the UK Foreign and Commonwealth office circulated to NATO allies in October 1998, the UK considered the use of force legally justified 'on the grounds of overwhelming humanitarian necessity', even without a Security Council go-ahead (this note is reproduced in full here: Roberts 1999, 106). However, this happened behind the scenes and was not a statement made publicly on the international stage to a wide audience. Only later on did the UK advance positions where it clearly stated that there was and continues to be a basis for unilateral or multilateral humanitarian intervention in international law in exceptional circumstances.[19] Hence, some reviews of the play seem to contain an error of judgment: they attempt to deduce the emergence of a new customary law exception, allowing for a unilateral right to humanitarian intervention without Security Council authorization from this case (for example, Tesón 1995). This neglects the fact that:

> Despite the odd (and inconsistent) statements by the US and the UK which seemed to favour unilateral humanitarian intervention, both those states and the remainder of NATO members tried to justify their action on the basis of the collective authority of the UN rather than on the right of humanitarian intervention. (White 2000, 33)

18 Nico Krisch carefully examines the claims and reactions of the main characters in the context of the Kosovo campaign. He concludes that political argumentations tended to outweigh legal ones, and that those legal positions advanced generally focused on two aspects: the avoidance of a humanitarian catastrophe and the enforcement or support of Security Council Resolutions 1199 and 1203, dating back to 1998 (Krisch 1999, 81). Concerning this first aspect, just like Iraq, the Kosovo case demonstrates that the intervening states claimed to act on behalf of the international community and its values, encapsulated in the title of Krisch's article, 'Unilateral Enforcement of the Collective Will': in a sense, they claimed a right to unilaterally enforce the (supposed) collective will of the international community.

19 As for the second aspect, only a few states vocally condemned the NATO intervention as illegal, whereas the majority of the international community did not do so.[20] Notwithstanding this silence, the existence and emergence of a customary law right to humanitarian intervention was severely impeded by the fact that one year after the end of hostilities in Kosovo, the foreign ministers of 132 countries passed a declaration

within the Group of 77 (G77) firmly rejecting the 'so-called "right" of humanitarian intervention, which has no basis in in the United Nations Charter or in the general principles of international law'.[21] Even if one accepts these dubious precedents as sufficient state practice, the necessary *opinio juris* is still lacking (Massa 2008, 59). *De lege lata*, it seems that humanitarian intervention remains illegal.

20 According to the extensive approach, the starting point is rather that positive law must correspond to objective law, the latter referring to rules which are considered necessary in a given social and historical context (Corten 2010, 10). Tesón (2008, 44) condemns the critics of the Kosovo intervention and ascribes to them 'positivist stubbornness', since this stance would imply that humanitarian intervention is legitimate and acceptable due to the advancement of humanistic values in the international community, which in turn demands that unilateral interventions replace authorized interventions when collective security mechanisms have failed (Corten 2010, 11). For the saviour-narrator, this stance seems the most fitting: the rhetoric seems to be more in line with arguments about legitimacy than with proposals of legality, painting the picture of a hero who is even willing to act against inflexible legal rules to protect humanity. And this grandiloquence did not fall on deaf ears. Many states considered the intervention in Kosovo justified, as described above (Heinze 2006, 29). The preceding sections show that in the interpretative community of international law, opinions were divided and continue to be so. Some scholars did consider the intervention illegal and also condemned it as politically and morally wrong.[22] Others agreed on its unlawfulness, yet advocated for a reform of institutional structures to be able to face humanitarian crises more effectively (for example Valticos 2000; Henkin 1999; Buchanan 2018). More favourable positions deemed the intervention illegal, yet justified for moral reasons: as the Independent International Commission on Kosovo held, the acts were 'illegal but legitimate'.[23] According to a similar logic, one author suggests that the lack of a firm response by other states in the international community could potentially be interpreted as a 'law of mitigation': the action would remain unlawful and the UN Charter unchanged, yet the transgressor would have to face lesser consequences (Franck 2002, 139; Clapham 2012, 459). On the other hand, certain authors considered the Kosovo crisis a legitimate case of humanitarian intervention[24] or that it 'marked a move toward formation of a customary rule of law'.[25]

21 These debates underline how the legality of the action alone is only one parameter by which the heroes of the play will be judged. The legality assessment as such already suffers from contradictions, since it unmasks the 'frustrations of attempting to uphold some norms (human rights) while seemingly violating others' (Latawski and Smith 2018, 32). However, perceptions of the reliability of the saviour-narrator rest upon a multitude of other factors as well: on images of suffering, on self-perceptions and outward perceptions of the characters' actions, on previous actions and speeches on stage, on moral, ethical and political considerations, and so forth. The position defended here is thus that a narrator's reliability will largely draw from legitimacy. As Pattison rightly states, legitimacy does not necessarily mean legality – legitimacy perceptions depend, *inter alia*, on the effectiveness of the actor, their internal and external support and fidelity to certain values and principles (Pattison 2008, 398-99).

4.3 Falling action

The rhetorical shift to 'Responsibility to Protect' (R2P)

22 Since the falling action technically begins with the climax (Bergman 2017), it makes sense to consider the aftermath of the Kosovo intervention in this section, which was coloured by uncertainty and division. The Commission on Kosovo had already identified a need to close the gap between legality and legitimacy and to establish a framework for humanitarian intervention (Independent International Commission on Kosovo 2000, 10). This challenge was taken up by the International Commission on Intervention and State Sovereignty (ICISS) sponsored by the Canadian government, which introduced a new approach to humanitarian action in a report entitled 'The Responsibility to Protect' to the Secretary-General in late 2001 (International Commission on Intervention and State Sovereignty 2001). This report introduced an important normative shift. As one of the chairs of the international commission of experts, Gareth Evans, wrote:

> We sought to turn the whole weary debate about the right to intervene on its head and to re-characterize it not as an argument about any *right* at all but rather about a *responsibility* – one to protect people at grave risk – with the relevant perspective being not that of the prospective interveners but, more appropriately, of those needing support. (Evans 2006, 708)

23 In this sense, the report held the promise of reconfiguring humanitarian intervention with a focus of humanity's law, namely the individual in need of protection, which may clash with the traditional sovereignty rights of states (Teitel 2011, 62). The fundamental change in the conception of sovereignty lies in the move from sovereignty as authority or control over a delimited territory and people, to 'sovereignty as responsibility'.[26] Sovereignty is considered to contain two dimensions: the first is a responsibility toward the welfare of the citizens within a state's own territory and the respect of their rights and dignity (internal legitimacy), whereas the second is a responsibility vis-à-vis the international community (external responsibility) (Gozzi 2017, 195). While the starting point remains that any state has a primary responsibility to protect the people within it, a failure to carry out this duty due to ill will or incapacity will trigger the secondary, residual responsibility to protect the international community, which acts in the first place through the UN (Evans 2006, 709). Crucially, the principle of non-intervention yields to R2P where the population is suffering serious harm and the state in question has done nothing to remedy this (Clapham 2012, 462).

24 Although the report stressed that the responsibility to protect 'was about much more than intervention and, in particular, military intervention' as the most extreme reaction within the responsibility to react, it still identified criteria to judge the validity of such a decision to use force.[27] The international commission explicitly acknowledges that the six elements in the following list have a pedigree in just war theory: (1) right authority,[28] (2) just cause of a large-scale loss of life or ethnic cleansing, (3) right intention, (4) last resort, (5) proportional means and (6) reasonable prospects (for the remaining elements, see International Commission on Intervention and State Sovereignty 2001, 32-37). Whereas the first element of right authority refers to legality, the other five pertain to the question of legitimacy. Even though the report continues to view the Security Council as the prime candidate for the saviour character, a failure to take on this role opens up space for alternative actors: the UN General Assembly[29]

and regional organizations, or a coalition of states within an area of jurisdiction, subject to subsequent – not prior – Security Council authorization.[30] Hence, a clear message conveyed to the Security Council through this report is that if it fails to discharge its responsibility to react to 'conscience-shocking situations crying out for action, then it is unrealistic to expect that concerned states will rule out other means and forms of action', and that such action lacking the necessary constraints of UN authorization might not be carried out for the right reasons.[31] Secondly, if an individual state or ad hoc coalition steps in when the Security Council fails to act and these actors fulfil the criteria of legitimacy in the eyes of world public opinion, this has an impact on the credibility of the UN itself (Evans 2006, 712). Still, one critical author notes that the formulation chosen by the ICISS *de facto* narrows the candidates down to the most powerful organizations, notably NATO, thus turning the responsibility to protect into a 'weapon of imperial intervention at will' (Chomsky 2011; Gozzi 2017, 196).

25 In terms of rhetoric within the play of humanitarian intervention, R2P thus changed the contours of the debate. The significance of this newly conceptualized framework lies less in a development of the law concerning the use of force and more in the heightened expectations that the international community needs to act to protect innocents from extreme human rights violations (Clapham 2012, 463). It demands that the international community turn into a reliable saviour character and may even imply a reversed presumption – instead of demanding a justification for a humanitarian intervention undertaken, a failure to do just that was what now needed to be justified (Rudolf 2013, 5).

26 Although space constraints do not allow for an in-depth analysis of events, 9/11 and the ensuing war on terror raised concerns that the use of force justified on humanitarian grounds could serve as a Trojan horse for non-humanitarian military campaigns (Heinze 2006, 22). In the prevailing climate, a large number of states questioned the wisdom of allowing the establishment of an additional exception to the use of force (Clapham 2012, 463). With the dedication of more political and military resources to fighting the evil of terrorism, the inclination of some of the major powers to spend these on the protection of innocents who faced the repression of a villain within their own borders seemingly dwindled. In this sense, 'when the dust from the World Trade Center and the Pentagon settled, humanitarian intervention became a tertiary issue' (Weiss 2004, 136).

27 What is left out in most scholarly accounts is that, if the attention of the audience might have been primarily drawn to the play of counter-terrorism and the issue of pre-emptive war (Weiss 2004, 136), the drama of humanitarian intervention has continued. The main actors are continuously engaged in various political and legal dramas, and the rhetoric of protecting others is not confined to the play of humanitarian intervention. The case of Iraq has been considered by some authors to constitute a prime example in which the ethical vocabulary of caring for others was instrumentalized, since US and UK governments have used it since the intervention in 1991 to emphasize their moral commitment to saving innocents abroad (Chandler 2003, 300). The 2003 Iraq war was dubbed 'Operation Iraqi freedom',[32] clearly casting the prime actors within the coalition of the willing – the US and the UK – in the saviour role. Using the familiar rescue scenario in just war terms, Bush repeatedly listed the crimes Saddam Hussein had committed against the victimized Iraqi people and the weapons that could threaten their neighbours, thus framing the operation as one

intended to protect suffering innocents from a raging tyrant.[33] When the principal justifications of the Bush administration lost much of their force – because no weapons of mass destruction were found, and the allegedly strong link to terrorism prior to the war could not be proven – the only viable argument left was the one of humanitarian intervention (for a strong voice contending that the 2003 Iraq war was clearly not a case of humanitarian intervention, see Roth 2006). According to this logic, the Bush administration used this argument as a 'back-up' rationale for the war in Iraq when other explanations failed (Heinze 2006, 31), thus demonstrating how the justificatory basis for humanitarian intervention can be resuscitated when deemed useful by the saviour-narrator.

28 Despite this hesitancy on stage to embrace the new guise of humanitarian intervention in the form of R2P, the concept was endorsed and deemed 'an emerging norm' by the High-Level of on Threats, Challenges and Change, which submitted its report to the UN Secretary General in December 2004.[34] The recommendations of the ICISS were embraced by Secretary-General Kofi Annan in 2005 in a report entitled 'In Larger Freedom: Towards Development, Security and Human Rights for All'.[35] The concept was then debated in the High-level Plenary Meeting of the General Assembly (2005 World Summit), culminating in paragraphs 138 to 140 of the World Summit Outcome Resolution.[36]

29 Even if Evans (2006, 714) triumphantly called this the biggest milestone passed, and appraised the outcome as a 'unanimous embrace of the responsibility to protect principle by the General Assembly', this recognition should not be overstated. There was still an unmistakable aura of suspicion on the international stage. A careful reading reveals that no unilateral right to intervene was authorized, the key word being the one italicized hereafter: 'each individual State has the responsibility to protect *its* populations from genocide, war crimes, ethnic cleansing and crimes against humanity' (par. 138). These more restrictive paragraphs were subsequently endorsed again by the General Assembly and the Security Council in respective Resolutions.[37] R2P has been referred to in numerous instances since 2005, for example in Darfur (for more examples, see Berman and Michaelsen 2012, 346-47). Teitel (2011, 116) acknowledges that 'the acceptance of RtoP expresses some degree of international consensus on a duty to protect civilians', yet adds a cautious note that the full implications of this concept remain uncertain. This uncertainty was acknowledged by the next UN Secretary-General, Ban Ki-Moon, yet he stressed that R2P is not a new code for humanitarian intervention.[38] Even if one admits that this is true, whether one wants to acknowledge it or not, this so-called 'positive and affirmative concept of sovereignty' punches holes into the traditional walls of those norms protecting state sovereignty against the saviour-narrator claiming to act in the name of humanity. It acknowledges that the Security Council is not the only one who might be cast in the hero role, and it shows that the ghost of just war is very much alive and well when it comes to legitimacy considerations, in the drama of protecting innocents.

Libya (2011) and its repercussions – what about Syria?

30 The next clear case of humanitarian intervention, albeit in its collective form, took place more than a decade after the Kosovo bombing campaign: the Libya intervention by NATO from February to October 2011,[39] this time acting with Security Council

authorization.[40] The measures short of authorizing the use of force adopted by the UN proved to be insufficient to stop the Libyan dictator Muammar al-Gaddafi from waging a brutal civil war on the population in revolt, which led the Security Council, acting under Chapter VII of the UN Charter, to authorize member states to 'take all necessary measures to protect civilians',[41] thus invoking the 'aims and methods of humanity law' (Teitel 2011, 62). The pursuant military operation led by the US, France and the UK was later passed on to NATO and tellingly named 'Operation Unified Protector' (for a legal analysis of Operation Unified Protector, see Yüksel 2012), clearly allowing these states to take on the saviour role (for a comprehensive account of the US position in Libya, see Koh 2015, 980-98). Some commentators heralded this authorization as a milestone in the effective implementation of the R2P doctrine (among many others, Powell 2012, 298). However, the preamble of Resolution 1973 only explicitly referenced the responsibility of the Libyan authorities to protect the population, not the responsibility of the international community (Chesterman 2011, 280-81). The mandate allowed member states to forcefully implement the no-fly zone and arms embargo, as well as the other measures authorized in the earlier Resolution 1970.[42] However, the Resolution excluded foreign occupation and at no point endorsed a regime change, but the unfolding military operation made it clear that this was the political goal of the coalition (Pommier 2011, 1066-67; Rudolf 2013, 8). In a wide reading of the mandate, toppling the regime in power was seen by the coalition as a necessary measure to protect civilians (Akbarzadeh and Saba 2018, 5). However, it was estimated that the intervention prolonged the duration of the war and augmented the death toll, since the allies failed to implement peace after removing the villain Gaddafi (an assessment of the outcome can be found in Kuperman 2013, 121-23).

31 The launching of the operation hence corresponded to a textbook case of R2P, while subsequent actions deviated from this principle (Pommier 2011, 1079). The former Assistant Secretary-General of the UN, Marcel Boisard, thus lamented in a October 2011 press that the protection of civilians was used as a pretext to justify an operation ultimately aimed at toppling Gaddafi, which prompted him to write that 'the principle of "responsibility to protect" died in Libya'. The international community was worried that statements claiming that NATO action complied with the Security Council resolutions could set a precedent of expansive interpretations for future NATO interventions, supposedly implementing the responsibility to protect (Berman and Michaelsen 2012, 356). Although it is probably too early to ring the death knell of the R2P principle, this example shows how the particular interpretative lens this principle entails can provide a means for the saviour-narrator to construe a mandate given by the Security Council in an overly broad way. It remains debatable whether NATO exceeded the Security Council mandate legally, but the political price for Libya is that Russia made it clear that it would veto similar Security Council resolutions in the future – a threat it delivered on most notably in the Syrian crisis (Koh 2015, 998). This stresses how the past actions of the hero character impact perceptions of reliability in the present and future, potentially leading to a chilling effect (Berman and Michaelsen 2012, 357). If a powerful character on the international stage such as Russia holds the belief that Libya unmasked certain saviour-narrators as unreliable, this can have very real consequences for the continuation of the drama of humanitarian intervention.

32 Due to space constraints, the history and context of the Syrian conflict and humanitarian crisis, which began as a civil war in 2011 and is still ongoing at the time

of writing, cannot be developed here.[43] The parties involved in the parallel international armed conflicts include many of the powerful characters we have encountered throughout this paper, such as the US, the UK, France and Russia (for a complete list of the countries involved and for/against whom they are fighting, see Sulce 2019, 2-5). Harold Hongju Koh, Legal Adviser to the US Department of State between 2009 and 2013, details how Russia refused to vote for 'essentially the same UN Security Council language it had supported in Libya', since it believed that force had been overused to bring about the abovementioned regime change (Koh 2015, 998ff). In August 2012, president Obama voiced his first direct threat of force against Syria in case the 'red line' of preparing to use or actual use of chemical weapons was crossed (Landler 2012). Notwithstanding the goal behind this, of protecting innocent civilians, the Obama administration did not offer a legal explanation as to why the use of force in Syria would have been consistent with international law, just as it never did for Kosovo (Koh 2015, 1003). The only public legal position advanced to the audience on the international stage was that given by the White House Counsel to a newspaper, who admitted that the Syrian attack might not fit a 'traditionally recognized legal basis under international law', but that it would nonetheless be 'justified and legitimate' and thus not prohibited (Savage 2013; Koh 2015, 999-1000). Hence, humanitarian intervention was not mentioned by the US administration, whereas the British government advanced a legal justification that explicitly rested upon this doctrine and R2P (however, in 2013 the British government failed to convince Parliament and garner its support for an intervention, see Carpenter 2013).

33 Faced with weak support abroad and at home, however, Obama did not act on this threat, despite statements where he invoked his belief that the use of military force could be justified on humanitarian grounds (Koh 2015, 998-1004). Obama had also stated that he would take military action in Syria without Security Council approval, given that the attacks were an assault on human dignity and the Security Council remained paralyzed (Tzeng 2017, 449). The reactions to this failure were prompt, castigating the US president as an unreliable narrator who called on a new era of engagement, yet ended up as a spectator of this humanitarian catastrophe (Plett 2017). Coming to the defence of the president, Koh painted a picture of a 'reluctant warrior' who tried his best to fight against Syria's President Bashar al-Assad, who 'is a war criminal who has slaughtered his own people for months and lied about it – with and without chemical weapons – while Putin gave him shameless cover with... vetoes, lies, and sickening rhetoric' (Koh 2013a). Notwithstanding the fact that the primary justification for a potential intervention was the enforcement of the ban on chemical weapons, the rhetoric at the time was clearly infused with humanitarian reasoning. These contrasting depictions underline how the reliability of hero characters such as Obama (following the Nation-as-Person metaphor of Lakoff) depend on the (mis)match between rhetoric and action, yet also on the behaviour of other powerful characters the saviour faces in the play. Koh deflects blame and criticizes the position that deems any humanitarian intervention illegal (one he calls the 'per se illegal rule') as overbroad. According to him, 'the per se position denies any nation, no matter how well-meaning, any lawful way to use even limited and multilateral force to prevent Assad from gassing a million Syrian children tomorrow' and 'leaders would either have to accept civilian slaughter or break the law, because international law offers no alternative' (Koh 2013b). The wording of this condemnation is revealing, since it evokes powerful images and

narrates a story of a hero who wants to save, but is prevented from doing so by states subscribing to an edifice of law without a conscience.

34 The current president of the US, Donald Trump, has authorized air strikes carried out by the US alone and then the coalition on Syrian targets supporting Assad's chemical weapons facilities (Sulce 2019, 5). While many deplore the air strikes in Syria as illegal, Trump never claimed to be undertaking an intervention to protect humanity and thus did not even try to assume the saviour role (on the illegality of the air strikes broadly, see Milanovic 2018). He has made it clear that his primary goal is to protect the American people, by eliminating the Islamic State in Iraq and Syria (ISIS) in Syria (Koh 2018). This reflects how a change in leadership will inevitably affect the actions of the hero in the drama of humanitarian intervention, whose character is moulded not only by the image of the state built on past actions, but also by its leader. As a consequence, some spectators asked what had happened to the international community's responsibility to protect (Esslemont 2016). The echo was that 'R2P has diminished from a high hope into an interesting collection of words lying on a table', and that Syria was an obvious case begging for an effective implementation of this doctrine: 'it's as relevant as ever, normatively, morally, in terms of our conscience, but it is a dead letter internationally' (statements by two scholars interviewed here: Esslemont 2016). Despite voices to the contrary claiming that other factors such as Russia's economic and strategic interests in Syria explain the veto, the past record of actors – notably the US, who had deposed leaders in Afghanistan, Iraq and Libya – has an impact on the viability of a regime premised on R2P (for an example of an author who denies the direct connection between the Libya precedent and the Syrian Security Council paralysis, see Bellamy 2014, 37; for a contrasting account, see Akbarzadeh and Saba 2018, 6).

FOOTNOTES

1. The climax has been defined in different ways, but this is the more cautious interpretation used in this paper. Other descriptors – 'the moment where the outcome is settled once and for all'; the 'moment when events turn for the last time'; the 'moment where we know it's all over' – are unfitting for the present purposes, since they point to a clear ending (Rush, 2005, 58ff).

2. Chapter 5 on a potential solidarist moment in international society. Concerning the case of Iraq, see Wheeler, (2010, 139–171).

3. A detailed description of the developments in Rwanda and a more nuanced account of UN (in)action can be found for example in Orford (2003, 96–110).

4. For a useful overview of the events leading up to the airstrikes and the aftermath, see Krisch (1999) 79ff.

5. UNSC Res 1199 (23 September 1998) UN Doc S/Res/1199; UNSC Res 1203 (24 October 1998) UN Doc S/Res/1203.

6. An entire article dedicated to this concept of 'ethical' foreign policy is Chandler, 2003.

7. For more on the 'Clinton doctrine' in the 1990s, see Charles Krauthammer *CNN* (29 March 1999) < http://edition.cnn.com/ALLPOLITICS/time/1999/03/29/doctrine.html > accessed 19 June 2019.

8. Statement by Tony Blair from: HC Deb 23 March 1999, vol 328, col 161.

9. Unfortunately, due to space constraints, we cannot enter into the conundrum of using force in response to warning signs, to prevent an impending disaster. In this sense, we 'can never know what would have happened had the intervention not taken place', see Wheeler (2001, 556).

10. For more on the concept of 'limited' war and whether Kosovo qualifies as such, see Latawski and Smith,
2018, 17–19.

11. Among many, Roberts, 1999.

12. In other words, 'such crises tend to lead to an even greater reliance on heuristics as a means of countering the lack of sufficient time to properly evaluate the situation', see Gross and Ní Aoláin, 2014, 243.

13. For the positions adopted by these states during the debates in the Security Council: UNSC Verbatim Record (23 March 1999) UN Doc S/PV/3988; UNSC Verbatim Record (26 March 1999) UN Doc S/PV/3989.

14. UNSG 'Secretary-General presents his Annual Report to General Assembly' (20 September 1999) Press Release SG/SM/7136.

15. NATO, 'Recasting Euro-Atlantic Security: Towards the Washington Summit' (November 1998) North Atlantic Assembly Res 283 para. 15 (e).

16. UNSC Res 1244 (10 June 1999) UN Doc S/Res/1244, which authorized the international deployment of military forces and instituted a civilian administration regime in Kosovo.

17. Shaw, 2008, 74. For an in-depth analysis of custom, see p. 72-92 of this source.

18. See oral pleadings of Belgium in *Case concerning Legality of Use of Force (Yugoslavia v. Belgium)* (Verbatim Record) 1999 CR/99/14.

19. See UK Ministry of Defence, 2004, 2.

20. A draft resolution aiming to condemn the NATO intervention as illegal was even rejected by the majority of states in the Security Council at the time, see Cassese, 1999, 792. For a list of those states which did explicitly condemn NATO action, see Corten, [2000], 698–699.

21. Group of 77 (G-77), 'Declaration of the South Summit' (Havana 14 April 2000) www.g77.org/summit/Declaration_G77Summit.htm (accessed 19 June 2019).

22. For example Chesterman, 2003, 218; Lowe, 2000, 934. For a more complete list of scholars defending this position, see footnote 17 of Tesón, 2008, 43.

23. Independent International Commission on Kosovo,1999, 4; for more scholars who reason along similar lines, see footnote 19 reference in Tesón, 2008, 43.

24. For example Wheeler, 2010, 281–299; Roberts (n 287) 106–109. For more scholars who reason along similar lines, see footnote 20 reference in Tesón, 2008, 43.

25. More examples of scholarly opinion believing this assertion can be found in footnote 21 of Tesón (n 280) 43, who considers the Kosovo intervention a clear precedent in customary law terms as well.

26. Welsh, 2002, 511. For an earlier articulation conceiving of sovereignty as responsibility, see Deng, 1996.

27. Evans 2006, 709–710. The report foresees three types of responsibility: The responsibility to prevent, the responsibility to react (including humanitarian intervention) and the responsibility to rebuild, see International Commission on Intervention and State Sovereignty 2001, 19–44.

28. Chapter 6 on right authority, see International Commission on Intervention and State Sovereignty 2001, 47–57.

29. A brief overview of this GA potentiality can be found in White 2000, 38–41.

30. See litera E of the initial summary of the report in International Commission on Intervention and State Sovereignty 2001, XIII.

31. International Commission on Intervention and State Sovereignty 2001, para 6.39.

32. A detailed description of the Iraq war (2003-2011) can be found here: 'Iraq War', *Encyclopedia Britannica* < https://www.britannica.com/event/Iraq-War > accessed 30 June 2019.

33. Lakoff, 2019. For a very critical account of this rhetoric by the US government, see Mandel 2004.

34. High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility: Report of the High-Level Panel on Threats, Challenges, and Change* (United Nations ed, United Nations Department of Public Information 2004); UNGA 'Note transmitting report of High-Level Panel on Threats, Challenges and Change' (December 2004) UN Doc A/59/565.

35. Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General* (United Nations Department of Public Information 2005); UNGA 'Report of the Secretary-General: In Larger Freedom' (2005) UN Doc A/59/2005.

36. UNGA Res 60/1 (242 October 2005) UN Doc A/Res/60/1.

37. UNSC Res 1674 (28 April 2006) UN Doc S/Res/1674; UNGA Res 63/308 (7 October 2009) UN Doc A/Res/63/308.

38. UNSG 'Secretary-General defends, clarifies 'responsibility to protect' at Berlin event on 'responsible sovereignty: international cooperation for a changed world'' (15 July 2008) Press Release SG/SM/11701.

39. More details on the Libya revolt and crisis of 2011 can be found in 'Libya Revolt of 2011', *Encyclopedia Britannica* < https://www.britannica.com/event/Libya-Revolt-of-2011 > accessed 22 June 2019.

40. Heraclides and Dialla, 2016, 3. This depends on the definition of humanitarian intervention one adopts, however. If the notion of collective humanitarian intervention with Security Council authorization is not considered a case of humanitarian intervention, then Libya would clearly not be a case in point. This stance is taken for example by Peter Tzeng 2017, 432.

41. This formula used authorizes the use of military force to reach the stated goals, see UNSC Res 1973 (17 March 2011) UN Doc S/Res/1973 para 4.

42. UNSC Res 1970 (26 February 2011) UN Doc S/Res/1970.

43. A useful overview of the conflict (including a legal assessment of its evolving nature) and the players involved can be found in Sulce, 2019.

5. The unreliable narrator in a world of paradoxes and conflation

5.1 The cognitive power of meta-narratives

The dream of the 'ideal'…

1 The preceding chapters have shown that the saviour narrator operates on fertile ground: a lack of consensus within the interpretative community has shaped the contours of the regulation of the use of force, and has created considerable uncertainty, making it difficult to identify clear criteria by which the reliability of the humanitarian intervention narrative may be judged (Bianchi 2016, 306).

2 This is exacerbated by some of the meta-narratives at work within the field of international law, such as the those on 'universality' and 'progress', which are interrelated (Bianchi 2016, 294). Human rights rhetoric is clearly infused with both. The fact that human rights rhetoric takes centre stage in international affairs prompts triumphalist accounts of human rights that are said to have achieved a 'worldwide normativeness', leading us to believe that we now live in the Age of Human Rights (Slaughter 2009, 2). Humanitarian intervention is directly linked to the enforcement of human rights, which are 'treated as universal ethical imperatives whose expansion means progress' (Altwicker and Diggelmann 2014, 434). For this reason, invocations of progress and universality permeate the drama of humanitarian intervention as well. The meta-narrative of universality evokes a sense of one-ness and sameness across nationalities and borders. The victim of human rights abuses is turned into a representative of this universal rights-holder (Orford 2003, 212). The language of human rights is one of 'simplicity and obviousness', bordering on common sense, which presupposes the universality of its own claims and presents itself as rational (Slaughter 2009, 3). In this regard, the language of human rights might truly have become a 'vocabulary for progressive elite solidarity' (Kennedy 2005, 28).

3 However, rationality and common sense are only part of the story. The other part relies on sub-rational or non-rational feelings of human solidarity and compassion (for a synthesis of those arguing for and against this position, see Teitel 2011, 204-5). To

properly understand the pull of the narrative of humanitarian intervention, I believe it is crucial to consider both aspects. Richard Rorty (2011, 130) has examined the manipulation of sentiment in international relations and found that when we hear 'long, sad, sentimental stories' and see news stories or programs about massive human rights abuses abroad, sympathy is stimulated. I write 'we' because I have witnessed this behaviour not only in myself, but also in many others. Through imaginative identification, we place ourselves in their shoes in an 'act of self-substitution, a projection of the self into the grammatical position of the subject who suffers' (Slaughter 2009, 93). Hence, the character of the victim is central to the narrative of humanitarian intervention: not only because every hero needs someone to save, but also because it 'allows the reader to imagine himself or herself to be on the side of the good and the just, part of a state or international community actively able to shape the world in the image of the ideals of freedom, democracy and order' (Orford 2003, 175). The ideal does not only relate to the dream of a better world, but also to the dream of a better version of ourselves.

4 Others have already noted that the human rights movement has had a part to play in the belief that the 'world's political elites form a "community" that is benevolent, disconnected from economic actors and interests, and connected in some diffuse way through the media to the real aspiration of the world's people' (Kennedy 2002, 117). These mental frames quickly lead to expectations of neutral and innocent intervention, one that bears the promise of emancipation for the oppressed, and a universalist presence of human rights (Kennedy 2002, 117). George Lakoff provides crucial insights into how these frames work. Despite exposure to facts, the broader public often fails to reach the 'rational conclusion', because:

> When the facts don't fit the frames, the frames are kept and the facts ignored. It is a common folk theory of progressives that "The facts will set you free!" If only you can get all the facts out there in the public eye, then every rational person will reach the right conclusion. It is a vain hope. Human brains just don't work that way. Framing matters. Frames once entrenched are hard to dispel. (Lakoff 2003)

5 Cognitive frames are thus capable of generating blind spots and a problematic tunnel vision, since 'alternative ways of thinking are suppressed' (Wählisch 2015, 334-35). For this reason, the strategic framing of humanitarian interventions by the saviour-narrator can dull the capacity of the audience to evaluate the situation in a critical manner. If the legitimacy of an intervention is tied to the criterion of 'acts which shock the conscience of humankind', as Michael Walzer suggests (Walzer 2015, 107), a direct link can be established to the empathy of the audience, which seems dangerous. The risk of falling prey to an unreliable narrator is in no way limited to the wider public – the interpretive community of international lawyers also has a tendency to resort to 'frame-consistent inferences' according to the sub-disciplinary background they come from (Windsor 2015, 755). By casting characters in familiar roles, playing with emotions, relying on just war argumentation and by invoking 'humanity', the reflexivity of those hearing the story is stifled. We have seen how invoking 'humanity' is a powerful tool to make the speaker's values seem universal and therefore unobjectionable. When humanitarian intervention is justified as a response to an urgent crisis, this 'will imply that any kind of contestation, hesitation, or deliberation is somehow complicit in the suffering and therefore immoral' (Leebaw 2014, 270). Ethical goals such as human rights protection are in a sense considered to be the moral responsibility of everyone (Kofi Annan quoted in Chandler 2003, 305-6). This appeal to

the conscience of the audience of the drama of humanitarian intervention is often overlooked in scholarly writing.

6 The meta-narratives of progress and universality, as well as the sentimental affinity of readers of humanitarian intervention, are also reflected within Teitel's humanity law, which introduces 'a sovereignty not of the state but of the *individual* in relation to the (responsible and responsive) state' by claiming that individual rights now lie at the centre of the international legal system (Denike 2008, 100; Teitel 2011). In addition, the meta-narrative or dream of systemic unity is introduced. This discipline of optimism would like to see the evolution of international law towards a more advanced system, which is ideally conceptualized as a coherent one (for a more detailed account, see Windsor 2015, 748-51). In the international legal field, the discourse about the systemic unity of international law seems biased. While unity is seen as a positive value, the competing narrative of a fragmentary legal field with its self-contained branches of international law has negative connotations (Bianchi 2016, 293). Humanity law, as the amalgam of international human rights law, international humanitarian law and international criminal law, bridges the divide between these branches and places the protection of humanity at the apex of the international legal order, as a goal on which all characters naturally would have to agree.

…hiding the 'real'

7 This dream of harmony within the meta-narratives tries to hide the dynamics of power and hierarchy, as well as the value conflicts and paradoxes that actually permeate the discussion (Windsor 2015, 749). My hypothesis is that the paradoxes within the language of human rights give the unreliable narrator more space to develop his story. In addition, these meta-narratives and a propensity for empathy tend to overshadow the dark side of human rights rhetoric.

8 As a brief introduction, I would like to point to the general malleability of human rights rhetoric. James Dawes sheds light on a series of paradoxes literary studies have unveiled in the human rights regime (he broadly defines five related paradoxes in the human rights language, namely the paradoxes of beauty, of truth, of description, of suffering and of witnessing, see Dawes 2009). The basis for this is the 'paradox of description', meaning that 'language liberates us from coercion by creating protective boundaries, but these boundaries also imprison and constrain us' (Dawes 2009, 396). In this context, literary critics have made efforts to make sense of meaning and language (Dawes 2009, 405). While the emancipatory model of language contends that democratic language practices emancipate us from the reign of force, the disciplinary model conceives of language as inherently unstable, capable of subjecting us to power (for a brief summary of the main positions and well-known proponents of these theories of language, see Dawes 2009, 406). Applied to the discourse of human rights, the former theory would consider human rights law as a vehicle for promoting the self-realization of humanity as a conglomerate of global citizens, while the latter would see it as a form of coercive subject interpellation (Dawes 2009, 407). The former corresponds to what I have called the 'ideal' in the preceding chapter, whereas I would contend that the 'real' necessarily needs to take the latter coercive dimension into account as well.

9 In my opinion, it is true that human rights are 'necessary but suspicious vehicles' (Slaughter 2009, 33). Some of the legal literature on the topic has been permeated by the underlying *problématique* that discourses on human rights are considered to be imperfect expressions of the essence of these rights (Gaete 1993, 14–15). However, the existence of such an essence itself is disputed, so that there is arguably 'no permanent core, no final, conclusive definition of human rights, anterior to the interpretive process' (Gaete 1993, 55). An influential state or organization claiming to act on behalf of humanity can thus quite easily join the battle-cry for universal human rights, given the intrinsic malleability of the language of human rights.

10 The word 'human' in human rights is not as inclusive as it initially appears to be. Anne Brown writes that the 'category of the human is deeply paradoxical, appearing with the power of both innocent description and moral norm', because it 'frequently operates as an exclusionary mechanism patrolling the divisions between self and alien... while at the same time appearing to maintain reference to an unimpeded universality' (Brown 2002, 15). The conception of human rights as universal and progressive has been challenged by relativist theorists, in the form of historical, cultural, feminist and cognitive critiques (for an overview of these critiques and counter-positions, see Kälin and Künzli 2011, 19-30). Makau Mutua, who principally adopts a critical race theory approach, deplores the fact that the saviour metaphor is based on Eurocentric universalism as the premise for the whole edifice of international law, and on a 'missionary zeal' that assumes the West to be superior to the rest of the world (Mutua 2001, 233). His contention, that defenders of human rights universality claim the solution to illiberal and authoritarian societies to simply be constitutionalism and political democracy, finds exemplary support in the cases of humanitarian intervention analysed above, where this antidote often proved to be overly simplistic (Mutua 2001, 237). Rights talk often contains harsh judgment directed at the perpetrator.[1] In the drama of humanitarian intervention, not all characters are ascribed 'humanness': the enemy forces seem to lie outside the purview of humanity, and the villain state cannot claim legitimate statehood (Brunnée and Toope 2004, 383). In this story, there seems to be an underlying moral certainty that the divide between 'good' and 'evil' is clear, and that the saviour is capable of narrating the story for the victim. Based on this fiction, the invocation of 'evil' carries significant resonance, yet it fails to provide concrete guidance for action (Brunnée and Toope 2004, 383). Maurice Blanchot once pointed out that writing or speaking of a disaster would always amount to a lie, since 'it gives limits to the limitless, sense to the senseless'.[2] James Dawes agrees that meaningful language is suspect, since it contributes to the consolidation of power relations, yet also because it attempts to 'present as "real" an experience inaccessible to reality, insofar as reality consists of what we can understand through our socially programmed conceptual categories' (Dawes 1999, 223). In this sense, reality grows successively more distorted the longer the chain of translation becomes, from the victims to the saviour who narrates their plight, to the audience who hears the story of suffering.

11 Dawes contends that 'naming is violence', and is a strategy that is commonly used in power relations. To be named is both a way of suffering violence and a source of dignity (Dawes 1999, 215-16). Using the word violence to describe this phenomenon might carry pathos, yet it is worth contemplating that naming – and the cognitive framing that follows from it – capable of giving and taking away a voice. The problem of speaking on behalf of the victim is epitomized in Dawes' 'paradox of witnessing' ('that

speaking for others is both a way of rescuing and usurping the other's voice') (Dawes 2009, 396). In my opinion, the saviour-narrator has an overpowering voice in the drama of humanitarian intervention. Recall the image of fiduciary representation or 'inheritance' invoked above (Chapter 3.2.B):[3] they speak on behalf of the victims and claim their rights for them. Yet, to borrow from Anne Brown:

> Metaphors of listening may assist more interactive, more open and less bordered ways of enacting knowing. Rights are traditionally associated with the activity of claiming, but they could be equally associated with listening. If notions of human rights... are a way of recognizing and taking part in the on-going interchange and negotiation among self and other, of requiring that one be properly heard, they demand not only the ability and 'space' to claim participation, but also the ability and willingness to accord others attention. (Brown 2002, 16-17)

12 The capacity to listen is a characteristic that the hero often lacks. The innocent victims are paradoxically presented as placeholders for humanity, yet also objects without agency. In the same vein, Orford notes that the villain governments of target states are at the most recognized a deviant agency, whereas agency is completely lacking for the peoples of the states where the intervention is taking place (Orford 2003, 170).

13 Additionally, as a consequence of human rights rhetoric becoming so commonplace and widespread, which any character on stage can use, there has been a 'banalization' of human rights (for an interesting account premised upon this idea, see Hannum 2019; McClennen and Slaughter 2009, 2). This all-pervasiveness needs to be analysed critically. I could not agree more with this statement by Joseph Slaughter:

> The banalization of human rights means that violations are often committed in the Orwellian name of human rights themselves, cloaked in the palliative rhetoric of humanitarian intervention, chivalric defence of women and children... Thus the discursive victory of human rights means that ours is at once the Age of Human Rights and the Age of Human Rights Abuse. (Slaughter 2009, 2)

14 Humanitarian and human rights law norms and institutions can be invoked as an alibi for violence and abuse of power (Leebaw 2014, 262). Although human rights were traditionally conceived as a defence of the individual against the state, this logic has now been turned on its head: they have become a standard justificatory tool to legitimize the external use of force by the saviour state against the supposed villain state (Kennedy 2005, 25). The unreliable narrator can thus use a prop originally meant to serve as a weapon of internal rebellion and dissent, as a device to bolster its own state's legitimacy (Slaughter 2009, 88). However, the discourse of humanity and human rights tends to be used by both sides in a conflict; it can be invoked by different actors for various reasons (Leebaw 2014, 272). Teitel admits that the same can be said for humanity law, whose 'comprehensive but indeterminate regime' may lend itself to politicization (Teitel 2011, 113). The porousness of humanity-based rhetoric can thus serve as an alibi for the saviour-narrator who wishes to wage war and turns the empathy for common humanity into leverage for strategic aims planned and acted upon by external agents (Denike 2008, 101; Leebaw 2014, 272). Hence, the interventions this discourse legitimates 'are more likely to track political interests than just own emancipatory goals', such as corporate capitalization which can ensue from lucrative reconstruction projects, or the superposition of liberal values following the Western conception of their supposedly superior social, political or economic order (Denike 2008, 101).

15 What is striking about this is how the spotlight is invariably put on the saviour or hero character. The drama claims to be about the victim, yet it is more focused on the narrator who claims to act on humanity's behalf. In consequence, the direction of the story changes: human rights language might be used, but there is arguably still no clear 'understanding that the rights to be defended were those of the oppressed rather than the rights for intervention by hegemonic states' (Geyer 2016, 49), despite the clear statement of Evans that R2P has laid this idea of a *droit d'ingérence* to rest (for more on the '*droit d'ingérence*' or the right to intervene, see Klein 1993). I doubt that the attempt to change direction in the R2P debate has truly been successful, and that the powerful characters on stage got the message. The other change in direction I noticed in the narrative is that it is said to be about the protection of the victims, yet often degenerates into the goal of punishing the villain. The denunciation of abuses committed by the villain governments leads to a focus on condemnation and punishment rather than on an attempt at cooperation (Chandler 2003, 304). This links to the rationale of just war: 'Punitive intercession is predicated on the inhumanity of rulers. Its goal is to punish and expurgate. This is the opposite of what might reasonably be considered a human rights intervention'.[4] Such a focus on punishment serves as an apology for the use of force. A good example can be found in the words of a speech writer for President Bush: 'In a world where there are evil governments, this is the real moral test. What do evil governments do? They kill. What do good governments do? They must also kill'.[5]

16 The willingness to use force is thus presented as a moral challenge, one the saviour-narrator is ready to take on. What is left out is that this link between military force and humanitarianism is far from natural. The idea of a 'humanitarian war' has been called an oxymoron (Roberts 1993, 429), although scholars such as Benjamin Banta (2017) present a convincing case that humanitarianism and war are not necessarily antithetical to one another. However, this does not mean that it is always unproblematic. The paradox lies in the fact that the humanitarian idea can wittingly or unwittingly 'simultaneously deplore, restrain, enable and embrace violence' (Slim 2001, 326). Ambiguity thus surrounds the notion of humanitarianism, nested within the discourses of politics, morality and compassion. The confusion resulting from 'humanitarian' action being claimed by non-humanitarian actors is only compounded by the fact that complex operations such as the one in Libya often involve a protection and relief dimension, which makes it easier for the saviour-narrator to claim that his action, true to the humanitarian name, is actually impartial and politically neutral (Pommier 2011, 1075-77). Given that this elastic word, 'humanitarian', lacks clear conceptual limits and has not been defined in international law or claimed exclusively by any specific branch of international law, it can be used for a wide range of acts and can be subject to hegemonic manipulation (Slim 2001, 331). An intervention such as the one in Kosovo can be portrayed as restoring the values at the core of the international order, sidelining the fact that the means for this was a breach of the rules that form the basis of the same order (Orford 2003, 178). This new type of military humanitarianism promotes the idea that interventionism is a more effective way of guaranteeing human rights and a just world order, than the seemingly outdated non-interventionist logic based upon a literal reading of the UN Charter (Orford 2003, 178).

17 By linking violence to humanitarianism, *jus ad bellum* reasoning has merged with *jus in bello* considerations, since 'the humanitarian idea was now deployed as a brake on the

means of violence and also as a just cause to describe the ends of violence' (Slim 2001, 332). But this proposes false hope: sometimes, violence might need to be countered with force, yet experience has shown that an end to the brutalities is not guaranteed. Intervention will normally lead to more destruction and death, whether under the aegis of humanitarian intervention or R2P. Rhetorical tropes – using the word humanitarian 'intervention' rather than war, substituting the former for R2P, or using 'violence' to speak of illegitimate agents contrasted with 'force', implying a policing function, for the hero characters instead – cannot silence the voices asking whether war can truly be humanitarian (Coady 2002, 15).

5.2 Issues of reliability and transparency

Indices of unreliability

18 One obvious objection to linking violence to humanitarianism is that humanitarian intervention remains selective. There are limits to empathy, and not all suffering provokes a forcible reaction. Whereas Kosovo prompted NATO to defy the Security Council, both states and the UN evidently failed in Rwanda (Slaughter 2014, 49). Wheeler notes that 'governments are notoriously unreliable as rescuers' (Wheeler 2010, 310). It may be true that selectivity is unavoidable, since injustice is everywhere. Slaughter claims that it makes no difference for humanitarian workers whether they act or not, since 'turning right rather than left at the fork in the road has no epic or heroic implications for the protagonist's personality' (Slaughter 2014, 56). The opposite is true for those characters on stage based on state entities. While certain commentators claim that selectivity in humanitarian interventions is desirable because it reduces the risk of over-commitment, fosters cooperation among powerful nations and prevents states or the UN from intervening in ill-planned operations, this positive account is overshadowed by the counterargument that selectiveness has a negative impact on actors' legitimacy and success, unmasking the discriminatory narrator as obviously motivated by concerns which are not purely humanitarian in nature (these contrasting opinions and explanatory factors for this selectivity are developed in Binder 2017).

19 On the one hand, ethical foreign policy clearly has its appeal. As Chandler notes, to the unreliable narrator there are three advantages attached to the advancement of an ethical foreign policy: (1) the object of criticism is clearly identified as the foreign government, (2) there is an assumption that the hero role will not be held very accountable for 'matching rhetoric to international actions', (3) credit can be taken for a positive outcome, but blame for a negative outcome can be cast on the villain state (Chandler 2003, 303). On the other hand, the existence of domestic support and the link to national interests are crucial factors for leaders. In the Syrian debacle, President Obama was denounced as an unreliable saviour-narrator. At the same time, he openly admitted that 'there are going to be times where our security interests conflict with our concerns about human rights. There are going to be times where we can do something about innocent people being killed, but there are going to be times where we can't' (quoted in Hannum 2019, 150). There is thus an inherent unreliability in any specific story of humanitarian intervention.

20 Indeed, this becomes even more apparent when we examine more closely the ghost of just war haunting humanitarian intervention narratives. Given the similarity of the ICISS principles with the traditional just war criteria, these considerations apply broadly to humanitarian intervention in its original and new guise of R2P (Brunnée and Toope 2004, 383–384). It has been shown that the 'just cause' of intervention has been given centre-stage in the drama of humanitarian intervention. Yet, 'just cause' is not the *primus inter pares*, although the discourse reflects that there tends to be a relative neglect of the other just war principles; namely, legitimate authority, right intention, last resort, proportionality, and reasonable prospect of success (for a reminder of the criteria mentioned above, see Coady 2002, 19). As some authors point out, finding a semi-convincing just cause reflecting an apparent right intention might be the least challenging task for the unreliable narrator, whereas proper authority as well as an argument that it was the last resort can often be drawn from Security Council authorization, UN endorsement or from a regional organization (Brunnée and Toope 2004, 379). Political rhetoric emanating from governments often mixes various cases which on their own would have been insufficient to justify war in legal terms (for example security with humanitarian concerns), yet the totality is accepted as reaching the threshold necessary for public approval (Brunnée and Toope 2004, 389). Right intention aiming for justice is notoriously difficult to ascertain, although I have already mentioned that the purpose of punishment is problematic given its proximity to revenge (revenge is explicitly excluded as right intention, see Coady 2002, 19). The element of legitimate authority has been discussed above. The most doubtful are the elements of proportionality and likelihood of success. This simple statement goes to the core of the problem: 'If just war is evoked, those evoking it should stay within the framework they have endorsed' (Elshtain 2001, 13).

21 We have discussed how avoiding the terminology of 'humanitarian war' can already be an attempt to sway the audience in favour of intervention. This cannot distract from the fact that any use of force, regardless of its purported justness, needs to comply with international humanitarian law. As Hugo Slim writes, war is judged twice by the audience: once in relation to the justness of the cause, a second time in terms of whether it has been 'fought justly' (Slim 2001, 327). Even though there should be no confusion between the justice of the resort to war (*jus ad bellum*) and the just conduct of the war (*jus in bello*), humanitarian intervention seems to blur this separation in dangerous ways.

22 The intervention in Kosovo is a case in point. There is an argument to be made that the exaggerated rhetoric partially constructed the just cause for intervention (Hannum 2019, 121). The International Commission even admitted that the rationale for military intervention by NATO did not rely directly on the 'immediate scale of humanitarian catastrophe, but rather on a weaving together of past experiences and future concerns' (Independent International Commission on Kosovo 2000, 159). Although Phelan's taxonomy of unreliability does not foresee such a category (a reminder of the taxonomy: 2005, 31-65), I would suggest that such 'overevaluating' or 'overreading' could provide additional grounds for unreliability.

23 International humanitarian law, mainly through AP I, protects civilian objects and civilians against the effects of active hostilities (Kolb and Hyde 2008, 126ff). Noncombatant immunity is part of the proportionality element of just war and is sometimes even considered a separate just war condition. Even if the initial resort to

force in Kosovo could be justified, the same cannot be said for the conduct of the operation, due to the bombing of dual-use objects[6], the use of cluster bombs and the strategy of high-altitude bombing (Heinze 2006, 29). There was not a single NATO casualty, yet approximately 500 civilians were directly killed by the allied bombing campaign (Hannum 2019, 122). The media might have deplored the effect of bombing on noncombatants, but the just war framework requires that attention be given to the long-term effects of these actions as well. Most problematically, the self-interest exposed by shielding the saviour state's soldiers shows intranarrational unreliability. As one critical American commentator rightly notes, there was an insufficient attempt:

> to meet the strenuous demand of proportionality; rather, we violated the norm of discrimination in a strange upended kind of way, namely, by devising a new criterion: *combatant immunity*, as our combatants ranked higher in consideration than did non-combatant immunity for Serbian – or Albanian Kosovar – civilians. (Elshtain 2001, 16-17)

24 NATO denied this, calling the civilian deaths acceptable 'collateral damage' not violating the principles of proportionality and precaution in attack.[7] On the other hand, Amnesty International condemned the acts as unlawful killings and clear violations of IHL (Amnesty International 2000). The idea of 'riskless warfare', expressed in President Clinton's wish to conduct a 'no casualty' or 'no cost' war (Elshtain 2001, 18), sacrifices coherency and what James Pattison calls local and global external effectiveness in order to preserve internal effectiveness (for a reminder of what these notions entail, see 2008, 13-14). According to this logic of effectiveness, which relates to the probability of success, NATO not only violated international law, but also the moral criterion by which legitimacy is judged (the fidelity to *jus in bello* is also part of the legitimacy test, according to Pattison 2008, 398). There is an internal contradiction in the narrator's own language if it is claimed that the campaign aims to defend the equal value of each human being, yet there is asymmetrical value is given to human life – there is an 'incompatibility between the morality of the ends, which are universal, and the morality of the means, which seem to privilege a particular community' (Kahn 1999, 4). And somehow, this seems to have been accepted by those institutions which ought to judge all actors according to the same legal standards:

> Despite nominal consensus on the dualistic axiom, international law tends to tolerate more incidental civilian harm ("collateral damage") if the alleged *causus belli* is... formally illegal but still perceived as legitimate, meaning that it furthers broadly shared international values: preserving minimum order, halting human rights atrocities, and so forth. (Sloane 2009, 55)

25 It seems that *jus ad bellum* considerations crept into the realm of *jus in bello*, resulting in the impression that humanitarian war places the hero nations beyond the equal application of law and endowing them with impunity (Banta 2017, 432). Taken to the extreme, this might mean that civilian casualties will be more, not less, permissible, in that it 'allows for their portrayal as accidents rather than violations of humanitarian norms' (Banta 2017, 433). For example, despite convincing evidence to the contrary, the Prosecutor's report of the International Criminal Tribunal for the Former Yugoslavia concluded that there was no basis to open a criminal investigation into any aspect of the NATO bombing campaign against the FRY (Amnesty International 2009).

26 These aspects heighten the risk that the victims will be re-victimized, while the saviour-narrator will be allowed to continue to speak humanity-infused rhetoric with internal contradictions. In effect, the actual essence of just war theory – meaning its

restrictiveness, its warning to be cautious – is misconstrued and abused as a permissive license for the use of force (Coady 2002, 18). At the same time, the saviour regularly does not accept that the consequences of a potential negative outcome are his to remedy. In cases of intervention for ethical ends, there is not enough moral or legal pressure to account for final policy outcomes (Chandler 2003, 309). Chandler (2003, 309) correctly stresses that the 'belief that it would have been even worse without international action provides a hypothetical *post facto* justification that is difficult to disprove'. Although rhetoric had elevated the Kosovar refugees to symbols of humanity – an image which should as a matter of consistency apply to all refugees stemming from all crises – governments are notoriously reluctant to admit refugees to their own countries after intervening, as the Syrian case powerfully shows (Orford 2003, 203).

27 Another example of a privileged treatment for the saviour-narrator's own state, and of asymmetry, is the fact that the crumbling of the non-intervention principle and the institution of a conditional sovereignty is considered laudable in comparison with the villain state, but not admissible for the hero state itself. In the humanitarian intervention narrative, 'Western imperialism operates to sustain and reinforce itself and its powerful states as sovereign, and legitimate, still bounded and impermeable behind their fortresses, while applauding the permeability and dissolution of others' (Denike 2008, 101).

Lack of transparency

28 Transparency is a crucial dimension of a narrator's reliability. Still, transparency is difficult to find in the narrative of humanitarian intervention. For example, heroic tales tend to place blame squarely on the villain state, evading any suggestion that the intervening states or the international community might have had a role to play in constituting or contributing to the crisis (Orford 2003, 176). This 'erasure of the violence of the international community' is also embodied in the refusal to provide official body counts of the killed and injured in the humanitarian campaign, which borders on censorship (for examples of this in Iraq and Kosovo, see Orford 2003, 190-91). NATO often invokes the image of a clean war conducted with high-tech weapons, implying that 'our violence is clean and surgical, while their violence is cruel and destructive' (Orford 2003, 191). If the story were truly to be told from the victim's perspective, it is highly doubtful whether they would agree with this.

29 Another example of unreliability in terms of transparency and consistency is how the US framed the Kosovo intervention as an exceptional situation *sui generis*, in a clear attempt to deny the intervention the value of precedence (Chesterman 2011, 281). But how exceptional was the situation in the Balkans really, compared to other situations of massive abuse of human rights? How different can they be in the eyes of the suffering victims around the world, on whom the focus is claimed to be? It seems more that it is about the saviour who wants to be selectively heroic and wishes to preserve rhetorical and legal flexibility. The result is that there are thus 'states willing to engage in, or tolerate, a one-off (or two-off) exceptional breach of Article 2 (4) of the Charter for some other political or moral considerations, but unwilling to modify the law for the future as a general matter' (Milanovic 2018). Following Ian Johnstone's (2011, 41-45) concentric model described above, demands for legal justifications regarding humanitarian intervention have been voiced by the outer circle of the wider audience.

However, these have only rarely been met by the government officials forming part of the inner circle, impacting their perceived reliability (for a more successful example of such advocacy, see Windsor 2015, 762). To borrow from Windsor, 'The interplay between secrecy and transparency has a significant bearing on the identification of unreliable narration, whether cast in terms of underreporting, or internarrational or extratextual unreliability (Windsor 2015, 762). Disclosure is a means for the audience to check the political neutrality, factual correctness and comprehensiveness of the legal position put forward by the executive branch. This is linked to a 'duty to explain', which Koh considers an important transparency norm that places an obligation on governments to explain to the public the international legal basis for their actions – a duty that the Clinton administration in Kosovo and the Obama administration in Syria clearly failed to fulfil when they did not articulate a clear legal rationale (Koh 2015, 980).

30 In practice, the duty to explain appears to be a myth, because 'actual practice appears to favour a "secret life of international law", where the legal advice that informs decision-making is seldom visible outside government', apart from the UK, which expressly relied on humanitarian intervention from Northern Iraq to Syria (Windsor 2015, 764). The British government's position proposes three general conditions for a humanitarian intervention: (1) convincing evidence of extreme humanitarian distress on a large scale, (2) no practicable alternative to the use of force must be available and (3) force must be strictly proportionate and necessary (a summary of the UK government's legal positions in 2013 and 2018 as regards Syria can be found here: Foreign Affairs Committee 2017, 3-4). Despite this transparency, the conditions are quite flexible, and although they attempt to infuse the test with an appearance of objectivity, the subjective element in their determination seems clear (for a critique of these UK criteria, see Milanovic 2018). Unreliable narration can also be a product of a consistent clash between the views of other characters and the narrator, such as the unconvincing proposition of the UK that humanitarian intervention is an established principle of customary law. However, as we have seen, there is a strong case to be made that international law does not permit states to use force on the territory of other states for humanitarian ends, which remained unchanged by the R2P doctrine (for more on this, see Akande 2018). Indeed, given the proximity of R2P to the six just war principles, it seems like the UK left out three of them in their legal justification on Syrian airstrikes: right intention (since the primary goal was not the purpose of protecting civilians, but enforcing the chemical weapons norm), reasonable prospects of success (which the proposed mandate seemed to lack) and right authority (R2P does not foresee a right to act unilaterally, only collectively) (Carpenter 2013). This bolsters the claim of those who argue that R2P continues to function as an excuse for violence when need be, and exposes those who claim that the R2P-enabled overreaction in Libya should merely be seen as the 'invitable toothing troubles' of any 'new' international norm (Banta 2017, 432). In addition, the UK assumed the role of active hero and falsely seems to present the choice as one between action and complete inaction – a choice which need not be made, because there are other options. However, the failure in Rwanda is a powerful memory of what can happen if nobody intervenes, fuelling this false dichotomy between presence and absence and making it appear as if it were better for states to take action, even if it might do 'some harm', rather than to do nothing (Tesón 1995, 342).

31 The failure to provide a clear legal rationale for American actions can probably be partially explained by a fear of providing a framework which other states could evoke to justify humanitarian intervention as well. However, the argument can be turned on its head: threatening or engaging military action for humanitarian purposes without providing a detailed legal basis might set an equally dangerous precedent, so that 'less-humanitarian-minded states can cite President Obama's 2013 threat to put their own broad spin on the legal interpretation, using the murky concepts of humanitarian intervention and R2P for their own self-interested purposes' (Koh 2015, 1003). In this sense, clear legal criteria – see for example the list suggested by Koh[8] – might constrain the use of force, because it would place a justificatory burden on the government according to the established criteria, while at the same time giving other actors on stage and the audience a more precise benchmark against which their supposedly humanitarian actions might be judged (Wheeler 2005, 100-101). Critics of the R2P doctrine continue to underline how malleable the notion still is, since it arguably fails to establish clear boundaries and can be instrumentalized (Rudolf 2013, 8). Hence, R2P is not a more perfect 'rules based' frame for humanitarian war, able to constrain the unreliable narrator, and neither is humanity law.

32 Humanity law holds the promise of protecting the innocent and giving victims a legal tool to articulate their claims. Teitel suggests that the minimalism inherent to humanity law allows all actors to agree on it, but she admits that the minimalist and depoliticizing value of protection is also used to justify interventions (Leebaw 2014, 271). Still, although humanity law can serve as an alibi, Teitel stresses that humanity rights simultaneously 'insist on *jus in bello* limitations and evaluate the justness of war in relation to its claims to protect civilians', thus creating limits on its own inherent risk of manipulation (Leebaw 2014, 272). It seems like two souls live in the same body of humanity law: one operating to justify intervention for humanitarian reasons, the other dedicated to limiting intervention 'through the same humanitarian logic' (Teitel 2011, 83). There is some truth to the assertion that humanitarian wars are now also judged by their outcome, notably their impact on the civilian population (Teitel 2011, 101). Yet the preceding arguments hopefully show that one tendency will overshadow the other, that the same logic sways more forcefully in the direction of one of these poles in most situations, and that these spirits cannot cohabit without problems. As one commentator of Teitel's work puts it:

> Although humanity rights are defined in relation to the goal of preserving human life, then, the protections found in the convergence of human rights and humanitarian law are not only minimalist but also fragile or tenuous, as compared with those found in the broader human rights framework. For this reason... the merging of international humanitarian law and international human rights law will function to *decrease* basic protections by moving away from the stronger protections outlined in the human rights framework. (Leebaw 2014, 273)

33 If the human rights framework is already capable of being manipulated for the purposes of the unreliable narrator, then the quote above would suggest that humanity law is even more prone to such abuse. Even worse, the discourse based on this conflation inherent in humanity law could be designated '"folk international law", a law-like discourse that relies on a confusing and soft admixture of IHL, *jus ad bellum*, and IHRL to frame operations that do not, ultimately, seem bound by international law' (Modirzadeh 2014, 225-26). The concept of protection might arguably be found in IHL,

just war and international human rights law, yet it can be used by numerous actors for diverse strategies – among them unreliable narrators.

FOOTNOTES

1. Using the example of ethnic cleansing in Kosovo, Rorty shows how the Serbs considered the Kosovar Albanians to be pseudo-humans whereas the democracies intervening in turn tended to view the Serbs as 'animals': Rorty 2011, 112–113.

2. Dawes 1999, 223; referring Blanchot 1986.

3. The idea of inheritance can be found in McClennen and Slaughter (2009), 3.

4. For a historical account of this punitive aspect, dating back to Grotious, see Geyer, 2016, 35ff, quote at page 40.

5. Quote referenced in Brunnée and Toope 2004, 366.

6. The definition of military objectives can be found in art. 52 (2) of AP I. Dual-use objects are objects which serve both civilian and military purposes, see Kolb and Hyde 2008, 132.

7. Art. 51 (5)(b) AP I; for more on these issues see Kolb and Hyde 2008, 136–137.

8. 'To be credible, the legal analysis of any particular situation would need to substantiate each of these factors with persuasive factual evidence of: (1) Disruptive Consequences likely to lead to Imminent Threat; (2) Exhaustion; (3) Limited, Necessary, Proportionate, and Humanitarian Use of Force; (4) Collective Action; (5) Illegal Means; and (6) Avoidance of Illegal Ends', see Koh 2015, 1011.

6. A drama without resolution

> Or, later, the knight grows up and looks back with sad wisdom on what once seemed so daring, so bold. (Kennedy 2009, 100)

1 This is the second half of the quote used in the introduction to present the drama of humanitarian intervention. It points to a trajectory of maturation of the saviour, an evolution from unreliability towards reliability, which presupposes self-reflection. It would assume that the hero understands that narratives have the ability to simultaneously 'strip away and create humanity and inhumanity' (Windsor 2015, 767). However, it is questionable whether the hero can live up to these expectations. But maybe, we can.

2 Normally, a conclusion summarizes the main arguments and drives home the critical points. However, I think it has become quite apparent what I have grown to believe throughout this process of spilling ink. The drama of humanitarian intervention unfolds in a world where morality, politics and law collide – there is no clear-cut resolution or conclusion. There continues to be struggles over the control of the narrative, vacillating between the extreme poles of rejecting the idea of humanitarian intervention outright as an oxymoron inviting deceit and glorifying it as heroic and compassionate altruism that shows a will to incur risks to save the victims without gains (Heraclides and Dialla 2016, 1).

3 In contrast to the traditional approach, I would rather ask what *you* have learned. The notion of humanitarian intervention might intuitively appear admirable, yet appeals to it should not 'lull our critical faculties to sleep' (Elshtain 2001, 24). The goal of this paper has been to provide indices for unreliable narration, although it should be clear that no state or organization is always unreliable. My intention was not to forever cast the hero in the constraining villain role, but to point to rhetorical contradictions which neither human rights nor humanity law are able to solve.[1] In a sense, both constitute meta-narratives based on humanity, which are blind to their own narrative aspects and fail to question their own supposed neutrality and inherent paradoxes. Unreliability is always contextual, perspectival, subjective and purposeful, which also has a clear impact on which legal position is advanced. George Lakoff writes that 'metaphors can kill' (Lakoff 2003). But what do they kill? Probably many of the innocent civilians the operation shrouded in just-war terms was meant to protect, but also our critical

thinking when the unreliable narrator uses rhetoric which artfully triggers cognitive frames and meta-narratives, promising an era of human rights for everyone. I have criticized the idea that the story ends up being more about the saviour than about the victim of human rights abuses, who claims that he can bridge the gap between the 'ideal and real'.[2] But it is also about us. What makes a narrator unreliable for you? Is it rather a question of legitimacy than legality, as I have suggested? Do you agree that intervention narratives do not principally operate in the realm of state systems, rational facts or law, but rather in the 'realm of identification, imagination, subjectivity and emotion' (Orford 2003, 159)?

4 *The moral of the story is: Stay awake and critical.*

FOOTNOTES

1. For example, it seems that sometimes the US is used as a scapegoat for failures of the international community.

2. The title for the final chapter of this paper is inspired by Slaughter 2009, 3.

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