

## International Humanitarian Intervention, Types and Legal Basis

PETRIT NIMANI, PhD.c.

Lecturer, Faculty of Law  
University of Prizren "Ukshin Hoti", Kosovo

M.Sc. ALBAN MALIQI

Assistant Professor, Faculty of Law  
College "BIZNESI", Kosovo

### Abstract:

*The question that we shall address in this paper is of particular importance and very complex, because we deal directly with the territory of an internationally recognized entity and membership in various international organizations that make it subject to the force in international point of view.*

*Here we will address the issue of intervention or non-intervention in the territory of a state known internationally, which state makes drastic violation of human rights and the exercise of genocide and violence in "his people".*

*Through this paper we will try to give answer many dilemmas about state sovereignty and concepts around it.*

*The right of the international community for global surveillance and security is inalienable right and the international community has an obligation to provide security for all citizens of the world regardless of race, gender, religion etc.*

*Violation of basic human rights of their states constitutes a crime punishable by different international acts.*

*International Humanitarian Interventions were a new invention in international law by advancing role and importance of the individual in relation to the states.*

*In this paper we will try to treat the history of international humanitarian intervention since World War II until today as a right of advance of the international community.*

*Regarding the International Humanitarian Intervention crucial role play international organizations as well as regional, if they have good intentions and human being exploited their right to prevent genocides.*

*Powerful world countries within the International and Regional Organizations should not use certain situations for low political calculations blocking humanitarian processes that lead to a peaceful solution to various problems, problems that affect the preservation of global security.*

*How much has influenced the International Humanitarian Intervention in the protection of Human Rights?*

*Why sovereignty of states will no longer serve in blocking Humanitarian Intervention?*

*How has influenced international humanitarian intervention in the democratization of the countries that were under attack?*

*These and many other questions about international humanitarian intervention will try to give answers in this scientific work.*

**Key words:** International Humanitarian Intervention, State Sovereignty, International organizations, regional organizations (UN, NATO, EU), Human Rights, etc.

International law arose as a consequence of creating a foundation to an international rule and in this regard has contributed to moral and political philosophy and political science. International law is created as a result of the bloodshed that occurred in World War and Second World Wars.

Key principles of Humanitarian Intervention in International Law are: **“prohibition of the use of force and the obligation of States to respect basic human rights”**.<sup>1</sup>

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<sup>1</sup> Tesón, Fernando R. Humanitarian Intervention: An Inquiry into Law and Morality. Ardsley, NY: Transnational, 2005 page 53

One of the examples of the protection of human rights was the International Red Cross. The Red Cross is an organization that intervenes in any conflict or struggle to help people in need.

Here's the heart of humanity and shown interest and charity for man, especially for those who suffer conflicts.<sup>2</sup>

The international right's after being formed to more definition rules and relationships to be established between the countries, it also defines the use of force against those countries that do not follow the principles and obligations of international law provides and Charter the UN.

Bearing in mind that international law was created the right as a result of agreements democratic states, then democracies have not had ambitions wars among themselves. But they were willing to demokratizonin countries with different systems that were still under the influence of communist ideology after the cold war.

Based on the UN Charter, which expressly prohibits the fight but in certain cases allows intervention by authorizing intervention by the Security Council in accordance with international law.

Until 1999, generally thought to be an international precedent is gradually crystallizing just a new right, the humanitarian intervention.

There was a considerable number of Security Council authorization to use force in humanitarian emergency conditions.

It was very problematic if individual states or coalitions of states will ever undertake actions in the absence of a Security Council mandate.

Two interventions coalitions in Iraq (Kurds in 1991 and, Marsh Abras "in the south in 1992) and the action of the

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<sup>2</sup>Ramsbotham, Oliver, and Tom Woodhouse. *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*. Cambridge, UK: Polity, 1996. Page 85

Economic Community of West African States in Liberia seemed provide a crystallization point of wry humanitarian action.

The UK government had argued that it officially legal right was already in force and offered specific legal criteria for its application, in relation to the dissemination of humanitarian emergency and its comprehensive nature, the fact that no agency is not dealt with and the implementation of the minimum force necessary to achieve the humanitarian purpose<sup>3</sup>.

Although the action of humanitarian obligation was not officially supported at least in the case of Iraq, there was very little international criticism.

We believe that international humanitarian intervention is in accordance with international law and that not a violation of international law, considering that international law and the UN Charter was created precisely to prevent crime and maintaining global peace. Therefore if certain states violate human rights in their countries, they can deal with the law and the strength of the international community.

The international community has an obligation, invoking international law and Security Council of the UN or regional organization to intervene and prevent abuses of states that do to the citizens to own and bring freedom and dignified life to those people.

## **History of Humanitarian Intervention**

After World War II happened some events that transformed and changed the way of the Interventions by it usual occurrence that was practiced until then.

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<sup>3</sup>Weller, Marc: Shtetësia e Kontestuar: Administrimi Ndërkombetar i Luftës së Kosovës Për Pavarësi. Prishtinë: Përktheu nga origjinali anglisht Flaka Suroi, Koha, 2009 page 432

Globalization, terrorism and violations of human rights are some events that gave Humanitarian Interventions Different character.

The doctrine of humanitarian intervention as has been revealed by older lawyers from Groci, propagate the existence of the borders of freedom that states under international law to the behavior of its citizens.<sup>4</sup>

According to this doctrine that supported the idea of humanitarian intervention by lawyers and states, because under the dominant worldview of human rights must be respected necessarily, while integrity territorial borders and state sovereignty can not serve as a shield to cover the systematic and massive violations of the rights of human and minority rights, can qualify as a threat of global peace and security<sup>5</sup>.

Taking into account these attitudes about humanitarian intervention we must deal with two problems: human rights and state sovereignty.

States may be misusing state sovereignty in violation of human rights and freedoms, and are called according to their sovereignty is untouchable. But state sovereignty can not serve in legitimizing legal action against states abusing the freedoms and human rights would, that are legitimate, in fact this is the biggest dilemma in international relations to intervene in humanitarian cases or not to intervene (when dealing with violations of human rights and freedoms).

When states intervene in such cases it may be appropriate to fluctuations in world order, and non-intervention would be a failure of democratic states to protect the civile populace from brutal pressures.

According to the author Fernando. R. Teson humanitarian aid intervention includes proportional strength which is given by the governments of various countries, alone or

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<sup>4</sup>Gruda, Zejnullah. E Drejta Ndërkombëtare Publike. Prishtinë: 2003 page 99

<sup>5</sup>Ibidem, page 100

in cooperation with other States to individuals who are victims of pressure parts dictatorships or anarchic systems.<sup>6</sup>

With the universality of human rights, states and international organizations aimed to care for citizens in all countries posed wronged and you infringing brutally by their states.

Such cases of abuses and humanitarian interventions we have in different countries of the world as p.sh in Uganda, Bosnia and Herzegovina, Kosovo, Libya, Rwanda, Iraq<sup>7</sup> ect., where the international community after continuing violations of human rights took all measures and intervened in these countries and as a result today we have democratic governments that respect the rights and freedoms of citizens.

Interventions first began in 1979 from Tanzania to Uganda, attacking Uganda because of the occupation of a part of the territory that was under the sovereignty of Tanzania.

Humanitarian intervention is allowed each time if meant to stumble disgusting tyrant or stop a state crimes against an entire population or when a country lacks,, minimum moral order ".<sup>8</sup>

Humanitarian intervention has the function of punishment culprit state or nation that is prone to cause damage to others, which entitles others all join to punish and to impossible to pull genocidal acts further.

The right of humanitarian intervention is supported by many famous authors of international law as: Grotius Vattel, Oppenheim, Le Fur, Verdeross<sup>9</sup>, who consider legitimate that

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<sup>6</sup>Tesón, Fernando R. *Humanitarian Intervention: An Inquiry into Law and Morality*. Ardsley, NY: Transnational, 2005 fq - 34

<sup>7</sup>Cases of humanitarian intervention: Uganda, Bosnia and Herzegovina, Kosovo, Libya, Rwanda, Iraq, in these countries had humanitarian intervention by international community, in some countries for human rights and freedoms while in Iraq to prevent the proliferation of weapons of mass destruction.

<sup>8</sup>Gruda, Zejnullah. *E Drejta Ndërkombëtare Publike*. Prishtinë: , 2003 fq - 97

<sup>9</sup>Gruda, Zejnullah. *E Drejta Ndërkombëtare Publike: Grotius Vattel, Oppenheim, Le Fur, Verdeross*, ishin disa nga autorët e të drejtës

one or more states may use force to stop keqëtrajtimet that a state's own citizens did, and when these actions are so brutal and widespread extent that offend and consciences nations.

Some other authors think that humanitarian intervention is not only a legal but should be even faster if you intend to terminate the minimum mass for not respecting human rights, to inhibit apartheid, genocide or other practices that shook the entire consciousness humanity.

"Every generation belonged to a genocide. We were still young to be filed against Auschwitz. Biafra came, Cambogia, Rwanda, the Balkans: we stayed back and did not face widespread massacres of our time. We developed humanitarian activity, solidarity hand in hand. We dreamed to be in their side before denying the human and minority groups "<sup>10</sup>

Other authors think that humanitarian intervention should be collective, because only the community of states is competent to stop breaches.<sup>11</sup>

Taking into account these attitudes of decision making bodies should be based on these insolences that the decisions that they comply with the attitudes of the authors that humanitarian interventions are not individual but collective community because only states can take responsibility to prevent an act of unlawful happens in a state to citizens to own or not meeting its international obligations.

Taking into account the literature of public international law and referring to this literature humanitarian intervention

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ndërkombëtare që e përkrahën të drejtën e intervenimit humanitar për të mbrojtur të drejtat elementare të njerëzëve.

<sup>10</sup>Kushner, Bernard. Luftëtarët E Paqes: (nga Kosova Në Irak). Tiranë: Mësonjëtorja. 2004, fq. 373

<sup>11</sup>Shih: Tesón, Fernando R. Humanitarian Intervention: An Inquiry into Law and Morality. Ardsley, NY: Transnational, 2005: Skeptikwt e Intervenimit Humanitar fq, 137

does not mean that only the Security Council can authorize, but they may be authorized by a regional organization<sup>12</sup>.

This prior authorization from any universal or regional international organization, gives legitimacy and military intervention made entirely relevant in legal and political terms.<sup>13</sup>

The notion that states may invade the sovereign territory of other states to stop massive bleeding was inconceivable until 1990, but the concept remains today. Therefore, we have collective intervention.

After the Cold War, was created an another global reality.<sup>14</sup> From here starts the survey differently in terms of protection of human rights by Eastern countries.

Taking a different treatment for their citizens and for the care of filling and guarantee their basic rights. Now the responsibility for human rights by states was international responsibility.<sup>15</sup>

## **Types of humanitarian interventions**

There are two kinds of humanitarian interventions involving armed forces. Unilateral interventions by a single and collective

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<sup>12</sup>Gruda, Zejnullah. E Drejta Ndërkombëtare Publike. Prishtinë: 2003 fq.100

<sup>13</sup>Tesón, Fernando R. Humanitarian Intervention: An Inquiry into Law and Morality. Ardsley, NY: Transnational, 2005. Këshilli i Sigurimit i OKB-sw dhe organizata regjionale janë institucione kompetente për lejimin dhe legjitimimin e intervenimit humanitar Rasti i Kosovës, Libis, Irakut, Intervenimi në këto shtete u bë pa autorizimin e Këshillit të Sigurimit ndërsa raste të tjera që u bë intervenimi humanitar me autorizim të Këshillit të Sigurimit të OKB-së ishin: Samolia 1992-1993, Haiti 1994, Ruanda 1994, Bosnje dhe Hercegovin 1994, Sierra Leone 1997 etj.

<sup>14</sup>**Lufta e Ftohtë** filloi me përfundimin e Luftës së Dytë Botërore në mes dy superfuqive të mëdha SHBA-së dhe BRSS- së, gjatë kësaj periudhe pati zhvillime të mëdha në marrëdhëniet ndërkombëtare dhe në Rendin e Ri Botëror, ku erdhi edhe deri tek rreziku i fillimit të luftës së tretë Botërore, pikerisht me ngritjen e raketave nga ana e BRSS-së në Kubë, Lufta e Ftohtë përfundoi me rënien e murit të Berlinit. Kissinger, Henry. Diplomacia. Tirane: LAERT, 1999. Përktheu, P.Pojani. Red. M.Raxhimi

<sup>15</sup>Jonatham I. Cheremy, Anticipatory, Humanitarian Intervention in Kosovo. Vanderbilt Journal of Transnational Law, Novemar 1999



interventions by a group of states. Because few states have sufficient strength and capacity to intervene alone, most modern interventions are collective.<sup>16</sup>

Some defend the principles of state sovereignty and non-interference, and argue that other states should be allowed to decide on their own. They point out that the principles of state sovereignty and non-use of force are stored in the United Nations Charter, which is considered as an authoritative source in the international legal order. According to their different states have different concepts of justice and international coexistence depends on a pluralistic ethical, under which each country can preserve its concept of good.

Under this concept states undertake responsibility to adjudicate violations of human rights in other countries interfere in national right of self-determination. It is assumed that asking a country to respect human rights, is likely to create friction that lead to disputes. Thus, acts of interference can disrupt interstate rule and lead to further conflicts.<sup>17</sup> Greater human suffering can be caused if the states of non-aside rate.

Others point out that the principle of humanitarian intervention does not threaten the territorial integrity and political independence of states. More than to destabilize a particular country and to mix in theirs affairs, humanitarian intervention aims to rebuild the rule of law and to advance the humane treatment of individuals.<sup>18</sup>

Moreover, proponents of this view claim that "only the watchful eye of the international community can ensure the

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<sup>16</sup>Michael Venthey, "International Humanitarian Law and the Restoration and Maintenance of Peace", African Review, vol7, no.5. Institute for security Studies, 1998.

<sup>17</sup>Helena Kennedy, "Conflict Resolution and Human Rights: Contradictory or Complementary?", May 23, 2001, [www.beyondintractability.org/bi-essay/human-rights-violations](http://www.beyondintractability.org/bi-essay/human-rights-violations)

<sup>18</sup>Antonio Cassese, Human Rights in a changing world, (Philadelphia: Temple University Press 1999).

maintenance of international standards, in the interest not of the state, but the individuals themselves".

They support the view that the massive violations of human rights, genocide and crimes against humanity, allow intervention even if it causes some tension or disagreement.

If, through its barbaric demeanor, a state destroys the lives and rights of its citizens, that state temporarily loses the right to claim the legitimacy and sovereignty.<sup>19</sup>

Interventions undertaken with the authorization of the Security Council of the United Nations and Regional Organizations also in rare cases the authority of the General Assembly of the UN.

Prohibited interventions are defined by the International Court of Justice as interventions that involved in making stock by using force.

States must not intervene in cases where the issue is under the jurisdiction of a particular state, and interventions that are not authorized by international organizations such as the United Nations Organization.

There are three different definitions of intervention:

1. **Soft intervention** is intervention kind in which cases are discussed, examined and recommendations.
2. **Strong intervention** refers to taking strong measures but not involved in the use of force but economic sanctions or sanctions of different nature.
3. **Enforced intervention** which means the use of force to achieve certain goals. The difference between these interventions according to the degree of use of force hints if an act is illegal, he influenced the intervention should a state that is free legally. Soft intervention is accepted in principle, but at the same time this also applies to strong intervention and use of force.

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<sup>19</sup>Don Hubert and Thomas G. Weiss, The responsibility to protect, 2001, web.idrc.ca › Publications › IDRC Books › All ourbooks

Take an example, if State A broken fishing agreement with the State B, State B puts economic sanctions in retaliation, then the action of the State B can not be called intervention for reasons that the state is not legal freedom to break the agreement, or not no legal responsibility.

**Concept of the exclusive interior jurisdiction** has two views: **the view esenciale-** essence of sovereignty should be outside the scope of international law, such issues should be far from the borders or competencies International Organization, it is the language that is used in Chapter 2 (7) of the UN Charter. In other words the essential perspective supports state sovereignty<sup>20</sup>.

**Legal standpoint of domestic jurisdiction** without regard to whether a matter is within the jurisdiction of the sovereignty of the state or action legalizes award, one of these may jenëedhe rights and freedoms, that was an issue exclusive jurisdiction of the Interior before 1945 but by that time there continues to be more.<sup>21</sup>

Regarding the essential view think that in principle can be acceptable, since each state regulate the order of constitutional and legal insiders, without any pressure from outside. But as far as human rights states should be involved in their observance or otherwise have to face external pressures, and not think that state sovereignty should serve to legalize illegal acts of states.

Our opinion is that this area should be and to remain within international organizations, as has market practices to be successful this protection within international organizations, had a bitter history of different peoples, which were caused by

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<sup>20</sup>Tesón, Fernando R. *Humanitarian Intervention: An Inquiry into Law and Morality*. Ardsley, NY: Transnational, 2005, page 77

<sup>21</sup>Ramsbotham, Oliver, and Tom Woodhouse. *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*. Cambridge, UK: Polity, 1996. page 114

different countries to genocides which embarrassed the entire humanity.

## **Unilateral interventions**

By 1945 when United Nations Organization were formed, there weren't any statement of the protection of human rights and freedoms, by that time people were objects but not subjects of international law. The only instance in international law that support humanitarian interventions were International Practice when they use force in humanitarian interventions.

The first intervention took place: Ugandian intervention in Tazania 1979, France's intervention in Central Africa 1979, US intervention in Grenada and Panama from 1988 to 1989 etc.<sup>22</sup>

## **Role of International Organizations in Humanitarian Intervention**

Creation of International Organizations was the main purpose for creating certain international mechanisms that can ensure the implementation of agreements between countries and providing a global peace.

Organization of the United Nations has played and is playing a very important role in creating a world-wide security by endangering global security prevented in cooperation with the Member States of the Organization. Intervention at different times to prevent security risk and in preventing violations of human rights by authoritarian and dictatorial countries worldwide is the main task of the UN to protect their citizens from murderous regimes and destructive to the country, only to realize their ambitions, their position in power, to release innocent people and violates their rights in the most inhuman way.

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<sup>22</sup>Tesón, Fernando R. *Humanitarian Intervention: An Inquiry into Law and Morality*. Ardsley, NY: Transnational, 2005, page 219

International organizations have a key role in prevention and intervention in authorizing Member States to prohibit the various conflicts in the world, the last time we have numerous cases that the international community is intervening to bring freedom and democracy in dictatorial countries.

Today we can call international and regional organizations as entities that play a key role in international law.<sup>23</sup>

The organization of various international conferences under international law has to draw different regulations and legal acts taking into account the creation of a sustainable climate to maintain global peace and security.

International organizations such as the UN, NATO, EU, OSCE, EC play a very big role in protecting exceptionally and preventing violations of human rights by their member states and create equal conditions for the all members of the self.

Because the organization is a subject of international law it enters in agreements with member states and connect with other international organizations.<sup>24</sup>

Among the agreements stipulated by the Charter are those related to make available to the Security Council of armed troops or other tools that may be needed to resist aggression.

In the practice of the UN throughout its existence time it was realized at the time of aggression in Korea, the Middle East, Congo, Bosnia etc.

So according to what was said above shows that international organizations play an important role in preventing aggression member states, causing these countries to punish and to violate their state sovereignty for the prevention of violence and killings, and the protection the rights of citizens.

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<sup>23</sup>Puto, Arben. E Drejta Ndërkombëtare Publike. Tiranë: Botimet Dudaj, 2010. Page 95

<sup>24</sup> Gruda, Zejnullah. E Drejta Ndërkombëtare Publike. Prishtinë: , 2003

International organizations also play an important role in the international community through the mechanisms themselves, which have different instruments to prevent or to pressure the aggressor states, to stop the violence against their citizens.

Since 1990 the UN has imposed sanctions on a certain number of states, sanctions of various kinds, while the former Yugoslavia had put the arms embargo, where it was probably only means that the international community did state that in the case the former Yugoslavia, international pressure did the leaders of the former Yugoslavia be forced to implement the Dayton agreement in Bosnia and Herzegovina on the way to lift the sanctions<sup>25</sup>.

## **Conclusion**

Humanitarian Intervention create a legal basis and an opportunity for the international community in such cases, especially when dealing with human rights to be more attentive and more prepared to efficiently and organized and fast, the Council authorized the Ensuring the UN or regional organizations decision to intervene and prevent these violations of human rights.

Skeptics believe that the group of humanitarian intervention have not managed to argue the principle of non-intervention taking into account the inviolability of sovereignty, which according to their violation of human rights can not sent States in the war and that it is towards the state how people treat people within its own territory.

Therefore, those arguments can not stand, considering the lives of innocent people.

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<sup>25</sup>Weller, Marc: Shtetësia e Kontestuar: Administrimi Ndërkombetar i Luftës së Kosovës Për Pavarësi. Prishtinë: Përktheu nga origjinali anglisht Flaka Suroi, Koha, 2009 page 139

I am convinced that with the emergence of humanitarian interventions may account for a safer world and fewer violations of human rights by states.

Marc Weller argues that debates and controversies about humanitarian intervention appeared to sovereignty and human rights, but according to him are those people who contain the sovereignty of a state, and that they are the leading provider of sovereignty.

Kofi Annan UN General Secretary with right asks that, „If any humanitarian intervention represents practically an unacceptable violation of sovereignty, how should we act in Rwanda and Srebrenica? What to do before the flagrant violations, massive, systematic human rights that go in the opposite direction to all the principles on which our existence is raised as human beings.

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