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An Anti-Humanistic Justification for the Use of Violence as a State of Higher Necessity in International Relations

Abstract: This article explores the conditions under which violence is deemed admissible in international relations understood as interactions among political communities. Its main objective is to identify and examine anti-humanist arguments that, by invoking the notion of extraordinary circumstances, seek to legitimise the resort to force. Such arguments range from biological and sociobiological perspectives to positions that challenge the axiological foundations of the contemporary international order. To refine the research problem, the study poses two guiding questions: (1) What arguments can be presented in favour of the use of violence in international relations? (2) What is the acceptance limit on arguing the use of violence in international relations?

Methodologically, the analysis deploys a three-track qualitative approach. First, a critical reading of selected work in social philosophy, biology, ethology, sociobiology and primatology captures the biological bases of intra-species violence. Second, a hermeneutic examination of Carl Schmitt's key concepts – politicality, the state of exception, sovereignty and *nomos* – reconstructs the political dimension of violence. Third, an institutional-legal analysis of the doctrine of necessity, illustrated by the Israeli-Palestinian conflict, clarifies its juridical contours.

Three principal findings emerge: (1) Violence is justified within three distinct yet interconnected frames: biological, political and legal, (2) Each frame entails the dehumanisation of “others” and the suspension of universal moral norms, thereby normalising violence as a policy instrument, (3) The boundaries of acceptable justificatory discourse are fluid, extending from the naturalisation of violence to its formal legalisation under exceptional circumstances.

Key words: anti-humanism, dehumanisation, violence, justification of violence, state of higher necessity, military necessity

Introduction

The research field of analysis focuses on the conditions for the use of violence in international relations, between the actors in these relations, who are most often states. At the same time, it should be noted that for the purposes of the analysis, a figure of a political community rather than a state itself will be used. The research problem will be the anti-humanistic argumentation justifying the use of the title violence, most often in the context of – or when justifying it as – a state of higher necessity. Undoubtedly, this approach to the research problem represents a departure from the usual analysis patterns focusing on normative and humanistic (humanitarian) issues concerned with the use of violence, most often warfare. However, it must be borne in mind that the universally accepted and well-established concepts of just war, featuring in philosophical, political science and legal reflections, are not the object of analysis (for more on this see: Walzer, 2010). Nevertheless, references to the category of justice are unavoidable, if only

because it is most often a figure of speech as well as a set of argumentative instruments used by those who use violence.

If we assume that – in the context of violence – the humanistic perspective emphasises the importance of man's value, subjectivity and dignity, then the anti-humanistic perspective is an antonym with a different content. Thus, on the one hand, we have an affirmation of man as a human person, while on the other, we have a negation of his special status as a human person. In consequence, in the former case, violence against human beings will be definitive, most often defensive, with concomitant universalization of morality. In the latter case, it will pose an inevitable means of influence – an inhumane one used in isolation from human dignity, with the concomitant suspension of morality or its particularisation. The inherent anti-humanistic means of action is to divide people into own and strangers (others), while dehumanising the latter (Ivie, 1980, pp. 279–294; Haritos-Fatouros, 1988, pp. 1107–1120; Levi, 1988; Badura et al., 1996, pp. 364–374; Badura, 1999, pp. 193–209).

The main purpose of the analysis is to present different types of anti-humanistic arguments justifying the use of violence in international relations, while invoking the concept of state of higher necessity *sensu largo*. Anti-humanistic arguments include biological and socio-biological approaches, as well as those that question the axiology of the contemporary international system. In order to elaborate the objective scope of the research problem, the following questions have been presented in the text: (1) What arguments can be presented in favour of the use of violence in international relations? (2) What is the acceptance limit on arguing the use of violence in international relations?

The text is divided, excluding the assumptions and conclusions, into three main sections addressing: (1) the biological justification for violence, (2) the political justification for violence, and (3) the state of higher necessity as justification for violence. In the first section, the analysis methodology is based on the critical use of selected theoretical and empirical findings from social philosophy, biology, ethology, sociobiology and primatology to present the problem of intra-species violence. The second section uses a hermeneutic approach, in which it is crucial to read and interpret such concepts as, *inter alia*, the political, a state of exception, the sovereign and *nomos*, which are C. Schmitt's intellectual output. This makes it possible to show the evolution of the concept of political violence, and to situate it in the broad socio-political context of contemporary international conflicts. The final section takes an institutional-legal approach, which uses the category of state of higher necessity to present the problem as exemplified by the Israeli-Palestinian conflict.

Biological justification for violence

Two conceptions of human nature have clashed in socio-political philosophy. One represented by T. Hobbes, and encapsulated in the Latin maxim: *Homo homini lupus est* (English: man is a wolf to another man),¹ and the other represented by J.-J. Rousseau,

¹ At the same time, it is noteworthy that T. Hobbes, in his dedication in *De Cive*, a text published eleven years earlier than *Leviathan*, made a broader statement about the war of all against all, reducing it to the opposition of us (a friend) and the stranger (a foe). He wrote that both statements can be true:

expressed already in his 1749 contest discourse, which reads: nature makes man happy and good, but society depraves him and makes him miserable (Porębski, 1999; Baczko, 2009 [1964], pp. 53–135; Mosca, 2022, pp. 213–225). It has been accepted in social thought, among others through the theses cited above, that human nature can be viewed in two ways: as evil at its very origins, and as evil, but due to the negative influence of institutions and superstitions which have transformed the naturally good man, who is – as J.-J. Rousseau put it – “good in his inherent goodness,” into an artificial, fanatical, irrational man (Rousseau, 2002, pp. 155–169; Baczko, 2009 [1964], pp. 53–135). On the other hand, a critical opinion about the concepts of man’s evil nature, which considered morality, compassion and altruism in human beings to be merely a façade, was expressed by F. de Waal in his book entitled *Primates and Philosophers: How Morality Evolved* (de Waal, 2006).

The two perspectives of thinking about the nature of man and the nature of society complement and influence the discourse on the nature of human violence, which can also be approached in two ways. For example, the research authored by J. M. Gómez, M. Verdú, A. González-Megías and M. Méndez has demonstrated that violence in humans has phylogenetic roots, and is therefore dependent on historical evolutionary processes, and is not just the result of culture or social environment alone. Man’s inclinations towards violence, including intra-species aggression (e.g., homicide, murder), are grounded in the position of hominids in the structure of the phylogenetic tree. Hence, one might say that we share the propensity for violence with our closest evolutionary relatives in this group, particularly primates, which in turn indicates that it may be a form of adaptive strategy to aid survival, territorial control, social hierarchy, or resource protection. The reduction in its intensity, particularly in the modern period, may be due to the development of advanced state institutions that have held hegemony over the means of violence (Gómez et al., 2016, pp. 233–237).

The socio-biological view, represented for example by E.O. Wilson, links violence to such categories as dominance and aggression, which in turn are linked to territorial behaviour (Wilson, 2000, pp. 134–173). Territoriality-linked dominance refers to providing a group member with priority access to resources (e.g. food, a mating partner, a rest and sleep place) or other values that increase his adaptive value. The consolidation of dominance is effected through territorial behaviour patterns which boil down to maintaining the exclusivity of an individual’s proper territory. One of the main ones consists in defence manifested by aggression and signalling the ownership relationship in various ways. The value of territory stems from the assumptions behind the territorial evolutionary theory, which considers it as an individual’s acreage enabling survival and reproductive success. Aggression encompasses various forms of physical influence exerted on other individuals in such a way as to ensure optimal living conditions for oneself at the expense of other individuals. E.O. Wilson distinguishes different types of aggression: (1) territorial (defence of a defined area against intruders aimed at protecting resources),

man can be God to another man, and man can be a wolf to another man. In the former case, a perspective of community members is to be adopted; while in the latter case: a perspective of two separate communities. In the latter case, man, in order to protect himself, resorts to deceit and violence, i.e. predation, while rebuking others for what he cruelly does himself (See “Dedication to the Earl of Devonshire,” in: Hobbes, 1949, pp. 1–6).

(2) dominance (establishment and maintenance of social hierarchy through fights or signals of dominance to ensure access to resources and partners), (3) sexual (competition for access to reproductive partners, or defence against competition in a reproductive context), (4) parental of various kinds (actions directed towards young individuals, of a disciplinary, emancipatory or dispersive nature), (5) moralistic (social pressure or punishments directed at individuals who violate group norms, aimed at strengthening group cohesion and functionality), (6) predatory (attacks on other organisms for the purpose of acquiring resources, non-defensive in nature), (7) anti-predatory (defence against predators, including both deterrent behaviour and direct attacks aimed at protection) (Wilson, 1970, pp. 123–154; McKenna, 1983, pp. 105–128; Wilson, 2000, pp. 134–144). Given the subject matter addressed in the text, the most relevant types of aggression are those that can develop into lethal intra-species violence against individuals outside the community.

Writing about “chimpanzee politics,” F. de Waal points out that they include, among others, the ability to build coalitions, mechanisms for gaining and maintaining power and hierarchical positions in access to resources. At the same time – in the context of his critical assessment of the 2001 film *Planet of the Apes* – he writes that: “Since debates about human aggressiveness invariably revolve around warfare, the command structure of armies should make us think twice before drawing parallels with animal aggression” (de Waal, 2005, p. 135). Furthermore, the analysis performed by J. C. Mitani, D. P. Watts and S. J. Amsler indicates that chimpanzees form coalitions and carry out organised lethal attacks on members of other groups, which gives rise associations with conflict and warfare behaviour among humans. The hypothesis underlying the study is that there is a correlation between the use of lethal violence by chimpanzees and their desire to expand their territory. Seizing some territory from opponents leads to greater access to resources and improved reproductive success for aggressors (Mitani, Watts, Amsler, 2010, pp. R507–R508). One may therefore wonder which, in the context of an adaptive strategy, is of greater importance: the ability to cooperate or the use of lethal aggression? Indeed, there is no denying that humans, unlike other anthropoids, have developed cooperative skills on a larger scale. Moving beyond the bipolar divide, it can also be assumed that both violence and cooperation have become adaptive strategies, and – in the latter case – group cooperation has become one of the mechanisms that increase the effect of group selection (cf. Wilson, 2013a; Wilson, 2013b, pp. 4–5; de Waal, 2014b, pp. 47–49). At the same time, the question of the adaptive strategies of man’s ancestors and man himself now makes us reflect on the actual origins of warfare as a manifestation of intra-species violence.

A juxtaposition of various approaches to manifestations of intra-species violence was made by L. Glowacki in his text entitled “The controversial origins of war and peace: apes, foragers and human evolution.” This author notes that two main perspectives can be distinguished with regard to the explanation of the origin of inter-species coalition killing: deep roots and shallow roots. The first would be the one that emphasises a phylogenetic justification, i.e. one assuming that we may have inherited behaviour patterns tantamount to warfare from a common human ancestor. A deeper perspective may also include one that emphasises an adaptive justification, i.e. one assuming that warfare results from ecological and social evolutionary pressure. On the other hand, the shallow

perspective entails the assumption that warfare is not likely to be a consequence of our evolution; it is a by-product arising from new social conditions. The new conditions include, among others, new organisational structures, social conditions (including population-related ones), as well as increased human capacity for perception, analysis and adaptation to environmental changes. A position like this presupposes that warfare is a recent phenomenon, and as such has not existed since the common human ancestor of chimpanzees and bonobos. Hence, in all likelihood, our species did not know what is referred to as warfare (Glowacki, 2024a, 106618).

Given the analogy and comparison to two species, i.e. chimpanzees and bonobos, the problem arising is whether it is warfare or peace that results from phylogenetic evolution, adaptation or new social conditions. This is because chimpanzees and bonobos are characterised by different social behaviour patterns, so it is difficult to indicate unequivocally which of these behavioural models is the reference for human ancestors and for man himself. However, man is characterised by his engagement in organised intra-species violence, as historically exemplified by wars fought by humans (Glowacki, 2024a, 106618; Glowacki, 2024b, pp. 1–21). It is also interesting to note that an idealised image of the bonobo as an example of non-violent social organisation is often presented in science and popular science messages (de Waal, 2014a). It is noteworthy, however, that – according to some studies – despite the absence of lethal inter-species violence, male bonobos evince higher rates of violence in encounter situations than in encounters between male chimpanzees and other individuals (Cheng et al., 2021, 104914; Moscovice et al., 2022, pp. 434–459; Glowacki, 2024a, 106618).

Of relevance to the issue of lethal violence among primates are the research findings presented by R. Wrangham and D. Peterson. With regard to organised attacks by males on other groups or weaker members of their own group (the so-called *coalitionary killing*), the following theses can be put forward: this type of violence is one of the elements of human ancestral evolution and can serve to explain the human propensity for conflict, warfare and violence in human societies, (2) this type of violence may serve to explain the development of social structures in which male coalitions enabled wars and armed assaults (Wrangham, Peterson, 1996). Another primatologist, R.M. Sapolsky, in his research, emphasised the behavioural aspects of individual primate species both in the short term (nerve impulses, hormone action, hormonal fluctuations, the influence of direct experiences) and in the long term (learning patterns, individual development, the influence of genetics and evolution). Thus, as regards the occurrence of susceptibility to violence and violence itself, the following are relevant: (1) the nervous system (especially the parts responsible for anxiety and aggression reactions, impulse control and behavioural planning), (2) nervous system dysfunctions, (3) hormones and neurotransmitters (e.g. testosterone, cortisol, serotonin, dopamine and oxytocin), (4) the interdependence of genetic and environmental factors (e.g. MAO-A gene) (Sapolsky, 2010; Sapolsky, 2017).

In the ethological context, the issues of violence and aggression are addressed in K. Lorenz's publication entitled "Das sogenannte Böse zur Naturgeschichte der Aggression," which is reckoned among the classics. In this conception, aggression is man's innate instinct that ensures the survival of the species, thus enabling competition for resources (territory, food, partners), as well as defence against predators. In his analyses,

this author presents the now-criticised concept of “hydraulic” aggression, whereby it is seen as a result of the accumulation of aggressive potential in a person, which under certain circumstances must find an outlet. He also points out that levels of testosterone and other aggression hormones may be relevant to aggression. Of course, the very effect of hormones on human behaviour has been studied before and continues to be studied. Therefore, contemporary research shows that at least testosterone can indeed influence people’s tendency to dominate and compete, but does not automatically determine aggression. Also other hormones, such as cortisol (stress hormone) and oxytocin (trust hormone), play a key role in the regulation of aggression and cooperation (Lorenz, 1963; Brain, 1977; Klein, Simon, 1991, pp. 91–93; Simon et al., 1996, pp. 8–17; Carré, Archer, 2018, pp. 149–153).

Undoubtedly, it is not the case that susceptibility to violence is merely genetic or evolutionary. In the individual and social dimension, the complexity of the determinants, i.e. genetic, neurophysiological factors (the limbic system, the prefrontal cortex, hormones) and environmental factors (trauma, social conditions) must also be taken into account.

Political justification for violence

The starting point for considering the political justification for violence is C. Schmitt’s very concept of the political (German: *das Politische*). This German jurist and political theorist distinguished the category of the political from the category of the state on a similar basis as Georg Hegel did with the category of civil society. The separation of the political from the state has two important benefits. Firstly, it allows for a better analysis of historical processes in which the state and society become separate, often competing entities with different practices. Secondly, it enables the precise definition of the political through basic categories that are independent and irreducible, e.g. Schmitt’s key distinction between friend and foe (Schmitt, 2000, pp. 191–250; Świącicki, 2015, pp. 163–166; Schmitt, 2020).

According to Schmitt, the distinction between friend and foe is not symbolic, but reflects a real threat to the existence of the community. It serves as the foundation of the political, because people unite around this distinction, creating a unity that is superior to other associations and societies. The resulting political unity will have the characteristic of being able to resolve ultimate things – these can include starting a war or disposing of the lives of others. One of the important powers of the community is the ability to determine who is a foe and who is not. At the same time, it should be stressed that it is not about every foe, but about the one whom the community defines as a public enemy (Latin: *hostis*). Therefore, a community is political when it is formed in an exceptional and extreme situation, at which point the sovereign acquires a special position (Schmitt, 2000, pp. 191–250; Dodd, 2009, pp. 32–41; Schmitt, 2020).

The characteristics of the sovereign are revealed in an extreme situation when the sovereign can decide about a state of exception, i.e. the suspension of the law in order to protect the political community, as expressed in Schmitt’s apt sentence in the opening pages of *Political Theology*: “Sovereign is he who decides on the exceptional case” (Schmitt, 2005, p. xi). This means that the sovereign has the power to violate the law and

can suspend its application or establish a new legal order while freezing the operation of the rule of law. His position and the decisions he makes do not derive from his role as a guardian of the law, but from his political will, from what N. Machiavelli referred to as *virtu* (Latin 'virtus', Greek 'areté'), i.e. the ability to act, initiative, strength or decision-making courage in a situation of necessity (Latin 'necessitās'). According to Schmitt, the sovereign stands above the existing law, as far as he is bound by it at some point, then in principle it is when he decides to suspend the legal order. Therefore, this decision cannot be described in legal terms, because it is an actual state referring to a state of higher necessity. Due to the fact that it is impossible to compile a list of circumstances and related powers of the sovereign, these are essentially unlimited (Schmitt, 2000, pp. 33–61; Świącicki, 2015, pp. 156–163).

Schmitt presents an interesting paradox that makes one think about how there are legal norms that are universally applicable, but at the same time there are norms that exclude them from application. An implication of this problem is also the problem of who is to identify these exceptions, and who has the right to act and decide in situations where no norms are provided (cf. Schmitt, 2000, pp. 33–61).

Another interesting issue in the German legal theorist's conception is the relationship between the political and warfare. Despite the frequent over-interpretation of the conflictual nature of the political in popular science and scholarly accounts, due to the emerging figure of the enemy, it must be borne in mind that this division does not amount to warfare itself. Even if C. Schmitt writes that an enemy is a belligerent, or at least combat-ready, organised group of people standing in the way of another, similarly organised one, the political itself is not warlike. Nor is it a kind of armed struggle, because the latter is after all guided by its own strategic and tactical rules, which are only the ultimate manifestation of the division into two groups (Schmitt, 2000, pp. 191–250; Schmitt, 2020). In the foreword to one of the editions of *The Concept of the Political*, C. Schmitt was aware of the changes occurring in the figure of the enemy and warfare after 1945. He wrote, *inter alia*, that in the Cold War, all the conceptual assumptions that had hitherto supported the traditional system of limiting and containing warfare had been broken. In his opinion, the Cold War makes a mockery of all classical distinctions between war and peace, neutrality, politics and economics, the armed forces and civilians, combatants and non-combatants – except for the distinction between friend and foe, of which cohesion is the source and essence (Schmitt, 2020).

In his work "Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum," originally published in 1950, C. Schmitt already links the state directly to war. For him, it is inherently linked to violence and conquest, and so to the seizing of land ultimately sanctioned by the law (Schmitt, 2011, pp. 13–20). Therefore, the state – according to him – came into being by means of *primaeval* appropriation, as the result of a process of one group taking over a territory, fencing it off and enforcing respect for acquired rights. Interestingly enough, in his 1754 *Discourse upon the Origin and Foundation of the Inequality among Mankind* included a similar opinion, which reads as follows: "The first man, who, after enclosing a piece of ground, took it into his head to say, *This is mine*, and found people simple enough to believe him, was the true founder of civil society. How many crimes, how many wars, how many murders, how many misfortunes and horrors, would that man have saved the human species, who [had pulled] up the stakes or [filled]

up the Ditches [...]” (Rousseau, 1761, p. 97; see also de Man, 2001, pp. 225–245).² In the same vein, theses on the origin of property, especially in the context of property competition, originally in the form of plunder, was presented by T. Veblen in his book entitled *The Theory of the Leisure Class* (Veblen, 2007).

The conquest or annexation of land sets in motion two parallel processes, the first under international law, and the second under public (and consequently private) law. However, both are characterised by the same logic, i.e. they seek to legitimise the original violence – in the first case at the level of the international community, in the second at the level of the political community or within a specific state. An unintended consequence of C. Schmitt’s thought is proximity to Marxism in terms of understanding the nature of the ideological character of law in a liberal or bourgeois state. This is also how all processes of delegitimisation of warfare in the international community should be understood, as it violates the established order, breaks the established legal legitimacy (*nomos*) of the division of space. On the other hand, international law, like any law in relation to the original *nomos*, is only a convention, and if so, no law constitutes a barrier to or limitation on the new founding act of *nomos* (see Schmitt, 2009; Schmitt, 2011, pp. 36–48; Zajadło, 2020a, pp. 143–161; Zajadło, 2020b, pp. 3–17).

The conventionality of the law and its role seem to have been conveyed in an applied way by Callicles, one of the Sophists and Socrates’ interlocutors in Plato’s *Gorgias*, where Callicles says: “However the law makers to be sure are the weaker and more numerous part of mankind. It is with a view therefore to themselves and their own interest that they frame their laws and bestow their praises and their censures; and by way of frightening the stronger sort of men who are able to assert their superiority, in order that they mayn’t assert it over them, they tell them that self-seeking is foul and unjust, and that this is what wrong doing consists in, trying namely to get the advantage over one’s neighbours; for they are quite satisfied no doubt, being the inferiors themselves, to be on an equality with the rest” (Plato, 1864, p. 62). Further on in the text, Callicles cites a song by Greek lyrical poet Pindar: “Law the Lord of all, mortals and immortals. – [He] inflicts, and justifies, the utmost violence with supreme hand. – I appeal in proof to the deeds of Hercules [...]” (ibidem, p. 64). It is in it that order or legitimacy (Greek: *nomos*) is a violent action on the one hand, but a just one on the other. At this point, it is appropriate to draw a parallel between Pindar’s Heracles, Machiavelli’s Prince, Rousseau’s primary legislator-sovereign and Schmitt’s sovereign and sovereign state. All of these entities, by virtue of their status in certain situations, may use specific measures to abolish or suspend the statutory law, thereby enacting a new *nomos*.

To summarise the issues concerning *nomos* in the context of violence, it is to be posited that it constitutes the original act of land division, its appropriation, which in turn forms the basis of law and order. Thus, appropriation, which is violence often effected through physical aggression, is a real – not abstract – relationship between power and

² A larger excerpt in the original: “Le premier qui, ayant enclos un terrain, s’avisa de dire: Ceci est à moi, et trouva des gens assez simples pour le croire, fut le vrai fondateur de la société civile. Que de crimes, de guerres, de meurtres, que de misères et d’horreurs n’eût point épargnés au genre humain celui qui, arrachant les pieux ou comblant le fossé, eût crié à ses semblables: Gardez-vous d’écouter cet imposteur; vous êtes perdus, si vous oubliez que les fruits sont à tous, et que la terre n’est à personne” (Rousseau, 1856/57, p. 257).

territory. In this view, the concept of C. Schmitt is close to the realist paradigms present in studies of international relations theories, emphasising that war and the use of force are inherent elements of international politics (cf. Burchill, 2001, pp. 97–135; Czaputowicz, 2007, pp. 58–102, 175–212; Zięba, 2018, pp. 13–30). H. Morgenthau himself, one of the fathers of the realist paradigm in the modern international relations theory, believed that states, seeking to increase their power, often resort to violence in the absence of an international government, and therefore this violence is the only way to ensure security (cf. Morgenthau, 1985, pp. 4–17; Neacsu, 2009; Zięba, 2018, pp. 13–30). Of a similar opinion was K.N. Waltz, who recognised that in a chaotic international system, states are forced to maximise their power and security, and violence becomes a rational means of survival (Waltz, 1979; Walt, 1997, pp. 931–935; Waltz, 1997, pp. 913–917). However, it is the *nomos* that constitutes own global and regional geopolitical orders, which by means of historical conquests, build the invulnerability of their present consequences. However, all other states and peoples who lagged behind with their right to use violence, and to enact their *nomos*, must accept this state of affairs. Thus, the former criminals and international violence advocates who would back then juggle with violence have become modern-day judges and erudite morality proponents, juggling with judgements on others while becoming the guardians of territorial golden cages. With the aid of the liberal concept of international relations, they have also developed new methods of legitimising appropriation. This is because – as C. Schmitt argued – every *nomos* is a historically specified order that results from what has been occupied, distributed and planned as the living space of a political community (Schmitt, 2011).

Viewed in terms of new claims, new attempts at appropriation, acts of territorial violence should be interpreted – through Schmitt’s intellectual glasses – as acts of self-determination and sovereignty of political communities, seeking to overthrow the artificial, will-ungrounded old *ius publicum Europaeum*, attempts to determine who really is the sovereign in a global or regional space. In practice, by creating a new *nomos*, the political community situates itself vis-à-vis possible “others” – they are the ones who can challenge appropriation or borders, i.e. they pose a potential threat by being the enemy, which in turn constitutes the real political. And so from the perspective of Schmitt’s *nomos* the Israeli-Palestinian conflict can be interpreted as well.

A state of higher necessity as a justification for violence

Under the Polish law the institution of higher necessity is regulated in the criminal code, and like necessary defence it determines the circumstances excluding the unlawfulness of the act. However, it is worth noting that the Act distinguishes two separate institutions in this respect. The former actually excludes unlawfulness (functioning as the counter-type), while the latter is a circumstance preventing the attribution of guilt to the perpetrator who commits a criminal act under it. Both situations involve sacrificing one good in order to protect another, which amounts to acting to avert an imminent danger threatening any good protected by law. Noteworthy, in the former case, the good sacrificed has a lower value than the good saved, while in the latter case, the good sacrificed does not represent an obviously higher value than the one to be protected (proportion-

ality remains preserved). In both varieties of a state of higher necessity, the condition allowing the sacrifice of a good is the absence of any other way of avoiding the threat (subsidiarity), while the threat must be objective in nature (Królikowski, Zawłocki, 2015, pp. 259–265; Warylewski, 2017, pp. 332–336, 422–424; Pohl, 2019, pp. 300–307; Mozgawa, 2020, pp. 283–291; Kulesza, 2023, pp. 319–323, 348–356).

As regards state responsibility under international law, the institution of higher necessity, in various ways, was introduced by the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) adopted by the UN International Law Commission in 2001. Article 23 sets out the exclusion of culpability in a situation of *force majeure*, while Article 25 defines the necessity itself (UN, 2005). Whereas in the first case the unlawfulness of the state is excluded due to *force majeure*, an event of irresistible force, or an unforeseen event beyond the control of that state; necessity – exempting from liability – is the only way in which the state can secure an essential interest in the face of a grave and imminent danger, or is an act that does not seriously affect the essential interest of states in relation to which a given obligation holds. Of course, particular situations cannot be invoked where international obligations preclude the possibility of raising necessity, or the state has itself contributed to it. In general, nothing excludes the unlawfulness of any state act that constitutes a breach of peremptory rules of international law (UN, 2005; Zawidzka-Łojek, 2022, pp. 264–274, Bierzaniek et al., 2023, pp. 197–209).

Analysing the general assumptions of the state of higher necessity in international law, A. Górbiel points out that in its historical development the German doctrine distinguished between particular forms of it: (1) state necessity, (2) war necessity and (3) military necessity. The first one of these boils down to *raison d'être*. The second one to the state's strategic objective of victoriously bringing the armed action as a whole to an end. The third form – the military necessity – is essentially concerned with the means necessary to conduct military operations, although the scope of this necessity is not necessarily explicitly specified, which means that it can be understood in several ways (Górbiel, 1970). Undoubtedly, however, one of the limitations is humanitarian law, as one form of the *nomos* of the liberal world. Another factor affecting its understanding is the continuous development of military technology, which now allows for a free interpretation of regulations of the international law of armed conflict that are incompatible with this progress. This results, on the one hand, in ambiguous assessments of the legitimacy of the use of methods and means of warfare, and on the other: in the ease with which arguments of ultimate need or exceptional circumstances can be used to legitimise lethal violence against others, particularly civilians. This is particularly evident in the Israeli-Palestinian conflict, in which the Israeli side uses a combination of the above types of argumentation to legitimise international crimes of various types against the Palestinians. This has resulted in the issuance of an arrest warrant by the International Criminal Court in The Hague against Benjamin Netanyahu and Israeli Defence Minister Yoav Gallant (ICC, 2024). In conclusion of the above, it must be added that the very concept of military necessity, as a state of higher necessity, is doctrinally described with the characteristics that are attributed to similar inclusions of fault and unlawfulness of acts in national orders, *inter alia*, immediacy of danger, proportionality, subsidiarity (cf. Bojarski, 2017, pp. 161–201).

From the perspective of the above considerations, the state of higher necessity expressed in various ways becomes the main axis of argumentation, fitting into the anti-humanistic justification for the use of lethal violence against the Palestinian civilian population. Crimes of this type are justified by state, war and military necessity. The argument of the “exclusive means” of defence, in an emergency situation, against an imminent danger not infrequently takes the form of large-scale military operations targeting territory inhabited by civilians. The Schmitt’s political – which amounts to a division into friends (soldiers and citizens of “our” state) and enemies (all on the Palestinian side) – leads to the interpretation of most military actions as justified by the need to secure one’s own *nomos* (territory, sovereignty and security), and to expand it at the expense of others. Thus, the figure of the sovereign is granted special powers, extraordinary ones that suspend rights, including humanitarian rights. With the benefit of this view, following T. Asad, it must be assumed that the category of terrorism is a convenient tool for depreciating the asymmetric violence advantage between stronger groups, with significant military potential and technology, and weaker ones, deprived of traditional means of warfare, and so using irregular methods as a substitute (see Asad, 2017, pp. 118–151; Bobako, 2017, pp. 8–13). Following Fanon, it is worth mentioning that: “The armed struggle proves that the people only believe in violence. People who have been persistently told that they can only comprehend the language of force decide to express themselves through the use of force (Fanon, 1985, p. 54). Biological and socio-biological anti-humanistic narratives will seek to naturalise violence as a means of conflict resolution, in which the existence or non-existence of a political community will be determined not only by mobilisation around a threat, as in C. Schmitt’s political. Schmitt, but the elimination of the enemy in the most effective way possible. In addition to the naturalisation of violence, there are parallel processes of dehumanisation of the figure of the enemy so that it is easier to deny him humanistic protection and to use lethal violence as a last resort.

Conclusion

The material scope of the research problem addressed in the text concerns the anti-humanistic argumentation that justifies the use of violence in international relations, particularly in the context of a state of higher necessity. The text analyses violence, particularly lethal violence, and its justification in various political, biological and legal theories, going beyond the traditional normative humanistic approach. The main purpose is to present the different types of anti-humanistic arguments used to justify violence in international relations. The text presents the following questions, specifying the material scope of analysis in question, which are linked to the following conclusions:

(1) What arguments can be presented in favour of the use of violence in international relations?

Violence in international relations can be justified by a variety of arguments that often go beyond the classical normative approach based on humanitarianism and the resultant law. The first argument of this kind is the biological justification for violence, which links the propensity for aggression to evolutionary survival strategies such as domi-

nance, defence of territory or securing resources. Socio-biological theories serve here as a good example, pointing to a natural tendency towards violence, the roots of which inhere in the social structure of humans and other primates, where violence served as a protection mechanism against threats (e.g. territorial aggression). Major findings of research into violence from the genetic and evolutionary perspective lend indispensable support to these approaches. The political justification for violence serves as another argument here. A good example is furnished by the assumptions of Carl Schmitt's concept of the political, in which the sovereign has the right to suspend legal norms in an exceptional situation, deciding life and death in defence of the political community. Strategic and warfare arguments based on *raison d'être* and the need to maintain sovereignty may justify the use of violence in the face of serious, imminent threats, as in the case of war. Last but not least, in the context of a state of higher necessity, violence may be regarded as the only means available to defend state interests, in situations where other means fail and the threat is immediate and irremediable.

(2) What is the acceptance limit on arguing the use of violence in international relations?

It can be assumed that the acceptance limits on violence in international relations are primarily determined by the norms of international law and the humanitarian principles underpinning the modern international order. It is accepted that principles such as proportionality, subsidiarity and the absence of any other way of avoiding danger constitute a situation in which it is easier to decide to use violence. However, violence, especially in the context of a state of higher necessity, must not infringe fundamental international obligations, such as respect for human rights, the sovereignty of other states, or compliance with international conventions, including the prohibition on the use of force (e.g. the UN Charter). However, there is no denying that this liberal *nomos* of the international community is not universal. Following C. Schmitt, one might say that there is a variety of disjunct types of sovereignty. The primary tool facilitating violence, including lethal violence, in international relations is the dehumanisation of the enemy and the suspension of the law in the name of protecting national interests. Such practices can lead to an abuse of the concept of a state of higher necessity. The limit to the permissibility of violence thus becomes not only compliance with international normative assumptions, but also the need to ensure that actions are proportionate to the threat and to exempt from liability in the context of protecting sovereignty. It can be assumed that the limit of this argumentation is also the danger of instrumentalising the norm of necessity, which is easily used to legitimise violence, especially against civilians, which can lead to the justification of war crimes, as in the case of the Israeli-Palestinian conflict under analysis.

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Antyhumanistyczne uzasadnienie stosowania przemocy jako stanu wyższej konieczności w stosunkach międzynarodowych

Streszczenie

Zakres przedmiotowy analizy w tekście koncentruje się na problematyce warunków dopuszczalności przemocy w relacjach międzynarodowych (między wspólnotami politycznymi). Głównym celem podjętej analizy jest identyfikacja i prezentacja antyhumanistycznych argumentów, które – powołując się na kategorię nadzwyczajnych okoliczności – legitymizują użycie przemocy. Do argumentacji antyhumanistycznej należy zaliczyć ujęcia biologiczne i socjobiologiczne, jak i te kwestionujące aksjologię współczesnego systemu międzynarodowego. Z kolei w celu uszczegółowienia problemu badawczego w tekście przedstawiono następujące pytania: (1) Jakie można przedstawić argumenty dla stosowania przemocy w stosunkach międzynarodowych? (2) Gdzie przebiega granica dopuszczalności argumentacji stosowania przemocy w stosunkach międzynarodowych? W ramach metodyki analizy zastosowano potrójne podejście jakościowe: (1) Krytyczną analizę wybranych ustaleń filozofii społecznej, biologii, etologii, socjologii i prymatologii w celu uchwycenia biologicznych przesłanek przemocy wewnątrzgrupowej; (2) Hermeneutykę pojęć C. Schmitta (polityczność, stan wyjątkowy, suweren, *nomos*) w celu rekonstrukcji politycznego wymiaru przemocy; (3) Analizę instytucjonalno-prawną stanu wyższej konieczności, zilustrowaną konfliktem izraelsko-palestyńskim. Do kluczowych ustaleń analizy należy zaliczyć następujące twierdzenia: (1) Można wskazać trzy ramy uzasadniania przemocy: biologiczną, polityczną oraz prawną; (2) Wszystkie ramy łączy dehumanizacja „innych” i zawieszenie uniwersalnych norm moralnych, co sprzyja normalizacji przemocy jako narzędzia polityki; (3) Granice dopuszczalności argumentacji są płynne: od naturalizacji przemocy po jej legalizację w wyjątkowych okolicznościach.

Słowa kluczowe: antyhumanizm, dehumanizacja, przemoc, uzasadnienie przemocy, stan wyższej konieczności, konieczność wojskowa

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Competing interests: The authors have declared that no competing interests exist
(**Sprzeczne interesy:** Autor oświadczył, że nie istnieją żadne sprzeczne interesy)