

## HUMANITARIAN INTERVENTIONS JUSTIFICATION

### **Abstract**

*There is a serious dilemma about whether to respect the international norm, which prohibits the use of force in the internal affairs in the form of intervention or to intervene when it comes to open and gross violations of the international humanitarian law. The dilemma is expressed as a conflict between legitimacy and legality. The author investigates the relation between legality and legitimacy, i.e. the conditions in which legitimacy has a priority over legality. According to the principle of legality, based on purely legal grounds, intervention must not be carried out unless all legal conditions are met. But, according to the principle of legitimacy, which is mainly based on political motives and moral considerations, the implementation of intervention is justified. Legality is determined by precisely defined legal norms, and legitimacy is the result of extensive comprehension of law and the result of doctrinal disputes and public opinions. The possibilities and acceptance of the fact that humanitarian intervention has been used as a justification for illegal military intervention, reconsider the moral and the legal support for humanitarian intervention. The overall situation is additionally blurred by the view of legitimacy, that is, the international legal status of the force that implements or calls for humanitarian intervention. There is still a division of the views about whether the humanitarian action carried out in the form of violent intervention or unilateral intervention is beyond the legally accepted UN Charter?!*

**Keywords:** HUMANITARIAN INTERVENTION, PROTECTION OF CIVILIANS, HUMANITARIAN LAW, RIGHTEOUS CAUSE, LAST RESORT.

### **Introduction**

With the adoption of the UN Charter in 1945, the protection of the individual becomes an important issue in international law. States can no longer invoke the principle of non-interference in the internal affairs against interference and non-military international intervention in cases of serious violations of human rights or violations of the military law on their territory. Also, persons responsible for genocide and war crimes bear individual responsibility under international law. States bear the responsibility for the prosecution of these criminals and if the country does not do that then such persons are subject to international judgment by the International Criminal Court. But still, the protection of the individual has not come to the fore during the whole period of the Cold War .

The imperative of human rights emphasizes the concept of state and government and the regulations designed to protect them, especially in Article 1 (3) which states that all countries should “achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” (United Nations Charter, Art. 1 (3)). The right of the state recognized in international law is meaningful only under the assumption that these countries provide at least minimal human rights. The goal of the United Nations for promotion and protection of human rights located in Article 1 (3) with reference to Article 2 (4) as clause for protection against war has fundamental precedence over the respect for state sovereignty. 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.” (United Nations Charter, Art. 2 (4)). Thus, the use of force in defence of the basic human rights is not the use of force inconsistent with the intentions of the UN. (Teson, 174). Here, humanitarian interventions come into play.

There is a need for clarification of certain moral and political aspects related to humanitarian interventions. The template for this is the following: First, a research of the need for a humanitarian intervention, stemming from a particular condition and style of warfare that often results in genocide and mass violations of human rights, is requested. In doing so, the dilemma surrounding humanitarian interventions should not be accessed without taking into account the nature of the new state and a new way of warfare. Second, factors that affect the response of the international community to humanitarian intervention should be analyzed. The focus will be on political, moral and instrumental motivation and obstacles to humanitarian intervention after the Cold War. Third, in the context of post - Cold War the moral and political dilemmas involved in the decision on whether to conduct a humanitarian intervention must be considered. Such dilemmas emerge from the complex balance between order and justice at the domestic level in most of the emerging countries as well as internationally between countries.

### **1. Non-interference in the internal affairs**

The principle of non-interference in internal matters is a long lasting and fundamental principle of the international customary law. It derives from the right of every state to sovereignty, territorial integrity and political independence and is actually the basic principle of international law. The customary principle of non-interference refers to interstate relations. As for the intervention of UN bodies, a partly similar principle is laid down in Article 2 (7) of the UN Charter as a fundamental principle of the organization. According to this article “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the do-

mestic 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 VI." (United Nations Charter, Art. 2 (7)).

The UN General Assembly in 1970 adopted the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. The declaration, which has the status of a recommendation, basically refers to the principle of non-intervention in contemporary customary law. According to the Declaration, neither a state nor a group of countries for whatever reason has the right to interfere in the internal affairs of other countries. Thus, any form of interference in a State or against its political, economic and cultural elements, constitutes a violation of international law. Additionally, no state should use measures that impede another country to apply its own sovereign rights or measures for the purpose of achieving any advantage. Furthermore, no state shall organize, support or participate in subversion, rebellion or terrorist activities directed towards the violent overthrow of the regime of another State, nor shall interfere in a civil war in another country.

As for the UN, Article 2 (7) of the Charter concerning the work of UN bodies is very similar to the customary principle of non-intervention. However, in the context of Article 2 (7), the intervention must be understood in a broader sense. The prevailing view is that the UN bodies can at any time discuss matters of a general nature and can provide general recommendations, whereas any UN resolution or a recommendation regarding the specific country calling to act in a particular way is considered an intervention in accordance to Article 2 (7).

The practice of the work of UN bodies is not clear through the scope of the concept of intervention. In cases where Article 2 (7) is invoked, members argue that intervention includes all activities of interference, including even the discussions and resolutions on the situation in a particular country. When the UN rejected the reference to Article 2 (7) of the state, it remains unexplained whether it is based on the view that interference is no intervention or that intervention refers to things that are not considered essential to the jurisdiction of the state. So, the urgent humanitarian assistance offered by UN bodies will probably not be an intervention if it retains all norms of humanity, impartiality and neutrality concerning humanitarian aid that is offered to a state.

Article 2 (7) provides an opportunity for a looser political definition of what is essential in the domestic jurisdiction. There are arguments that claim that even in a situation within a state where there is lack of legal obligation, the subject, which in legal terms should be essential for the domestic jurisdiction under Article 2 (7), can be a justified subject of international concern that crosses the area outside the exclusive authority of the state (McDougal and Reisman, 1968). As for UN action, when a dispute arises as a *domestic* or *international* characteristic of a situation in the country where the *issue* occurs, in accordance with Article 2 (7), it is only to some extent subject to judicial control. The power to interpret Article 2 (7) lies in the first instance in the action of the UN organ itself. The International Court of Justice has no supreme power for interpretati-

on when it comes to the UN Charter. However, according to Article 96 of the UN Charter, the General Assembly or the Security Council may request an advisory opinion from the Court on any legal matter. The court may also interpret Article 2 (7) in cases brought before it. According to the position of the court, Article 2 (7) never excluded the UN bodies from action.

## 2. Care to protect the weak

Many people who normally oppose the war, make an exception for so-called humanitarian wars. The opinion is that this kind of war is being waged due to altruistic reasons. It all begins with the growth of concern in NATO about the controversial doctrine of humanitarian intervention and inability of the international community to protect the helpless in an emergency caused by conflict. In the case of the NATO intervention in Kosovo an important issue was raised about the consequences of such action without international agreement. Is it legitimate for a regional organization to use force without a UN mandate and, on the other side, are massive and systematic violations of the human rights, with terrible humanitarian consequences, permissible? This in fact is a recognition of an existing conflict between the concept of state sovereignty and the moral obligation to protect people who are threatened. That has encouraged the international community to look for other ways to resolve the conflict between the two concepts. It was a challenge to the world to find common ground in simultaneously watching the principles of the Charter and in acting in defence of the common humanity.

The *Permanent Court of International Justice*, which is the predecessor of the International Court of Justice, in 1923, with regard to the concept of domestic jurisdiction of the state in Article 15 (8) of the *Covenant of the League of Nations*, pointed out that the term is essentially relative and depends on the development of international relations. This notion was transferred to Article 2 (7). During the negotiations in San Francisco in 1945, before the adoption of the UN Charter, it has been emphasized that non-intervention would be a fundamental principle of the United Nations, but it would also be the subject of evolution according to the development of the international law.

The overall objective of a humanitarian intervention in another country is protection of the civilian population against threats within the geographical boundaries of the State which is subject to intervention and „not for the purpose of self-defence, and not in order to address some larger threat to international peace and security as traditionally understood.“ (Evans, 2006). The international community was faced with the task of overcoming the previous understanding of the *right to intervene with the responsibility to protect*, aiming to overcome the existing problem of lack of political will and what is generally accepted as a *routine conflict prevention*. Thus, the essence of the concept of *responsibility to protect* has become protection of people or the higher safety concept - The human security. This new study calls into question the approach that considers the protection of national borders and sovereignty and in this context it is an anachronism in accordance with the dynamics of international politics in the internati-

onal system of the post - Cold War. With this new attitude, the prevailing thought is that the position of sovereignty implies a responsibility to protect the population rather than the state borders. This is consistent with the thought that all sovereign states in the first instance owe their citizens and that debt must be settled by the international community if the first - responsible is abdicated or unable to act. The actual benefits of the concept of *responsibility to protect the people* completely summarized would be: First, the shift from the right to intervene to the responsibility to protect imposes an assessment of the problem from the perspective of those who need help rather than the perspective of those that could intervene. Second, this formulation implies that the primary responsibility remains to the country that is affected. Only if the state is unable or unwilling to fully fulfil its responsibility to protect, or if the state itself is the violator of the human rights and security, only then can the international community take responsibility and act instead of that state. Third, the responsibility to protect is called *umbrella concept* that covers not only the *responsibility to act*, but also the presented *responsibility to prevent* and the *responsibility to rebuild* (Gareth and Sahnoun, 2006).

Here, it is inevitable to mention that some less obvious negative aspects of the humanitarian intervention associated with the manner in which the intervention changes the dynamics of the conflict interfered. The group in whose favour the intervention is conducted can get the incentive to divert the efforts of waging the war to the conducting of a propaganda in order to maximize the benefits of the intervention, as well as incentives to exaggerate the crime committed against it, fabricate events that have not occurred and even perform staged attacks on its own people. This group, in addition to getting an incentive to refuse to negotiate for conditions that could be agreed before the intervention, can also get an incentive to strive to improve the conditions with the agreement that those conditions would be provided by the interventionist. Such actions prolong the conflict. On the other hand, if the group against which a humanitarian intervention is initiated is convinced that it is not guilty of what is being accused for, or at least, that the other side is no less to be blamed, subsequently, that party could conclude that it represents a target for certain things that are not associated with its exercise of human rights and therefore there is no further need to be concerned about the way those human rights are being perceived. This results in an increase in the abuse of human rights. Humanitarian interventions are in favour of the weaker party in the war. But, it would be wrong to conclude that the weaker side is the one having justified goals in the war. The suffering of one side over the other, does not give it the right to expect that its own objectives in the war are more justified than the goals of the other party that suffers less.

If sovereignty implies the duty of a state to protect its citizens, the relevant question here is: under what circumstances the international community will intervene in the internal matters through intervention of rescuing vulnerable population?! In this sense, it should not matter defaying/specifying the circumstances under which the world community is to intervene in situations of internal conflict. What we need to do is emphasize that the threshold for international action is conditioned by the lack of

will and failure of the state to provide preventive measures or by the disability of the state. Thus, humanitarian interventions can be seen as a last resort - when all non-military options of prevention or of peaceful solution to the crisis are taken into account and there is a logical belief that the weaker measures would have failed- based on several inter-related conditions such as: a valid reason, caution, proper purpose, last resort, appropriate use of force and reasonable and proper governmental view.

### 3. Criteria on humanitarian interventions

When deciding on the merits of what is seemingly a humanitarian intervention, what is to be taken into account is not only the declared objective of the interventionist government, but the reality of the situation and all of its possible consequences (Marjanovic, 2011). According to the international law and the international customary law, the prohibition of an intervention consists of two elements. Firstly, the interference in the internal matters must reach the level of an intervention. Second, the intervention must be addressed to problems that belong to the domestic jurisdiction. With the Final Act of the Helsinki Conference on Security and Cooperation in Europe from 1975, States parties undertake to refrain from any act of war, or political, economic or other coercion which is intended to subordinate to its interest another country participating in the application of the rights inherent in sovereignty and thus securing any advantage.

When it comes to the threshold of taking humanitarian intervention, according to humanitarian intervention apologists, the criteria that justify the legitimacy of coercive intervention are the following:

1. Massive violation of the basic human rights at the level of crime against humanity carried out by the country itself or with its support or its silence, or as a result of the disintegration of the state where the government is disabled to prevent these crimes;
2. The UN Security Council is paralyzed or unable to take action due to the use of veto or a policy of confrontation between the permanent five members;
3. There are clear signs that the military options will better serve the given context where all peaceful means in achieving a solution have been exhausted and do not contribute to success;
4. A group of countries that oppose a state, intervene for the sole purpose of stopping crimes and violations of human rights by accepting, or at least without opposing, the majority of the UN member states.

In contrast of this are the views of the opponents who do not justify a humanitarian intervention on any given basis. The reasons why a humanitarian intervention is an extremely bad idea are several. Some are obvious, others may not be so clear, but are no less harmful. They include:

1. Humanitarian interventions are funded by taxes, which in a way from economical aspect are considered as imposed costs;
2. Under the name of humanitarian intervention a state can initiate a war by the pretext that it has nothing to do with war;
3. Military action usually results in innocent casualties and damage to property and endangers the ecological environment;
4. Military psychosis in the state subject of intervention can be used in support of the power of the rulers of the country and in reduction of the civil liberties of its subjects;
5. At any given time, many states are involved in the violation of human rights, so it is logical to conclude that the principle of humanitarian intervention is a recipe for endless war;
6. Humanitarian intervention sends a signal to the abused ones around the world that, instead of fighting themselves for their rights, they should campaign for an intervention by an external force;
7. Humanitarian intervention can serve to convince the public in the positive aspects of adventurous foreign policy, militarism or violation of the principle of national sovereignty. It can serve the idea of imperialism and can build a moral foundation for an empire which later would start to expand its boundaries with wars of different types (Marjanovic, 2011).

There was an increased interest in the debate on the justification of humanitarian interventions arising from the discontent and condemnation of NATO's unilateral intervention in the Federal Republic of Yugoslavia in 1999 caused by the onset of ethnic cleansing in Kosovo. At the moment, the debate on the legality of the air campaign of the coalition between the US, the UK and the France on the locations of the Assad forces in Syria is also quite relevant, as in some way relates to the Syrian government's chemical weapons capacities and its alleged use on civilians. The air strikes included aircraft and cruise missiles launched from the sea.

In the latter case, the intervening coalition is accused of initiating an intervention without seeing the results of an international inspection commission sent to the field in Syria to investigate cases of alleged use of chemical weapons against civilians in the Duma on April 7, 2018. The Syrian government denies involvement in the Duma attacks and calls the air strikes a violation of international law. This event is still fresh and the further development of this interventionist adventure is yet to be expected. The veto of Russia meant that there was no prospect for the UN Security Council to approve the use of force. Thus, the legality of the military action relies on an argument of the international public order based on the defence of the credibility of the ban on the use of chemical weapons, forcing Syria to commitments arising from its membership in the Chemical Weapons Convention and at the same time alleviating humanitarian suffering through the protection of civilians from further attacks with chemical weapons. The attacks began before the *Organization for the Prohibition of Chemical Weapons* (OP-

CW), inspectors arrived in Syria to investigate the alleged attacks, although it was previously reported that inspectors were not allowed access the sites for production and storage of chemical weapons.<sup>1</sup>

Let's go back to the humanitarian intervention in the Federal Republic of Yugoslavia. NATO's humanitarian war in Kosovo was condemned by most of the international community because of its lack of legitimacy and legality, which were contested over lack of approval by the UN Security Council. Taking this into account, those humanitarian interventions that would be carried out without the approval of the Security Council of the UN, should not be justified in terms of legitimacy, but could be justified as a sort of backside door in the international law applicable on the moral basis and hence should be recognized as an ad hoc only in extreme situations.

---

<sup>1</sup> Regarding the military action, the United Kingdom announced its legal stance on the action, which stressed that limited strikes were justified on a humanitarian basis. After the attacks, the Parliament of the United Kingdom debated the attitudes in accordance with the international law concerning the urgency of the intervention and whether there was a lack of practical alternatives.



### References

- Danish Institute of International Affairs. (1999). *Humanitarian Intervention: Legal and Political Aspects*. Copenhagen: DUPI.
- Evans, G. Sahnoun, M. (2006). "The Responsibility to Protect: Revisiting Humanitarian Intervention." *Foreign Affairs*. 24.10.2006<sup>th</sup>.
- Marjanovic, M. Is humanitarian war the exception?. *Mises daily*. Monday, April, 04.2011. <http://mises.org/daily/5160/Is-Humanitarian-War-the-Exception> (visited 15.05.2014).
- McDougal, S. Reisman, W. (1968). "Rhodesia and the United Nations: The Lawfulness of International Concern." *American Journal of International Law*. Vol. 62, No.1, pp 1-19.
- Teson, F. (1997). *Humanitarian Intervention: An Inquiry into Law and Morality*. Irvington-On-Hudson, N.Y. : Transnational.
- United Nations Charter. <http://www.un.org/en/documents/charter/> (visited 30.04.2014).
- UNSC Resolution 1296 (2000), 19 April 2000. <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Civilians%20SRES1296.pdf> (visited 28.05.2014)