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# Humanitarian Intervention: A Justified Principle?

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## ABSTRACT

*Humanitarian Intervention since the time known has been a very debatable topic and the idea of a country interfering with the matters of another country has been a very contentious and never-ending issue in world politics at large especially after the formation of codified laws and charters which clearly dis approve of this idea. Nevertheless, countries even till today try to interfere in the matters of other countries whatever the reason may be. Due to this interference we have seen instances where countries have been dragged to the International Court of Justice multiple times and countries have been punished to. But also, is it correct to see citizens of a country suffering from blatant abuse of human rights and to be quiet. Is it alright to just keep calm and let people die just because a code says to do so? Through this paper I would analyze the basic concept of 'humanitarian intervention', go through the various arguments surrounding this very volatile and debatable topic, the various arguments, reasonings and justifications given by various countries which have intervened in matters and also to discuss if this concept is something which comes under the bracket of justified moral principle even though the rules don't say so.*

## I. INTRODUCTION

Humanitarian intervention - in an international context, this term refers to when one country intervenes in the internal affairs of another country when, according to international law and international charters, they are not permitted to do so.

We see the usage of this term most often, when a country intervenes to save nationals of another country, from blatant abuse of human rights or other abuses that they face. So, even though the U.N charter, that contains rules and regulations that ought to be followed by member states, explicitly prohibits intervention of states in the issues of other states (Barring a couple of exceptions that include self-defence and acceptance from the side of security council as a part of its responsibility) in Article 2(4),<sup>2</sup> I believe that it is still appropriate for

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<sup>2</sup> United Nations Charter, 2(4) (1945).

states to intervene, where applicable, using various loopholes and justifications such as customary law, etc.

Despite the presence of humanitarian values in the pre-charter era, no such reference can be found in the current codified United Nations charter. This could be because the United Nations was established in the aftermath of World War II with the goal of maintaining peace and preventing situations from escalating and leading to future wars. As a result of these historical circumstances, we can understand why there is no mention of humanitarian intervention in the charter. Even so, we still see such interventions occurring around the world: NATO in Kosovo, US in Iraq (as argued by the U.S) etc. Importantly, there are two types of debates taking place in the context of humanitarian intervention: “(1) whether, as a matter of principle, interventionism ought to be allowed irrespective of the legal status of the doctrine; and (2) whether humanitarian intervention is permissible under international law.”<sup>3</sup>

## II. ARGUMENT FOCUSED ON STATES POLICY

Furthermore, international law is not just constrained to codified texts but also includes customary practices. Such customary laws are not fixed but evolve through time, practice of the states, actions, etc. As discussed earlier, since the UN's inception in the mid-1940s, the protection of human rights has been a major priority, and it has also been considered as part of the development process. For a long time, states have intervened in the face of moral consideration, but only as a last resort when blatant violations of human rights occurred.

Even though we have seen many interventions in the past, the countries defend them under personal defence, as it is one of the two exceptions provided by the charter. The U.K, for instance, justified its actions stating that it intervened “in exercise of the customary international principle of humanitarian intervention.”<sup>4</sup> Whatever the reason may be, not following the UN imposed rules and sanctions doesn't allow countries to use force.

## III. ARGUMENT FOCUSED ON U.N PRACTICE

Article 2(4) says that “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.”<sup>5</sup> Keeping in mind international geo-political dynamics, the “U.N Charter established a system in which peace is

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<sup>3</sup> Modibo Okran, THE DOCTRINE OF HUMANITARIAN INTERVENTION IN LIGHT OF ROBUST PEACEKEEPING Bc.edu (2021), [https://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bcicl/25\\_1/01\\_TXT.htm](https://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bcicl/25_1/01_TXT.htm) last visited 10 May 2021.

<sup>4</sup> Clara Portela, *Humanitarian Intervention, NATO and International Law*, Berlin Information-center for Transatlantic Security (2000).

<sup>5</sup> *supra*, note 2

the default state in international relations and war is an exceptional occurrence that requires justification.”<sup>6</sup> Hence, as mentioned above, the charter provides for only two exceptions under Article 51 of the U.N Charter. Firstly, a right of self-defence without Council authorization for the use of force and secondly, the Security Council, in pursuit of its responsibility to maintain world peace might authorise the use of force. Hence, we can see why many commentators consider humanitarian intervention to be illegal because it is not provided for as a special exception in the charter.

Moreover, the International Court of Justice in one of its famous ruling, *United States V. Nicaragua*<sup>7</sup> states “the ICJ had explicitly ruled that the use of force could not be the appropriate method to monitor or ensure respect for human rights, that there is no general right of intervention in international law and, therefore, intervention violated international law. Although humanitarian intervention does exist in state practice, and although state practice is deemed a source of law as under Article 38 (1) (a) of the Statute of the ICJ.”<sup>8</sup>

#### **IV. JUSTIFICATIONS AND LEGALITY OF HUMANITARIAN INTERVENTION**

However, as evidenced by the numerous examples of such interventions around the world and the high moral ground claimed to justify humanitarian intervention due to the blatant violations of human rights, this approach is gaining traction in a number of countries. We can also see that many world leaders including Britain’s ex-Prime Minister Tony Blair and German’s Defence Minister Scharping have come out and given statements in support of military actions on the ground of humanity.<sup>9</sup>

Here, it is also necessary to discuss the Criminal Law approach, which basically states that the strict approach of laws must also take into account morality, as seen in practise wherein The Goldstone Commission concluded that the NATO air campaign in Kosovo was "illegal but legitimate."<sup>10</sup> An independent international commission also “lamented the gap between legality and legitimacy.”<sup>11</sup>

#### **V. HUMANITARIAN INTERVENTION – LEGAL OR JUST LEGITIMATE ?**

Let us now examine the distinctions between legal, legitimate, and other debates surrounding this topic, such as institutionalisation or codification of the principle, etc.

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<sup>6</sup>Saira Mohamed, *Restructuring the Debate on Unauthorized Humanitarian Intervention*, 88 North Carolina Law Review (2011).

<sup>7</sup>*Nicaragua v United States*, 14 ICJR (1986).

<sup>8</sup> Kirthi Jayakumar, *Humanitarian Intervention: A Legal Analysis*, SSRN Electronic Journal (2012).

<sup>9</sup> Portela, *supra* note 4

<sup>10</sup> Mohamed, *supra* note 6

<sup>11</sup> Id

The first, simple legal step would be to completely deny Humanitarian Intervention, as it is against the legal framework that governs the countries. Simon Chesterman the dean on NSU argues that “even the argument that ‘implies humanitarian intervention is morally valid because the ends sought justify the means employed’ is false because ‘in practice the ends are never so clear and the means are rarely so closely bound to them’.”<sup>12</sup> To some extent, this is true because we have seen numerous instances where nation states have interfered in the affairs of other countries in order to demonstrate their power or authority, disrupting peace and harmony. In fact, such instances of military power abuse are more common than cases in which countries have taken action in good faith. Even though this legal step to deny Humanitarian Intervention appears to be a simple representation of existing law and provides a more straightforward position for countries, individuals who truly suffer as a result of state action and a lack of human rights will suffer greatly.

Now comes the point of justification. This can be observed in the case from roughly 20 years ago, when NATO defended its intervention in Kosovo as a rare breach.<sup>13</sup> Here, we can see that NATO did not go to the trouble of modifying the law or creating a new one, but stated that it used force on humanitarian grounds and argued that it was done primarily on moral grounds, which simply overrode any issues of sovereignty. It's also worth noting that the Security Council took no action to condemn or reprimand NATO or criticise its activities. As a result, it set an unintentional precedent

Then there are scholars who argue that this concept should not be codified, but rather become widely accepted, and that the absence of Security Council authorization is essential as “The uncertain legality of humanitarian intervention puts a very high burden of justification on those who would intervene without UN authorization. Yet this very ambiguity is also fertile ground for the gradual emergence of normative consensus, over time, based on practice and case-by-case decision making.”<sup>14</sup>

However, this does not imply that the concept will be easily institutionalised or that the moral reasoning will be successful. It has its own set of issues, and when there is legal backing, the power is considerably greater, implying that there is a considerable risk of misuse of the legal provision.

Abuse may occur as a result of various political gains that nation states may obtain. The effect of codification would eventually be nullified as a result of this. Furthermore, scenarios

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<sup>12</sup> J. E. Linter, *Humanitarian Intervention: Legitimising the Illegal?*, 5 Defence Studies 271-294 (2005).

<sup>13</sup> Id

<sup>14</sup> Jane Stromseth, *Rethinking humanitarian intervention: the case for incremental change*, in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* 232–272 (J. L. Holzgrefe & Robert O. Keohane eds., 2003).

may arise in which states act unnecessarily and remain calm when there is a genuine need to act. They may recognise their own self-interests and act accordingly, thereby posing a threat to world peace.

Finally, notwithstanding what the rules or charters say, it is extremely difficult to control every nation state to work and run completely on the guidelines of international law, at least at the point of intervention. We must also question what good is sovereignty (the main reason why intervention is considered wrong) when there is no justice on the other side of the line (border) and people do not even have basic rights. The sole basis of the concept of human intervention is that the basis of intervention on humanitarian grounds is that Because it is no state's prerogative to tolerate wilful disrespect and violation of human rights, if such wilful contempt and abuses occur, another state or states may interfere to put an end to them. But at what cost? It is undoubtedly true that international law, the legal framework, rules, and guidelines are what allow this otherwise chaotic world to progress smoothly.

Intervention on moral and humanitarian grounds is something that has happened in the past, is still happening now, and will happen in the future. It's not going away anytime soon. We can see that throughout recorded history, countries have been acting in contravention to law. As Weiss argues "the greater danger for a more just world order comes from too little, rather than too much, humanitarian intervention."<sup>15</sup>

Given the current global situation, I believe scholars should stop debating whether it is legal or not, even if it violates basic rules of international law, because whatever the conclusion is, humanitarian intervention will still exist in the world. Instead, we should consider what the expected standard should be when such interventions are made.

What is expected right now is a simple framework that allows for moral decisions but with a higher degree of constraint, rather than how to make this legal, as a set of rules would be open to misinterpretation and manipulation. People with authority and resources must be able to operate on moral and humanitarian grounds, and they must be given the space to do the right thing when there is clear proof of human catastrophe occurring around the world. The time when such a mode of intervention is adjusted and included in the legislation with a properly explained set of intended threshold to follow, then the implementation may be monitored, simplified and streamlined to get good results in this ever changing and sensitive world.

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<sup>15</sup> *Linter, supra* note 11

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