Ministry of Education
Department of Higher Education
Yangon University of Distance Education

Yangon University of Distance Education Research Journal

Vol. 10, No. 1 December, 2019

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Study on the Humanitarian Intervention under International Law

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Abstract

The law of intervention lies between the extremes of absolute independence on the one hand and unregulated interference on the other. This study was intended to present a rule of transcending practical importance for the preservation of a just peace among nations, namely: that no state shall unreasonably insist upon its rights or pursue its interests to the detriment of the opposing rights and interests of other states. Humanitarian intervention is means that dictatorial interference in the internal affairs of a State through the use of armed forces by a third party for a limited time and for the specific purpose of protecting the inhabitants of the State from arbitrary and persistent human rights abuses which exceed the limits of the authority within which sovereign States are presumed to act.

Key terms: Intervention, interference, dictatorial interference, humanitarian intervention

Introduction

Theintervention in international law may be any interference that may affect the interests of others; especially, of one or more states with the affairs of another; the intervention of one state in the affairs of another is typically unwelcome by the state being intervened in, but some cases of mediation between states.

International law forbids intervention in general. Since the international law has been the law which regulates the relations between States, the States are the principal subjects of international law. The United Nations was established in 1945 as international organization to maintain the international peace and security. It is currently made up of 193 Member States. According to the powers vested in its Charter and its unique international character, the United Nations can take action on the issues confronting humanity in the 21st century, such as peace and security, climate change, sustainable development, human rights, disarmament, terrorism, humanitarian and health emergencies, gender equality, governance, food production, and more.

Article 2(4) of the UN Charter provided 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.

Article 2(4) absolutely prohibited on the use of force, but for cases of self-defence codified in Article 51 or measures authorized pursuant to Chapter VII.

The prohibition on the use of force reflects the well-founded and fundamental presumption that the use of force by states poses an unacceptable threats and damage to the larger global community. There was no place for legality of intervention in international law: the intervention shall be permitted only in self-defence or in actions authorized by the Security Council of United Nations.

The doctrine of basic or fundamental rights and duties of States was formulated in the 'Draft Declaration on the Rights and Duties of States' drawn up by the International Law Commission of the United Nations in 1949. The Commission's Draft Declaration consisted of fourteen articles which were formulated in the light of new development international law and in harmony with the United Nations Charter. The Declaration was composed of fourteen articles and the International Law Commission considered that the Declaration should apply to all the sovereign States of the world in addition to the members of the United Nations. Among the five basic duties of the State mentioned in the Declaration, the two articles were related with the intervention as; the duty to refrain from intervention in the internal or external affairs of other States (article 3) and the duty to refrain from resorting to war (article 9).

But the actions of intervention have become increasingly acknowledged by the international community in the humanitarian emergencies which threaten large scale of life and

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property may also have a destabilizing effect on the global community when they reach the level of threats to international peace and security. Therefore, when the cases of large scale loss of life and property occurred, the community may be conflicted by the moral imperative of saving lives as against the legal obligations enumerated in the *Charter of the United Nations.* The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter.

The commencement of the doctrine of humanitarian intervention is associated with natural law and early international law. The "father" of international law Hugo Grotius (1583-1645) introduced the doctrine to regulate international relations new political and moral standards, among others provision concerning respect for sovereignty and contracted agreements. In order to promote international order he further refined the "just war" doctrine stressing for that wars were only allowed if based on specific legal reasons.

"Humanitarian intervention" can be defined as the situation in which an individual state or coalition of states uses limited and proportional military force, without Security Council authorization, to alleviate large scale loss of life where there is no other plausible alternative to halt an immediate or imminent humanitarian casualty for the people.

The Concept of Humanitarian Intervention

The doctrine of "humanitarian intervention" has long been a controversial subject, both in law and in international relations, and remains so today. Given that by no means all States accept the principle involved, there is no generally accepted definition of "humanitarian intervention". One possible definition runs as follows: "the theory of intervention on the ground of humanity (...) recognizes the right of one State to exercise international control over the acts of another in regard to its internal sovereignty when contrary to the laws of humanity".[1]

Another writer affirms that "humanitarian intervention is defined as coercive action by States involving the use of armed force in another State without the consent of its government, with or without authorization from the United Nations Security Council, for the purpose of preventing or putting to halt gross and massive violations of human rights or international humanitarian law".[2]

"Intervention on the grounds of humanity" and the *droit d'ingérence*[3] are other terms used in the past to describe operations involving assistance and intervention in a country's internal affairs. The first term, used mainly during the 19th century, referred to protection of a State's own citizens in another country, but was also used to react to particularly shocking acts perpetrated by a State on its own citizens. The debate at the end of the 1980s on the *droit d'ingérence* was always ambiguous and concerned both operations carried out by individual States and action taken by international organizations and NGOs.

States often claim that they can use force against a State that is violating the human rights of its people and brutally suppressing them. Examples of humanitarian intervention include the invasion of India by East Pakistan in 1971, the invasion of Uganda by Tanzania in 1979, the ECOWAS intervention in Liberia in 1990 to 'stop the senseless killing', and the NATO action against Yugoslavia in 1999, for the latter's repression of Albanians in Kosovo. The most recent examples are the 2011 intervention in Ivory Coast and Libya by the international community. Although these two actions were taken apparently to protect civilians

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[1] Francis Kofi Abiew, The Evolution of the Doctrine and Practice of Humanitarian Intervention, Kluwer Law International, 1999, p. 31.

[2] Humanitarian Intervention, Legal and Political Aspects, Danish Institute of International Affairs, 1999, p. 11.

[3] Right to intervene

from repressive governments (and hence qualify as humanitarian intervention of a type), they are, legally speaking, accommodated within the concept of the responsibility to protect.[4]

There is as yet no unanimous acceptance of "humanitarian intervention", certain States and a body of doctrine considers such acceptance sufficiently widespread that one can speak of international custom and general principle.

Humanitarian intervention" refers to armed intervention, often carried out with a political agenda. International humanitarian law recognizes the right to provide humanitarian assistance, and impartial humanitarian aid cannot be condemned as interference or infringement of a State's national sovereignty.

In its 1986 ruling on a case involving military and paramilitary activities in Nicaragua, the International Court of Justice stated that if the provision of "humanitarian assistance" is to escape condemnation as an intervention in the internal affairs of another State, it must be limited to the purposes hallowed in the practice of the Red Cross. However, the court also added that "the use of force could not be the appropriate method to monitor or ensure such respect [for human rights]".[5]

The usage "armed intervention' in international law can be explained as for responding to the serious breaches of human rights and of international humanitarian law". This wording also serves to emphasize the fact that the forces engaged in the intervention are bound by humanitarian law in their military operations.

Without doubt, humanitarian intervention raises on of the most controversial questions in international law, and one that has been resolved neither by academic writing nor by State practice. Humanitarian intervention is a highly sensitive issue, and the arguments of those who support the practice are often as sound and convincing as the contentions of those who oppose it.[6]

Humanitarian intervention is a concept that can allow the use of force in a situation when the UN Security Council cannot pass a resolution under Chapter VII of the Charter of the United Nations due to veto by a permanent member or due to not achieving affirmative votes. Chapter VII allows the Security Council to take action in situations where there is a "threat to the peace, breach of the peace or act of aggression".

This is upheld in the UN Charter of 1945, where in article 2(7) it is stated that "nothing should authorize intervention in matters essentially within the domestic jurisdiction of any state." Thus, because both proponents and opponents of humanitarian intervention have their legal grounds on the charter of the United Nations, there is still an ongoing controversy as to whether sovereignty or humanitarian causes should prevail. The United Nations has also continuously been involved with issues related to humanitarian intervention, with the UN intervening in an increased number of conflicts within the borders of nations.

Prohibition of humanitarian intervention in the United Nations

This is a doctrine of intervention professing to protect citizens from the oppression of their own government. The UN Charter does not permit 'humanitarian intervention'. On the contrary, as typically consisting of invasion and bombardment of State territory, 'humanitarian intervention' is a prime example of aggression under General Assembly Resolution 3314 (1973).[7]

As a customary international law principle, non-use of force is separate from later treaty obligations. These later treaties and conventions have, however, contributed to a greater understanding of the exact extent of the prohibition against the use of force.

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[4] Abass. Ademola, International Law:Text, Cases, and Materials, Second Edition, Oxford University Press, 2014, p.405.

[5] Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, para. 268.

[6] Abass .Ademola, International Law: Text, Cases, and Materials, Second Edition, Oxford University Press, 2014, p.405.

[7] Orakhelashvili. Alexander, Akehurst's Modern Introduction to International Law, Eighth Edition, Routledge Publishing, 2019, P. 468.

The principle of non- use of force has developed under article 2 (4) of the Charter of United Nations such as;

"[a]ll 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."

It has sometimes been argued that intervention in order to protect the lives of persons situated within a particular state and not necessarily nationals of the intervening state is permissible in strictly defined situations. This has some support in pre- Charter law and it may very well have been the case that in the nineteenth century such intervention was accepted under international law.[8]

However, it is difficult to reconcile today with article 2 (4) of the Charter. Unless one either adopts a rather artificial definition of the 'territory integrity' criterion in order to permit temporary violations or posits the establishment of the right in the customary law. Practice has also been in general unfavorable to the concept, primarily because it might be used to justify interventions by more forceful states into the territories of weaker states.

Nevertheless it is not inconceivable that I some situations the international community might refrain from adopting a condemnatory stand where large numbers of lives have been saved in circumstances of gross oppression by a state of its citizens due to an outside intervention. In addition, it is possible that such a right might evolve in cases of extreme humanitarian need.

One argument used to justify the use of Western troops to secure a safe haven in northern Iraq after the Gulf War was that it was taken in pursuance of the customary international law principle of humanitarian intervention in an extreme situation.[9]

The Security Council adopted Resolution 688 on 5th April 1991. Among its seven basic facts under the Resolution, the provisions relating to the humanitarian intervention are as follows;

The Security Council

1. *Condemns* the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region;

3. *Insists* that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations;

4. *Requests* the Secretary-General to pursue his humanitarian efforts in Iraq and to report forthwith, if appropriate on the basis of a further mission to the region, on the plight of the Iraqi civilian population, and in particular the Kurdish population, suffering from the repression in all its forms inflicted by the Iraqi authorities;

6. *Appeals* to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts.

The Resolution was adopted at the 2982nd meeting by 10 votes to 3 (Cuba, Yemen, Zimbabwe), with 2 abstentions (China, India).

The 1999 Kosovo crisis raised squarely the problem of humanitarian intervention among the permanent members of Security Council.

Kosovo, a southern province of Serbia and Montenegro, has seen deep conflict between its Serbian and ethnic Albanian population. In 1974, the Yugoslav constitution granted Kosovo, then part of the Federal Republic of Yugoslavia, autonomous status. In 1989, amid rising breakaway movements throughout Yugoslovia, Yugoslav President Slobodan Milosevic revoked Kosovo's autonomy, a step that deepened Serb-Kosovar differences.

[8] Shaw. N. Malcolm, International Law, Eighth Edition, Cambridge University Press, 2017, p. 881.
[9] Shaw. N. Malcolm, International Law, Eighth Edition, Cambridge University Press, 2017, p. 881.

The majority Kosovar movement favored non-violent political action, but a separatist movement called Kosovo Liberation Army (KLA) came to the fore, receiving arms and funds from Albania and (later) from the US and German intelligence services, while the Russians backed the Serbs. The KLA attacked police and government installations as well as Serb civilians. As Serbian government forces struck back, they committed atrocities and the Kosovar population began to flee in large numbers.[10]

Several international efforts to broker a peace plan failed. Western nations demanded major concessions from Belgrade, including free passage of NATO military forces into Kosovo. When Milosevic rejected these demands, NATO bypassed the UN and began a 78-day bombing campaign, leading to an increase in the flow of Kosovar refugees. This 'humanitarian intervention' was marred by NATO's inability to ensure the safety of innocent civilians. The NATO bombardment eventually forced Milosevic to withdraw troops from Kosovo in June 1999.

The UN established a Kosovo Peace Implementation Force (KFOR) and an Interim Administration Mission in Kosovo (UNMIK), asserting administrative control over the province. In 2003, the UN established a set of basic conditions for the political future of the territory and insisted that the Kosovo administration meet these benchmarks before discussing the territory's "final status" - that is, would it achieve independence or would it become an autonomous region within Serbia and Montenegro.

In 2007, the UN issued the Ahtisaari Plan, which suggested "supervised independence" for the province. The Plan contained provisions for Kosovo's own constitution, flag, anthem and army, as well as guaranteeing the religious and linguistic rights of ethnic minority Serbs. However, both Belgrade and Kosovo rejected this attempted compromise.

On February 17, 2008, Kosovo unilaterally declared independence. While the US, UK and France supported the decision, stating the unique nature of Kosovo's case, the move divided the Security Council. Russia and China argue that the unilateral declaration of independence undermines the United Nations and is illegal under international law.

Under its resolution 1244 of 1999, the Security Council welcomed the withdrawal of Yugoslav forces from the territory and decided upon the deployment under the auspices of international civil and military presence. The doctrine of humanitarian intervention in a crisis situation was invoked and not condemned by the United Nations, but it received strong support. It is not possible to characterize the legal situation as going beyond this.

The matter was revisited during the Syrian crisis of 2013 in particular by the use by the Syrian authorities of chemical weapons. The principle of humanitarian intervention is the contention that intervention in order to maintain democracy and to protect human rights violations are permitted as such under international law especially under the provisions of UN Charter.

Conclusion

In the nineteenth century, the principle of non-intervention, as formulated earlier by Wolff and Vattel, had by then acquired general recognition. Nevertheless, the international legal order of the nineteenth century was characterized by certain exceptions to this principle, namely the right of intervention based on treaties and on the principles of self-help and self-preservation. However, a new independent reason for intervention based on 'humanity' emerged in theory which was related to the ideas of political liberalism and the concept of fundamental human rights. State practice in the nineteenth century increasingly invoked humanitarian reasons to justify intervention often, however, as a disguise for intervention made for political, economic or other reasons.

[10] Global Policy Forum, Kosovo, available at https://www.globalpolicy.org/security-council/ Kosovo.html.

This practice revealed a new tendency in the official grounds advanced by states to justify intervention in that period, but not a new rule of customary international law. In reality, states were mostly pursuing their own ends when intervening in another state for alleged humanitarian purposes, and thus the institution of intervention was unable to provide a complete justification for such action.

A distributional conception thus separates questions relating to the nature and scope of sovereignty from questions relating to the use of force. In relation to sovereignty's nature and scope, gross violations of human rights trigger a redistribution of sovereign authority that removes them from the sovereign authority of the offending state and relocates them in the international realm, reconstituting them as matters that fall under international, as opposed to, domestic, legal authority.

To keep within the bounds of law every state that employs its might to defend its rights or to protect its interests against the abusive insistence upon alleged right by another must first justify its action before its alliance states; it must second observe all the delays and forms of procedure customary in international practice; and it must third - outwardly at least - evince a disposition to adopt any suggestion or compromise which gives promise of a peaceful solution without sacrificing its own important interests or the means to enforce them.

Nowadays, the International Committee of the Red Cross (ICRC) is providing humanitarian assistance together with the United Nations. Base on its seven principles, humanity, impartiality, neutrality, independence, voluntary service, unity and universality: these seven Fundamental Principles provide an ethical, operational and institutional framework to the work of the Red Cross and Red Crescent Movement. They are at the core of its approach to helping people in need during armed conflict, natural disasters and other emergencies.

The application of the law of intervention is guided by the opinion of all of the States fixing the limits of the reasonable discretion which each state may enjoy in acting for the defense of its own rights and interests. This builds the whole system of international law upon the foundation of what the consensus of the States' judge to be reasonable under the rule of reason.

Acknowledgements

Firstly, I would like to express my special thanks to Rector Dr. Tin Maung Hla and Pro Rector Dr. Khin Thant Sin, Yangon University of Distance Education, for their encouragement to do much research works for research and development in higher education, Myanmar. I would like to extend my heartfelt thanks to Dr. Tin Htay Ei, Professor and Head of Department of Law, Yangon University of Distance Education, for her suggestions and comments to develop research idea and to accomplish this research work.

References

Laws

1. Charter of the United Nations (1945)
2. Charter of the Economic Rights and Duties of States (1974)
3. Declaration on the Inadmissibility of Intervention (1965)
4. GA Res 3314 (XXIX) [1974]
5. Security Council Resolution 688 of 1991
6. Security Council 1244 of 1999

Cases

1. Francis Kofi Abiew, The Evolution of the Doctrine and Practice of Humanitarian Intervention,Kluwer Law International, 1999, p. 31.
2. Humanitarian Intervention, Legal and Political Aspects, Danish Institute of International Affairs, 1999, p. 11.
3. Abass .Ademola, International Law: Text, Cases, and Materials, Second Edition, Oxford University Press, 2014, p.405.
4. Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, para.268.
5. Global Policy Forum, Kosovo, available at https:// www. global policy.org/security council/ Kosovo.html.

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