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# Humanitarian Intervention and United Nations

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## ABSTRACT

*With the establishment of United Nations in the aftermath of the Second World War, one clear objective of the international community was to bring and ensure peace and stability around the globe. However a cursory glance at the world history of past few decades provides ample evidence that little has been achieved. There is no guarantee against war-like situations. As a matter of fact international community do, legally and otherwise, recognize the necessity of armed intervention, popularly, known as humanitarian intervention.*

*The doctrine of humanitarian intervention essentially contemplates the use of military force by one state (or a group of states) against another state not in self-defence but, rather, to prevent the widespread deprivation of human rights .*

*A right to humanitarian intervention presents a clear fundamental challenge to state sovereignty, therefore needs a strong justification and a clear legal basis. The UN Charter contains a general presumption against the use of force in international affairs. Specifically, Article 2(4) states, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.” In addition Article 2(7) prohibits intervention “in matters which are essentially within the domestic jurisdiction of any state”. The Charter, however, contains two explicit exceptions to the Article 2(4): Article 51, which permits the use of force in self-defence, and Articles 39, 42, and 43 (powers under Chapter VII) which permit the UN Security Council to authorize the use of force to “maintain and restore international peace and security.”*

*If we take into consideration, activity that are reasonably characterised as humanitarian intervention occurred in places like Somalia (1992-1993), Haiti (1994), Bosnia (1993-1995), Kosovo (1999), East Timor (1999), and Sierra Leone (2000) but not in places where there have been equally heinous and large scale atrocities like Rwanda (1994), the Democratic Republic of Congo (1997-2001), Sudan (1998, 2003), and others has drawn charges of inconsistency and selective indignation. Kosovo intervention proved to be a magnet for charges; it is, after all hard to reconcile NATO’s seemingly enthusiastic*

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*humanitarian intervention over Kosovo with the world's utter indifference over genocide in Rwanda.*

*On one hand where Humanitarian Intervention empowers world leaders to be something more than being a mute spectator of gross human rights violations. On the other hand there is a policy objection to humanitarian intervention, It is prone to abuse as it provides cover for self interested action. This abuse of the humanitarian justification for military action blurs the distinction between legitimate exceptions to the non-intervention principle and subversion of the principle for reasons of national interest .Its in this light the author would discuss the structure, scope and limitation of UN with respect to Humanitarian Intervention and also touch upon the concept of Responsibility to protect as an alternative to humanitarian intervention.*

## I. INTRODUCTION

*“The Charter of the United Nations expresses the noblest aspirations of man: abjuration of force in the settlement of disputes between states; the assurance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; the safeguarding of international peace and security.”*

One look at the preamble of UN Charter and it becomes clear that it's a product of Second World War and strives to provide peace, security and justice to the world community. Article 1 holds human rights as the core universal value however post cold war era is filled with cases of grave human rights violation. Though the UN charter at large prohibit use of force and upholds sovereignty of a state, the question arises what is to be done in case a state is the reason behind human rights violation, in case of genocide or war crimes.<sup>2</sup> As a result international community do, legally and otherwise, recognize the necessity

of armed intervention, popularly, known as humanitarian intervention.

On the other hand, here attention should also be paid to the observation of I.C.J. in the *Corfu Channel* case, the Court observed that:

"the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself." (*I.C.J. Reports 1949*, p. 35).

Humanitarian Intervention has often been looked upon as a two edged sword.<sup>3</sup> While it appears to be duty of world community to take resort to humanitarian intervention in cases of grave

<sup>2</sup> Malcolm N. Shaw, *International Law* 488 (6<sup>th</sup> ed., 2008).

<sup>3</sup> Jean-Pierre L. Fonteyne, *The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter*, 4 CAL. W. INT'L L.J. 203 (1973) at 237.

violation of human rights, there is a fear that humanitarian intervention is prone to abuse as it provides cover for self interested action.<sup>4</sup>

In this paper the authors will discuss the role played by United Nations with respect to Humanitarian Intervention. In doing so, the concept of humanitarian intervention will be discussed foremost followed by provisions in United Nations Charter, cases of intervention and the concept of responsibility to protect.

## II. HUMANITARIAN INTERVENTION

Non interference in the affairs of other states is an established principle of international law and its violation is referred to as intervention. To quote Oppenheim, intervention is “a dictatorial interference by a state in the affairs of another for the purpose of maintaining or altering the actual conditions of things.”<sup>5</sup> However humanitarian intervention is intervention on behalf of human rights transcending sovereignty.<sup>6</sup>

It is important here to have a look at some of the definitions provided by the international scholars on humanitarian intervention. Baxter refers humanitarian intervention as “short-term use of armed forces by government, in what would otherwise be a violation of the sovereignty of a foreign state, from the protection from death or grave injury of citizens of the acting state and

incidentally, perhaps, nationals of other states by their removal from the territory of the foreign state”<sup>7</sup>

A humanitarian intervention is an act performed for the purpose of forcing a sovereign to respect fundamental human rights in the exercise of its sovereign prerogatives.<sup>8</sup> Its an attempt to compel a state to act or to compel a state to act or to refrain from acting and may eventually be backed up by the use of force.<sup>9</sup> Sir John Vincent writes “offences against human rights is a matter of International concern... ..do not trigger intervention except but perhaps when outrageous conduct shocks the conscience of mankind.”<sup>10</sup>

Although a state’s treatment of its subject is a matter exclusively within its domestic jurisdiction yet intervention has been justified so as to defend the rights of foreign subjects of an oppressive rules.

However, many international legal scholars, especially those from third world countries have argued that the doctrine of humanitarian intervention has no place in international law. According to V.S. Mani, “respect for sovereignty and non intervention are two cornerstones of international peace in the contemporary world.”<sup>11</sup>

<sup>4</sup> Yearbook of the ILC, 1966, vol. II, p. 248.

<sup>5</sup> L. Oppenheim, International law, Vol, 1, Longmans Green, London, Eight Edition, P.305.

<sup>6</sup> Stanley Hoffman. “The Problem of Intervention”, in Hedley Bull (ed.), Intervention in world politics, oxford university press, New york, 1984, P.26.

<sup>7</sup> Cf. Richard Lillich, ed., Humanitarian Intervention and the United Nations (Virginia, 1973) p.59.

<sup>8</sup> Hersch Lauterpacht, “the international Protection of Human Rights, Chapter I : Fundamental Human

Roghts under the Charter”, *Recueil des Cours* ( 1947-I) pp. 13-35

<sup>9</sup> Thomas M Frank, “Who Killed Article 2(4)?”, *AJIL*, vol. 64 (1970), pp. 809-37

<sup>10</sup> Cited in Adam Roberts, “Humanitarian war, military intervention and War”, *International affairs*, Vol. 69, No.3 July 1993, P. 433.

<sup>11</sup> V.S. Mani, “Humanitarian Intervention and International Law”, *IJIL*, vol. 33 (1993), pp. 1-26

According to Brownlie, “that humanitarian intervention, on the basis of available definitions, would be an instrument wide open to abuse... as a matter of degree, the definitions of humanitarian intervention are woefully slack. Moreover, the safeguards attached to the definition seem unworkable. Does a force sent to halt racial oppressions or practice of slavery remain until the legislative and administrative structure maintaining the particular condition has been changed.”<sup>12</sup> Mani seems to be of the same opinion and holds that under modern international law, there is no place for humanitarian intervention and contrary views in the western doctrine are untenable in terms of state practice and rulings of the International Court of Justice.<sup>13</sup>

Some western jurist have, however begun contending that there should be a right, and even duty, to intervene in another state to ensure “good governance” or to enforce human rights. This is an ominoustrend which must be checked.

### III. UNITED NATIONS & HUMANITARIAN INTERVENTION

The advent of the United Nations neither terminated nor weakened the customary institution of humanitarian intervention. A new basis of humanitarian intervention emerged after the formation of the United Nations. The preamble of the UN Charter expresses the determination of the people of the of the world “

to reaffirm faith in the funadamental human rights, in the dignity and worth of the human person, in the equal rights of men and women...’<sup>14</sup>the UN Charter seven specific references to human rights in the Preamble and Articles 1(3), 13 (1)(b), 55(c), 62(2), 68 and 76(c). The UN’s relevant activities focus on-

- a. Defining and clarifying rights of individual
- b. Studying particular human rights or human rightsin particular places and making recommendation for their realisations
- c. Providing assistance directly to victims of human rights violations
- d. Protecting violations in specific cases<sup>15</sup>

Other Charter provisions, which appear to engage Member State’s obligation with respect to these six references, are Article 56, 60, 87.

The main question is whether the doctrine of humanitarian intervention survives the provisions of the Charter prohibiting the resort to the use of force under Article 2(4) except in self-defence under Article 51 or under the authority of Security Council (Articles 42 and 43).<sup>16</sup>

According Article 2(4) of the Charter, all members of the UN pledge to abstain from the threat or use of force in the situations; first, when force is used to affect the territorial integrity or political independence of a sovereign state; and second, when it is used contrary to the spirit of

<sup>12</sup> Ian Brownlie, *Humanitarian interventionin law and civil war in the modern world*, (ed. J.N. Moore) (Princeton, 1973)

<sup>13</sup> Supra note 7

<sup>14</sup>Preamble, United Nation Charter

<sup>15</sup> Theodore Meron (ed.), *Human Rights in International Law*, 2 vols. Clarendon Press Oxford (1984)

<sup>16</sup> Malcolm N. Shaw, *International Law* 488 (6<sup>th</sup> ed., 2008).

the United Nations,<sup>17</sup> Two exceptions within the Charter regarding to prohibition of the use of force are (a) self defence under Article 51 and (b) situations where the security council takes enforcement actions pursuant to Chapter VII of the Charter.

There are different views on Article 2(4) and its bearing on the doctrine of humanitarian intervention. One school of thought interprets Article 2(4) as absolute, while the second maintains that it is a conditional, qualified ban on the use of force.<sup>18</sup> Supporters of humanitarian intervention emphasize that Article 2(4) does not prohibit the use of force per se, but only for certain lawful purposes.<sup>19</sup>

On the other hand, strict adherents to the prohibitions on the use of force hold a different view regarding their territorial integrity and political independence of states. They observe that the principle of prohibition of use of force was intentionally included due to smaller nations concern over the sanctity of territorial and political independence. Despite the prohibition of the use of force resulting from United Nations Charter, various scholars continue to recognize the right of States to intervene in another state, when there are gross violations of human rights occur.<sup>20</sup>

<sup>17</sup>Article 2(4) of the United Nations Charter.

<sup>18</sup>Alex de Waal and Rakiya Omaar *Can Military Intervention be "Humanitarian"?* <http://www.merip.org/mer/mer187/can-military-intervention-be-humanitarian>; The authors explain that the "customary law of humanitarian intervention" comprises the classic examples of 19th-century military "humanitarian intervention" when Britain, France and Russia cited persecution of Christians in Muslim-ruled territories of the Ottoman Empire. Britain intervened in Greece in 1830; France sent a military expedition to Syria and Lebanon in

However the UN Charter empowers Security Council to use force in accordance with the provisions of the Charter. The SC can authorize individual and collective use of force under chapter VII of the Charter.

So far as the UN intervention in the domestic jurisdiction of the states is concerned, the relevant Article 2(7) says:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter, but this principle shall not prejudice the application of enforcement measures under chapter VIII".

The charter, thus permits UN to interfere in the internal affairs of any state. Even against its consent.<sup>21</sup> However, the UN power of intervention is qualified by the determination of threat to peace or breach of peace or an act of aggression by the Security Council could, therefore, declare that violations of human rights in a particular country constituted a threat to the international peace and take military action or authorize member states to terminate such violation of human rights. Article 2(7) could be

1860; Britain sent troops to Crete in 1866.

<sup>19</sup> Yearbook of the ILC, 1966, vol. II, p. 248.

<sup>20</sup>Mark S. Stein, 'Unauthorized Humanitarian Intervention'

[http://www.pegc.us/archive/Articles/Stein\\_UnauthHumInt.pdf](http://www.pegc.us/archive/Articles/Stein_UnauthHumInt.pdf) on p.14 and Seybolt, Taylor B., *Humanitarian Military Intervention: The Conditions for Success and Failure* (2007). Oxford: Oxford University Press, 2007.

<sup>21</sup> For instance, see Mary Kaldor, *Human Security: Reflections on Globalization and Intervention* (Polity Press, Cambridge, 2007), p.16.

interpreted as authorizing humanitarian intervention by way of exception.<sup>22</sup>

However, it may be submitted that when Security Council takes or authorizes actions under Article 39, it is a case of peace enforcement and not intervention ‘proper’.

#### IV. CASES OF HUMANITARIAN INTERVENTION

The activity that is reasonably characterized as humanitarian intervention occurred in places like Somalia (1992-1993), Haiti (1994), Bosnia (1993-1995), Kosovo (1999), East Timor (1999), and Sierra Leone (2000) but not in places where there have been equally heinous and large scale atrocities like Rwanda (1994), the Democratic Republic of Congo (1997-2001), Sudan (1998, 2003), and others has drawn charges of inconsistency and selective indignation.

Kosovo intervention proved to be a magnet for charges; it is, after all hard to reconcile NATO’s seemingly enthusiastic humanitarian intervention over Kosovo with the world’s utter indifference over genocide in Rwanda.<sup>23</sup> The operation raised major questions about legitimacy of military intervention in a sovereign state. Was the cause just for to warrant an outside involvement?<sup>24</sup> Another important question was did this intervention received appropriate authority as the “coalition of the willing” or in

other words NATO acted without Security Councils approval and hence marginalized the UN system.<sup>25</sup>

The case of intervention in Bosnia and Somalia points fingers directly at failure UN. In Bosnia a massacre of thousands of civilians seeking shelter in UN “safe areas” took place in Srebrenica. This incident raised question on basic aim of intervention i.e. protection of human lives. Another failure was Somalia where an intervention being carried out to save lives and restore order was destroyed by flawed planning and ultimate withdrawal of UN peace operations in 1992-93<sup>26</sup>.

Coming back, if in case we try to justify NATO intervention by argument that it was a moral imperative, then inaction in Rwanda would cast serious doubt on the “morality” of a moral rule that is applied arbitrarily and selectively.<sup>27</sup> On the other hand, The most commonly cited examples of intervention for humanitarian purposes are the Indian intervention in the war between Pakistan and Bangladesh in 1971 and Vietnam’s invasion of Cambodia in 1979, it is significant to note here that none of these states sought to justify their actions by reference to a norm of humanitarian intervention (both justified it as *self defence*).<sup>28</sup>

<sup>22</sup> Yearbook of the ILC, 1966, vol. II, p. 248.

<sup>23</sup>International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, International Development Research Centre, Ottawa, 2001, p. 8, available at: <http://www.iciss.ca/pdf/Commission-Report.pdf> at 449.

<sup>24</sup> Clara Portela, ‘Humanitarian Intervention, NATO and International Law: Can the Institution of

Humanitarian Intervention Justify Unauthorized Action?

<sup>25</sup> Ibid at page 1

<sup>26</sup> Id.

<sup>27</sup> Ibid. at 447

<sup>28</sup>J L Holzgrefe and Robert O Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* 216,219 (2003).

## V. RESPONSIBILITY TO PROTECT (R2P)

In order to find new political consensus on the question of humanitarian intervention, Secretary-General Kofi Annan posed a question to the General Assembly, asking 'if humanitarian intervention is unacceptable assault on sovereignty of state, how should we respond to Rwanda, to Srebrenica, to gross and systematic violation of human rights?'<sup>29</sup> In response to the question, the International Commission on Intervention and State Responsibility (ICISS) was established by the Canadian government. Its purpose was 'to build the new international consensus on how to respond in face of massive violations of human rights and humanitarian law'. The commission released its report in the year 2001, advancing the principle of responsibility to protect. The report developed the concept of humanitarian intervention not as a right to intervene, but as a responsibility on part of the state to protect people at grave risk<sup>30</sup>

Responsibility to protect explicitly entails three key duties, first 'to prevent both the root causes and direct causes of internal conflict and other man-made crises putting population at risk'<sup>31</sup> Secondly, a responsibility to react is triggered when responsibility to prevent fails to avert humanitarian crises (responsibility to protect). Third, a responsibility to build requires full assistance with recovery, reconstruction and reconciliation, addressing the cause of the harm. The intervention was designed to halt and avert.

The ICISS report, by highlighting the instances of Rwanda, Bosnia, Kosovo and Security Council's inaction in these instances, emphasised that council members' veto shall not stand in the way of protecting human rights abuses which amount to loosening its legitimacy if it fails to act in face of humanitarian crises.

Later in 2005, the world summit took place in the United Nations where 170 heads of state for the first time formally discussed the report on Responsibility to protect.<sup>32</sup> It was endorsed by the world summit and was adopted by the General Assembly the same year; however, what was endorsed by the meeting in an outcome document represented some what different version of the principle given in the original document.<sup>33</sup> The outcome document restricted its statement to 'preparedness' and showed a clear retraction from the duty explicated in the earlier drafts of the outcome document of the responsibility to protect by replacing the word responsibility with preparedness.<sup>34</sup> It drew major criticism because the statement of preparedness was in major contrast with the commitment of responsibility to protect given in the ICISS report.

Later in 2009, the Secretary-General issued the report entitled 'implementing the responsibility to protect'. In the same year, the General Assembly adopted the resolution which merely took notice of the report and rather than enforcing the principle, it decided to continue its consideration of the principle. Hence

<sup>29</sup>Malcolm N. Shaw, *International Law* 488 (6<sup>th</sup> ed., 2008).

<sup>30</sup> *Supra* 14 at 24

<sup>31</sup> *Supra* Note 14 at 81

<sup>32</sup> Thomas G Weiss, R2P after 9/11 and the world

summit, *Wis INT'L Law Journal*, 24, 750(2006)

<sup>33</sup>*ibid.*

<sup>34</sup>Saira Mohammed, Taking stock of the responsibility to protect, *Stan. J. n int'l L* 48, 324 (2012)

‘Responsibility to Protect’ drawn out in ICISS, was not adopted in its actual form by Security Council. As a result of which it did not succeed to emerge as a legally binding principle. (however its application in the Libya Crisis is notable)

## VI. CONCLUSION

Over the last forty years, a number of governments have justified unilateral military action with reference to the “customary law” of military humanitarian intervention in one form or another, and without exception, the international community has refused to recognize these actions as legitimate. But this “customary law” is reckless and offers absolutely no guidance to the manner in which the intervention itself should be conducted. If there is to be humanitarian intervention, there should be a coherent humanitarian justification coupled with a proper procedural and substantive legal regime to underwrite it.

As Ian Brownlie puts it ‘the doctrine of humanitarian intervention was inherently vague and its protagonist gave it a variety of form’<sup>35</sup> however in the the post-Cold War period the justification for humaitarian intervention in extreme cases, involving human rights violation “which shock the conscience of mankind” are finding increasing acceptance. However, an international consensus is not developed on the issue nor the grounds of humanitarian intervention having clearly defined. The contradiction between humanitarian intervention

and state sovereignty is yet to be defined. Besides, the UN has not been consistent in its response to violation of human rights and there have been selective interventions reflecting the biases and double standards of P5.<sup>36</sup>

Humanitarian intervention should be very exceptional and should be undertaken under auspices of UN. An international consensus must be involved on the grounds and criteria for intervention especially, What level of human rights one nation should trigger intervention? The human must formulate principles and guidelines to make such intervention more broad based and transparent. The legitimacy of humanitarian intervention addressed on clause of intervention, the meetings employed and their proportionality to the end and the authority under which the intervention takes place.

International interventions for humanitarian purposes must be added out by the security arm of the UN i.e. the Security Council. However, the interventions undertaken by the security counsel can gain credibility only when it is reformed and made more representative in its composition. The unrepresentative character of Security Council is an hindrance to international intervention in case of human rights violations as more situations cited for interventions out in developing countries. More countries would need to be included as a permanent member of the security council especially from the developing world and ensure that humanitarian intervention does not become a device to introduce a new kind of ‘colonialism’.

<sup>35</sup>Ian Brownlie, *International law and the use of force* (oxford, 1963), vol. 1, p. 338

<sup>36</sup> Malcolm N. Shaw, *International Law* 488 (6<sup>th</sup> ed., 2008).

As Noam Chomsky argued, “for one thing, there’s a history of humanitarian intervention. You can look at it. And when you do, you discover that virtually every use of military force is described as humanitarian intervention.” Chomsky precisely pointed out everything that is wrong with the way humanitarian intervention is frequently justified and carried out: There is a quick resort to military force without relying on force itself as a last resort; there is always an ulterior motive that predisposes a state’s decision to intervene; and, many a time, the intervention itself is unilateral and unauthorized. Therefore, it is no longer about whether a state should intervene or not, but rather, that a law should be brought into place for the state that intervenes to conform to, in its *modus operandi*.

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