

Overtone of Interest- The Changing Dynamics of 'Intervention' in International Humanitarian Law

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Abstract

Interventions have always been a controversial aspect of International Law. And condemnation of such interventions has been subsided with the adoption of the United Nations Charter that aims at protecting the political independence and mutual respect for the sovereignty of State, thus the act of intervention has been restricted. However, the humanitarian ambit that is, to safeguard the humanitarian objects. U.N. Charter has empowered the United Nations Security Council to carry out the intervention of Humanitarian nature where it is deemed necessary to protect the individuals, natural resources and prevent gross violations of their human rights. Over the years many interventions were carried out with a humanitarian object where some successfully achieved the objective while some appeared big failures, but the question posits that, whether such empowerment to intervene on humanitarian grounds has always been exercised in pursuant to good conciseness and with benevolent political will to encourage the universal brotherhood amongst natural or some oblique considerations to achieve some distinct riding status upon others in the realm of international relations? If carrying out humanitarian intervention is devoid of humanitarian objects and causes more harm than preventing the same, then the entire idea of intervention shall be a failure. Through this paper, the authors intend to analyse the humanitarian interventions carried out in different instances, their underlined agenda and implications of such interventions.

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Introduction

International relations have constantly been restructuring since ages in pursuit of acclaiming world power. Human Civilisation is full of chequered history of armed conflicts, civil wars, rebellions and most importantly the burns of World Wars. The reasons that triggered the wars range varyingly from political to religious to ethnical differences. Ethnical complexes and the urge to avenge any previous defeat or to expand the sovereign territorial boundaries took the form of armed conflict over the years. The catastrophic impacts of such wars or armed conflicts, moved the world leaders to ponder over the devastation caused by the war and its adverse impacts on mankind. With the UN (United Nations) coming into force and forming a legitimized structure for managing and governing the use of power, 'intervention' is one such instrument of utilization of power with certain limitation. Article 2(4) of the United Nations Charter (the UN Charter) embodies the spirit of respecting the territorial integrity and political independence of all the states as one of the core principles of international law.³ Intervention as understood is the dictatorial interference by a State in the affairs of another State with the primary goal of restoration of global order and peace as well as of maintaining or changing the existing actual condition or situation.⁴ The provision as envisaged in the UN Charter prohibits interventions as such, but with development in the field of international law, many legal scholars, have disagreed with such an interpretation as they believe that intervention of humanitarian nature is in accordance with the principle of 'jus ad bellum' and such an intervention does not violate the territorial sovereignty and political independence of the State, where intervention is being carried out. The object of Humanitarian intervention is to prevent or end mass and grave violation of the basic human rights of individuals, and after the operationalization of UN Charter this serves as a restrictive yet beneficial instrument of the UNSC (United Nations Security Council) for shielding people from atrocities and spoils of armed conflicts.⁵ This paper focuses on the particular issue to analyse how diligently the spirit of *jus ad bellum* is adhered to during interventions of Humanitarian nature.

Legal Sanctions Relating To Humanitarian Intervention

³N K JAYAKUMAR, INTERNATIONAL LAW AND HUMAN RIGHTS, 165, (1sted, 2011).

⁴*Ibid*, 166.

⁵JAMES PATTISON, HUMANITARIAN INTERVENTION AND THE RESPONSIBILITY TO PROTECT: WHO SHOULD INTERVENE? 28 (2010).

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The spirit of Article 2 (3) &(4) along with Article 2 (7) of the UN Charter, can be dated back to the ‘Kellogg Briand Pact’ of 1928. The principle of non-intervention was also reaffirmed in the UNGAResolution⁶.

To this general prohibition of use of force as laid down in the UN Charter and other legislation, lies two exception, under which intervention is allowed, the said exceptions are; the power vested with UNSC to authorise use of force under Chapter VII of the UN Charter and in circumstances where it becomes necessary to invoke the right to self-defence only on fulfilment of either of these two conditions, the utilization of power is legitimate under international law.⁷ The UNSC as provided in Article 39 of UN Charter, can only authorise utilisation of force in situations where there exists an imminent threat to the world peace and security and when all measures to restore the same has failed, in such a situation the UNSC is authorised to take remedial actions according to Article 41 and 42 of the UN Charter, otherwise, UNSC as provided in Article 24 of the UN Charter is under obligation to preserve the world peace and security. The principle of non-intervention has also been reiterated under by ICJ (International Court of Justice) judgments in *Corfu Channel* and *Nicaragua case*. Though the UN Charter prohibits intervention prima facie under Chapter VII, Right to self-defence, and under the customary International law, intervention for the humanitarian cause has been allowed, to protect humans from the ravages of war or armed conflict and preserve world peace and security.

During the post-Cold War Era i.e. from the year 1990 to 2000 with the increased disturbances in Somalia and Rwanda, the UN observed these disturbances as a grave threat to the world peace and security, and with this looming danger, the UNSC initiated UN-mandated interventions in the conflict zones. But unfortunately, such interventions miserably failed to attain their objective and evolving through these failures in two nations, the UN transcended from the intervention policy to the policy of ‘Responsibility to Protect’ (R2P) in the year 2005.⁸ This policy is based on three core concepts, firstly, it is the responsibility of a state to safeguard, mass violation of human rights of its citizens, secondly, if the state is unable to provide protection of its people from atrocities then it must seek assistance from the international community and lastly, if the state fails to protect the individuals and all peaceful

⁶G.A. Res 2131 (XX) (Dec 21, 1965).

⁷Jana Dadova, *The Legality of Humanitarian Intervention and without UN Security Council Authorisation*, RESEARCHGATE, (Aug. 20, 2018), https://www.researchgate.net/publication/305806123_The_Legality_of_Humanitarian_Intervention_without_UN_Security_Council_Authorization.

⁸Daniel Golebiewski, *The Humanitarian Intervention of the UN A look at the Security Council’s haphazard response to Somalia and Rwanda*, THE POLITIC, (Aug. 20, 2018), <http://thepolitic.org/the-security-councils-humanitarian-intervention/>.

measures have failed, in such a situation by the virtue of the policy of 'R2P' the responsibility of protection shall shift from the state to the international community to extend technical support and when all such attempts fail only then use of force can be sanctioned. Most importantly all the actions undertaken to preserve world peace and security by the UN, must be performed in strict adherence to the principles of international law. The Doctrine of Humanitarian Intervention under the ambit of collective security has the objective of intervention to provide humanitarian aid to the needful, to respect and restore the sovereignty of the State in conflict. But, many times the aid doesn't reach the needful and atrocities of the war leave a catastrophic impact on the human population. Such impacts have been analyzed in the following case analysis.

Case Analysis

Analysis of Situation in Kosovo

During the 1990s, the world saw the commencement of two of the most heinous crimes against humanity at large in the name of Balkan and Rwanda. This paper deals with one of the states of Balkan, i.e. Kosovo, which was a base of military intervention. It is one of the youngest countries in the world at the moment, it gained its independence from Serbia after fighting Europe's one of the most brutal sectarian conflicts since the Second World War.⁹ Kosovo always existed in some form or the other, at times it was colonized by the Ancient Serbian Kingdom then ruled by the Ottoman Empire and most recently was the part of the Socialist Federal Republic of Yugoslavia.

With the disintegration of the territorial boundaries of the Republic of Yugoslavia in the early 1990s owing to the religious, lingual and ethnic disparity the regions with a Christian majority, declared their independence, and the former head of Yugoslavia i.e. Serbia acknowledging such declaration allowed the disintegration. But when Muslim majority regions like Bosnia and Herzegovina claimed their independence, Serbia refused from obliging such claims. Incidentally when ninety-five percent of the Albanian Muslims made attempts for claiming independence, Serbia sent in troops and began a campaign of ethnic cleansing of the Muslims. It was a conflict that pitted an accommodating authoritarian nationalist leader, Slobodan Milosevic against the Western power. The Albanians were targeted by the Orthodox Christian Serb Troops which took the form of a genocide in the year 1995. While the people of the state were overcoming the impact of the genocide, NATO

⁹ Fernando R. Tesón, *Kosovo: A Powerful Precedent For The Doctrine Of Humanitarian Intervention*, AMSTERDAM LAW FORUM (Aug. 20, 2018), <http://amsterdamlawforum.org/article/view/62/119.html>.

intervened and concluded the seventy-eight-day long war. But this intervention failed to cap the damage, as around fifteen thousand Albanians were murdered.

From the year 1999 to the year 2008, the existence of Kosovo was limited only to this grey area anticipating achieving a final outcome from the negotiations between itself and Serbia, but in vain. Serbia insisted that Kosovo shall remain within the sovereign domain of Serbia like always it had been. Even the head of the Serbian Orthodox Church says “Recognition of Kosovo as an independent country is a sin.”¹⁰ The implications of the genocide carried out by Serbia was such on Kosovo that Serbia lost its political and moral legitimacy over Kosovo and hence Kosovo strongly accented the idea of complete independence from Serbia, as a result the state remained in this indecisive deadlock. When in the year 2007, Marti Ahtisaari, an Ex-Finish President and UN Special Envoy to Kosovo helped negotiations along and made a series of recommendation like ‘if Kosovo wants to be independent, they can never unite with the Albanians in Albania ever again.’ Kosovo agreed to this and announced their independence on February 17, 2008 and since then half the world including Albania, Turkey and United States of America have recognized it, but Countries like Serbia, Russia, China have not yet recognized it as a country.

Analysis of Situation in Syria

The Civil War of Syria; a war within the humanity, where indiscriminate attacks have been committed and the lives of many innocent individuals have been blooded down. Several resolutions have been passed by the UNSC in order to bring peace in the State of Syria, but all in vain. The State miserably failed in abiding its obligation under R2P and over last seven years, the situation has worsened with time, resulting in increased casualties and forced immigration. Peaceful protest has turned into a civil war and in furtherance that civil war has now morphed into a conflict of global dimension, which is being played out in Syria. The forces of President Bashar al-Assad, are backed up by Russia as well as Iran and various powerful Shia Militias. Then there are the rebels, who have taken a battering but are still fighting on.

The two of the biggest militias called as Jaysh-al-Islam and Ahrar-al-Sham, up in the north with the backing from the USA, the Kurds (an ethnic group) have spread right across the region, being counterattacked by Turkey. The south region has been torn down by air strikes conducted by Israel. Along with such interference the Islamic State Group; the fanatical

¹⁰ Marc Santora, *In Kosovo a Peace built on Separation*, THE NEW YORK TIMES (Aug. 24, 2018), <https://www.nytimes.com/2018/01/30/world/europe/kosovo-serbia.html>.

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jihadists have taken over large parts of Syria and Iraq, grabbing the world's attention with their brutality and posing a pertinent threat on state sovereignty.

The Western countries have accused President Assad of initiating indiscriminate bombing, chemical weapon attacks and other war crimes with an objective to remain in power.¹¹ The rebel groups or the terrorist (as the Assad government refers them as) have been constantly countering the Assad government with a primary motive to overthrow Assad from the Government. The conflicts were triggered when the Assad government came down brutally on the people involved in the peaceful protest back in 2011. Then one clash led to another and eventually took the form of this civil war.

With the strengthening of the clashes and increasing catastrophic impact of the war, the international community involved itself by carrying out proxy wars. President Assad is Russia's closest ally in the Middle-East, Russia extended its help but with an objective to maintain the strong footing in the Middle Eastern region through the Mediterranean Port. Also, Iran the oldest ally of the President extended help only to counter the influence of its regional rival, Saudi Arabia and spreading their own influence across the region. In an attempt to achieve their goals, both Russia and Iran both have outplayed everyone else. While the U.S., Turkey and some of the Gulf States offered some support to various rebel groups, Russia and Iran have been constantly rooting for President Assad to remain in power. Against the Russian air powers and Iran backed militias, the rebels have been badly outmatched.

Midst this conflicts the YPG¹² played a crucial role in driving the Islamic State out of North Eastern Syria. Turkey extended humanitarian help by providing shelter to the Syrians fleeing from the conflict, yet brewing with its own insecurities against the YPG, launched a war against them. This paved the road for Turkey to build closer relations with Russia, in spite of being a former member of NATO.

In the southern region the concern that draws Israel's attention is the growing influence of its arch-enemy Iran and probable chances of Hezbollah getting the high-tech weaponry. A global conflict has been playing out around the Syrian border with Russia now calling the shots. The war in Syria is gradually engulfing the lives of innocent Syrians and various global powers into a vicious situation that is hard to see a way out of.

Analysis of Situation in Yemen

¹¹ Lucy Rodgers, David Gritten, James Offer and Patrick Asare, *Syria: The Story of the Conflict*, BBC (Aug. 28, 2018), <https://www.bbc.com/news/world-middle-east-26116868>.

¹² YGP is the People's Protection Unit, Members of this became the part of Syrian Democratic Forces, where the members received arms and training, backed by the U.S.

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Another worst humanitarian crisis is being witnessed by the Country of Yemen. The crisis in Yemen has a gruesome face, where innocent lives are being subjected to inhumane atrocities, even neutral organizations like ‘Hospitals’, ‘World Heritage’ sites, ‘Schools’ have been object of indiscriminate attacks. The literacy rate has fallen to a massive low, giving rise to a situation, wherein the country’s youth have taken guns to the streets to fight against the government. The perpetuation of such disturbances would compel to divert the fund to defence rather than social development, such as contributing strategies, proceeding nurturing disturbances to remain alive in the minds of the human race. The War has resulted in a number of Yemenis to leave their own soil and take shelter as a refugee in some other country. With Saudi Marshalled Coalition, the conflict has garnered violence particularly within the year of 2015, building a violent playground for regional and international actors over the pillaged poorest country within the Arab Spring.

Once the dictators were toppled down in the Middle East region, the Yemenis also aspired for reform and this initiated a clash between the then President Ali Abdullah Saleh and the then Military Chief Ali Mohsen al- Ahmar which gave rise to a political instability. The conflict aggravated once the Rebel leader Abdul Malik al – Houthi went against the then Government for non-performance of its obligations towards the citizens. Gradually, the Capital city of Sana’a was seized by the Houthi rebels. The President Ali Abdullah Saleh was forced to give up his position and his deputy Abdrabbuh Mansour Haditook over in November 2011, however this political transition to Hadi was unsuccessful. The clash was between the loyalists of the former President Saleh and the loyalists of Hadi Government. In 2014, Houthi forces took over Yemen’s capital Sana’a. With the rising conflict President Hadi was forced to escape to Saudi Arabia via the city of Aden.

Saudi Arabia, apparently considered the Houthi forces to be a direct threat and feared that Iran might try to achieve the foothold on its border. Saudi Arabia had suspected Iran for backing the Houthi rebels because of the ethnic similarity between both the actors, however Tehran denied any involvement in such matter. Saudi Arabia building alliance with USA, Britain and France, procured logistics, weapon power and intelligence with their support and initiated a military operation which had a devastating impact, claiming lives of approximately ten thousand individuals and forcing over three million people to leave their homes. An aggregate of twenty-seven journalists was killed since the happening of Yemen’s civil war in

2014¹³. The Saudi led coalition intends to revive the Hadi Government however it's been unable to conquer back the North of the Country as well as its capital Sana'a. Meanwhile, fighters from al-Qaeda within the Arabian Peninsula and thereof the affiliates of ISIL (Islamic State of Iraq and the Levant) have taken advantage of the chaos by seizing the regions of the South and stepped up their attacks within the Government and established control over the city of Aden. As in each war, civilians are bearing the impact of this one as well. The destruction of infrastructure and restrictions on food and fuel imports puts roughly seventeen million Yemenis in severe scarcity and life-threatening situation unless necessary humanitarian assistance is assured at the earliest. The other concern is, that the regions affected by cholera epidemic have not received any the International aid.¹⁴

The Yemenis are in a complete sorry state of affairs, where they have a minimum or zero access to basic life requirements, the damages caused by air strikes or sporadic violent outbreaks within the Houthi ruled area have foiled the garbage and sewage facility even. Major attempts of mediation have failed as neither of the parties intends to abandon first and this has turned the region into a field of proxy wars disrupting, evading and destroying the peace and security furthermore invoking a persistent prolong situation forcing the citizens to live a life by compromising and surrendering their innate human dignity.

Conclusion

The face of Humanitarian Intervention has been changing to hold economic colonialism over political colonialism, to retain such authority for enjoying long-term 'economic routes' which is resulting in aiding Humanitarian Crisis. The Invasive character to transgress the economic zone of other territorial jurisdiction in the pretext of defence and religion becomes the order of the day. Agreeable and acclaimed path of sustainable development gets defeated due to such abusive surfacing of the age-old domineering instinct of the human race.

¹³Ali Aweida, *27 Journalists killed in Yemen since 2014*: NGO, AA NEWS BROADCASTING SYSTEM(HAS)(Aug. 15, 2018), <https://www.aa.com.tr/en/middle-east/27-journalists-killed-in-yemen-since-2014-ngo/1170178/>.

¹⁴Kate Lyons, *Yemen Cholera Outbreak now the worst in History as millionth case looms*, THE GUARDIAN, (Sept. 2, 2018), <https://www.theguardian.com/global-development/2017/oct/12/yemen-cholera-outbreak-worst-in-history-1-million-cases-by-end-of-year>.