



Shooting to Kill: The Ethics of Police and Military Use of Lethal Force

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Humanitarian Armed Intervention

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Abstract and Keywords

In this chapter it is argued that humanitarian armed intervention in relation to large-scale human rights violations is in some cases morally justified (e.g., the Rwanda genocide), and that intervention is best understood as a collective moral responsibility. Moreover, collective moral responsibility is to be understood as the joint moral responsibility of individual human actors. Here two notions are utilized: multilayered structures of joint actions and joint institutional mechanisms. It is further argued that humanitarian armed intervention can, at least in principle, be morally justified in the case where there is large-scale violation of (basic) *positive* rights (e.g., subsistence rights). This is the case, even if it is held that a single individual would not be morally justified in using lethal force against someone violating his or her (basic) positive rights. The critical difference is the scale of the rights violations.

Keywords: humanitarian armed intervention, collective moral responsibility, joint omissions, positive rights, layered structures of joint action, joint institutional mechanisms, Rwanda genocide

IN RECENT DECADES there have been a number of humanitarian armed interventions¹ by nation-states in conflicts taking place within the borders of other nation-states.² One thinks of Bosnia, Kosovo, Sierra Leone, Somalia, Rwanda, East Timor, Libya, and, most recently, Iraq (against ISIS). In some instances, such as Rwanda, armed intervention was evidently morally justified; however, the armed forces deployed were inadequate and/or arrived far too late. In other instances, such as Kosovo, armed intervention might have been justified and timely, but the force deployed was arguably excessive, or at least of the wrong form.³ In still other cases, such as in response to the large-scale atrocities

being committed by ISIS in Syria and Iraq, it **(p.213)** is unclear what form humanitarian armed intervention should take and who should take it, but it is indisputable that humanitarian intervention is required, and that it needs to be an armed intervention if it is to succeed.

8.1 Justifiable Humanitarian Armed Intervention

The first general point to be made here is that at least *some* humanitarian armed interventions are morally justified. Consider the case of Rwanda. According to Fergal Keane, in Rwanda, after the deaths in a plane crash of the Rwandan and Burundian presidents on April 6, 1994, an orchestrated program of genocide took place: “In the ensuing 100 days up to one million people were hacked, straggled, clubbed and burned to death.”⁴ The genocide in Rwanda—and like cases—constitutes a decisive objection to the claim that humanitarian armed intervention is *never* morally justified. Moreover, cases such as East Timor appear to demonstrate that humanitarian armed intervention can be successful. On the other hand, the experience of cases such as Bosnia shows that even if armed intervention is justified, the situation on the ground needs to be adequately understood if that intervention is to be successful. Evidently, the United Nations failed to understand that the war in Bosnia was in large part genocidal and directed at the civilian population. So interventionist methods aimed only at keeping groups of combatants from getting at one another were inadequate; such methods cannot and did not protect the civilian populations.⁵

The second general point concerns the nature of the justification. The fundamental justification for humanitarian armed intervention is that genocide, or other large-scale human rights violations, are taking place, and armed intervention is the only way to put an end to it. This is a moral justification. So also are the justifications offered by the United States and its allies in relation to the 2003 Iraqi invasion, namely the so-called “weapons of mass destruction” (WMD) and “regime change” arguments.⁶ The prevention of the use of nuclear, chemical, and biological weapons is self-evidently a moral imperative. But the “regime change” argument was **(p.214)** presented principally in terms of the cessation of Saddam Hussein’s ongoing violation of the moral rights of the Iraqi people.

Perhaps there can be decisive political or military justifications for armed interventions. Moreover, such nonmoral justifications are not necessarily inconsistent with moral justifications. Indeed, in some cases the political and military justifications are themselves ultimately underpinned by moral justifications. For example, arguably, the nature of the polity being put in place by ISIS in its so-called caliphate is in itself so morally repugnant in human rights terms as to warrant humanitarian armed intervention independent of considerations of the narrow political and purely self-defense interests (e.g., in respect of ISIS-inspired terrorism) of the extant Iraqi state, the United States, the Gulf states, and so on. In still other cases, armed intervention might be

politically expedient as well as being morally justified. Some have argued as much in relation to the 2003 invasion of Iraq and overthrow of the Saddam Hussein regime.⁷ In practice, armed interventions are likely to be motivated by a complex mix of moral, political, military, economic, and other considerations. However, my point pertains to good and decisive justifications: I claim that the *fundamental* (good and decisive) justification for *humanitarian* armed interventions, in particular, is a moral justification.

Here, as elsewhere, moral justifications can be weakened or strengthened by legal considerations. Nevertheless, it is important to stress that an action can be morally justified, all things considered, notwithstanding that it is unlawful. Many types of unlawful activity aimed at undermining authoritarian states, such as peaceful demonstrations or supporting banned political organizations, illustrate this point. And I take it that humanitarian armed intervention in Rwanda, for example, was morally justified—if not morally obligatory—even if it would have been in breach of international law (as in fact was presumably not the case). As it happens, I take it that post-2001, the so-called doctrine of the Responsibility to Protect (R2P) has strengthened the legal hand of would-be interveners at the expense of state sovereignty, albeit the legal issues here are complex and outside the scope of this work.⁸

Granted the existence of an acceptable general moral justification for humanitarian armed intervention in terms of the prevention of large-scale **(p. 215)** violation of human rights (notably, genocide), at least four further questions arise. First, should the armed intervention be undertaken by any nation-state or states that happen to have the wherewithal to prosecute it successfully, or should it be undertaken only with the participation, or at least consent, of the international community? Second, should the notion of large-scale human rights violations be a very narrow notion, and therefore restricted to, say, genocide, or should it be relatively wide, and embrace, say, authoritarian rule? Third, should the intervention go only so far as to terminate the rights violations that triggered it, or should it involve taking preventative measures in relation to possible future rights violations by the perpetrators, or indeed by the erstwhile victims?⁹ Fourth, what form should the armed intervention take? For example, should aerial bombing—as opposed to, say, the use of ground troops—be the principal tactic?

My own view in relation to the first question is as follows: The moral responsibility to intervene is a collective moral responsibility. In particular, it is the collective responsibility of members of the international community, and therefore of the members of their governments and of other relevant individual human actors, to combat large-scale human rights violations taking place inside states whose governments are unwilling or unable to terminate those rights violations. Indeed, the internal government might be the one perpetrating the rights violations, as in the case of the Assad government in Syria at the time of

this writing. Moreover, broad-based, multilateral interventions are less likely to serve the interests of any one nation-state, or small group of states, and are therefore more likely to be motivated by genuine humanitarian, rather than purely political, considerations. Nevertheless, since the moral priority is to bring about the cessation of the rights violations—rather than merely determine who ought to be the one or ones to terminate it—unilateral intervention might be justified in cases in which the international community is unwilling to act. Here I am setting aside the admittedly relevant issue of the legality of unilateral interventions, which is a central concern in relation to, for example, the invasion by US-led force of Iraq under Saddam Hussein.

In relation to the second question, I hold that the understanding of large-scale human rights violations should be narrow, in that it should **(p.216)** involve only large-scale moral rights violations of the most morally egregious kind; specifically, large-scale violations of rights to properties constitutive of selfhood. Genocide, ethnic cleansing, and enslavement of populations are perhaps the most obvious examples of this. Here I distinguish, first, between rights violations and injustice. Injustice does not, I suggest, provide an adequate justification for armed intervention. Second, I distinguish—admittedly somewhat arbitrarily—between violations of rights to properties constitutive of selfhood (e.g., right to life) and violations of rights to properties not thus constitutive (e.g., voting rights). The former, but not necessarily the latter, justify armed intervention. Thus genocide, but not necessarily authoritarian governance, justifies armed intervention.¹⁰

However, the appropriate notion of large-scale human rights violations is wide in the sense that it should not be restricted to violations of so-called negative rights, such as the right not to be killed, but also some positive rights, such as the right to a basic subsistence. Consider the case of an autocrat who, for political purposes, was deliberately refraining from the provision of basic medicine and foodstuffs to some needy element in his country.¹¹ In such a case, there might be an in-principle justification for armed intervention. Why armed intervention? Because the nation-state in question is refraining from providing for the subsistence rights of its citizens.

In relation to the third question, I hold that interventions, where possible, should be preventative, and therefore should not necessarily be restricted to the termination of occurrent rights violations. I acknowledge the dangers attendant upon permitting intervention in relation to future, and therefore only potential, human rights violations. The 2003 US-led invasion of Iraq under Saddam Hussein proved to be a telling example of such dangers. For it turned out that Saddam Hussein did not have the arsenal of WMDs that the United States and United Kingdom leadership led the world to believe he had.

(p.217) Nevertheless, where a process of large-scale human rights violations has commenced, then intervention is justified, at least in principle. Moreover, where it is clear, post-intervention, that the process of rights violations would recommence, were the intervening armed forces to retire, then the continued presence of the intervening armed forces—jointly acting with civilians engaged in a program of reconciliation and reconstitution of civil society—might also be justified.

I cannot here give a definitive answer to the fourth question beyond endorsing in general terms the *jus in bello* principles of just war theory. These principles posit that the armed force used should be the minimum necessary force, that it should be proportionate, and that it should be effective.¹² It has been argued that if North Atlantic Treaty Organization (NATO) had used ground troops in Kosovo, then some of those ground troops would have been killed, but the extent of the death of civilians and the destruction of property would have been much less. If so, from the perspective of just war theory, NATO should have used ground troops—assuming armed intervention in some form was justified, because the lives of one’s own soldiers do not have a greater moral value than the lives of the innocent people one’s armed forces have been deployed to protect.¹³ A similar point might be made in respect of the armed intervention by the United States and its allies in the war against ISIS in Iraq and in respect of the civil war in Syria. Here I am assuming that providing combat troops in large numbers, or “boots on the ground,” would be effective, and that the prior question of the moral requirement to intervene militarily has been settled, bearing in mind that—as argued in Chapters 3 and 6—the institutional purpose, or at least the primary institutional purpose, of regular soldiers is to protect their own citizenry. I return to this issue below.

In this chapter I explore the notion of collective moral responsibility as it pertains to nation-states that are or ought to be engaged in humanitarian armed intervention in a variety of settings involving states or groups perpetrating large-scale human rights violations. I do so on the assumption that such interventions are the collective moral responsibility of the community of nation-states, and therefore of the members of their **(p.218)** governments and of other relevant individual human actors. I further assume that humanitarian armed intervention is a cross-border use of armed forces, or the threat of such use, by a state or states *primarily* for the purpose (though not necessarily the sole purpose) of protecting basic moral rights. So cross-border armed interventions undertaken primarily in order to, for example, expand one’s territory or sphere of political influence are not humanitarian armed interventions. Russia’s recent invasion of Crimea is a case of the latter, notwithstanding its claim to be protecting the rights of members of the Russian community therein.¹⁴

The current armed intervention against ISIS in support of Iraqi government forces on the part of the United States, Iran, and others is, or at least ought to be, a case of an humanitarian armed intervention, given that ISIS is intent on engaging in large-scale human rights violations, not only in the course of waging war, but also as an inherent feature of the form of governance it is seeking to impose in Iraq, Syria, and elsewhere.¹⁵

Humanitarian armed intervention can be undertaken with or without the consent of the government of the state whose border is to be crossed, and it can include direct attacks on the armed forces of that government, as well as the deployment of armed forces to protect safe havens, ensure that food or other aid is distributed properly, and so on.

8.2 Collective Moral Responsibility and Human Rights Violations

For my purposes here, I need to clarify the key notion of collective moral responsibility as it pertains to humanitarian armed intervention, building on the notion of collective moral responsibility introduced in earlier chapters. Let us remind ourselves what that or those notions were.¹⁶ As argued in Chapter 5, the basic suggestion is that collective moral responsibility can be regarded as a species of joint responsibility for actions and omissions; specifically, it is joint (prospective or retrospective) moral **(p.219)** responsibility for morally significant joint actions and omissions and their foreseeable and avoidable morally significant outcomes. In this connection I distinguished between natural, institutional, and moral responsibility. Moreover, the joint “actions” in question can operate at a number of individual and collective levels. Here the notion of a layered structure of joint actions introduced in Chapter 3 is salient. Let us work through some examples of humanitarian armed intervention, beginning with the collective (retrospective) moral responsibility of perpetrators of large-scale serious rights violations.

Consider the perpetrators of basic rights violations against the Tutsis in Rwanda, the so-called Interahamwe and the Rwandan army. According to Fergal Keane, the genocide in Rwanda was a premeditated collective enterprise.¹⁷ From 1990, thousands of ordinary Hutus were organized into citizen militias (Interahamwe) by the Rwandan army under the directions of Rwandan Hutu government leaders, including President Juvénal Habyarimana. (Rwanda was a one-party state governed by the MRND (National Revolutionary Movement for Development), led by the president. Lists of Hutus were compiled on the basis of identity cards; an identity card system having been put in place in 1926 during the Belgian colonial period. At a prearranged moment—the above-mentioned shooting down of the plane transporting the Rwandan and Burundian presidents in 1994—the Interahamwe went on their genocidal rampage against Tutsis.

Clearly, each individual who committed murder is individually morally responsible for that murder. However, there is an additional dimension of

collective moral responsibility. This dimension arises in virtue of the overall (morally significant) collective end of the organized murder of Tutsis; namely, genocide. Evidently, many, if not most, of the individual murders were committed (at least in part) as a means to an overall collective end—the elimination of all Tutsis in Rwanda. Moreover, the genocide, or, at least, partially successful genocide, relied on the coordinated action of organized groups, each group realizing some proximate collective end in the service of the larger collective end of genocide, so that there was a layered structure of joint action. Accordingly, perpetrators were jointly, and therefore collectively, morally responsible for genocide (or near-genocide). The nature and extent of the contributions of individual members of the Interahamwe, and their leadership, to this collective end of genocide varied. For example, some assisted by identifying individuals **(p.220)** as Tutsis, but without actually taking anyone's life. Perhaps those in subordinate positions have diminished moral responsibility relative to their superiors. Moreover, no single individual member of the Interahamwe, with the possible exception of the key members of the leadership, can be held *fully* morally responsible for the genocide. Nevertheless, none can escape some share and degree of moral responsibility for the realization of the collective end to which they intentionally contributed. As for the key members of the leadership, each might be held fully morally responsible (jointly with the others) for the genocide depending on the degree of control they exercised over the membership. Again, consider the murder of 8,000 Muslim men by Serbian soldiers in the UN designated "safe area" of Srebrenica in Bosnia in July 1995.¹⁸ The Serbian forces bombed and then took the town of Srebrenica, after NATO had failed to support the UN force "protecting" the town. The Serbian soldiers then hunted down and murdered any Muslim men that they could find. Here was planned and orchestrated ethnic cleansing and mass murder in the service of ethnically pure territorial units and Serbian nationalism. There was joint action at a number of levels; indeed, there was a layered structure of joint action. However, let us consider the alleged actions of the members of a group of soldiers on the ground, who were allegedly dressed as UN peacekeepers and driving stolen white UN vehicles. These Serbian soldiers guaranteed the Muslim's safety. They would then shoot them.¹⁹ This is joint action. Some soldiers are driving the vehicle, while others are looking for Muslims; then some of the Serbian soldiers are talking to the Muslims to convince them that they are safe. Finally, some of the Serbian soldiers shoot the Muslims dead. The soldiers coordinated their individual actions in the service of a collective end. Each performed a contributory action, or actions, in the service of the collective end of bringing about the death of the Muslim men.

Here again, it is important to note that each agent is individually (naturally) responsible for performing his contributory action, and responsible by virtue of the fact that he intentionally performed this action, and the action was not intentionally performed by anyone else.²⁰ Since the **(p.221)** individual actions

in question were morally significant, each agent is morally responsible for his action. Moreover, on my account, to say that they are collectively (naturally) responsible for the realization of the collective end of a joint action is to say that they are *jointly* responsible for the realization of that end. Again, since the collective end in question was morally significant, the agents who realized it were collectively *morally* responsible for this outcome.

What of institutional responsibility (both individual and collective), as opposed to natural and moral responsibility? The members of military and police organizations do not have an institutional, let alone a moral, responsibility to engage in large-scale human rights violations, even if they are directed by those in authority to do so. It might be argued against this that some large-scale human rights violations have been institutionalized, and are even lawful, and that therefore the relevant institutional actors had an institutional obligation to perpetrate them. For example, some of the large-scale human rights violations perpetrated by members of the apartheid regime in South Africa, and some of those perpetrated by the Nazis under Hitler, were lawful. The case of ISIS in Iraq and Syria is less clear-cut, notwithstanding the claim of members of ISIS to have established a legitimate state under Sharia law: the so-called caliphate. For, unlike South African under apartheid and Germany under the Nazis, ISIS is at this time essentially a nonstate actor, albeit one occupying territory and attempting to set up a new state (or quasi-state). However, there is no question that ISIS has organizationally embedded practices consisting of large-scale human rights violations (e.g., enslavement of women, murder of Christians).

Arguably, the various rights-violating laws enacted by the South African apartheid regime and by the Nazi regime in Germany were inconsistent with the underlying institutional purposes of, respectively, the South African and German military and police forces in question. If so, then arguably the institutional actors in question did not have an institutional responsibility or obligation to perpetrate these human rights violations. Or perhaps they simply had competing organizational responsibilities. Moreover, it is presumably the case that the egregious rights violating practices of ISIS are inconsistent with Islamic law (Sharia),²¹ and, therefore, with the institutional purposes of military and police forces that are properly compliant with Islamic law.

(p.222) At any rate, on the normative teleological theory of institutions (adumbrated in Chapter 3), there is a distinction between organizations and institutions.²² Organizations might have as a *de facto*, indeed defining, purpose to engage in human rights violations, but institutions, properly understood, do not have a *defining* institutional purpose to do so. This is because institutions, unlike organizations, are normatively defined in terms of collective ends, which are collective goods on my normative teleological account.

As was argued in earlier chapters, if the occupants of an institutional role (or roles) have an institutionally determined obligation to perform some joint action, then those individuals are collectively responsible for its performance, in the sense of bearing collective institutional responsibility. Moreover, as is the case with individual responsibility, collective responsibility has a prospective or forward-looking sense and a retrospective or backward-looking sense (see Chapter 5). Since collective institutional responsibility is a species of joint responsibility, it implies the existence of a joint institutional obligation—an institutional obligation each individual has jointly with the others. If each individual discharges his or her institutional obligation, then the joint institutional obligation will have been discharged and the corresponding joint action performed. Moreover, if this institutional determined joint action is morally significant, then those who performed the joint action are, at least in principle, collectively morally responsible for the action (and, for that matter, its foreseeable and avoidable morally significant outcomes).

As emphasized above, institutional responsibility sometimes exists in the context of a relation of authority. If the occupant of an institutional role has an institutionally determined right or obligation to command other agents to perform certain actions, and the actions in question are joint actions, then the occupant of the role may well be *individually* (institutionally) responsible for those joint actions performed by his or her subordinates, and the subordinates might not have any institutional responsibility. If so, this is not an instance of *collective* institutional responsibility per se. On the other hand, as we saw above (Chapter 3, section 3.1) the relationship between a superior and subordinates may involve a second-order joint action that consists in coordination of the first-order joint action of the subordinates. In such cases, the superior and the subordinates act jointly in order to realize a collective end (coordination of **(p. 223)** the subordinates' first-order joint action). Moreover, if the collective end is morally significant (e.g., by virtue of the coordinated first-level joint action being morally significant), then the superior and the subordinates may have collective moral responsibility for the realization of the collective end of the first-order joint action. Nevertheless, it does not follow that they have collective *institutional* responsibility for realizing this end.

Instances in which the institutional actions of those in authority are themselves joint actions belong to a somewhat different category. Consider the case of the members of NATO collectively deciding to exercise their institutionally determined right to direct NATO forces to bomb Kosovo and not to use ground troops. The British wanted to use ground troops, the Americans and others did not. The Greeks did not want the bombing of Serbian civilian targets. At any rate, "there was a clear and powerful majority in favor of air strikes."²³ Moreover, NATO ordered this action in the absence of a positive ruling from the UN Security Council. Accordingly, NATO forces bombed Kosovo. Hence the members of NATO are collectively institutionally and morally—given the moral

significance of this joint action—responsible for the bombing of Kosovo, and presumably, therefore, for untoward consequences in terms of loss of innocent civilian lives. They are also collectively (institutionally and morally) responsible for ignoring UN protocols.

There are a number of things to keep in mind here. First, the notion of responsibility in question is, at least in the first instance, institutional—as opposed to moral—responsibility. Second, the institutional responsibility in question is both prospective and retrospective. Third, the “decisions” of committees, as opposed to any given individual decision of a member of a committee considered on its own, need to be analyzed in terms of the notion of a joint institutional mechanism (see Chapter 5, section 5.4). So the “decision” of NATO can be analyzed as follows: At one level, each member of the relevant NATO committee voted for or against the bombing of Kosovo; let us assume that some voted in the affirmative and others in the negative. But at another level, each member of the NATO committee agreed to abide by the outcome of the vote; each voted having as a collective end that the outcome with a majority of the votes in its favor would be respected, and that the action voted for would be carried out. At still another level, if we presume that each member of the NATO committee had the institutional authority to bind the government **(p.224)** that each represented to a given course of action,²⁴ then the members of the NATO committee were acting as representatives of their respective governments, and these governments, in turn, acted as representatives of their respective nation-states. Accordingly, not only the members of the NATO committee, but also the members of their respective governments, were jointly institutionally responsible for the decision to order the NATO forces to bomb Kosovo. NATO was thus collectively institutionally responsible for bombing Kosovo, and the sense of collective responsibility in question is *joint* (institutional) responsibility.²⁵

This analysis reveals a number of layers of institutional responsibility: the institutional responsibility of the *human* members of the committee, of the various governments, and of the NATO armed forces who carried out the bombing operations. Moreover, since the bombing of Kosovo was manifestly morally significant, these various human members of NATO were collectively *morally* responsible for it. However, we need to be careful here, since moral responsibility, as we have seen in Chapter 3, does not precisely track institutional responsibility. In particular, institutional responsibility, including legal responsibility, can be properly ascribed to collective entities, such as governments, nation-states, and NATO per se; not so moral responsibility. As I have argued in detail elsewhere,²⁶ the latter attaches only to human beings, whether merely individually or jointly.

At this point the notion of a layered structure of joint actions needs to be utilized again. Let us work with another military scenario involving NATO to illustrate this. Consider the Croat forces attacking the Serbs in Knin in Croatia in Operation Storm on August 4, 1995. This was the **(p.225)** turning point in the Croat-Serbian confrontation.²⁷ The Croat forces included artillery as well as ground troops. However, they were supported by the NATO air force that bombed Serbian communications systems, thereby greatly facilitating the progress of the Croat ground forces. So there was the Croat artillery, the Croat troops, and the NATO air force, and each performed a different joint action; namely, the actions of shelling the town (the artillery), overrunning and occupying the town (the ground forces), and destroying the communication systems (the air force). However, each of these joint actions is describable as an “individual” action that is a constitutive element of the larger joint action directed to the collective end of winning the battle against the Serbian forces. Moreover, winning this battle was a morally significant action by virtue of its collective end presumably being a moral good (even if not an unqualified good). Accordingly, we can, at least in principle, ascribe collective (joint) moral responsibility for winning the battle to the individual pilots of the NATO air force and to the individual members of the Croat army.²⁸

As we saw above, a similar analysis in terms of a multilayered structure of joint action is available in relation to the organized genocidal attack of the Interahamwe in Rwanda. However, unlike in the Croat-NATO scenario, the members of the Interahamwe were collectively morally responsible for evil rather than good.

The upshot of this discussion is that human agents involved in complex morally significant cooperative enterprises involving large numbers of agents, such as military campaigns or orchestrated programs of genocide and ethnic cleansing, can *at least in principle* be ascribed collective (i.e., joint) moral responsibility for the outcomes aimed at by those enterprises. This conclusion depends on the possibility of analyzing these enterprises in terms of the notion of multilayered structures of joint action and, in some cases, joint institutional mechanisms. Moreover, it follows **(p.226)** that there is no need to ascribe *moral* responsibility to collective entities, such as institutions, per se. However, as already mentioned, institutional responsibility can be ascribed to collective entities per se, (e.g., the legal responsibilities of nation-states). Accordingly, I am not claiming that the notions of multilayered structures of joint action and joint institutional mechanisms ensure that all *institutional* responsibilities, as such, attach directly to individual human beings rather than collective entities.

8.3 Collective Moral Responsibility to Intervene

Let us now turn to the collective moral responsibility to intervene, and specifically to intervene in cases of egregious moral rights violations conducted on a large scale. As already noted (see Chapter 1), Shue has argued for the

existence of what he terms basic moral rights.²⁹ These include the right to security, and certain so-called positive rights, such as the right to subsistence. Shue argues that these basic rights generate rights to protection and assistance. In essence, they are a subset of natural rights and closely align with what I have been referring to as rights to properties constitutive of selfhood, so I will refer to them in what follows as basic natural rights or just basic rights. At any rate, let us accept Shue's arguments.

As we saw in Chapter 3, with the establishment of the nation-state, and specifically of policing institutions, the responsibility for protecting the natural rights of citizens and others within a polity has to a large extent devolved to the police. When these natural rights are threatened on a large scale by organized armed forces external to the polity, it is principally the military institutions of the state that bear the responsibility. So the members of the relevant state agencies—governments, police organizations, and military forces—have a collective (special) institutional and moral responsibility to protect and assist their own citizens when there are either internal or external threats to their basic natural rights. So far, so good, but what are we to say about cases in which the state is no longer willing or able to protect the rights to security of its citizens. Indeed, in some of these cases, the state is itself the source of the threat. The Rwandan genocide is one such clear case, the Assad government in Syria at the time of writing is another, albeit it is somewhat less clear, given **(p.227)** that the Assad government was responding to an insurrection demanding political rights primarily.

Shue has persuasively argued that the state has obligations other than the obligation to promote the interests of its citizens.³⁰ Specifically, the state has an obligation not to unduly harm citizens of other states. Examples of such obligations include the obligation not to attack other states purely for economic gain, the obligation not to deplete the ozone layer by destroying forests, and so on. Surely, this is correct. States or, at least, the human members of governments, security agencies, and, for that matter, ordinary citizens have qua human beings, individually and in aggregate, *natural* moral obligations not to unduly harm citizens of other states by virtue of the general natural obligation of all human beings not to unduly harm other human beings. However, I want to go further and suggest that the state or, at least, the members of its relevant security agencies not only have moral obligations (joint moral obligations) not to harm citizens of other states, but they also have collective (i.e., joint) moral responsibilities to protect the basic natural rights of citizens (and residents, etc.) of other states. These collective moral responsibilities give rise to particular joint moral obligations to assist when four general conditions are met: (1) the moral rights in question are rights to properties constitutive of selfhood, such as the right to life (i.e., they are basic natural rights); (2) the rights violations are occurring on a large scale; (3) the state in which rights violations are occurring is not willing or able to protect these rights and, indeed, in some cases may be

the perpetrator of violations of these rights; (4) the members of the security agencies of the external state (or states) in question are able to protect these rights, whether by unilateral organizational intervention, or jointly with the security agencies of other states and/or local or international nongovernmental organizations (NGOs).³¹ Moreover, these joint moral obligations are, in the first instance, simply the *natural* obligations writ large of third parties to bring about the cessation of rights violations (see Chapter 1). That is, they are not, at least in the first instance, *institutional* obligations of these institutional actors. Nevertheless, these individual institutional actors are human beings and, **(p. 228)** as such, have natural moral obligations. Importantly, the security organizations to which these individuals belong are, in fact, the only available means by which the cessation of the rights violations in question can be brought about. Hence they are the ones obligated. Naturally, these joint natural obligations need to be institutionalized if they are to be discharged efficiently and effectively. I take it that the establishment of UN peacekeeping forces and the enactment of legislation, such as RP2, are attempts at institutionalization in this sense. Such processes of institutionalization can specify prior natural (moral) obligations and transform them into institutional (moral) obligations (see Chapters 1 and 3).

I suggest that when conditions 1 and 2 are met, the persons whose basic rights are being violated have a collective (i.e., joint) moral right to assistance.³² Moreover, if conditions 1–4 are met, then the persons in question may well have a collective moral right to cross-border intervention by the members of the security agencies of external states, and, in particular, to foreign military intervention, supposing unarmed intervention to be ineffective. Consider the Rwandan genocide. Each individual Tutsi had a basic moral right not to be killed. But the threat of the killing of a single Tutsi would not generate a right to foreign armed intervention to protect that right, even in the absence of adequate domestic police protection. There would need to be some reasonably large number of Tutsi lives at risk. Let us assume that that threshold is reached. But in that case it is the totality of the persons in question who jointly have a right to foreign military intervention. It is not as if each possesses that right independently of the others. So the moral right to foreign military intervention is, after all, a collective right, albeit one based on the individual moral right of each of those Tutsis not to be killed. Under certain conditions, therefore, the basic moral rights of the members of a given nation-state constitute collective moral rights that generate moral responsibilities—collective moral responsibilities—on the part of the relevant members of other nation-states to intervene in the affairs of the state in question. These collective moral responsibilities give rise to joint moral obligations to assist in particular ways, and, ideally, these collective (joint) moral responsibilities and obligations will become, in fact, the institutional responsibilities and duties of the members of relevant governments and security agencies.

(p.229) In Chapter 1 I suggested that basic natural rights are not restricted to negative rights, for they include some positive rights, such as subsistence rights. Accordingly, humanitarian armed intervention might be morally justified in a case in which a state is refraining from providing for the basic material needs of its citizens, or more likely a substantial section of its citizenry. That is, lethal force can in principle be used to enforce positive rights, such as subsistence rights, as well as to enforce negative rights—or, at least, this is the case when the positive rights violations in question are egregious and on a large scale. Moreover, as is the case with negative rights, third parties—at least in principle—have moral rights, and indeed moral obligations, to use lethal force to ensure that positive rights are respected, depending on which positive rights are in question and the scale of the rights violations.

This point has implications for governments who intentionally refrain from respecting the positive rights, including subsistence rights, of their citizens. Governments have a clear institutional responsibility to provide for the well-being of their citizens. Accordingly, the moral responsibility based on need—and the fact that those in government could assist if they chose to—is buttressed by this institutional responsibility that these officials have voluntarily taken on. Consider the example discussed in Chapter 7 of hundreds of thousands of blacks in apartheid South Africa who were forcibly removed into desolate “homelands,” which were then declared by South African politicians to be independent nation-states. These politicians did not, thereby, succeed in absolving themselves of their institutional responsibility for the resulting poverty, deaths from malnutrition, rights violations on the part of the surrogate authoritarian “governments” established by the South African state, and so on. Accordingly, other things being equal, humanitarian armed intervention might well have been justified, presumably in cooperation with the local resistance movement, the ANC. This is, of course, not to say that it was in fact morally justified; in particular, it might not have been justified because it was not necessary.

Notwithstanding some important moral differences, the in-principle justification for armed intervention in the South African case and the in-principle justification for armed intervention to prevent genocidal slaughter in Rwanda were similar in at least one respect. In both cases the in-principle justification for armed intervention was to bring about the cessation of large-scale human rights violations orchestrated by those wielding political power, if not political authority. Evidently, in the case **(p.230)** of Rwanda, the violations were predominantly of negative rights (e.g., the right not to be killed), whereas in South Africa the violations were predominantly of positive rights (e.g., subsistence rights). And, doubtless, other things being equal, the violation of negative rights is a greater evil than the violation of positive rights. However, this difference in moral weight is not of an order of magnitude such that armed

intervention can be morally justified in many of the former kinds of cases, but never in the latter kinds of cases.

The situation in the civil war in Syria presents a number of somewhat different kinds of case. For instance, according to Medecins Sans Frontieres, “For the past two years, the bulk of international humanitarian aid—provided by the UN and the International Committee of the Red Cross (ICRC)—has been channelled through Damascus and distributed according to the whim of the government. This same government prohibits the provision of medical assistance to people living in opposition-held areas. These areas are subject to intense bombing, targeting health centers as well as all those people—from bakers to doctors—who are trying to help the population. Just a few days ago, a field hospital in al Bab, northern Syria, was bombed by the Syrian air force, killing nine patients and two medical staff.”³³ The people being deprived of this aid have a positive right to it. Moreover, members of the Assad government have both a collective institutional responsibility and a collective moral responsibility to see to it that the aid is provided. Nevertheless, the Assad government is preventing others from providing this aid. That is, members of the Assad government and its armed forces are collectively morally responsible for the negative rights violation of using lethal force to prevent others from discharging their collective institutional and moral responsibility to provide assistance to the people in question.³⁴ The members of the Assad government are thus doubly morally culpable. Evidently, lethal force against relevant members of the Assad government and its armed forces to bring about the cessation of these large-scale serious violations of positive rights is morally justified, at least in principle, including by external states.

(p.231) In the light of this discussion, let us assume that, under certain conditions, large-scale violations of basic rights, including violations of some positive rights, generate a moral responsibility—and perhaps an institutional responsibility—on the part of relevant members of external states to intervene militarily to terminate those rights violations. Why is this moral responsibility a *collective* moral responsibility? It is a collective moral responsibility because, first, a state that engages in armed intervention is simply an organization composed of individual government officials and individual members of a military force. Thus, its “action” of armed intervention can be understood as a multilayered structure of joint actions (as discussed above). Second, such armed intervention—or, more to the point, failure to intervene—is morally significant. Accordingly, the members of the government and of the military force in question can, at least in principle, be held collectively morally responsible for their failure to intervene.

At this point a further question arises: Does the community of nation-states have a collective moral responsibility to intervene in cases of genocide and the like? In light of our above analysis of collective responsibility, at the initial level of

analysis, this question amounts to asking whether or not each member of the community of nation-states has an in-principle moral responsibility to intervene militarily in cases of large-scale basic rights violations, and this responsibility is possessed jointly with the other nation-states. As we have already seen, at the next level of analysis—the level of a single nation-state’s military organization³⁵—our above-described account of such organizations as composed of individual members of a military force, including its political and military leaders, applies; that is, our account in terms of a layered structure of joint action applies. As argued above, that account enables us to ascribe collective moral responsibility to the individual members of the organization in question, albeit jointly.

However, the notion of a layered structure of joint action is now applicable to the community of nation-states, construed as a set of jointly acting organizations engaged in a multistate humanitarian armed intervention. That is, by the lights of our account, the required actions of the community of nation-states, or at least of their governments and security agencies, are simply the required actions of an organization of organizations and, as such, simply constitute an additional layer to **(p.232)** the preexisting layered structures of joint action at the level of the single organization. Accordingly, the individual members of the various organizations (i.e., the membership of the various military forces and their political leadership) can now be held collectively morally responsible for the military intervention—or rather, given our concerns at this juncture, for the failure to intervene militarily.

Let us now take a closer look at the collective moral responsibility to intervene to terminate, reduce, or prevent large-scale serious basic rights violations. The failure to discharge such a collective moral responsibility constitutes a morally culpable joint act of omission. This is because the following three conditions obtain: (1) the basic rights being violated and, therefore, the wrong being done, or about to be done, is such that some aggregate of persons can, and morally ought to, intervene, and those on whom the collective moral responsibility to intervene falls are in a position to successfully intervene; (2) those who have the collective moral responsibility to intervene have that responsibility by virtue of the nature and extent of the rights violations taking place, as well as, at least in some instances, by virtue of their collective institutional responsibility (e.g., in accordance with R2P); (3) the cost to be incurred by them as a consequence of their intervention is not prohibitively high.

Here we need some theoretical account of collective moral responsibility for joint omissions on the part of the members of large organizations and of organizations of organizations (meta-organizations). Elsewhere I have elaborated such an account.³⁶ Here, for reasons of space, I restrict myself to a few salient points, bearing in mind that my general account of collective moral responsibility is an individualist relational account based on the notion of a morally significant joint action (or multilayered structure of joint actions). On this account, participating agents intentionally perform a contributory action

that makes a (possibly very small) causal contribution to the collective end at which they are aiming. Roughly speaking, in the case of a joint omission, the participating agents intentionally refrain from performing their contributory individual actions and, therefore, fail to contribute causally to the collective end that they have or, at least, ought to have had. (See also Chapter 5, section 5.4.)

(p.233) I suggest that the conditions under which members of some organization (or organization of organizations) are collectively morally responsible for failing to perform a layered structure of joint actions to bring about the cessation of large-scale rights violations include the following: (1) the rights violations took place or are taking place; (2) all or most of the members of the organization, individually or jointly, intentionally refrained from performing the morally required layered structure of joint action; (3) if each or most of the members had performed their contributory individual actions having as a (collective) end the cessation of the rights violations, it is likely that the collective end would have been realized; (4) The cost of this joint intervention would not have been prohibitively high, either to the members of this organization or to third parties; (5) the members of the organization had a collective institutional responsibility to intervene; (6) with respect to some set comprising most members of the organization, each member of that set would have intentionally refrained from performing his or her contributory action (having as an end the cessation of the rights violations), even if the others, or most of the others, had performed theirs (with that collective end); (7) If a member of the organization would have performed his or her contributory action had the others performed theirs, but done so only because the others did, (i.e., not because she or he had as an end the cessation of the rights violations), then the member would still be morally responsible, jointly with the others, for failing to intervene (given conditions 1-5).

There are a couple of things to note in relation to this account of collective moral responsibility for omissions. First, the collective moral responsibility for the unrealized collective end might be distributed in a manner such that the degree of moral responsibility that attaches to any individual participant for the unrealized collective end might be very small indeed, given that their individual omission might have made little or no difference to the realization of the collective end. Second, the account presupposes an organization (or set of organizations), within an institutional framework, and therefore presupposes a structured, albeit large, group of persons who can act together, if they choose to do so, in order to realize the collective end of bringing about the cessation of large-scale basic rights violations.

Armed with this account of collective moral responsibility for joint omissions on the part of the members of large organizations, and of organizations of organizations, let me now briefly consider the collective moral responsibility of relevant members of national governments, security **(p.234)** forces, and

international agencies (e.g., the UN) for the failure to conduct humanitarian armed interventions in order to bring about the cessation of large-scale serious basic rights violations. I suggest that the conditions under which the members in question can, at least in principle, be held collectively morally responsible for such failures do obtain.

First, there a high level of mutual awareness, including by way of the international mass media, and through the work of international groups, such as Amnesty International, that monitor large scale violations of basic rights violations. So the relevant persons in each nation-state are, or should be, aware of most episodes of large-scale violation of basic rights, and each set of members is aware that the members of every other set is aware, and so on. Thus there is mutual awareness among relevant government officials and members of security agencies.

Second, the relevant members of governments and of military forces (especially those in leadership positions) have the economic, military, and diplomatic wherewithal to engage in successful humanitarian armed interventions, at least in many instances. Rwanda is an obvious case in point. Moreover, various nation-states have cooperated in the past, including under the auspices of the UN. So the required cooperative action among the members of relevant governments and security agencies is entirely practically possible.

Third, a set of international institutions has been developed in relation to the collective action of nation-states, and therefore the joint action of the members of the relevant government and security organizations of those nation-states is entirely institutionally possible. These include the UN, the Security Council, and various pieces of international legislation (e.g., RP2) and associated international courts. Indeed, there are rules and international institutional mechanisms for armed intervention (e.g., in relation to genocide).

Let me now address the issue of unilateral humanitarian armed intervention. As argued above, there is a collective moral responsibility on the part of relevant government and military personnel across the international community to engage in humanitarian armed intervention in cases of large-scale serious basic rights violations in which there is no internal solution and intervention without arms cannot succeed. Humanitarian armed intervention by a UN-led multistate military force is one way in which this collective moral responsibility might be discharged. I have suggested above that in the contemporary world there are very few cases in which the collective moral responsibilities of the relevant government **(p.235)** and military personnel across the international community to engage in humanitarian armed intervention *cannot* be discharged. However, there are quite a few cases in which these collective moral responsibilities are not in fact discharged. In such cases, the responsibility to intervene may fall to the relevant political and military members of a single nation-state, or small

group of states. Arguably, this is much less preferable. Given the costs of armed intervention to the party or parties intervening, broad-based, multilateral armed intervention is preferable to unilateral armed intervention. For one thing, the costs borne by a state intervening unilaterally are likely to be greater than if the burden is shared, so that the individual state needs a greater incentive, in terms of its self-interest, than it might if it were part of a broad-based group engaged in multilateral intervention. For another thing, if a state intervenes unilaterally it might feel entitled, and have a greater capacity, to make peace more in conformity with its own interests than in conformity with the needs of the victims it has rescued. This is precisely the charge that was made against the United States by its political enemies in relation to its invasion of Iraq. At any rate, broad-based, multilateral, humanitarian armed interventions are more likely than unilateral ones to be motivated by humanitarian, rather than purely political, considerations, if only because the self-interest of one state can often be kept in check by the self-interests of the others.

Finally, I have suggested that if the members of a group, A, are being subjected to large-scale positive rights violations at the hands of the members of another group, B, then (1) the members of A may well have a joint right to use lethal force to bring about the cessation of those rights violation, and (2) the members of some other third party, C, may well have a collective moral responsibility to engage in humanitarian armed intervention, supposing the members of A are unable to bring about the cessation. However, it would not follow from this that the members of A would have a joint moral right to use lethal force against the members of C to ensure that the members of C in fact discharged their collective moral responsibility to engage in humanitarian armed intervention. Not all those who fail to discharge their collective moral responsibilities in relation to large-scale rights violations are themselves rights violators. This is especially the case in relation to third parties. It would not have been morally justified for the ANC to conduct its armed struggle against, say, the Reagan administration when the administration decided to pursue a policy of “constructive engagement” in relation to the apartheid government of the day. Similarly, it would not have been morally justified for **(p.236)** Bosnian Muslims to use deadly force against UN personnel or officials of the European Community when the latter groups failed to discharge their collective moral responsibility to intervene and protect the Bosnian Muslims—indeed to arm them—in the face of the genocidal “ethnic cleansing” operations being conducted by the Serbian forces.

8.4 Conclusion

In this chapter I have argued that humanitarian armed intervention in relation to large-scale human rights violations is in some cases morally justified (e.g., in the case of the Rwanda genocide), and that, if so, intervention is best understood as a collective moral responsibility. Moreover, collective moral responsibility is to be understood as the joint moral responsibility of individual human actors. Here I utilized two notions described in earlier chapters; namely, multilayered

structures of joint actions and joint institutional mechanisms. I have further argued that humanitarian armed intervention can, at least in principle, be morally justified in cases where there is large-scale violation of (basic) *positive* rights, such as subsistence rights. This is the case, even if it is held that a single individual would not be morally justified in using lethal force against someone violating his or her (basic) positive rights. The critical difference lies in the scale of the rights violations.

Notes:

(1.) The material in this chapter is based on two earlier published papers: Miller, "Collective Responsibility, Armed Intervention and the Rwandan Genocide"; and Seumas Miller, "Collective Responsibility and Armed Humanitarian Intervention," in Tony Coady and Michale O'Keefe, eds., *Righteous Violence* (Carlton, Australia: Melbourne University Press, 2005), 51–71.

(2.) For useful discussions of these issues, see Fernando Teson, *Humanitarian Intervention: An Inquiry into Law and Morality* (New York: Transnational Publishers, 1988); Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict* (Cambridge: Polity Press, 1996); Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000); and, more recently, James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010).

(3.) See Tony Weymouth and Stanley Henig, *The Kosovo Crisis: The Last American War in Europe?* (London: Pearson Education, 2001).

(4.) Fergal Keane, *Season of Blood: A Rwandan Journey* (London: Viking Press, 1995), 29.

(5.) See Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era* (Oxford: Polity Press, 1999), 64.

(6.) Kenneth M. Pollack, *The Threatening Storm: The Case for Invading Iraq* (New York: Random House, 2002).

(7.) Pollack, *The Threatening Storm*.

(8.) Pattison, *Humanitarian Intervention*, Chapter 2.

(9.) Evidently in Kosovo the Albanians were the object of ethnic cleansing by the Serb armed forces, but the Serbs themselves became the object of ethnic cleansing by some of Albanian armed forces (KLA). See Weymouth and Henig, *The Kosovo Crisis*, 239.

(10.) For a contrary view, see Teson, *Humanitarian Intervention*.

(11.) For an insight into Saddam Hussein's strategies and policies in this regard, see Richard Butler, *Saddam Defiant* (London: Phoenix, 2000). Of course, Saddam Hussein's policies took place as a response to, and in the context of, the sanctions imposed by the United States and its allies. Given Saddam's response, the continued imposition of sanctions was surely both ineffective and immoral.

(12.) See Walzer, *Just and Unjust Wars*.

(13.) On the other hand, it could be argued that the media spectacle of significant numbers of body bags containing dead NATO combatants might have created public pressure in the United States, in particular, not to continue with the intervention, and thereby left the Albanian Kosovars to the mercy of their murderous Serbian enemies.

(14.) Armed interventions that are *not humanitarian* armed interventions are not necessarily morally unjustified, albeit a good and decisive moral justification is likely to be hard to come by in such cases.

(15.) Stern and Berger, *ISIS: The State of Terror*.

(16.) For an earlier and more detailed application of this notion of collective responsibility to genocide, see Miller, "Collective Responsibility, Armed Intervention and the Rwandan Genocide."

(17.) Keane, *Season of Blood*.

(18.) Laura Silber and Allan Little, *Yugoslavia: Death of a Nation* (London: Penguin, 1997), 345-350.

(19.) Silber and Little, *Yugoslavia: Death of a Nation*, 350.

(20.) For an earlier and more detailed application of this notion of collective responsibility to ethnic cleansing, see Miller, "Collective Responsibility and Armed Humanitarian Intervention."

(21.) This is certainly the view of the majority of Islamic authorities worldwide.

(22.) See Miller, *Moral Foundations of Social Institutions*, Chapter 2.

(23.) Weymouth and Henig, *The Kosovo Crisis*, 192.

(24.) This is so whether or not the decision maker was a military leader, a senior government official (such as the minister of defense in the United Kingdom) or, in fact, the national leader (such as the president of the United States). For in each of these cases, institutionally speaking, the individual in question was acting on behalf of the government as a whole and, indeed, the nation-state *per se*.

(25.) This mode of analysis is also available to handle examples in which an institutional entity has a representative who makes an individual decision, but it is an individual decision that has the joint backing of the members of the institutional entity (e.g., an industrial union's representative in relation to wage negotiations with a company). It can also handle examples such as the firing squad in which only one real bullet is used, and it is not known which member is firing the real bullet and which merely blanks. The soldier with the real bullet is individually directly causally responsible for shooting the person dead. The members of the firing squad are jointly institutionally and morally (and indirectly causally) responsible for its being the case that the person has been shot dead.

(26.) Miller, "Collective Moral Responsibility."

(27.) Silber and Little, *Yugoslavia*, 360. Arguably—if somewhat implausibly—the NATO bombing was not *intentional* support for the Croats. If not, then the example was not a paradigmatic case of joint action.

(28.) The cooperation between Croat land forces and NATO air power against Serbian forces is in sharp contrast to what happened in Kosovo. NATO forces were in some sense in alliance with the Kosovo Liberation Army (KLA), which was engaged in fighting Serbian forces. The KLA was supposedly operating on behalf of the Albanian majority in Kosovo in their conflict with the Serbian forces controlled from Belgrade, but supposedly acting on behalf of the Serbian minority in Kosovo. However, NATO relied more or less exclusively on its own air power to destroy, or seek the capitulation of, the Serbian forces.

(29.) Shue, *Basic Rights*.

(30.) Henry Shue, "Eroding Sovereignty: The Advance of Principle," in Robert McKim and Jeff McMahan, eds., *The Morality of Nationalism* (Oxford: Oxford University Press, 1997), 340–359.

(31.) The intervention may require assistance other than military assistance, such as food and medical supplies.

(32.) Elsewhere I have provided and defended an analysis of collective rights as joint rights. See Seumas Miller, "Collective Rights," *Public Affairs Quarterly* 1, no. 4 (1999): 331–346, and *Social Action*, Chapter 7.

(33.) Robin Meldrum, "Syria: Lift the Humanitarian Blockade," *Medecins Sans Frontieres*, September 19, 2013, <http://www.doctorswithoutborders.org/news-stories/op-ed/syria-lift-humanitarian-blockade>.

(34.) I assume the relevant members of international organizations have this collective institutional and moral responsibility, given the relevant members of the Assad government and its welfare organizations are not discharging their

prior collective institutional and moral responsibilities to assist the people in question.

(35.) Or, at least, multiple organizations within the same nation-state (e.g., an army, an air force, a navy, and a government).

(36.) Seumas Miller, "Collective Responsibility, Epistemic Action and Climate Change," in Nicole Vincent, Ibo van de Poel, and Jeroen van den Hoven, eds., *Moral Responsibility: Beyond Free Will and Determinism* (Dordrecht, The Netherlands: Springer, 2011), 219–246.

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