

REDEFINING HUMANITARIAN INTERVENTIONS IN THE 21st CENTURY

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Abstract

The transformation in the nature of war and of accompanying human rights violations have influenced the manner in which we think about sovereignty, non-intervention and the protection of human rights. The ongoing humanitarian crisis in Syria and the Security Council's response to it has shown that the doctrine of humanitarian intervention is heavily influenced by factors other than the substantive act of violence. Accordingly, this paper discusses the legal element, but also throws light on the factors that influence the use, or abstention from the use, of armed humanitarian intervention. Further, in light of recent crisis, this paper evaluates the argument of a 'new humanitarianism' which may prove to be useful in a better understanding of the dynamics of armed conflicts and mass atrocities.

Keywords: Humanitarian intervention, sovereignty, use of force, human rights, United Nations.

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Introduction

“States bent on criminal behavior should know that frontiers are not the absolute defense.” -

Kofi A. Annan¹

Humanitarian intervention has undoubtedly been one of the remarkable developments of the post-Cold War era wherein military force has been used to end human rights violations on foreign territories.² However, humanitarian interventions which began in the 1990s have since, remained a contested subject matter under international law.³ Usually, it is expected that, both ethical and legal aspects would form part of any humanitarian intervention, but, in most cases, the fulfillment of an ulterior motive (strategic or economic interests) is viewed hijacking the ‘humanitarian’ nature of interventions. Furthermore, half-hearted attempts to intervene amid an international crisis have not averted humanitarian catastrophes but only added to it.⁴ In addition, concerns regarding the legal status of humanitarian interventions have also created significant challenges for the global order in terms of formulating a consensus as to whether or not international law should permit states to use military force to avert human rights abuses. Thus, a major obstacle to the legalization of humanitarian interventions is the unlawful use of force by states in order to pursue personal gains under the pretext of helping victims.⁵

Therefore, it can well be said that, “humanitarian intervention saves lives and costs lives. It upholds international law and sometimes breaks international law. It prevents human rights violations, and it perpetrates them.”⁶ As a result, humanitarian missions, in their attempt to

¹Secretary-General Presents His Annual Report to General Assembly’ (*United Nations*, 20 September 1999) <<http://www.un.org/press/en/1999/19990920.sgsm7136.html>> accessed 7 March 2017.

² Thomas G. Weiss, *Humanitarian Intervention* (3rd edn, Polity Press 2016) 9.

³ Mark S. Stein, Unauthorized Humanitarian Intervention (2004) 16 (2) *Social Philosophy and Policy*, 14, 15.

⁴ Graham Cronogue, Responsibility to Protect: Syria The Law, Politics, and Future of Humanitarian Intervention Post – Libya (2012) 3 (1) *Journal of International Humanitarian Legal Studies*, 124, 126.

⁵ Zaid Ali Zaid, Humanitarian Intervention in International Law (2013) 54 (2) *Acta Juridica Hungarica*, 185, 186.

⁶ David Vesel, The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World (2003) 18 (1) *Brigham Young University Journal of Public Law*, 1, 3.

stop human rights abuses, avert crisis and preserve human life; have given rise to a number of issues relating to, legality and legitimacy of the interventions, the nature of interventions covering different scenarios and the general understanding of the key concepts enshrined in the Charter of the United Nations, like, sovereignty, nonintervention in the domestic affairs of a state and human rights.⁷ Nevertheless, humanitarian intervention allows states to intervene in the domestic affairs of other states in order to stop human rights violations. Consequently, the validity of humanitarian interventions continues to be highly debated among both theorists and practitioners of international law.⁸ This paper attempts to explore the validity of the traditional doctrine of humanitarian intervention in light of an upsurge in ‘violence within states’ in the 21st century. But, before going any further, it is important to define humanitarian intervention in order to critically examine the issue at hand.

1. The Traditional Doctrine of Humanitarian Intervention

The doctrine of humanitarian intervention is a contentious subject, both in law and in international relations.⁹ Since, certain states are not willing to unanimously accept the principle involved; there is no generally accepted definition of the term ‘humanitarian intervention’.¹⁰ Nonetheless, the term has been defined by many writers. J. L. Holzgrefe defines humanitarian intervention, 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 government of the state within whose territory force is applied.”¹¹ Adam Robert’s

⁷ *ibid.*

⁸ Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project* (2004) 35 (2) *Columbia Human Rights Law Review*, 259, 260.

⁹ Dr. Jasmeet Gulati and Ivan Khosa, *Humanitarian Intervention: To Protect State Sovereignty* (2013) 41 *Denver Journal of International Law & Policy*, 397, 400.

¹⁰ Anne Ryniker, ‘The ICRC position on “humanitarian intervention”’ (*International Committee of the Red Cross*, June 2001), 527 <https://www.icrc.org/eng/assets/files/other/527-532_ryniker-ang.pdf> accessed 7 March 2017.

¹¹ Dr. Gulati and Khosa, *Humanitarian Intervention: To Protect State Sovereignty* (n 9) 399.

defines humanitarian intervention, as “coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants.”¹²

Note that, despite the uncertainty around humanitarian intervention, certain states are of the view that the doctrine is in the process of being accepted widely and its practice is in the process of developing.¹³ It would suffice to say that, at present, the doctrine is already accepted wherein there is a threat to peace as a result of violations of human rights and humanitarian law within a country.¹⁴ Regardless of the validity of humanitarian intervention in the post-Cold War era, there remains absolutely no doubt that the doctrine gained widespread acceptance during the nineteenth and early twentieth century as a customary principle of international law.¹⁵ The origins of the doctrine can be traced to the seventeenth century jurist Hugo Grotius and later in the writings of the eighteenth century jurist Emer de Vattel.¹⁶ But, it was only at the end of the nineteenth and early in the twentieth century, that the issue of humanitarian interventions gained considerable importance. During this time, a substantial body of state practice arose wherein the great powers justified forceful interventions on foreign soil by alleging a need to protect civilians. Therefore, in light of the considerable freedom enjoyed by states to resort to armed force during this period, it was least surprising that the doctrine of humanitarian intervention gained widespread acceptance.¹⁷ For instance, as noted by T.C. Lawrence, “an intervention to put a stop to

¹² Adam Roberts, *The So-Called ‘Right’ of Humanitarian Intervention*, (2000) 3 *Yearbook of International Humanitarian Law*, 3, 5.

¹³ Ryniker, ‘The ICRC position on “humanitarian intervention”’ (n 10) 529.

¹⁴ *ibid* 530.

¹⁵ Gabor Sulyok, *Humanitarian Intervention: A Historical and Theoretical Overview* (2000) 41 (1-2) *Acta Juridica Hungarica*, 79, 86.

¹⁶ *ibid* 85. - In the case when a breach of a fundamental right is undoubted, said Grotius, no-one can approve of it on the basis of equity, and in such cases the “rights of human society” cannot be ruled out. Moreover, even if the doctrine that citizens are not allowed to take arms against their sovereign was recognized, it would not mean that no-one else could do that for them. It is, he explained with an apt comparison, as if a trustee acted for his ward.

¹⁷ Ryan Goodman, *Humanitarian Intervention and Pretexts for War*, (2006) 100 (1) *The American Journal of International Law*, 107, 108.

barbarous and abominable cruelty is a high act of policy above and beyond the domain of law. Should the cruelty be so long continued and so revolting that the best instincts of human nature are outraged by it, and should an opportunity arise for bringing it to an end and removing its cause without adding fuel to the flame of the conflict, there is nothing in the law of nations which will brand as wrongdoer a group of states which might undertake to intervene.”¹⁸

Though, the only resistance faced by the doctrine during this period was on the ground that the use of force by states on humanitarian basis stood in violation of the non-intervention principle.¹⁹ In the post UN era, the legal principles that steered the early development of the doctrine of humanitarian intervention remain no longer valid mainly because the prohibition of the use of force had become a peremptory norm of international law. In addition, safeguarding human rights was no longer an issue within the sole domestic jurisdiction of individual states but was considered a matter of international concern.²⁰

Prior to examining the impact of the Charter regime on the humanitarian intervention doctrine, it is crucial to have a look at one of the key tenets of international law i.e. state sovereignty which presents by far the greatest challenge to the notion of humanitarian intervention.

2. The Concept of State Sovereignty

Sovereignty has, for the past several centuries, acted as the foundation of international relations and world order.²¹ The concept of sovereignty can be understood as “the

¹⁸ Sulyok, *Humanitarian Intervention: A Historical and Theoretical Overview* (n 15) 87.

¹⁹ Daniel Wolf, *Humanitarian Intervention* (1988) 9 *Michigan Yearbook of International Legal Studies*, 333, 337. - Pradier-Fodere offers a classic statement of the non-intervention rationale for rejecting a right to humanitarian intervention when he writes: “The acts of inhumanity, however condemnable they may be, do not provide the latter with a basis for lawful intervention, as no state can stand up in judgment of the conduct of others. As long as they do not infringe upon the rights of the other powers or of their subjects, they remain the sole business of the nationals of the countries where they are committed.”

²⁰ Celeste Poltak, *Humanitarian Intervention: A Contemporary Interpretation of the Charter of the United Nations* (2002) 60 (2) *University of Toronto Faculty of Law Review* 1, 6.

²¹ Dr. Gulati and Khosa, *Humanitarian Intervention: To Protect State Sovereignty* (n 9) 400.

independent and unfettered power of a state in its jurisdiction.”²² Sovereignty as a concept is one of the fundamental principles of international law, both under customary international law and the UN Charter. It also plays a very significant role in upholding international peace and security even as acting as a defense for weak states against an aggression from strong ones.²³ At the same time, the concept has consistently been violated by powerful states. In a globalized world, territorial borders have come under stress due to varied political dimensions resulting from internal disorder, social turmoil etc. which have put limits on the scope of freedom for states to handle sovereign matters. Powerful states have often seen a developing crisis as an opportunity to intervene in the sovereign affairs of a weak state in the pretext of preventing a wider international disorder.²⁴

The current formulation of the concept of sovereignty as per several scholars in international law was highly influenced by agreements concluded by European states in the Westphalia treaties, 1648. After almost 30 years of war, the sovereign authority was established within a system of equal and independent states in order to maintain peace and order.²⁵ It is essential to identify the necessary elements of statehood, given that, for an entity to claim sovereign authority, it must fulfill the criteria of being a state in the first place.²⁶ The 1933 Montevideo Convention on the Rights and Duties of States lists out the essential elements of a state: “a permanent population, a defined territory, a functioning government and the ability to enter into relations with other States.”²⁷ The post-1945 system of international order is laid down in the UN Charter. The Charter adopted the principle of sovereign equality amongst all states.

²² G. Weiss, *Humanitarian Intervention* (n 2) 21.

²³ J. Fonteyne, *The Customary International Law Doctrine of Humanitarian Intervention* (1974) 4 *California Western International Law Journal*, 203, 257. - State sovereignty refers to the legal equality, competence and independence of states. Within this concept are all matters that all countries are allowed by the international law to act without compromising the sovereignty of other nations. Examples of such matters include the social, political, economic and cultural systems to be employed by the states. In these important issues, a state has free will to choose the way forward for its citizens without cohesion from any other state.

²⁴ *ibid.*

²⁵ Dr. Gulati and Khosa, *Humanitarian Intervention: To Protect State Sovereignty* (n 9) 411.

²⁶ Zaid, *Humanitarian Intervention in International Law* (n 5) 187.

²⁷ *Montevideo Convention on the Rights and Duties of States* 1933, art 1.

Taking into account the critical nature of equality of all states, the Charter sought to prevent any interference in the sovereign affairs of one state by another.²⁸ The International Court of Justice (ICJ), the principal judicial organ of the United Nations, “recognized the sanctity of the tenet of non-interference in the domestic affairs of states.”²⁹ In 1949, the Court also pointed out that “the respect for territorial sovereignty among states that are independent is an essential foundation for international relations.”³⁰ The Court also referred to the principle of non-interference as an important principle of state sovereignty which acts as a base for the entire international law.³¹ An act of aggression against the territorial sovereignty of a state is considered unlawful, firstly because such acts destabilize the international order and can present a threat of war which the UN has sought to outlaw since its inception. Secondly, the intentional weakening of a state’s capacity to govern creates a political vacuum which can lead to internal disorder, human suffering, threat to the peace and security of the whole region, as has been seen in the cases of Bosnia and Rwanda, Iraq and Afghanistan, or Yemen and Syria.³²

Sovereignty is not, however, absolute, because of widely accepted limits in international law. Under Chapter VII of the Charter, sovereignty is not a barrier to measures taken by the Security Council in order ensure peace and security.³³ As per Article 51, the use of force is permitted either in self-defense or via a mandate from the Security Council.³⁴ Sovereignty

²⁸ Poltak, *Humanitarian Intervention: A Contemporary Interpretation of the Charter of the United Nations* (n 20).

²⁹ *Asylum Case (Colombia v Peru)*, I.C.J. Reports 1949, 4.

³⁰ *ibid* 35.

³¹ S. G. Simon, *The Contemporary Legality of Humanitarian Intervention* (1993) 24 *California Western International Law Journal*, 117, 118.

³² Rohini Sen, *Use of Force and the ‘Humanitarian’ Face of Intervention in the 21st Century* (2014) 32 (3) *Wisconsin International Law Journal*, 457, 462.

³³ Adam Roberts, *Humanitarian War: Military Intervention and Human Rights* (1993) 69 (3) *International Affairs*, 429, 433.

³⁴ Charter of the United Nations 1945, art 51. - Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to

also yields to the demands of customary law and treaty obligations. Member states under the Charter are obligated to fulfill their international obligations to achieve international cooperation in addressing economic, social, cultural problems and work towards achieving the goals set out in the Charter.³⁵ Sovereignty also carries with it the responsibility for states to protect persons and property within their territories. The UN Charter has significantly expanded obligations in the field of human rights law thereby regulating political and economic affairs of member states. Sovereignty can no longer be used as a shield against human rights violations that go against the norms of international law.³⁶ In the words of former UN Secretary General, Boutros Boutros-Ghali, “the time of absolute state sovereignty has passed.”³⁷ In this respect, in a number of cases in the 1990s, the Security Council endorsed the use of military force to protect human rights of individuals/groups. In short, sovereignty could no longer be an unquestioned justification for actions that completely disregarded human rights and fundamental freedoms of individuals/groups.³⁸

The following section examines the influences of the adoption of the United Nations Charter on the humanitarian intervention doctrine.

3. The United Nations Charter and Humanitarian Intervention

The legal discourse on the use of armed force in international law has changed significantly, since the adoption of the Charter of the United Nations by the international community.³⁹ In

take at any time such action as it deems necessary in order to maintain or restore international peace and security.

³⁵ Charter of the United Nations 1945, art 2(1). - All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

Charter of the United Nations 1945, art 1(3). - To achieve international cooperation 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.

³⁶ Roberts, *The So-Called ‘Right’ of Humanitarian Intervention*, (n 12) 21.

³⁷ G. Weiss, *Humanitarian Intervention* (n 2) 27.

³⁸ *ibid.*

³⁹ David J. Scheffer, *Toward a Modern Doctrine of Humanitarian Intervention* (1992) 23 (2) *University of Toledo Law Review*, 253, 259.

relation to humanitarian interventions, the opponents to the doctrine point towards the prohibition on the use of force in the Charter to put an end to any debate which aims at reconciling the doctrine and the UN *jus ad bellum* regime.⁴⁰ Note that, under Article 2 paragraph 4 of the Charter of the UN, “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.”⁴¹ In addition, Article 2 paragraph 7 declares that, “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”⁴² However, according to those in support of the doctrine, Article 2(4) of the Charter does not completely forbid the threat or the use of force. It only does so, in cases, where such use of force is directed against the territorial integrity or political independence of any state.⁴³ Besides, Article 2(4) does not prohibit humanitarian intervention, given that, in principle, humanitarian interventions are neither directed against the territorial integrity or political independence of a state.⁴⁴

As per Philip Jessup, former judge at the International Court of Justice: “if force can be used in a manner which does not threaten the territorial integrity nor political independence of a state, it escapes the restriction of the first clause.”⁴⁵ Additionally, it is argued that humanitarian interventions only cement the core values (for example, fundamental human rights, maintaining international peace and security) that led to the formation of the United Nations.⁴⁶ Yet, others argue that, the phrase ‘against the territorial integrity or political independence of any state’ suggests a sweeping ban on the use of force in order to protect

⁴⁰ *ibid* 260-261.

⁴¹ Charter of the United Nations 1945, art 2(4).

⁴² Charter of the United Nations 1945, art 2(7).

⁴³ Vesel, *The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World* (n 6) 10.

⁴⁴ Eve Massingham, *Military Intervention for Humanitarian Purposes: Does the Responsibility to Protect doctrine advance the legality of the use of force for humanitarian ends?* (2009) 91 (876) *International Review of the Red Cross* 803, 823.

⁴⁵ *ibid*.

⁴⁶ *ibid* 824.

smaller/weak states against aggression.⁴⁷ Nonetheless, the legality of use of force in humanitarian interventions in the UN era cannot solely be based upon the interpretation of Article 2(4). Application of Charter provisions need to balance out textual connotations, contemporary challenges and state practice in order to decide upon the legality or illegality of any action.⁴⁸

Note that, since the 1990s, a number of humanitarian interventions have occurred. In analyzing some of these interventions the following section attempts to highlight the role of the UN Security Council and its resolutions in the development and debate of the humanitarian intervention doctrine. The purpose behind the examination of these specific cases of intervention is to firstly, identify when the international community has been willing to take up arms for humanitarian considerations and secondly, to examine the particular legal issues involved in each intervention that help shape the discourse on humanitarian intervention today.

4. Humanitarian Intervention in Practice

A. Northern Iraq, 1991

Saddam Hussein carried out a campaign of repression against the Kurdish population following the 1991 Gulf War. Fearing the worst, many Kurds sought refuge in the mountainous borders of Turkey and Iran. The Iraqi forces even cut-off access to basic necessities which led to thousands Kurds dying daily from appalling health conditions and lack of food.⁴⁹

⁴⁷ Vesel, *The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World* (n 6) 12. - The International Court of Justice in *Nicaragua v United States* held that, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect.

⁴⁸ *ibid.*

⁴⁹ Peter Malanczuk, *The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War (1991)* 2 (2) *European Journal of International Law*, 114, 114.

The question before the Security Council was how to respond to violations of humanitarian and human rights law by Saddam's regime. However, the Council's only response to the situation came in the form of Resolution 688 which only condemned Saddam's actions as UN members were not in favour of taking any military action in Iraq under humanitarian justifications.⁵⁰ But, only weeks into Resolution 688, a coalition of military forces consisting of United States of America, British, and French troops, began to establish 'safe havens' in northern Iraq for protecting Kurdish refugees without the consent of Iraq.⁵¹ The 'safe havens' did initially prove to be useful in supplying much needed humanitarian relief to the Kurdish refugees, but ensuring their safe return home proved to be a lot more difficult for the coalition. Further, in addition to sending ground troops, the coalition also brought considerable air support and even established a no-fly zone for Iraqi aircrafts.⁵² Though, the Kurdish intervention did show support towards humanitarianism, yet, much cannot be said about the legality of the intervention or its contribution to the development of customary international law.⁵³ The issue pertaining to the overall acceptance and legitimacy of the operation can be understood in the context of Security Council negotiations in relation to the situation in northern Iraq. Note that, during the debates over Resolution 688, there was no mention at all of the use of force against Iraq.⁵⁴ With regard to the legal basis for intervention, a simple reading of Resolution 688 reveals that the intervention was not endorsed by the UN.⁵⁵ Despite the fact that the coalition forces did intervene mainly to provide humanitarian relief to the Kurdish people in northern Iraq and saved at least few lives, the legality and legitimacy of the intervention remains a weak case.⁵⁶

⁵⁰ *ibid* 115.

⁵¹ *ibid*.

⁵² Vesel, *The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World* (n 6) 39.

⁵³ *ibid*.

⁵⁴ *ibid*.

⁵⁵ *ibid* 40.

⁵⁶ *ibid* 41.

B. Rwanda, 1994

The Rwandan genocide was the result of years of tension and conflict between two ethnic groups in Rwanda: the Hutu and the Tutsi.⁵⁷ The genocide was carried out by the Hutu Rwandan army and party militias concentrating on the mass elimination of all Tutsi. In the 100 day period starting from April 7, 1994, an estimated 800,000 men, women, and children were killed.⁵⁸

Under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, all parties to the Convention are obligated to prevent or punish acts of genocide.⁵⁹ As early as August 1993, the international community was made aware of the genocide in Rwanda and that it met the Convention's definition of genocide, yet, weeks into the genocide, the international community did nothing to stop the killings and wasted precious time in debating whether the killings met the legal definition of 'genocide' under the Convention.⁶⁰ No military action was taken in the midst of gross violations of human rights by the international community. More shocking was the misuse of the United Nations Assistance Mission for Rwanda (UNAMIR) during the genocide.⁶¹ Note that, under the Arusha Peace Agreement, UNAMIR had been in Rwanda since October 1993 to oversee its implementation. However, the UN mission was forbidden to use force. UNAMIR's commander, General Romeo Dallaire's request of engaging with the Hutu's to save innocent civilians was hence turned down by the UN. This was followed by the Security Council's vote to reduce the size of UNAMIR to just 250 men.⁶² "The mass reduction of UNAMIR military forces, coupled with

⁵⁷ 'Outreach Programme on The Rwanda Genocide and the United Nations' (*United Nations*) <<http://www.un.org/en/preventgenocide/rwanda/education/rwandagenocide.shtml>> accessed 13 March 2017.

⁵⁸ Organization of African Unity [OAU], "Rwanda: The Preventable Genocide," (*African Union*, 2000) <<http://www.unhcr.org/refworld/docid/4d1da8752.html>> accessed 13 March 2017.

⁵⁹ Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

⁶⁰ Matthew P. Farrell, Humanitarian Intervention and the Rwandan Genocide: Nothing More Than a "Band-Aid Solution" (2013) 6 *Glendon Journal of International Studies* 1, 7.

⁶¹ *ibid.*

⁶² *ibid.* 8.

its passive Rules of Engagement signified that the international community had essentially decided against providing humanitarian military intervention.”⁶³

C. Kosovo, 1999

The long-standing conflict between Serbs and Kosovars (ethnic Albanians) over Kosovo took a big turn in the late 1990s when war broke out between Serb forces and the Kosovo Liberation Army (KLA) in February 1998. By the summer of 1998, the Serbs responded oppressively in Kosovo. Villages were burned and thousands of Kosovars were driven from their homes. According to an estimate by the Independent International Commission on Kosovo, 200,000 - 300,000 people were driven from their homes by the Serbs. The conflict continued to escalate and created a humanitarian disaster threatening destabilization in Macedonia and Albania, where most of the refugees had fled.⁶⁴

The United Nations was not involved in most of the key decisions regarding an international intervention on behalf of the Kosovars. Nonetheless, the Security Council did pass few resolutions (1160, 1199 and 1203) during the intervention which only condemned both sides for the conflict and hoped for a diplomatic solution.⁶⁵ The military response by the North Atlantic Treaty organization (NATO) against the Federal Republic of Yugoslavia (FRY) on March 24, 1999, however, aroused more controversy than any use of force since the end of the Cold War. Though, NATO’s intervention was effective in stopping the persecution of Kosovo Albanians but it also involved the large scale use of force against a state, not because of its aggression against other states but because of the manner in which it was treating its

⁶³ *ibid.*

⁶⁴ Vesel, *The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World* (n 6) 42.

⁶⁵ David Wippman, *Kosovo and the Limits of International Law* (2001) 25 (1) *Fordham International Law Journal*, 128, 133. See also, J. L. Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (1st edn, Cambridge University Press 2003) 49.

own citizens.⁶⁶ It is also crucial to understand that, the Kosovo intervention was not carried out in vacuum but the primary impetus for using military force was to stop human rights violation. The US position on the Kosovo incident confirms the same.⁶⁷ The statement made by President Bill Clinton which later came to be known as ‘Clinton Doctrine’ on humanitarian intervention is as follows: “It is not free of danger, it will not be free of difficulty. There will be some days you wish you were somewhere else. But never forget if we can do this here, and if we can say to the people of the world, whether you live in Africa or Central Europe, or any other place, if anybody comes after innocent civilians and tries to kill them en masse because of their race, their ethnic background or their religion, and it’s within our power to stop it, we will stop it.”⁶⁸

Although, the humanitarian enthusiasm was evident on part of NATO, there are problems with regard to the intervention’s authorization and character. Firstly, NATO undercut the Security Council’s power to determine whether the situation in Kosovo presented a threat to international peace and security. Note that, none of the Security Council resolutions had used the phrase ‘threat to international peace and security’.⁶⁹ Additionally, “the lack of a broad international consensus concerning the Kosovo intervention shows that Kosovo did not meet the state practice requirement, and weakens any claims that the Kosovo situation be used as precedent for legalizing future interventions.”⁷⁰ The NATO intervention was important in indicating that certain powerful states were willing to use force outside of the UN authorization in order to defend human rights anywhere. The problem, however, with the intervention only came in the manner in which it was conducted and justified.

⁶⁶ Christopher Greenwood, *Humanitarian Intervention: The Case of Kosovo* (1st edn, Finnish Yearbook of International Law 2002) 144.

⁶⁷ Daniel H. Joyner, *The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm* (2002) 13 (3) *European Journal of International Law*, 597, 598.

⁶⁸ *ibid.*

⁶⁹ John J. Merriam, *Kosovo and the Law of Humanitarian Intervention* (2001) 33 (1) *Case Western Reserve Journal of International Law*, 111, 144.

⁷⁰ Vesel, *The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World* (n 6) 49.

D. Libya, 2011

While Kosovo signified progress in the evolution of humanitarian intervention regarding the use of force, the intervention in Libya in 2011 resulted in a step backward. The UN's decision to intervene in Libya was in response to a civil war wherein rebels sought to overthrow the Muammar Gaddafi's regime. However, the purpose for intervention in Libya appeared to soon shift from being humanitarian in nature to that of a regime change.⁷¹

On March 17, 2011, the Security Council issued Resolution 1973, which demanded a "complete end to violence and all attacks against, and abuses, of civilians."⁷² Further, this resolution authorized "all necessary measures" to protect civilians, in addition to enforcement of a no-fly zone and an arms embargo. The resolution noted the "heavy civilian casualties, condemned the gross and systematic violation of human rights," and labeled certain "widespread and systematic attacks" against civilians as "crimes against humanity."⁷³ It was clear that, the UN resolution contemplated humanitarian intervention as the legal basis for authorizing the use of force. But, what began as a humanitarian mission soon turned into providing air force support for the Libyan rebels and the bombing of targets throughout Libya. As a result, the intervention lost its humanitarian objective.⁷⁴ A close examination of the resolution also shows that the military intervention in Libya was not the result of a unanimous agreement in the Security Council. Both, Russia and China had abstained from Resolution 1973.⁷⁵

In the above mentioned cases, a broad range of circumstances have had their influence on the legality and legitimacy of each intervention. Further, these cases have also shown when and

⁷¹ G. Weiss, *Humanitarian Intervention* (n 2) 73-74.

⁷² 'Resolution 1973' (*United Nations*)

<http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2011_03/20110927_110311-UNSCR-1973.pdf>
accessed 13 March 2017.

⁷³ *ibid.*

⁷⁴ G. Weiss, *Humanitarian Intervention* (n 2) 73-74.

⁷⁵ *ibid.*

how humanitarian interventions should proceed. With respect to when can interventions occur, there is a genuine concern that a right to intervene can be abused by powerful states which could result in greater occurrences of violence and suffering. Contrasting with these views are persistent worries that inaction, resulting through selecting of missions, may also undermine humanitarian goals. In short, the most important question that needs to be asked is, what exactly constitutes a ‘threat to international peace and security’ and how often are states ready to rescue strangers?

5. Towards New Humanitarianism post Syria?

“More than 250,000 Syrians have lost their lives in four-and-a-half years of armed conflict, which began with anti-government protests before escalating into a full scale civil war. More than 11 million others have been forced from their homes as forces loyal to President Bashar al-Assad and those opposed to his rule battle each other - as well as jihadist militants from so-called Islamic State.”⁷⁶ There is no doubt that, Syria’s case presents a challenge to the expansion of humanitarian intervention doctrine. The repeated failure on part of the international community to come together to rescue and implement civilian protection rules has also threatened the credibility of the UN.⁷⁷ Nonetheless, the current situation in Syria and several other humanitarian missions of the past only bring back the focus on the most crucial part of the debate regarding the doctrine which is the decision to act in times of crisis.⁷⁸ For this reason, there is a need to examine the phrase ‘the decision to act’ in light of new conflicts.

Since the 1990s, there has been a decrease in state versus state conflicts due an upsurge in violence within states. However, for civilians who end up suffering every time, the nature of

⁷⁶ ‘Syria: The story of the conflict’ (*BBC*, 11 March 2016) <<http://www.bbc.com/news/world-middle-east-26116868>> accessed 13 March 2017.

⁷⁷ Eric Engle, *Humanitarian Intervention and Syria* (2012) 18 (1) *Barry Law Review*, 129, 130.

⁷⁸ William D. Wood, *Humanitarian Intervention in Syria: Is crisis response and limited contingency operations the solution?* (2015) 223 (3) *Military Law Review*, 610, 628.

conflict has rarely made a difference. These new conflicts are fought locally in neighborhoods; villages etc. and they often give rise to grave humanitarian catastrophes which are characterized by massive bloodshed, displacement, malnutrition and starvation.⁷⁹ For example, “in Rwanda, some 800,000 people (a tenth of the total population) were slaughtered in a period of few weeks, while as many as 250,000-500,000 women were raped, and half the population forcibly displaced; in Bosnia-Herzegovina, there were some 100,000 deaths, with 20,000-50,000 rapes and 2.7 million people left in need of assistance and 1.5 million risked starvation.”⁸⁰ Note that, these disasters do pose a considerable quantitative and qualitative challenge for those seeking to come to the rescue, be it soldiers or civilian humanitarians.

In light of today’s civil wars, the traditional humanitarian thinking may appear to be ineffective because it is based upon principles and assumptions, which have certainly worked well in the era of interstate wars but are undoubtedly of less help in tackling present day crisis. Therefore, an examination of this dramatic shift away from a state centric understanding of international relations becomes all the more essential in order to assess humanitarian interventions today.⁸¹ The most striking feature of this shift is the rise of non-state actors who have usurped the role of states due to an absence or failure of political institutions. Further, failure to respect international humanitarian law, attack on aid personnel, blocking of relief, scale of human suffering etc. have raised doubts over the

⁷⁹ G. Weiss, *Humanitarian Intervention* (n 2) 91. - In comparing the older and newer varieties of armed conflict and random violence, there are four essential changes that must be discussed. First, the locus of war no longer coincides with State borders in areas of fragmented authority, in fact, borders are often meaningless. Second, instead of States and their militaries being the main agents, non-State actors are playing an increasing role. Third, the economies of war are no longer financed principally from government tax revenues but increasingly from illicit activities. Fourth, instead of informed combatants being the main victims, civilians are increasingly paying the lion’s share of the costs.

⁸⁰ *ibid* 89.

⁸¹ Gareth Evans, *From Humanitarian Intervention to the Responsibility to Protect* (2006) 24 (3) *Wisconsin International Law Journal* 703, 703.

traditional operating principles of humanitarian intervention.⁸² According to the April 2011 UN Office for the Coordination of Humanitarian Affairs report, *To Stay and Deliver*, “the number of attacks against aid workers actually tripled over the first decade of the twenty-first century, resulting in an average of more than 100 death per year. War-torn Afghanistan, Somalia and Sudan were the most dangerous, with fatalities in these countries inflating global trends.”⁸³ UN organizations as well as non-governmental organizations have always had to work with states authorities, in order to find victims and provide relief in war affected areas. In some ways, humanitarian space was always guaranteed by states in many interstate wars wherein aid workers could carry out their relief work.⁸⁴ But in most of the new conflicts, belligerents often do not provide consent, allow passage of relief or abide by international law. Hence, the most basic struggle for aid workers today is to secure humanitarian space, a challenge not known to them earlier.⁸⁵

On the other hand, the use of military force is also considered problematic and only few states go for making such a commitment because of an expansion of humanitarian work which now includes “development, democracy promotion, establishing the rule of law and respect for human rights, and post-conflict peace building.”⁸⁶ An argument against the use of military force in humanitarian missions is that “any deployment of soldiers is bound to clash with humanitarian principles of independent, neutral and impartial provision of relief of victims of conflict. As such, relief oriented actor’s who dishonor that definition are on a slippery slope to a kind of corruption.”⁸⁷ Again, there is also the debate regarding whether the

⁸² Kalevi J. Holsti, *Taming the Sovereigns: Institutional Change in International Politics* (Cambridge University Press 2004) 318.

⁸³ G. Weiss, *Humanitarian Intervention* (n 2) 99.

⁸⁴ Michael Bryans, Bruce D. Jones and Janice Gross Stein, “*Mean Times*”: *Humanitarian Action in Complex Political Emergencies - Stark Choices, Cruel Dilemmas* (Programme on Conflict Management and Negotiation, Centre for International Studies, University of Toronto 1999) 9-10.

⁸⁵ Bruce M. Oswald, The Creation and Control of Places of Protection during United Nations Peace Operations (2001) 83 (844) *International Review of the Red Cross* 1013, 1013.

⁸⁶ G. Weiss, *Humanitarian Intervention* (n 2) 114.

⁸⁷ *ibid.*

use of military force does more harm than good.⁸⁸ Further, there are significant quantitative problems via a vis the actual measurement of costs and benefits, for example, how feasible is placing soldiers on the ground for protecting civilians in a foreign territory considering the casualties, fatalities and the political impact.⁸⁹ Nonetheless, whatever the costs and benefits affecting humanitarian missions; it appears that politics and military capacity in the end are more vital in determining when, where, why and how to protect and assist affected population during conflicts.

Conclusion

The international community's inaction is largely to be blamed for the current situation in Syria, yet, despite the political deadlock in the Security Council; it would be too early to say that states are now slowly rejecting the idea of humanitarian interventions. However, each unfolding episode of crisis, points towards the difficulty of getting a general answer on the question of whether or not one should go for humanitarian intervention. As already noted in the paper, the answer to the question of whether or not in a particular scenario, humanitarian intervention is viewed legal is likely to depend not only on the circumstances of the case, but also on the perspectives and interests of the states addressing the matter.

Setting aside the issues raised in this paper for a moment, what remains clear is that the nature of war is undergoing transformations which do require transformation in humanitarianism. In light of the events post 1990s, there is no blueprint for humanitarian interventions as of today to overcome the challenges posed by these transformations, however, in the opinion of the author's, human rights violations must continue to command attention of the world; at the same time, addressing of new issues affecting humanitarian interventions must not be overlooked. A cautious legal regulation is required to mitigate the problems. This would depend on firstly, a reassessment of fundamental principles of

⁸⁸ *ibid.*

⁸⁹ *ibid.*

contemporary international law, i.e. respect for human rights versus the principle of sovereignty and non-intervention and secondly, establishing an effective human rights protection mechanism to combat grave and massive violations of human rights which will act as a powerful deterrent against governments about to commit outrageous violations of human rights.



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