

Legitimacy of the Policies of Humanitarian Interventions

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Abstract: Driven by fundamental national interests hidden under the garb of universal welfare and protection of human rights. Humanitarian Interventions have become one of the biggest sources of tension, contention and dis-harmony in the international arena. This paper therefore, seeks to understand the nuances of mandated and unmandated interventions, dealing with the dilemma of their legitimacy by attempting to realize the trade-off between protecting rights and guaranteeing sovereignty which comes with its own risks when looked at from a realist perspective. Therefore, the paper seeks to clearly define interventions, lay out a historical analysis, put forth legal and institutional contentions vis-a-vis interventions by looking at roles of international bodies in regulating and governing such intervention and thereafter puts forth a conclusive narrative and value-judgement on humanitarian interventions based on the afore mentioned study.

Keywords: Legitimacy, Humanitarian Interventions, Human Rights, Law, United Nations, Politics, Armed Conflict, International, Relations.

I. INTRODUCTION

The aim of this academic text is to act as a standpoint in understanding humanitarian intervention and in raising questions on the legitimacy and legality of Humanitarian Intervention as a concept administered in the international sphere with suspicion and questions concerning interventions as a means to fulfilling national interest and agendas, for instance the questions raised on the *Coalition of Willing* and In the aftermath of the war in Bosnia, the genocide in Rwanda.

Further the NATO strikes in Kosovo and Serbia without Security Council mandate, global public concern led to the formulation of Responsibility to Protect. (Chinkin, Kaldor, 2018) The question here is then the mandating, authorizing and legally identifying interventions as legitimate under the international concept of Responsibility to Protect (R2P). Hence, the paper briefly also talks of the international legislatures and cases of humanitarian intervention through which a precedent of just and legitimate interventions can be attempted to be established.

II. DEFINITIONS AND EVOLUTION OF HUMANITARIAN INTERVENTION

The question of assistance in an international arena governed by the animalistic instinct of survival creates a dilemma specific to the administering of Humanitarian Intervention. This dilemma not only entails to legalistic principles of

international law but to far reaching theoretical and philosophical ideas of politics itself.

The father of international law, Hugo Grotius perhaps justified the idea of Humanitarian Intervention as to ensure the maintenance of a working international order relating Humanitarian Intervention with the doctrine of legitimate resistance to oppression. This idea of Hugo found its heart in early 19th century international law practice as exemplified In the framework of the balance of power and the European Concert, a number of interventions justified on humanitarian grounds that took place in the period from 1827 to 1908. (Danish Institute of International affairs, 1999 pp 10-11) With this understanding the principle of humanitarian intervention lost its hold in international law until the end of World War I, resurfacing in the 20th century as the legitimate use of force for self-defence and protection of human rights and international peace and security, this understanding was clearly theorised in the Pact of Paris 1928 and the UN Charter.

During the 21st century with complex and diverse institutionalized international arrangements like the UN diversifying and expanding its scope. The nature of Humanitarian Intervention has rapidly evolved. We now look at Humanitarian Intervention as a multifaceted concept lacking a universally agreed upon definition primarily because of the dilemmas and questions it carries along. Humanitarian Intervention has been defined as coercive action by states involving the use of armed force in another state without the consent of its government, with or without authorisation from the United Nations Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law. (Danish Institute of International affairs, 1999 pp 10-13) Though this definition is not formal or universally accepted it serves as a stand-point towards highlighting some key features of modern day Humanitarian Intervention, as per Alton Frye, (Frye, A. , 2000).

- Humanitarian intervention involves the threat and use of military forces as a central feature
- It is an intervention in the sense that it entails interfering in the internal affairs of a state by sending military forces into the territory or airspace of a sovereign state that has not committed an act of aggression against another state.

- The intervention is in response to situations that do not necessarily pose direct threats to states' strategic interests, but instead is motivated by humanitarian objectives.

It is also to realise that the concept of Humanitarian intervention has evolved into an apparatus of power politics and is maligned and imbued with adversarial and negative meanings including hypocrisy, moral superiority, a licence to intervene, and disregard for the principle of sovereignty. Also, recent literature proposes ways of legitimately circumventing the authority of the UN Security Council, which is a further obstacle to the political acceptance of humanitarian interventions. The literature on the Responsibility to Protect, unburdened by the negative connotations of humanitarian intervention, has fared slightly better, but it has also failed to establish military intervention for protection purposes as a regular tool of international politics. Both discussions share a further deficiency: a total neglect of both outcomes and the factors leading to the success or failure of interventions. Thereby, putting a moral question on their legitimacy.

III. INTERNATIONAL LEGISLATIONS TO HUMANITARIAN INTERVENTION

To understand the legal concerns and dimensions surrounding humanitarian intervention doctrine, it is imperative to draw a certain juxtaposition with the widespread atrocities witnessed in the final decade of the 20th century in particular those associated with the NATO intervention in Kosovo. Because of which, the issue of humanitarian intervention has been thrust into the political and doctrinal limelight. (Bertschinger, 2016, pp. 1–3)

Legally speaking, the UN Charter in 1945 drew a line in the sand concerning a long discussion about the use of force and consequently also about the issue of humanitarian intervention. The basic rule of international law concerning the prohibition on the threat or use of force in international relations is laid down in Article 2(4) of the UN Charter:

"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."

The UN only and only lays out two explicit exceptions in the case of using force in the international arena.

First, an exception is granted for the use of force in exercising the right of individual or collective self-defence in response to an armed attack against a state (Article 51 of the UN Charter). This provision gives expression to an established principle of customary law. 'Individual self-defence' means the state subject to armed attack defending itself. 'Collective self-defence' means other states helping the state in its defence, either based on an ad hoc request from this state or on the

basis of a prior agreement on collective self defence. (Danish Institute of International affairs, 1999 pp 12-13)

Secondly, the use of force can be mandated by the UN Security Council in case of a threat to or a breach of international peace or an act of aggression (Chapter VII, Articles 39 and 42 of the UN Charter). Another aspect of international law that argues towards humanitarian interventions is R2P. Briefly, The Responsibility to Protect (R2P) is an emerging international security and human rights norm which seeks to enhance the state's ability to protect civilians from four mass atrocity crimes: genocide, crimes against humanity, ethnic cleansing and war crimes. The central tenet of R2P is that sovereignty, the defining feature of a state, entails responsibilities as well as physical and political jurisdiction. The state may have the right to manage affairs within its borders, but it also has the fundamental responsibility of shielding populations within those borders from these four crimes ("R2P - in detail," n.d.) One of the pillars of R2P deals with coercive measures so as to protect and this is what makes it the most controversial. However these remains outside the ambit of this paper

With this we have established the fundamentals of the legislations that govern any and all international humanitarian interventions. However, the question does not play in the dimension of an absence of international law however in its clear violation and no reprimanding principle. It is here that the questions and dilemmas arise concerning a framework governing interventions. A clear need for which can be realised by looking at the following cases:

IV. CASES OF INTERNATIONAL HUMANITARIAN INTERVENTIONS NOT GOVERNED BY UNSC- LESSONS LEARNED

Vietnam in 1978 Contra the Khmer Rouge in Cambodia,

Whereby, Vietnam launched an invasion of Cambodia in late December 1978 to remove Pol Pot. Two million Cambodians had died at the hands of his Khmer Rouge regime and Pol Pot's troops had conducted bloody cross-border raids into Vietnam, Cambodia's historic enemy, massacring civilians and torching villages

India in 1971 Contra Pakistan in what was then East Pakistan and is now Bangladesh, The Indo-Pakistani War of 1971 was a military confrontation between India and Pakistan that occurred during the liberation war in East Pakistan from 3 December 1971 to the fall of Dacca on 16 December 1971. The intervention was initially conducted to liberate Bangladesh as a victim of oppression by the Pakistani government. However, it resulted in countless deaths and war casualties.

Tanzania in 1979 Contra the bloody tyranny of Idi Amin in Uganda.

Yet another instance of intervention between Uganda–Tanzania essentially resulting into a war fought between

Ugandan rebels loyal to Milton Obote and Uganda Army units loyal to President Idi Amin.

V. THE LESSON FROM UNMANDATED INTERVENTIONS

These uses of force are endorsed as serving humanitarian ends even though they failed to receive any mandate to act from the Security Council and although in each instance, despite rescuing a vulnerable population, the predominant motivation to intervene seemed clearly non-humanitarian in character. In contrast, Walzer pushing to the outer limit his central thesis as to the rise of humanitarian diplomacy writes “In these circumstances, decisions about intervention and aid will often have to be made unilaterally...The governing principle is, Whoever can, should, ”humanitarian agenda and its non humanitarian agenda. This is highlighted through the above brief cases mentioned. The question of evaluation, assessment often leaves the international community deliberating heavily on the intentions of the intervention, whether national interest or actual humanitarian work. (Falk, 2011)

The essential arguments of the proponents of the doctrine of humanitarian intervention and its opponents are centred on the Charter of the United Nations. The Charter has made a clear policy choice that the use of force by individual States is prohibited, in view of the disastrous results that unbridled force produces when left to the States *uti singuli*; it makes an exception only for self-defence. Thus, humanitarian intervention by individual States is prohibited under the Charter. As a practical argument, they add that any contrary solution would give rise to grave abuse, to political bias and selectivity, and to a policy of unilateral interventionism by the great powers, utilizing the law as they see fit. (Falk, 2011) The proponents of intervention put forward two types of arguments. The first are of a technical nature. It is claimed that humanitarian intervention is directed at neither the territorial integrity nor the political independence of the targeted State, and thus is not inconsistent with Article 2(4). Moreover, they argue that the Charter is not an instrument protecting a single value, that of peace at all costs, but that it has in fact several purposes to which it gives expression. One of its fundamental values, they say, is the prohibition of the use of force; but another is the protection of fundamental human rights. However on the other side negating these reasons scholars against the idea of humanitarian intervention talk of amidst others the problem of humanitarian intervention to a certain extent, as it contraposes two legal absolutes: peace, and fundamental humanitarian imperatives. On both sides, the highest values of international law are at stake. Thus, adjustment proves to be a legal and human conundrum. On the one hand, there is the danger of opening ever wider the door to the unilateral use of force by States. Experience has proved that this is conducive neither to peace nor to justice.

VI. LEGITIMACY, LEGALITY AND THE RATIONALE OF JURISPRUDENCE

Understanding the various complexities involved in determining the legality and rationally legitimate discourse on humanitarian intervention it follows that each case of intervention must be evaluated on a case to case basis and no standardized ideology of intervention can be produced. However, this does not pose a restriction on the international community to determine the lawfulness of an intervention, what it merely does is it considers the complexity of the concept and thereby produces a set of determinants towards judging the legality of the same.

These determinants have been deliberate and attempts have been made to standardize them so as to enhance the jurisprudence towards deciding upon the legitimacy of an intervention. The pioneering works in thoroughly formalizing these determinants have been credited to the The International Commission on Intervention and State Sovereignty, created after the Kosovo intervention under the aegis of the Canadian government and a group of private foundations in response to appeals by Mr Kofi Annan, Secretary-General of the United Nations, produced a detailed report on humanitarian intervention entitled “The Responsibility to Protect”.

The commission goes on to state the conditions under which the interests of protection prevail. Its approach is multi-faceted, based as it is on the cumulative interplay of seven determinants reminiscent of legal theories with great pedigree. According to the Commission, for an intervention to be lawful there must be: (International Commission on Intervention and State Sovereignty, 2001)

- 1) A just cause-As for the just cause, it is clearly stated that only a grave and irreparable harm for human beings, i.e. considerable losses of human lives (actual or expected) or ethnic cleansing on a large scale can give rise to a right of military intervention;
- 2) the right intention (*recta intentio*)-As for the “right intention” the Commission stresses that the essential aim of the intervention must be to halt or avert human suffering. Other aims, e.g. to support a claim of self-determination are not legitimate (at least if they are the prime motivation);
- 3) a situation of last recourse (*ultima ratio*)- i.e. all diplomatic and other non-military means must previously have been explored. It is not necessary for all ways to have been actually tried and proved unsuccessful; it is, however, necessary to establish there were reasonable grounds for believing that, in the circumstances, the measure, if attempted, would not have been successful, e.g., by reason of lack of time;
- 4) respect for the principle of proportionality-the intervention must be proportionate in scope, duration and intensity to the humanitarian aim pursued, which

means that the force used must be the minimum necessary to accomplish the aim;

- 5) reasonable prospects of success- The underlying idea is that in order to justify the intervention, there must appear to be a reasonable likelihood of it bringing about a cessation or alleviation of the atrocities it is intended to address. There can be no legitimate intervention if its most probable outcome is only to aggravate the conflict or to extend it more widely;
- 6) a prior request for authorization by the Security Council of the action-Points to deliberation and coordinated action towards and through the international community. To point at a form of unity in action.

Many of these principles are reminiscent not only of the doctrine of just war (*bellum justum*), but also and more conspicuously of the conditions elaborated by legal doctrine for even more extreme situations of the fight against an established legal order, i.e. the so-called right of resistance (*ius resistendi*). In particular, the condition of “reasonable prospects of success” flows directly from there.(International Commission on Intervention and State Sovereignty, 2001)

The *Affaires courantes et commentaires* Current issues and comments, states, a huge aspect on each and every criterion in detail and dwells further trying to understand the relationship between peace and justice as determining factors to intervention whereby it recalls the relationship of justice and peace as two legal principles we keep sacrosanct in determining the solution to the problem of legality in international humanitarian interventions, as an a priori rule of the contemporary human civilization and reaffirms the above mentioned determinants to successfully understanding the legality and moral righteousness of intervention. That concept, applied to our problem, could lead to the following conclusions. International law does not regulate the conflict between the use of force and fundamental humanitarian values a priori in a conclusive manner. (Kolb, 2003)

Therefore to understand the legality is like understanding an a priori principle or law that exists without reasonable justification or it can be viewed as an endless array of arguments. Richard Falk rightly points, “There is no right and wrong in such a debate. Both orientations are in touch with relevant realities, and there is no principled way to choose between such contradictory concerns beyond an assessment of risks, costs, and likely effects of intervention or inaction in each instance depending on its overall properties. Judgment here is necessarily operating in a domain of radical uncertainty, that is, nobody knows! This raises the crucial question, what to do when nobody knows? It is this unavoidable responsibility for a decision when the consequences are great and available knowledge is of only limited help that points to the difficulties of the human condition even putting to one side the distorting effects of greed, ambition, civilizational bias, and the maneuvers of geopolitics. The late great French philosophical presence,

Jacque Derrida, explored this dilemma in many discourses that related freedom to responsibility, with some collateral damage to Enlightenment confidence in the role of reason in human affairs. For Derrida, making such decisions is an unavoidable ordeal that is embedded in what it means to be human, combining helplessness with urgency.” (Falk, 2011)

VII. AN EX-POST-FACTO ANALYSIS

This section is supposed to draw forth a retrospective view of the interventions that have happened through history without taking into account specific case studies but through generalizing the norms and circumstances under which the UN has taken sufficient, robust actions and mandated various interventions. Through this understanding, it will become relatively easier to determine the scenario under which interventions have been viewed in a legitimate paradigm and under a positive light. The scholarship on humanitarian intervention often argues that each humanitarian crisis (and the responses to them) is historically unique and therefore requires a case-by-case explanation. While it is agreed that attention should be paid to the specificities of each crisis, Martin Binder’s research shows that the UN’s response to them is not random but follows remarkably consistent patterns. Binder argues that a combination of four factors explains whether the United Nations does or does not take strong action. These are as follow :(Binder, 2015)

Table 1.0

<p>The first explanatory factor is the extent of human suffering in a crisis. In a humanitarian crisis people suffer and die while human rights norms are massively violated. This generates a morally motivated pressure to come to the rescue of threatened populations and to defend international norms.</p>	<p>Secondly, whether the UN intervenes depends on the extent to which a crisis spills over to neighbouring countries and regions. Humanitarian crises often affect neighbouring countries or regions in negative ways. Spillover effects include regional conflict diffusion, refugee flows, terrorism or economic downturn. Spillover effects create a material interest to intervene.</p>
<p>The third explanatory factor for UN intervention is the ability of a target state to resist outside intervention. Militarily strong target states, or target states that have powerful allies, can raise the costs and risks of UN intervention and affect its chances of success</p>	<p>Fourth and finally, UN intervention is explained by the level of material and reputational resources the UN has committed to the resolution of a crisis in the past (sunk costs). To the extent that the UN has invested time, money, and diplomatic prestige in the resolution of the crisis, this creates the wish to protect these investments through continued or escalated involvement.</p>

Highlighting the factors of response for the UN towards taking action (Binder, 2019)

What Binder’s research administers is a totally different idea of how the UN makes a decision in mandating an intervention. What it suggests is rather than principles of morality, righteousness, legality, justice and peace. The principle of proportionality is highly deliberate upon and prioritized.

Whereby, whether an intervention is to be mandated or not largely depends on a cost-benefit analysis of each intervention on a case to case basis. While, there is nothing visibly wrong in this, it is just a totally different understanding of mandating interventions relative to the understandings of legality and legitimacy as established in section 3.1.

VIII. CONCLUDING REMARKS

While international law puts forth factors and determinants to understand legitimacy of an intervention vis-a-vis documents like the UN Charter, it at the same time highlights doctrines like R2P and creates certain scenarios of exception and interventions too.

The balance that international law attempts to achieve however is largely driven by economic factors as briefly described in section 3.2. Hence, this paper serves its purpose by questioning the essential nature of determining legality of humanitarian intervention, is it to be determined via the principles and determinants as mentioned in section 3.1 or through the economic indicators of intervention as mentioned in section 3.2. As per evidence, economic determinants have thus yet been prioritized.

It is to say an intervention is essentially mandated based on its benefits and loses post which principles of peace, justice, humanitarian agenda and legality are looked at. All of which combined either makes the intervention legitimate or illegitimate. However issues of the precedence of economic factors before humanitarian principles is again largely questionable and therefore, the legitimacy of humanitarian interventions remains a dilemma and international law more often than not considers these interventions on a case to case

basis and if not, it leaves it as an a priori understanding of relationships between peace, justice, economics and law.

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