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Dissertation Paper

ON

**Concept of Humanitarian Intervention in Contemporary International
Law: A Critical Analysis**

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DECLARATION

I, Rushmila Jahan Rasha, sincerely pronounce and authenticate that this thesis paper is novel and my own effort and that it has not been plagiarized from anyplace or from anyone's standpoint. The objective of this thesis study is to conclude a course for my undergraduate studies.

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Abbreviations

Art = Article

ECOWAS = Economic Committee on West African States

ICISS = International Commission on Intervention and State Sovereignty

ICJ = International Court of Justice

LN = League of Nations

R2P = Responsibility to Protect

NATO=North Atlantic Treaty Organization

UNSC = United Nations Security Council

USA = United States of America

USSR = Union of Soviet Socialist Republic

Abstract

Humanitarian intervention is depicted as a controversial yet significant portion of international law. Although it has not been endorsed anywhere in the UN Charter, the world has experienced many such interventions conducted with the paramount objective to prevent gross human rights violation. There is a conflict of opinion among scholars concerning the legal status, validity and specifically the true nature of humanitarian intentions behind this notion. Nonetheless, the world has experienced many interventions based on humanitarian grounds. Majority of the precedent of such intervention suffers from selectivity and is accused of political biases. Even the international community raised finger over it viewing its inevitable and alarming clash with the sovereignty of the intervened state. Such inconclusiveness encircling this concept accorded room for R2P to develop as a new concept with wider prospects to fruitfully substitute humanitarian intervention in near future. Moreover, frequent exercise of such unauthorized intervention imposes serious threat to the current crisis management mechanism. To address all these concerns, R2P needs to be developed to a standard standpoint with a structured framework to uphold the objective of the prohibition on the use of force in the UN Charter and to maintain harmony with sovereignty of states as well.

Chapter 1: Introduction

1.1 Introduction

International law does strictly prohibit the use of force except for certain permissible circumstances. A lacuna arose in the international legal system that has identified use of force on humanitarian grounds not directly prohibited or restricted. Absence of endorsement in the UN Charter has allowed the international community concerned to utilize this lacuna for the purpose of protecting mass human rights violations. The legality and underlying politics behind such intervention is a matter of debate among different schools but it is also true that in recent times we have already witnessed several attempts of interference on humanitarian grounds. This discussion would contemplate the feasibility, probabilities, and recommendations to ensure a better regulated humanitarian intervention system under international law framework.

1.2 Research Questions

I would analyze the following research question and continue my dissertation on the following topic:

- Considering present and future global context how the principle of humanitarian intervention will work under international law?

1.3 Research Methodology

The research portrayed herein is based on various information presented in articles, books, journals, legal documents, and other materials. It follows an analytical approach in presenting the relevant information and examining several issues including legal provisions. After contemplating different articles, research papers, postulations prepared by renowned academicians, researchers, writers I have prepared the thesis. Furthermore, I prepared this solely depending upon my own findings and understandings with sensible examination according to my perspective and finished it with an exhaustive decision on an overview of the general findings.

1.4 Scopes and Limitations of the Thesis

This thesis paper will contemplate how humanitarian intervention has been working inside the arena of international law without authorization from the UN for protecting thousands of people whose lives are at stake. This paper would provide individual researchers, academicians, legal enthusiasts, educators, law undergraduates and worldwide law specialists a specific knowledge of the history, development, and contemporary analysis of this very subject. It would reveal how a biased attitude is actively working behind the mentality of the powerful state entities while interfering under the mask of humanitarian intervention and its solution.

While covering the thesis, limitations are the issues that constrains a particular write-up to stop at a certain point and restricts the prospect of the research and even influences the outcome and the conclusions that were about to be drawn. This research paper is no exception. This was written during the COVID-19 period and accordingly I had limited access to data. I had to stick to online materials and as such, I needed to continue my research from the least applicable materials that I could get from the web. Thus, this thesis has been based on online data only and it restricted its contemplation on humanitarian intervention and international law and politics of the contemporary world.

Chapter 2: The Idea of Humanitarian Intervention

2.1 Definition

As said by Article 2(4) of the UN Charter, the use of force against any state or threat of same is entirely prohibited. This provision of UN Charter enforces a normative embargo on the inter-state aggressive conflicts and any sort of escalation. Both the use of force and threat of use of force are uniformly forbidden with certain exceptions. Such as, use of force for the reason of self-protection or defense is allowed. Along with it, scholars of liberal school consider intervention for humanitarian cause as the second exception to use of force. This term lacks a universally accepted meaning and hence, it often generates confusion and polarized opinions.

Humanitarian intervention is an action of interference in the internal affairs of other state with an intention to concluding the physical misery caused by the disintegrations or exploitation of governmental power of a country along with supporting in generating a situation in which a feasible arrangement of civil authority can materialize.¹ This theory also bring up forceful interventions by a state or jointly, or by an organization (could be international or regional), designed at ceasing violations of human rights and the maltreatment of inhabitants in another state, as has been defined by the Advisory Committee on International Law. In other words, this is the course of action where the employ or threat of employ armed force by a country or a group of countries trans-border with the objective of finishing rigorous and extensive violations of human rights.² Adam Roberts defines humanitarian intervention as “military intervention in a state, without the approval of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants.”³ In the words of Tony Brems Kundsén, humanitarian intervention is “dictatorial or coercive interference in the sphere of jurisdiction of a sovereign state motivated or legitimated by humanitarian concerns.”⁴ As per the definition ushered by J. L. Holzgrefe, humanitarian intervention is “the threat or use of force across state borders by a state or group of states aimed at

¹ Parekh Bhikhu, ‘Rethinking Humanitarian Intervention’ (1997) 18 International Political Science Review

² TB Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Sipri, Stockholm International Peace Research Inst 2012)

³ Adam Roberts, ‘Humanitarian War: Military Intervention and Human Rights’ (1993) 69 International Affairs 429

⁴ Michael Pugh, ‘Humanitarian Intervention Revisited: Post-Cold War Responses to Classical Problems’ in Michael Pugh (eds), *The UN, Peace, and Force* (1st edn Frank Cass 1997)

preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.”⁵

2.2 Characteristics

Briefly, intervention for humanitarian cause is an instrument to put a stop to rigorous and extensive human rights violation in an area or country, where such authority of that area or state is either incompetent or reluctant to save its own civilians from violation or is enthusiastically persecuting.

There is a consensus on some of its fundamental characteristics.⁶ Firstly, the threat to employ and employment of armed forces as a key attribute is present in humanitarian intervention. Secondly, this type of intervention is usually in reaction to the circumstances and conditions aggravated by the objective of humanitarian grounds. Thirdly, this intervention requires prying in the internal matters of another state by deploying armed forces in the area of another sovereign country. As Saban Kardas views, there are four typical characteristics of the concept of humanitarian intervention: use of military force, the absence of the target state’s permission, what distinguishes it from peacekeeping, the aim to help non-nationals as well as agency of intervention.⁷ There are certain other criteria which distinguish it from other forms of force: it can be implemented without the authorization of the UN and Chapter VII of the UN Charter distinguishing it from the enforcement mechanism of the Security Council. Moreover, it does not involve people of the intervening state and thus is different from self-defense. Last but not the least; since it is carried out without the approval of the intervened state, it is differentiated from invitational interventions.⁸

⁵ J L Holzgrefe, ‘The Humanitarian Intervention Debate’ in JL Holzgrefe and Robert O Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press 2003)

⁶ Alton Frye, *Humanitarian Intervention: Crafting a Workable Doctrine: Three Options Presented as Memoranda to the President* (Council on Foreign Relations 2000)

⁷ Saban Kardas, ‘Humanitarian Intervention: The Evolution of the Idea and Practice’ (2001) 4 *Perceptions Journal of International Affairs*

⁸ M Rafiqul Islam, *International Law: Current Concepts and Future Directions* (1st edn, LexisNexis Butterworths 2014)

2.3 Objectives

The sole rationale behind the concept of humanitarian intervention is to check rigorous abuses of human rights. The objectives are to protect humans, lighten the suffering of them and to uphold their dignity throughout and in the repercussion of man-made crises. It also aims at checking and strengthening vigilance for the occurrence of such situations. Humanitarian intervention prioritizes the right to life over anything. R2P aims to protect general people against the violations of four specific mass atrocity crimes namely genocide, war crimes, ethnic cleansing, and crimes against humanity. It caters for reconciling the competing theories of protection of individual human rights and state sovereignty. It protects the mass population of a state from the severance of atrocities.

Valuable or helpful humanitarian intervention is the one which becomes successful to save people by avoiding or stopping violent assault on inhabitants, or by supporting them by delivery of aid, or using both ways. As Taylor B. Seybolt describes, “Humanitarian intervention is a short-term activity with limited political objectives.”⁹ It is anticipated to discontinue the most horrible agony and not to ascertain a durable peace or to deposit a fresh political organism in that area. This anticipation distinguishes this intervention from the system of peacekeeping, where the key objective is examining political and armed forces stake-holders. Nevertheless, humanitarian intervention can ascertain an argument for peace building, by producing safer surroundings in which normal civilians can reflect beyond the distress as regards their endurance. In view of that, intervention for humanitarian grounds is not destined directly to look after or endorse civil and political rights, however to a certain extent to defend fundamental human rights in severe conditions.

It is, therefore, easily comprehensible that humanitarian intervention reckons the inevitableness of forcible prevention of violation of human rights which distinguishes it from peaceful protest or other non-aggressive diplomatic intervention.

⁹ TB Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Sipri, Stockholm International Peace Research Inst 2012)

Chapter 3: Background

3.1 History

The term humanitarian intervention was first coined in the nineteenth century. We can divide the historical development into two broad perspectives- i) Pre-UN Era and ii) Post UN Era.

Pre-United Nations Era

Humanitarian intervention, which stems from the idea of just war, dates all the way back to ancient Greek, Roman, and Christian culture. The just war doctrine made starting a war for a just cause lawful and included the concept of authority, which could be applied only by powerful and capable states. Plato argued for waging wars on humanitarian grounds, sparing innocents, while Aristotle spoke of justice and justifiable reasons for conflict. However, the concept genuinely originated around 400 A.D. with St. Augustine's teachings. Throughout the sixteenth and seventeenth centuries, large-scale and destructive religious battles between Protestants and Catholics raged throughout Europe, culminating in the Westphalia Treaty. Following the Westphalian Peace, the Church was further weakened and lost more of its power, resulting in a sharp decline in religious warfare. Natural law immediately became a substitute following the peace pact. Following that, this concept underwent significant evolution in the late nineteenth century, culminating in the invasion of Greece by Britain and France in 1827, the European intervention in Crete in 1886, Bosnia in 1875, Bulgaria in 1877, Macedonia in 1887, and the US engagement in Cuba in 1898.¹⁰ Between 1914 and 1918, the First World War engulfed the whole world. The League of Nations was founded during peace negotiations by the war's victorious parties to avert future battles of this magnitude and to restore stability and peace. However, the organization was less than successful because of the system's flaws and failures. States once again resorted to force but claimed not to have engaged in combat but rather had resorted to coercion.

Post-United Nations Era

The League of Nations was supplanted by the UN at the conclusion of World War II. International law-making began with the intention of limiting states' use of force against one another. It became a focal point of concern in the twenty-first century for systematic and fundamental human rights violations occurring throughout the world. States acknowledge the reality of inherent human rights and commit to working collaboratively and independently

¹⁰ Ellery Stowell, *Intervention in International Law* (Butterworths, London, 1879)

with the UN to make sure collective admiration for and adherence of human rights as well as basic liberty. Although the UN has enacted multiple authoritative resolutions in reply to significant violations of human rights, the UN charter prohibits it from intervening on humanitarian grounds. Observing the violence happened in the area of Balkans and Rwanda during the 1990s and the international community's failure to prevent them, on top of NATO's armed intervention in Kosovo, was condemned as a flagrant infringement of the embargo of the employ of power, the international community became intrigued on how to deal with coarse and systematic breach of human rights. Later, in 1999, in the General Assembly, the then Secretary General of UN accentuated upon 'the prospects for human security and intervention in the next century' and threw a challenge to the member States to find common ground in defense of common humanity.¹¹ The International Commission on Intervention and State Sovereignty (ICISS) accepted the challenge and published a report regarding Right to Protection (R2P) which the UN World summit 2005 unanimously adopted.¹² This responsibility expands towards the wider community of the world which activates when a particular state is either reluctant or not capable to execute its responsibility to protect or is itself the authority responsible for the crimes or violence. R2P is still in an infant stage and developing.

3.2 Examples

The world has watched several examples of intervention on humanitarian grounds in the nineteenth and early twentieth century. Practical examples of humanitarian intervention are depicted as hereunder.

1. Congo (1964)

Between the years of 1960 and 1965, the Republic of Congo faced political upheaval and conflict in their territory. The Congo crisis began almost immediately after achieving independence from Belgium. This political turmoil constituted civil wars. At the end of 1964, the rebel forces seized and captured several persons and took them hostage with a view to claiming concession from the newly elected government and also slaughtered 35 (thirty-five) hostages. A joint rescue operation was staged by

¹¹ United Nations, 'Secretary-General Presents His Annual Report to General Assembly | Meetings Coverage and Press Releases' (*un.org*, 1999) <<https://www.un.org/press/en/1999/19990920.sgsm7136.html>> accessed 21 March 2022

¹² International Commission on Intervention and State Sovereignty (ICISS), *Responsibility to Protect* (International Development Research Centre, 2001)

the USA and Belgium. Two thousand people of almost 18 nationalities were rescued in this military operation.

2. Northern Iraq (1991)

After the Gulf War of 1991, Saddam Hussein initiated repressing the Kurdish population. Many Kurds fled and sought refuge in the mountains existing in the borders of Iran as well as Turkey. The Iraqi military forces restrained the contact to fundamental necessities. Consequently, thousands of Kurds were failing due to bad physical condition and lack of sufficient foodstuff.¹³ UN members were unwilling to show military activism in Iraq on humanitarian grounds.¹⁴ Within a few weeks, a coalition force of the USA, UK and the French troops tried to ensure absolute human rights in northern Iraq by protecting the Kurdish refugees.

3. Kosovo (1999)

In the month of February of 1998, thousands of Kosovo residents were fleeing from their own residence due to the oppression of the Serbs.¹⁵ NATO intervened there in the late 90's. This was useful in preventing the persecution of people of Kosovo. This intervention was for ensuring the basic human rights of the Kosovo people of which they were being denied continuously. The then President of United States Bill Clinton thereafter announced the Blair Doctrine of Humanitarian Intervention. Although NATO exercised its power on humanitarian grounds, it hindered the power of the UNSC in determining whether the situation is against international peace and security.

4. Libya(2011)

Muammar Gaddafi was the president of Libya, and the rebels were trying to overthrow him from power. A civil war was initiated therein, and the UN intervened there. The UNSC issued a Resolution 1973 and required an absolute ending to brutality and all assaults in opposition to, and mistreatment, of peoples. Additionally, no fly zone was declared as well, and an arms embargo was put on Libya. These all

¹³ Peter Malanczuk, 'The Kurdish Crisis and Allied Intervention in the Aftermath of the Second Gulf War' (1991) 2 *European Journal of International Law* 114

¹⁴ *ibid* 115

¹⁵ David Vessel, 'The Lonely Pragmatist: Humanitarian Intervention in An Imperfect World' (*Digitalcommons.law.byu.edu*)<<https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1315&context=jpl>> accessed 27 March 2022

were done to protect civilians in all necessary means. The resolution contemplated the heavy civilian casualties and gross violation of human rights thereby termed the acts as crimes against humanity.

Chapter 4: International Law and Humanitarian Intervention

4.1 World Politics (Then vs Now)

The 16th and 17th century interventions were more of religious nature than humanitarian interventions and later on, it turned out to be political.¹⁶ The casuistry of the day can be reason of the hypothesis to believe forms of baroque or rococo, but the typical formation that is underlying is seldom affected.¹⁷ The presence of two superpowers, USSR and USA balanced the equilibrium of international law but upon the collapse of USSR, USA turned to be the only superpower holding immense politico-legal authority in its hand and hence the western blocks are enjoying the complete authority in the use of force under the mask of humanitarian intervention. Political biases and self-interest mainly work underneath this interference.

Before the Cold War

Previously, in the presence of two superpowers, world politics was also divided in two blocks depending on the relation with the superpowers. While the USA took an attempt to establish a principle in the international sphere or presented its demands, the USSR utilized their veto power resulting in power tensions in the early 20th century. The interwar led to a collapse of all the attempts taken by the global community to put into effect internationally recognized rules of humanitarian interference. The use of military power to intervene on humanitarian grounds was viewed as illegal during the Cold War period. Any attempt of intervening by one superpower would surely be considered illegal by the other. The UNSC remained violently dormant due to conflicting politics and frequent vetoes.

In the Cold War, the notion of humanitarian activism through intervening was confined to a single side of a bi-polar political chessboard. The USSR considered humanitarian interference as a tool of invasion of Western governments.¹⁸ The demise of the USSR as a superpower in 1991 signaled the end of the Cold War. This was the beginning of a new era in international politics.

¹⁶ Robert Phillimore, *Commentaries Upon International Law, Vol 1* (Butterworths 1879)

¹⁷ Terry Nardin, 'From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention' (2013) 24 (1) *The European Journal of International Law* 235

¹⁸ Jonathan Whittal, 'Is Humanitarian Action Independent from Political Interests?' (2015) *International Journal on Human Rights*

Post-Cold War Era

After the break-down of the state named Soviet Union, the immense ideological barriers and conflict between the superpowers collapsed which have previously created hostilities in the UNSC for years. The presence of a single superpower ensures unilaterally the reflection of the will of it. Such mighty state or coalition forces provide assistance in foreign territory to serve national military tactics of the state or coalition force in the mask of humanitarian interference. The US has intervened in the name of humanitarian activism in Libya, Syria etc. but didn't pay a heed to Israel, Myanmar etc. which is severely controversial. This is just another way to justify and conceal in disguise the old humanitarian imperialism.

A good number of states consider humanitarian intervention as a tool to serve the interest of the western states.¹⁹ Humanitarian intervention is extremely linked to power and cannot be separated from this in the current socio-legal scenario. Noam Chomsky argued that the United States has continued to ensure U.S. hegemony in the post-Cold War world portraying humanitarianism as a legitimizing ideology.²⁰ The post-Cold War illustrations of humanitarian intervention suggest very clearly that the western alliance only intervened in the name of intervention on the humanitarian grounds only where they were stakeholders.²¹ NATO and its western members place Kosovo in a human rights narrative but portray many other military interventions differently exposing a superpower simply utilizing its political agenda. As Noam Chomsky specified, “for one thing, there's a history of humanitarian intervention. You can look at it. And when you do, you discover that virtually every use of military force is described as humanitarian intervention.” Chomsky precisely pointed out that such intervention is applied vehemently without exhausting the prior methods of international dispute settlement. As Professor Rafiqul Islam has discerned, it is too naive to pretend that an intervening state will be motivated solely based on humanitarian grounds disregarding geopolitical, economic interest in such intervention.²² Anne Orford demonstrated that a capitalist set of constraints is imposed on a broken society impairing its right of self-

¹⁹ Jianming Shen, 'The Non-intervention Principle and Humanitarian Interventions under International Law' (2001) 7(1) *International Legal Theory*

²⁰ Noam Chomsky, 'Humanitarian Intervention' *Boston Review* (December 1993 – January 1994)

²¹ M Rafiqul Islam, *International Law: Current Concepts and Future Directions* (1st edn, LexisNexis Butterworths 2014)

²² *ibid*

determination. Thus, upon preventing the headship from taking on a loom to progress or improvement that reimbursement the citizens of the state makes overseas financier pleased.²³

In the second Gulf crisis, the US and its allies invaded Iraq without any previous authorization from UNSC and devastated the country but couldn't prove its humanitarian ground. Iraq was invaded for Western oil interests. Changing the regime of Iraq was an emergency as Saddam Hussain was not working as their political agent.²⁴ The fastest genocide rate was found to be in Rwanda in the year of 1994. A half million Tursi were murdered by the Hutus within a week but there was no sort of humanitarian intervention making it to be a selective use of force.²⁵ Western states had only a minimal interest in Rwanda. France was its colonial power previously, so it had its interest and hence sent troops belatedly after the massacre.

The dogmatic exercise of asymmetric power in the guise of humanitarianism with a view to ensuring self-interest as well as the interest of the alliance can turn the post-intervention situation many times worse than the pre-intervention situation and destroy the country by creating violence, chaos and destabilization. Syria can be cited here as the envoy of the United Nations and Arab League to Syria stated that an estimate of 400,000 people had died during the intervention in Syria.²⁶ It represented approximately 2% of Syria's pre-war population as Syria's pre-war population was nearly 20.8 million in 2011. Between March 2011 and March 2021, at least 350,209 people died in the conflict as has been reported by the United Nations in September 2021.²⁷

4.2 Whether Created in Good Phase or Bad Phase

Throughout history, various justifications for war have been regarded justifiable, and society has modified the concept of just war at various points. At the dawn of Christianity, combat

²³ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003)

²⁴ Alex J. Bellamy, 'The Responsibility to Protect and Australian Foreign Policy' [2010] *Australian Journal of International Affairs* 432

²⁵ Alan J. Kuperman, 'Rwanda in Retrospec' (2000) 79 *FOREIGN AFFAIRS* 98

²⁶ 'Syria Death Toll: UN Envoy Estimates 400,000 Killed' (*Al Jazeera*, 23 April 2016) <<https://www.aljazeera.com/news/2016/4/23/syria-death-toll-un-envoy-estimates-400000-killed>> accessed 22 March 2022

²⁷ 'Syria War: UN Calculates New Death Toll' (*BBC* 24 September 2021) <<https://www.bbc.com/news/world-middle-east-58664859>> accessed 22 March 2022

between Christians was judged unjustifiable due to the Church's severe pacifism at the time. Around 400 A.D., as the Roman Empire began to crumble, Christian scholars began prescribing that violence is both justified and essential when used in self-defense and defense of others to prevent the vast Roman Empire's statehood from collapsing. The use of violence as a justification for war is an early indicator of today's humanitarian intervention philosophy. The crusades resulted in the massacre of hundreds of thousands of non-Christians, but the atrocities were justified on the grounds that they were committed in the name of God. The Treaty of Westphalia, as well as the principles of sovereignty and non-intervention, secured peace and encouraged the occurrence of fewer wars. Additionally, each sovereign's freedom to determine the religion practiced within his state rendered religious wars unjust. As a result, conflicts on those grounds were rare. Additionally, a counterargument was made against the principle of nonintervention. Scholars began calling for a right of intervention in nations where citizens were treated inhumanely and lacked the ability to revolt against a tyrant sovereign. This is how this principle evolved but remained relevant in the field of international law to the present day.

Although the doctrine was initiated for a legitimate reason, it evolved into a political dogma for the purpose of protecting interests. With the advancement of human rights principles and theories, the international community considered intervention to be permitted only in the case of humanitarian assistance. However, the doctrine of humanitarian intervention has not yet been cleansed of the effluvium of political agendas or self-interest. The theory was established to ensure a 'just cause' with a dignified objective and has flourished to the present day. Thus, while humanitarian intervention is always a noble moral institution, it can be dubious in certain circumstances.²⁸

²⁸ M Rafiqul Islam, *International Law: Current Concepts and Future Directions* (1st edn, LexisNexis Butterworths 2014)

Chapter 5: Russia's Invasion on Ukraine and Humanitarian Intervention

5.1 Current Scenario

Russia's invasion of Ukraine is the latest chapter in a multi-year crisis that dates all the way back to 2014 and beyond.²⁹ Russia invaded Ukraine and annexed Crimea in 2014. Russia also accused that neo-Nazi groups were tyrannizing Ukrainian citizens by persecuting the Russian-speaking minority. Putin argued that NATO was a threat to Russia's security because it had been expanding eastward toward Russian territory since the early 2000s and insisted that Ukraine be excluded from linking the coalition ever. Vladimir Putin's attack on several areas of Ukraine commenced suddenly on 24 February to make it colonize. Moreover, following months of pretentiousness at the same time as rejecting any tactics to show aggression. This is the major recruitment of armed forces in that region since the Second World War. In less than two weeks, the war in Ukraine has forced over 2.5 million refugees to flee to neighboring countries, posing ever-increasing protection risks, despite the fact that the vast majority of those fleeing are women and children.³⁰ Ukraine's incumbent President Volodymyr Zelenskyy has pleaded with NATO on multiple occasions to help on humanitarian grounds, but NATO has not yet intervened militarily.³¹ R2P, as a developing worldwide policy, has the ability to safeguard and shield national and foreign individuals in Ukraine from the cruelty and horror taking place there at the moment. The ICISS and the United Nations High Level Panel on R2P have identified five threshold requirements for justifying military intervention in accordance with R2P: fair cause, proper objective, final alternative, proportionality, as well as a rational probability of achievement. Thus, if all these conditions are realized, the international community will be able to fulfill its obligation to safeguard Ukraine against Russian invasion in the current geopolitical situation.

²⁹ 'Ukraine Humanitarian Crisis - Center for Disaster Philanthropy' (*Center for Disaster Philanthropy*, 2022) <https://disasterphilanthropy.org/disasters/ukraine-humanitarian-crisis/?gclid=Cj0KCQjw0PWRBhDKARIsAPKHFGgY2AXf7SGH6AIGukfuUwkNZw6tR3VqT30pZNIiKYYPYUlysK4uAzEaAgR5EALw_wcB> accessed 25 March 2022

³⁰ 'Donate To Help Protect and Empower Women and Girls In Ukraine And Neighbouring Countries' (*Donate.unwomen.org*, 2022) <https://donate.unwomen.org/en/ukraine?gclid=Cj0KCQjw0PWRBhDKARIsAPKHFGiVXHOQOX56lQP7sjrJh_-s9z7st6BNgGChEAWG3b57ujMKmzG7L5YaAkn_EALw_wcB> accessed 25 March 2022

³¹ Simon Lewis and Ingrid Melander, 'NATO Rejects Ukraine No-fly Zone, Unhappy Zelenskiy Says This Means More Bombing' (Reuters, 5 March 2022) <<https://www.reuters.com/business/aerospace-defense/nato-meets-ukraine-calls-no-fly-zone-hinder-russia-2022-03-04/>> accessed 25 March 2022

5.2 Effectiveness

To reach a conclusion as to the effectiveness of this doctrine, we need to explore both the supporting and opposing argumentation. The two competing aspects of the UN Charter - state system perspective and human rights perspective gave rise to a debate between these two opposing schools of thought: restrictive conservatism and progressive realism.

Law-oriented restrictive conservatism

Conservatism views that promotion of human rights should, in no way, threaten peace and security of a state. Neither Art 2(4) nor Art 2(7) allows interference or use of military within the area of another country except for the enforcement measures.³² Ian Brownlie as a spokesperson of opposing view mentions that operation of this doctrine is prone to abuses as only the powerful states can undertake such measures and justifying military operations in the name of humanitarian intervention would frequently be indicated towards the presence of selfish motives in it.³³

The opponents further highlight that in the pre-UN regime, humanitarian intervention could have been justified, as there was absence of any competent international authority like the UN to address the emergency situations, or crisis like breach of human rights. But the emergence of the UN and several other regional organizations with identical mandates redresses the earlier lacuna in terms of centralized authority.

The restrictive view contends that drafters have sensibly and willingly refrained from recognizing humanitarian intervention in the UN Charter.³⁴ To affirm one of the staple objectives of the UN Charter, the protection and promotion of human rights, various organs of the UN have competence and jurisdiction to react in case of urgency. Furthermore, the UN not only pledges under Art 1(1) to respond collectively whenever any threat to peace and tranquility arises but also prohibits unilateral use of force in inter-state relations under Art 2(3), (4) and (7). The Charter of UN expressly includes two exceptions to the embargo on the use of military power but not mentioning humanitarian intervention anywhere in any manner reflects the drafters' awareness of its abuses and risks.

³² Peter Valek, 'Is Unilateral Humanitarian Intervention Compatible with the UN Charter?' (2004) 26 Michigan Journal of International Law 1233

³³ Ian Brownlie, *International Law and the Use of Force by the States*, (Clarendon Press 1963)

³⁴ M Rafiqul Islam, *International Law: Current Concepts and Future Directions* (1st edn, LexisNexis Butterworths 2014)

Collectively all these encourage non-intervention which is recognized in the UN Charter as well as in various succeeding resolutions and judicial decisions.³⁵

Policy-oriented progressive realism

The realist perspective sticks to the literal and non-restrictive meaning of Article 2(4) and (7) and contends that since these expressly prohibit the use of military power in opposition to the territorial uprightness or political sovereignty of a country, that means any interposition without causing any harm to territorial uprightness or political sovereignty of a country is permissible. They assert that such interventions actuated on humanitarian grounds and good faith, in the truest sense, does not adversely affect the sovereignty of a state.

The realists promote sovereignty of a state to be free of interference in determining domestic policy, freedom from oppression and suppression where the sovereign authority acts as a trustee in conformity with the general will. An intervention aimed at protecting the people from any oppression and suppression condones, rather than erodes, sovereignty and independence of state.³⁶

5.3 Prospects

Considering few examples from the past and observing how effectively humanitarian intervention became able to contribute would reveal its future before the world.

Critically analyzing the cold-war era interventions, it is evident that humanitarian interventions serve limited humanitarian purposes with extreme abusive exposition. For example, the Indian invasion of East Pakistan in December 1971 protected many potential victims from massacre by the Pakistani army. India was about to face a huge burden on her economy and a threat to social security as a huge number of refugees took shelter in that state. Through unilateral humanitarian intervention, India tackled that human tragedy as well as attained its political interest over Pakistan. This act of invasion was justified by India as self-defense in response to a Pakistani military operation held on December 3, 1971. We have

³⁵ *Corfu Channel, United Kingdom v Albania*, [1949] ICJ Rep 237; *Colombia v Peru, Merits, Judgment*, [1950] ICJ Rep 266; *Nicaragua v United States*, [1991] ICJ Rep 47

³⁶ Andrew Field, 'The Legality of Humanitarian Intervention and the Use of Force in the Absence of UN Authority' (2000) 26 Monash University Law Review 339

seen clashes between them in 1950 and in 1965 over Kashmir territory which remains to be resolved. Therefore, India's interest as to gaining superiority in the sub-continent and over an age-old enemy state puts a question mark over its justification of intervention on humanitarian grounds.

Similarly, Vietnam invaded Cambodia in 1978-79 in the name of precluding genocide while staging incursions into Vietnamese land. The US intervention in 1965 in the Dominican Republic aimed at prevention of another communist govt. rather than prevention of human rights violations amidst a violent civil war.³⁷

Seemingly, the potential that humanitarian intervention came with fails to sustain evaluating on cost-benefit doctrine. Moreover, it tends to result in an act of aggression prohibited by the *jus cogens* principle of non-use of force cannot be overlooked.³⁸

Humanitarian intervention unauthorized by the UN may be justified on moral grounds but is thoroughly illegal as a breach of the *Jus Cogens* principle. Gradually the institution of human rights has been internationalized and bears a positive impact over absolute sovereignty whenever that becomes a threat to violation of human rights.

Although R2P has been progressing since 2001 with a view to amplifying the human rights protection mechanism, it has no express recognition as a binding law under any international instrument. Yet, in the contemporary world, maintaining coherence with the objectives of the UN Charter, R2P has a potential to come out as an alternative of such interventions that suffers from multiple controversies. The status of R2P is to take resort to forceful means as a last option and the UN General Assembly and the Secretariat are also committed to implement R2P. Cumulatively all these refer to a future recognition of R2P.

³⁷ Anthony Clark Arend and Robert Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (Routledge 1993)

³⁸ M Rafiqul Islam, *International Law: Current Concepts And Future Directions* (1st edn, LexisNexis Butterworths 2014) 325

Chapter 6: Concluding Remarks

6.1 Findings

International law is developing continuously day by day. Direct intervention on a sovereign state is a violation of sovereignty but in this thesis, it has been evident that the proliferation of intervention on legitimate humanitarian grounds is getting popularity among the developed states. The concept of humanitarian intervention is designed to circumvent the UNSC jurisdiction by raising a right. This result designates that humanitarian interventions are used for the rationale of ensuring self-interest first in the name of humanitarian help, but this may be considered to be a useful tool as well for ensuring international peace and harmony. From the result it is evident that massive human rights violation is a cause of humanitarian intervention in modern days. Most of the time it is found to be efficient. The developed and powerful states are more probable to employ this for humanitarian purposes in those states where human rights are at a stake. This implies that, when powerful states want to do missions on humanitarian grounds, it means to protect naïve people's lives, diminish human agony, as well as stop additional violence against human despite their having political and national agenda.

Due to the constant fear of misuse or abuse of international law and lack of proper regulatory framework in the UN Charter, this doctrine is yet to be legally recognized. International law currently lacks sufficient mechanism to hold control over such interference which may eventually ensure the national and political interest of the states intervening. Political agenda may be an active reasoning behind the mask of humanitarian grounds. The UN Charter does not authorize the UN to take measures on humanitarian grounds, nor does it prohibit the involvement of states in war for ensuring respect and honor of human rights. There are two conflicting schools of thoughts who argue and differ with each other regarding the legality and validity of such humanitarian intervention. This is a reason behind having no regulatory framework of humanitarian intervention. Balancing between them is a must for the utmost development of this doctrine.

Defending human rights is the collective responsibility of the UN and the regional organizations. The UN Charter has not authorized any state to take on its responsibility on their shoulders. The UN Charter cannot treat some powerful countries more equal than the

less powerful states. But the UNSC and concerned organs failed miserably during necessity and hence this doctrine of humanitarian intervention evolved. Veto power is a real impediment in ensuring UN intervention in necessary grounds. Therefore, reform is highly recommended for ousting the veto power of the permanent members of the UNSC and allowing the UN to take prudent decisions at the urgent moments more rapidly than before.

In the current world scenario, where military powers like Ukraine and Russia are in military conflict and gross violation of human rights is also found, it can easily be estimated that soon in the upcoming world humanitarian intervention would have its ultimate impact to protect the world from mass destruction and atrocities.

International law confuses the community due to the existence of R2P and humanitarian intervention simultaneously. Neither of them has received official recognition. This finding shows that R2P is a more modern kind of humanitarian intervention, as its legal foundation is more robust than humanitarian intervention. It is a redesigned alternative to humanitarian intervention that subsumes human rights within the realm of sovereignty. Such intervention, if properly developed, has the potential to remedy significant international humanitarian situations including egregious human rights violations while also providing necessary legal validity.

6.2 Recommendations for Improving the Conceptual Framework

Humanitarian intervention and R2P are not yet recognized under international law. Although R2P has so many utilities, due to the fear of misuse or abuse of international law and lack of regulatory framework in the UN Charter, this doctrine is in its primitive age still waiting for recognition. For improvising the conceptual framework of humanitarian intervention, thus, the following measures may be taken.

Balancing Between the Two Schools of Thought

Overall, the legalist view emphasizing preservation of international security over safeguarding human rights regardless of anything would undermine one of the objectives of the UN which is neither expected nor compatible with the ultimate goal.

On the other hand, it is quite apparent that Art 2(4) moderately supports the realist aspect. The realist analysis prioritizing human rights over peace and security imbalance the two corresponding objectives of the UN Charter. Giving priority to one over other is not a satisfactory solution. The realist justification seems delusive as any armed invasion intrudes the territorial sovereignty when troops of one state forcibly cross international borders and enter another state. Such an invasion undermines the political independence by hampering the political process and decision-making in the invaded state.

Balancing between the two schools of thought would be a fine equilibrium for the development of this doctrine.

Opting for Either R2P or Humanitarian Intervention

International law still does not officially recognize either of the R2P or humanitarian intervention. R2P is the more modern format of humanitarian intervention. It is the redefined alternative to humanitarian intervention submerging the concept of human rights in the realm of sovereignty.³⁹

Humanitarian intervention is right-oriented which is contradicting with the restrictive interpretation of sovereignty and clashing with the domestic jurisdiction of a state. R2P is a duty-based notion, a duty to prevent human right violations. If the state itself remains concerned to protect the rights of its people, automatically the need for unauthorized and disputed interventions on humanitarian grounds will decline and thus building a harmony between two contesting concepts. Moreover, humanitarian intervention is beset with several controversies coming from practical scenarios and scholarly opinions unlike R2P with a more defined mechanism, articulated scope, centralized structure which makes it a reliable alternative as well as less prone to abuse.

International community must respond to either of the doctrines for its quick development in the international legal arena. Therefore, the decision-making mechanism of the UN and international community must be swift, effective, and free from unnecessary encroaching to respect and protect human rights through either of the methods.

Ensuring Active response from UN

³⁹ Gareth Evans, 'From Humanitarian Interventions to the R2P' (2006) 24 Wisconsin International Law Journal 703

The humanitarian intervention is the outcome of inaction on the part of the UNSC and the other concerned organs of the UN in certain cases of need. When the Syrian people desperately needed action, there continued to be finger-pointing and name-calling in the UNSC as voiced by Kofi Annan while resigning from his post with frustration.⁴⁰ Russia and China have again abused their veto power at the UNSC, following a vote on a draft resolution impeding the pathway of ensuring accountability for the use and production of chemical weapons in Syria.

Therefore, reform is recommended regarding the veto power of the permanent members of the UNSC leaving aside their political interests and thus allow the UN to take significant decisions at a crisis moment rapidly than before. Otherwise, the trust of people with the UNSC will continuously diminish simultaneously forming a positive discernment in favor of humanitarian intervention and other forms of applying force.

Moreover, since R2P has a visible prospect of playing its role to protect human rights, much attention should be given on its effective implementation rather than frequent actions. The authorized, collective, and functional humanitarian measures need to be promoted instead of unilateral, coercive and opportunism driven humanitarian interventions. Thus, R2P can be a strong message to the 21st Century states that no state can obtain impunity in the disguise of sovereignty and infringe the rights of its people and therefore, this concept needs further consciousness to come out as an efficient bridge between sovereignty and rights of people.

6.3 Conclusion

The rule or theory of non-intervention in another state is now no longer a supreme standard. United Nations Security Council has now enlarged the application of the term 'threat to international peace and justice'. Both humanitarian intervention and R2P are simultaneously working to prevent gross human rights abuse and right to life. They do have certain utilities in defending human rights and saving many of the potential victims. If any situation arises where responsibility has to be taken by any state to prevent violence, then that state should judge on whom the responsibility to intervention falls as well as it also need to consider that whether this intervention goes further than rescue to fixing the damage or stopping additional

⁴⁰ Ian Black, 'Kofi Annan Resigns as Syria Envoy' (*The Guardian* 2 August 2012) <<https://www.theguardian.com/world/2012/aug/02/kofi-annan-resigns-syria-envoy>> accessed 24 March 2022

violent behavior. In addition, this intervention might also broaden to saving civilians from any further troubles, in any case while these are the consequence of aggression.

Despite several improvements of humanitarian intervention in the current geopolitics, there is still a long way to go. Therefore, debates on the matter must continue to bridge the gap between proponents and opponents of intervention on humanitarian grounds. There is a crying call for build up a universal arrangement on the concerns of human rights as well as their useful implications. Suppose, the UN itself be converted into more effective and helpful in upcoming circumstances of humanitarian interventions, in that case it has taken lessons from its errors and develop its triumphs. The international community as a whole must promulgate strict legal principles for authorizing interventions on humanitarian grounds. This study suggests the requirement of setting up an ample structure of common principles or statements to lead the UN in terms of deciding at what moment or conditions a domestic situation of human rights or domestic violence necessitates act by the Security Council, international organization or a group of states. It is quite clear that if interventions on humanitarian grounds in future are to be effectively built up, in that case they must be jointly underwritten by the international community all together.

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