

The title of the Research Paper;
Humanitarian Intervention and the Problem of Sovereignty.

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Abstract.

Attention to the security of individuals in the international arena has occupied an important position, especially with the increase in human suffering and their exposure to genocide and ethnic liquidation, as a result of internal and regional armed conflicts. The spread of light weapons and mass destruction weapons and terrorist acts, which led to the emergence of international calls to put an end to these violations. States – governmental and non – governmental organizations have found themselves compelled to intervene to protect or prevent human rights abuses.

The issue of interference in the affairs of states has taken a new direction in which the justifications and even the means differ from those practiced in the past, which were mostly military interventions with the intention of occupying or annexing parts of states territories for the benefit of other states but the international trend at the present time has taken the principle of cooperation between states to eliminate problems that threaten humanity to ensure stability to all states by linking human rights violations within states and their effects on international peace and security which allows the use of modern interventions means that were not known before in addition to the return of direct military interventions and the so-called humanitarian intervention appeared .

On the external level there has been a noticeable retreat from the rigid concept of sovereignty and the principle of non –interference in the internal affairs of states and this raises many problems

about the legitimacy of intervention and the fact of national security.

Key words/ Humanitarian Intervention Sovereignty. Human Rights. Responsibility to Protect.

Introduction

State sovereignty, Non-intervention in the internal affairs of states, Prohibition of the use of force are among the fundamental principles in international relations. On the other hand, human rights has witnessed a rapid development and has become an international issue governed by the principle of the "universality of human rights", contributed to shifting the focus to the security of individuals that make a strongest challenge to the absolute character of sovereignty, especially after the end of the cold war. In People Centric Approach, state sovereignty can no longer be prioritized over the security of people, thus states became obligated to protect its citizens, and when it fails in doing so or unwilling to put an end to the gross violations of human rights, this would open the door for humanitarian intervention . In this case despotic leaders should not be able to hide behind the shield of state sovereignty. Despite the approval of humanitarian intervention by many politicians and thinkers it is still one of the most controversial concepts, especially about its foundations and the question of its legitimacy (both legal and moral). Moreover justification has evolved from the idea of the duty to intervene to an idea more dangerous than all of the above which is "the responsibility to protect", this notion creating a tension between the norms of state sovereignty and the protection of human rights. We pose the following question: to what extent does humanitarian intervention affect the principle of sovereignty?

- I/ Humanitarian Intervention, sovereignty (Atheoretical Framework)**
- II/ Framework)**

III/ Humanitarian intervention, state sovereignty has been one of the most controversial concepts in international relations, especially after the end of the cold war, both of them have witnessed some developments which make them more complicated and this requires a clear understanding of the both concepts.

A. Humanitarian Intervention

1. The definition of Humanitarian Intervention

Intervention by any means (diplomatic, economic and military) has always been a complicated phenomenon in international relations. Yet, humanitarian intervention has been one of the most controversial issues in international politics although there is not a uniform definition of intervention in the academic field. In general it means ‘interference into the domestic jurisdiction of the state, the legitimacy of humanitarian intervention has been hotly debated among the academic circles of international relations especially since 1990.¹

Humanitarian intervention is defined as “the threat or use of force by a state group of states or international organizations primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights”²

In addition, humanitarian intervention is defined as “the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of

individuals other than its own citizens, without the permission of the state within whose territory force is applied”.³

It is also defined by a NATO seminar in November 1999 as : “an armed intervention in another state , without the agreement of that state , to address a humanitarian disaster , in particular caused by grave and large–scale violations of human rights”.⁴

It means that the intervention is done without the agreement of the intervened state, so the sovereignty of that state is breached.”

Following Akehurst (1984)” humanitarian intervention refers to the use of armed force by a state (or states) to protect citizens of the target state from large–scale human rights violations there.”⁵.

The previous definitions include the following points:

- _ Resort to the use of military force.
- _ It is carried out by a country alone or jointly with other countries.
- _ Outside the framework of international regulation” the united nations”.
- _ Without approval of the intervening state.
- _ Aims to stop violations of basic human rights.

2. Historical roots of the doctrine of humanitarian intervention

The historical roots of the doctrine of humanitarian intervention date back to the 16th and 17th century. Classical writers on international law held the view founded in natural law philosophy, that a war to punish injustice and those guilty of crimes was just war⁶, when examples of military intervention have been justified by the humanitarian considerations of the major powers, but it involved the political interests of the intervening parties. At the end of the

19th century, many legal commentators held that a doctrine of humanitarian intervention existed in customary international law. However, many legal scholars disagree because the state practice prior to 1945 was inconsistent with regard to humanitarian intervention, that the existence of the doctrine of humanitarian intervention was questionable.⁷

During the first half of the 20th century, the doctrine of humanitarian intervention was recognized by a vast majority of legal scholars as part of customary international law, although there was also a considerable minority of legal scholars who were opposed the doctrine.

During the past ten years, however the notion of intervention has been given a qualitative new and different thrust. This has been done in two ways: first, intervention is increasingly defined in terms of purposes or goals which are radically different from the traditional objectives that intervention was expected to achieve before the 1990s. Second, intervention is sought to be projected as being undertaken by, or on behalf of the international community rather than by a state or a coalition of states for its/their own ends. Such intervention is represented as “international intervention” that is undertaken to achieve humanitarian objectives. It is further argued that these objectives are intrinsically far too valuable to be held hostage to the norm of state sovereignty and therefore, ought to override that norm. This is a radical departure from the cold war era when intervention was undertaken unabashedly to promote strategic ends, and justifications were provided within the framework of sovereignty rather than in contravention of that norm.⁸

3. The main forms of humanitarian intervention;

Seybolt describes four main forms of humanitarian intervention:

- _ Assisting in the delivery of aid.
- _ Providing protection to aid operations.
- _ Protecting the injured party.
- _ Military defeating the aggressor.
- _ None are mutually exclusive from any others, and these types should be perceived as a continuum in the order listed where the difficulty in enforcement increases.⁹

4. Conditions for international humanitarian intervention;

The UN secretary general established a high level panel on threats challenges and change to consider how collective security may meet the challenges of the twenty-first century. The panel considered that in deciding whether to authorize or endorse the use of military force, at least the following five basic criteria of legitimacy should be considered: First, that the seriousness threat to state or human security is such to justify prima face the use of military force. Second, that is clear that the primary purpose of the military action is to halt or avert the threat in question, whatever other motives or purposes may be involved. Third, that military action should be a last resort. Fourth, that the scale, duration and intensity of the proposed military action are the minimum necessary and proportionate means to meet the threat.¹⁰ Finally, that there is a reasonable chance of the military action being successful in meeting the threat in question with the consequences of action not likely to be worse than the consequences of inaction¹¹.

B. Sovereignty

1. Definition of sovereignty

Although state sovereignty is a fundamental principle of international law, the precise meaning of the term sovereignty is not clearly defined. The concept of sovereignty state dates back to the peace of Westphalia in 1648 which designed a system of independent nations based on “the principle of autonomy, territory, mutual recognition and control”.¹² Such a definition accepts that sovereignty is thus not only an internal attribute of states (The right to rule over a delimited territory and the population residing within it). It is based in substantial part on recognition by the community of states, such recognition of sovereignty by international norms are important in an international system in which power is distributed in a highly unequal fashion.¹³ The traditional meaning of sovereignty stresses on the rights of states to act as it chooses as Abram and Antonia handle claim: “the complete autonomy of state”, i.e. the right of being independent and not be subjected to any interference from other countries.¹⁴

The previous definitions of sovereignty present a traditional understanding of sovereignty as Jan Brownlie notes that sovereignty and equality of states represent the basic constitutional doctrine of the law of nations. He further indicates that this basic doctrine is contextualized by three corollaries:

- 1) Jurisdiction exercised by states over territories and permanent populations.
- 2) The duty not to intervene in the exclusive jurisdiction of other states.
- 3) The dependence of obligations which emerge from the source of international law¹⁵.

2. The principle of non-intervention and state sovereignty

The principle of non-intervention is the mirror image of sovereignty of states. It is closely linked to the concept of domestic affairs of states which requires that a state not intervene in the internal affairs of other states as it is also confirmed in the charter of the United Nations that in article 2.4 that states "all members shall refrain in their international relations from the threat or use of force against the territory integrity or political independence of any state or political independence of any state. Article 2(7) also affirms nothing contained in the present charter, but principle shall authorize the united nations to intervene in matters, which are essentially within the domestic jurisdiction of any state² 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 VII.¹⁶

But is sovereignty absolute?

3. A new understanding of sovereignty

The idea that a state may do whatever it wants in its territory is an illusion, and the principle of absolute sovereignty is thus replaced by a concept of relative sovereignty where the freedom of each state is limited by the freedom of other states, and the independence of a state is subjected to international law.¹⁷ In this context secretary general Boutros-Ghali in his 1992 report "An agenda for peace", he stated that the time of absolute and exclusive sovereignty has passed.¹⁸ Many commentators, mostly coming from the developed world, contend the last decades have confirmed and even expanded the reach of that statement, especially in the definition of legitimacy of the practice of

humanitarian intervention. Traditional sovereignty incorporated in the charter of the United Nations, is characterized by the norms of non-interference and state equality.¹⁹ Humanitarian intervention challenges this notion creating a tension between the norms of state sovereignty and the protection of human rights.

4. Forms of sovereignty

It is necessary to distinguish between the internal and external sovereignty of a state. Internal sovereignty may be described as the competence and authority to exercise the function of a state within national borders and to regulate internal affairs freely. (Internal sovereignty comprises of the whole body of rights and attributes that a state possesses in its territory).²⁰

External sovereignty is traditionally understood as legal independence from all foreign powers, and as impermeability, thus protecting the state's territory against all outside interference. According to Perrez external sovereignty broadly includes international independence, the right to international self-help and the authority to participate in international society.²¹

I/ The legal basis for humanitarian intervention in according to the charter of the united nations

Humanitarian intervention is a mean to prevent or stop a gross violation of the human rights in a state, where such state is either incapable or unwilling to protect its own people, or is actively persecuting them. Many scholars identify the 1990s as a decade of humanitarian intervention, during which the UN authorized several interventions on humanitarian grounds. During the 1990, even as the Security Council was increasingly willing to authorize humanitarian intervention, the United States and its allies took military action on at least

three occasions for express human purposes, when the specific action was not authorized by the Security Council. Some instances of intervention, though unauthorized have been declared legitimate like NATO's intervention in KOSOVO in 1999.²²

1) The legality of humanitarian intervention by resorting to force

When does a state or a group of states have the right to resort to force?

This question is dealt with explicitly by the UN charter. This later limited the use or the treat to use force more than past treaties and tried to fashion a structure to settle disputes without recourse to force, by diplomacy, collective discussion, and mediation rather than war. The first charter outlines the aims and principles of the organization. In chapter 1, article 2, paragraph 4, the frames prohibited the use of force. "All members shall refrain in their international relations from the threat or the use of force against the territorial integrity or political independence of any state or in any other manner in consistent with the purpose of the UN"²³ However the charter permits two explicit exceptions to the prohibition on the use of force in international relations in article 2(4):

First, an exception is granted for the use of force in exercising the right of individual on collective self-defense in response to an armed attack against a state (article 51 of the UN charter). Secondly, the use of force can be mandated by the UN security council in case of a threat to or breach of international peace or an act of aggression (chapter 7), articles 39 and 42 of the UN charter).²⁴

2) The legality of humanitarian intervention in view of the exceptions of the use of force in the charter of UN

The charter of the United Nations provides for two exceptions to the prohibition stipulated in the aforementioned article, namely, in the case of legitimate defense and the maintenance of international peace and security.

Some jurists who support humanitarian intervention claim that it is a collective legitimate defense on the grounds that violating human rights, and is in the same time an infringement on all countries of the international community.²⁵

We are going to analyze the text of article 51 of the charter to determine whether humanitarian intervention constitutes a legitimate defense. This article stipulates the following:

“nothing in this charter shall impair or diminish the natural right of individual and collective states to defend themselves in the event of an armed attack against a member of the UN, until the security council has taken the necessary measures to maintain international peace and security and this measure shall be immediately notified to the council.”²⁶

The legitimate defense: article 51 of the charter of the UN enshrined this principle considered it as an exception to the principle of prohibiting the use of force in resolving international conflicts. It is clear that legitimate defense requires the following facts:

- The presence of actual armed aggression.
- The urgent necessity that has no choice after the exhaustion of peaceful means.

- Inform the security council of the measures they are taking in a timely manner, and not until the end of the military operation.²⁷

To what extent is humanitarian intervention considered as a legitimate defense? Since the exercise of the right of legitimate defense is conditioned on the occurrence of an armed attack on the state that claims its rights to exercise legitimate defense, and considering that the persecution of a state for its subjects and mistreatment of them does not in any way constitute an armed attack on any other state, therefore intervention cannot be considered to stop human rights violations by resorting to force is a legitimate defense, and this is what both Q.Corten and P.Kleen claim that it is not possible to consider humanitarian intervention as a legitimate defense, because the attack on human rights does not in any way represent an aggression against any other state, and it is certain that the state that violates human rights remains legally responsible towards the international community.²⁸

if we suppose that in the event that a state makes a military intervention by resorting to the use of force based on its right to legitimate defense, and with the aim of stopping human rights violations in the intervening state, this later responds to them, so who is the state that is in a case of legitimate defense in accordance with the text of article 51 of the charter.

Maintaining international peace and security: is human intervention included in the intervention of the UN to maintain international security?

The charter of the UN provides the Security Council with the power to make binding decisions and to enforce these decisions. Article 39 of the charter challenges the classical concept of state sovereignty by exempting the Security Council from the principle of non-intervention under certain circumstances.

This provision gives the security council the discretion to determine the existence of any threat to the peace or act of aggression and to make recommendations or to decide what measures must be taken in accordance with article 41 and 42 to maintain or restore international peace and security.²⁹

The phrase “threat to international peace and security” stipulated in article 39 explains desire to expand the powers of the security council to adapt different situations as posing a threat to peace and security by using the measures provided for in chapter VII of the charter, which involve resorting to force as well. As long as human rights are an international affair, if the Security Council decided that the widespread violations of human rights in a country constitute a threat to international peace and security, it will be within the power of the Security Council to intervene to stop it, even by resorting to military force.³⁰ Therefore, the Security Council prevents states from interfering unilaterally for whatever reasons, and even in the case of a regional organization. So the defense of human rights remains the preserve of the United Nations.

An in depth reading of the provisions of the UN charter reveals the fact that there are basic conditions must be met before the security council decides to take coercive measures, the most important of which is the exhaustion of the peaceful means stipulated in the charter VI. If the Security Council decides to intervene militarily to stop human rights violations, states cannot intervene unilaterally or collectively, unless authorized by this framework.³¹

So the legality and legitimacy of such humanitarian intervention is a long standing controversy among states and legal scholars.

Supporters of armed humanitarian intervention such the jurist Stone claims that resorting to the use of force is not prohibited except in cases where it is directed against the territorial integrity or political independence of the target state from the intervention.

As long as the humanitarian intervention aims to stop human rights violations, it is not aimed at undermining the territorial integrity or political independence of the intervening states, because its aim is humanitarian, however, it is not possible to consider a military intervention by a country and group of countries over the territory of other state, even if it is for humanitarian purposes without leading to an attack on the territory of this target country, or at least the stationing of military forces on its territory without its consent. It is not a clear infringement on the integrity of its territory, and then one of the consequences of any military intervention is to bring about change in the structure of the ruling regime in the targeted state from the intervention.³²

So how can one imagine a humanitarian intervention that does not target the political independence of the state in which it is interfering?

Also supporters of humanitarian intervention claim that the humanitarian intervention is consistent with the purposes and objectives of the united nations on the grounds that it aims to protect human rights and put an end to their violations, especially since human rights are one of the most important purposes of the united nations, as stipulated in the second paragraph of the preamble to the charter. The human being is superior to the maintenance of international peace and security, and they are lofty principles that cannot be violated but with regard to the alleged hierarchy of the goals.³³ Moscow claims that the humanitarian intervention is consistent with the purposes and

adjectives of the UN on the grounds that it aims to protect human rights and put an end to their violation, especially since human rights are one of the most important purposes of the United Charter.³⁴ According to this later human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, region or any other status. These rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education... and everyone is entitled to access to these rights without discrimination.³⁵ In this context human being is superior to the maintenance of international peace and security, and they are lofty principles that cannot be violated. But with regard to the alleged hierarchy of the goals of the UN, the Charter did not refer to any gradation in the importance of these goals, as the jurist Riesman believes that both goals the protection of human rights and the maintenance of international peace and security are linked and complement each other. Also the first paragraph of the Charter considers the maintenance of international peace and security are the essential objectives of the United Nations, and the other objectives cannot be achieved without ensuring the maintenance of the international peace and security.³⁶

3) Responsibility to Protect vs. sovereignty

In recent years, the principle of national sovereignty has been limited from another quarter, from the expansion of the doctrine of human rights. Ever since the target events in Rwanda and the former Yugoslavia in the early 1990s, there have been efforts to further circumscribe the principle of sovereignty to justify foreign state intervention when genocidal events or massive violations of

human rights take place within a country. This enterprise has produced the doctrine of the Responsibility to Protect.³⁷

International commission on intervention and state sovereignty created in September 2000 at the initiative of the former Canadian minister of foreign affairs, Lloyd Axworthy, the commission is co-chaired by Mr. Gareth Evans and Mohamed Sahnoun, it is composed of 10 other international figures including the former president of the ICR Cornelio Sommaruga. The commission has been given a year to carry out its work, the conclusion of which are to be presented to the 56th General Assembly of the UN in 2001.³⁸ The commission suggests that sovereignty should be seen as the responsibility to protect. According to the commission in their report on the responsibility to protect, this implies: first, that state authorities are responsible for the functions of protecting the safety and the lives of citizens and the promotion of their welfare. Secondly, it suggests that the national political authorities are responsible to the citizens internally and to the international community through the United Nations. Thirdly, it means that the agents of the state are responsible for their acts of commission and omission. In view of its approach to sovereignty as the responsibility to protect, the commission supports intervention for human protection purposes when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetration.³⁹ Since the attention of the international community symbolized the victims, the principle of the responsibility to protect is based on the perspective of the victims and not the perspective of the interfering or the name of people, not the governments of the UN.⁴⁰

The principle of the responsibility to protect consists of two components:

The responsibility to prevent, which means exercising all tests before taking military measures, and **the responsibility to rebuild**, which is post-conflict reconstruction.⁴¹ In this way, according to the report of international committee on sovereignty and intervention, considering that sovereignty has become the responsibility to protect nationals and not a justification for violating their rights. This was confirmed by Kofi Annan through a report he presented in 2003 in which he emphasized the responsibility of all states when it comes to the suffering of the population.⁴²

There is a growing acceptance that the international community must bear the responsibility to protect individuals or (issues of human rights), especially when states are unable or unwilling to protect their citizens. This opened the door to the possibility of a more legitimate use of humanitarian intervention.⁴³ The responsibility to protect must also be seen as a complement to the principle of sovereignty, as it stems from the idea that sovereignty is a responsibility that states must fulfill its responsibilities however, contemporary international practices have proven that the responsibility to protect is a principle that is still not clear and is misused even with an attempt to distinguish it from humanitarian intervention, the interventions in Sudan and Libya and Syria remain the best evidence of the misuse of the principle of responsibility to protect, double standards , as they left countries to an unknown fate and contributed to the deterioration of human rights and a massive influx of refugees in the complete absence of human security.⁴⁴

Conclusion;

The protection of human rights has become a shared responsibility of the state and the international community and the UN started to give priority to requirements of human rights over the principles of "non-intervention" and state sovereignty. This later has become no longer an absolute principle and the states cannot argue that human rights law does not bind them, and they are free to rule as they wish and that the international community had an obligation to intervene to stop the widespread abuse of human rights. This contention gained widespread support from many scholars that resorting to the use of force is not prohibited because its aims is humanitarian, but international attention to human rights must be within the framework of respect for the sovereignty of state and non-interference in its internal affairs. Also states cannot protect the rights of its people if it is unable to protect its sovereignty. The principle of sovereignty achieves international stability along with respect for human rights which achieves international peace and security. Therefore human rights must be preserved by strengthening the sovereignty of states. Finally, we can say that humanitarian intervention has been widely criticized for many reasons. The most intractable one relate to the question of legitimacy (who is to judge an intervention legitimate, and on what grounds?), besides this the doctrine of humanitarian intervention re-presents a mode of liberal imperialism (for the implementation of traditional geopolitical policies or of powerful economic interest). The same thing concerning the doctrine of the Responsibility to protect since the contemporary international practices have proven that this slogan is still not clear and is misused even with an attempt to distinguish it from humanitarian intervention.

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