

## **International intervention for humanitarian purposes between the sovereignty of States and the obligation to protect human rights**

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### **Abstract:**

*The issue of human rights has evolved considerably as the issue of its protection is no longer the subject of the internal authority of States only, but it has become one of the international issues that have been organized through various international legal rules, in addition the impact of this development on the emergence of the so-called right of States to monitoring the extent to which other States respect human rights issues.*

*As a result of these developments, it has become common among some powers that states have the right to intervene militarily in other states with a view to suppressing gross violations of human rights, Others consider that the intervention must be based on a Security Council authorization under a resolution in accordance with the provisions of Chapter (VII) of the Charter, Then the justifications evolved to make the humanitarian intervention based on the idea of duty and then a more dangerous idea has recently emerged, which is the responsibility to protect civilians, Therefore, this study attempts to exposure to the problem of humanitarian intervention and its effects on the sovereign logic of states.*

**Key words:** Humanitarian interventions, Human Rights, sovereignty of states, responsibility to protection.

## **INTRODUCTION**

The fundamental principle of international intervention for humanitarian considerations is military intervention to protect human rights and to prevent serious violations of international law, this principle evolved considerably during the nineteenth century, where it was used several times by the European countries to intervene in the affairs of the Ottoman state in that period, Under the pretext of protecting the Christian minorities who lived under the Ottoman Empire at the time, Military intervention has increased on humanitarian grounds since the early 1990s, This period witnessed many applications for military intervention for humanitarian purposes, both at the unilateral level and at the collective level within the framework of the United Nations.

However, it should be noted that the United Nations Charter did not use the term "Humanitarian Intervention" or "Humanitarian Considerations" directly, Although the Charter itself explicitly refers to the need to respect and promote human rights, as stated for in the preamble to the Charter, As well as in the text of Articles (55) and (56) of the Charter of the United Nations, it can therefore be said that the Charter did not permit such interference as an exception to the principle of prohibition of the use of force provided for in article (2/4) of the Charter, Or an exception to the principle of non-interference in the internal affairs prescribed in Article (2/7) of the Charter of the United Nations.

The affirmation by the Charter of the United Nations of the need for international cooperation to protect human rights may justify humanitarian intervention to protect oppressed peoples and to suppress violations of international humanitarian law, that is because morality and solidarity impose on the international community an ethical and moral

obligation to intervene in order to assist the victims of natural disasters and the like.

In contrast, humanitarian intervention is no longer an agreed principle of international jurisprudence because of criticisms levelled against it as a result of its incompatibility with the principle of non-interference in the internal affairs of States, as well as using it as a pretext for exploiting and colonizing states, this prompted the international community to reconsider the concept of humanitarian intervention at the theoretical level, particularly after the events of 11 September 2001, Through the report drawn up by the Committee on Intervention and State sovereignty (ICISS) This report was commissioned by the Secretary-General of the United Nations on 18 December 2001, this report replaces the term "Humanitarian Intervention" with the term "Responsibility to Protect", which is referred to in short (R2P), This is in order to achieve a kind of compatibility between the concept of State sovereignty and its responsibility to protect its citizens, on the one hand, and the responsibility of the international community to protect these citizens when the national State is found to be unable to protect its nationals.

Although the phenomenon of intervention is an old phenomenon, its concept is still ambiguous and is often confused with other terms such as assisting other states, the use of military force, and intervention for humanitarian considerations.

The main problem to be raised is to what extent does international intervention affect the sovereign logic of States.?

## **THE CONCEPT OF HUMANITARIAN INTERVENTION**

The principle of non-interference in the internal affairs of States is a fundamental principle of contemporary international law, However, the broad interpretation of Chapter (7) of the

Charter of the United Nations and the consequent expansion of sources threatening international peace and security made it very possible to go beyond that principle, Humanitarian intervention has become a customary rule necessitated by contemporary changes of the international community.

The international jurisprudence differed in defining the concept of humanitarian intervention among those who defended a narrow concept of humanitarian intervention, which can only be done through military action and the use of armed force.

The second trend defends a broad concept of humanitarian intervention, considering that intervention can be carried out in addition to the use of military force through other means, such as political, economic and diplomatic pressure.

## **THE NARROW CONCEPT OF HUMANITARIAN INTERVENTION**

According to some scholars, humanitarian intervention is all interference limited to armed force in its implementation of human rights protection, so the Military force is the basis for humanitarian intervention, Professor *Baxter* called the description of “humanitarian intervention” all use of force by a State against another State for the protection of human rights against grave violations, the act of interference may also be aimed at protecting nationals of the State which implements it, by deporting them from the state in whose territory they are at risk of death, this view was also taken by *Brownlie, Scheffer and Bayerlin*.

*Brownlie* confirmed that the aim of the intervention is to protect the citizens and their freedoms when their countries are unable or unwilling to protect them, the jurist *Mario Bettati* stressed the principle of necessity and the principle of proportional, that is, military intervention is the result of

serious violations only, While Professor *Marie-Jose* counted six operations considered associated with this type of intervention, and characterized these operations that the implementation was through the use of armed force, these operations are:

- Belgian intervention in the Congo in July 1960.
- American-Belgian intervention in Stanleyville-Paulis in 1964.
- Israeli occupation raid on Entebbe airport in Uganda in 1976.
- The process carried out by France in Kolwezi in 1986.
- The US raid on Tabas in Iran in 1980.
- The operation carried out by the Egyptian forces at the airport in Malta in 1985, which was aimed at rescuing hostages held on board the Egyptian Airbus Pong.

However, the Permanent Court of International Justice rejected this type of intervention when it affirmed that the rules of international law grant the state the right to diplomatic protection of its citizens in other countries and that it is not entitled to use this right to lift the damage on others, While the International Court of Justice in the Barcelona Traction case stressed the need to respect the diplomatic protection of citizens at the global level and considered that the means of protection of human rights do not empower States to protect those affected by the violations of these rights, regardless of their nationality, Thus, military intervention by a State to protect its nationals in another State can not be a legitimate humanitarian intervention, as it represents an illegal situation of military force in accordance with the rules of international law.

## **THE BROAD CONCEPT OF HUMANITARIAN INTERVENTION**

The trend of the defender of the broad concept of humanitarian intervention does not link humanitarian intervention to the use

of armed force, this type of intervention can be effected by means other than resorting to military force, Such as the use of political, economic or diplomatic pressure, etc.

Professor *Mario Battati* is one of the biggest defenders of the broad concept of humanitarian intervention, where he considers that humanitarian intervention is the intervention achieved through the intervention of a State or an international intergovernmental organization in the internal affairs of a particular state, He adds that interventions by private individuals, institutions, private companies or non-governmental organizations do not amount to international intervention, but are an internal violation covered by the domestic law of the State.

Therefore, the purpose of the intervention varies from case to case, it could be including intervention to protect citizens, protect minorities, end internal hostilities, address humanitarian tragedies caused by natural or human disasters and Support national liberation movements based on the right to self-determination.

Based on this, some agree that the narrow interpretation of humanitarian intervention may be in line with the pre-establishment phase of the United Nations when war was a legitimate and acceptable means of settling international disputes, but it is incompatible with the era of the conclusion of the Charter in 1948, when the use of force was prohibited in International relations except in two cases:

- The status of collective security measures adopted by the Security Council under Chapter VII of the UN Charter.
- The case of legitimate defense based on Article (51) of the UN charter.

Therefore, humanitarian intervention must be based on the two preceding cases and must not be limited to the use of military force.

## **LEGITIMACY OF HUMANITARIAN INTERVENTION**

International jurisprudence has differed on the concept of international intervention between those who consider it to be an intervention through armed force mandated by the Security Council, and who considers that can be done by using military force or by other means such as political, economic and diplomatic pressure, but they agree that the purpose of Intervention is the protection of human and minority rights.

The Jurisprudence also distinguishes between unilateral humanitarian intervention which is illegal interference and the intervention of the United Nations which is legitimate intervention approved by the UN Security Council.

## **ILLEGALITY OF UNILATERAL HUMANITARIAN INTERVENTION**

The original of the intervention is an illegal international act. The Charter of the United Nations affirmed the obligation of States not to interfere in each other's affairs, as stipulated in article (2/4) "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".

This prohibition is the result of the Charter's recognition of the equal sovereignty of Member States in accordance with Article (2/2) "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter".

The principle of the prohibition of the use of force therefore greatly contributes to reducing the phenomenon of non-observance of the principle of non-interference.

The principle of non-interference has been affirmed in many international documents, the most important of which is

the Declaration on the inadmissibility of interference in the internal affairs of States, issued by General Assembly resolution (36/103) of 9 December 1981. which contained the duty of States to refrain from exploiting human rights issues with a view to Interfering in the internal affairs of States or exerting pressure on states.

However, international jurisprudence has been divided into two parts, some of them considered unilateral humanitarian intervention is legitimate and some consider it illegal.

## **SUPPORTERS OF UNILATERAL HUMANITARIAN INTERVENTION**

The position in favors of unilateral humanitarian intervention as a legitimate act is based on the following arguments:

- The practices of States prior to the conclusion of the UN charter confirms the legitimacy of unilateral humanitarian the intervention, because it is based on interdependence among the peoples of the world to achieve minimum human security, nor did the Charter contain an explicit provision that would prevent States from unilaterally or collectively the right to humanitarian intervention.
- Contemporary international law concerned not only the regulation of relations between States but also the protection and respect of human rights, and it did not put a boundary between the principle of State sovereignty and the concern for human rights, the UN charter sets both principles side by side, although they appear to be contradictory, on the one hand, the charter prohibiting the intervention in the internal affairs of States and on the other hand, obliges States to cooperate in the protection and development of human rights.

Thus, the proponents of unilateral humanitarian intervention have come to the conclusion that customary international law does not preclude the use of force for humanitarian purposes, If the Security Council is unable to exercise its powers under Chapter VII of the Charter Because of the use of the veto by a permanent member, therefore the Unilateral interference is lawful in the case of gross violations of human rights. However, the intervention must be in accordance with several conditions, the most important being: existence of evidence confirming gross violations of human rights, failure of the State concerned to take appropriate measures to stop the violation or unwilling to do so, as well as the non-military measures being exhausted and the failure of the Security Council to take measures Appropriate to prevent the continuation of such violations.

## **OPPONENTS OF UNILATERAL HUMANITARIAN INTERVENTION**

The trend against unilateral humanitarian intervention is based on the following arguments:

- The recognition of the legitimacy of unilateral humanitarian intervention violates one of the most fundamental principles underlying the UN Charter, which is the principle of non-use of force or threat to international relations Article (2/4), where This principle has become a Jus cogens that cannot be violated.
- The recognition of unilateral human intervention denies and contravenes all United Nations General Assembly resolutions that prohibit the use of force in international relations, as stated in General Assembly Resolution 3314 of (1975) Article 5:

"1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful."

- The International Court of Justice had condemned in its resolution of 27 June 1986, training, arming and financing Contras and encouraging military activities directed against Nicaragua, where the United States violated customary international law which imposes non-interference in the internal affairs of other States and it has determined that the use of force is not the appropriate way to ensure respect for and protection of human rights.

Thus, the Court rejected the idea of unilateral humanitarian intervention to protect human rights, which often led to gross violations of these rights.

## **THE LEGITIMACY OF INTERNATIONAL HUMANITARIAN INTERVENTION**

After the end of the cold War, the UN Security Council adopted numerous resolutions based on Chapter VII of the Charter concerning the settlement of issues that threaten international peace and security for the protection of human rights, ethnic and racial minorities and the provision of humanitarian assistance, this indicates that the Security Council no longer considers military assaults alone as a source of threat to international peace and security.

Thus, the Security Council has taken a broad interpretation of the concept of the threat of international peace and security to include internal armed conflicts, which result in grave and gross violations of human rights and international law. Consequently, humanitarian intervention by the United

Nations under Chapter VII of the Charter has become a legitimate justification.

Former United Nations Secretary-General Boutros-Ghali has stressed that the disputes to be resolved by the Security Council are not raging disputes between States, but internal conflicts, and the United Nations must confront civil wars, ethnic divisions and tribal wars.

As for the problem of the incompatibility between international humanitarian intervention to protect human rights and the internal jurisdiction of States, the International Court of Justice considered in its Judgment of 5 May 1970 in the Barcelona Traction case that human rights are universal and binding in nature and are part of jus cogens norms that go beyond National jurisdiction, where all States may consider that they have a legal interest in the protection of these rights.

Moreover, the Charter of the United Nations considers that any threat to international peace and security by a State would constitute an exception to the principle of non-interference in internal affairs Member States have a article (2/7), which means that the UN has the right to intervene in the internal affairs of States through the UN Security Council decision On the basis of Chapter VII of the Charter.

Thus, if the Security Council's objective is to interfere with the protection of human and minority rights, such interference is considered legitimate, because article (2/7) of the Charter, which prohibits interference in the internal affairs of States, has excluded the repressive measures adopted by the Security Council for the maintenance of peace and international relations.

## **RESPONSIBILITY TO PROTECT AS AN ALTERNATIVE TO HUMANITARIAN INTERVENTION**

At the Millennium Summit in September 2000, Canadian Prime Minister John Chretien announced the establishment and formation of the International Commission on Intervention and State sovereignty ( ICISS ), Its tasks are to lay the foundations for international humanitarian intervention and to try to support a comprehensive global debate on the relationship between intervention and State sovereignty, by reconciling the international community's duty to intervene in the event of gross violations of humanity and the need to respect the sovereignty of States.

The Committee submitted its report and published it in December 2001. The report concluded that the international humanitarian intervention should be replaced by the responsibility to protect, so that it falls to the State itself the primary responsibility to protect its population, but if the population is seriously harmed as a result of internal war, disobedience or repression, or if the state is unable or Unwillingness to stop harm international responsibility for protection therefore replaces the principle of non-intervention. Hence the first appearance of the concept of the responsibility to protect, which is a development of the principle of humanitarian intervention.

The Commission's report emphasized that the responsibility to protect had three specific responsibilities:

### **Responsibility for prevention**

It is to address the root and direct causes of internal conflict and other man-made crises that expose peoples in jeopardy, and the Committee has emphasized that the responsibility to prevent is no longer national or local only, but a duty for the entire international community.

It should be recalled that, in 2000, both the General Assembly and the Security Council adopted important resolutions recognizing the vital role of all United Nations organs in conflict prevention, as the Security Council stressed the importance of effective preventive strategies to prevent the occurrence of Internal Conflicts in particular.

The report of the Committee on Intervention and State sovereignty identified four measures to prevent the root and direct causes of the conflict and the measures are as follows:

- **Political measures:** include measures that can be taken by states to establish democracy, share constitutional powers, enshrine the principle of deliberation on authority, protect freedoms and the rule of law, as well as the political and diplomatic measures that can be taken by the Secretary-General of the United Nations, such as mediation, good offices and fact-finding missions.
- **Economic measures:** These measures are to work internally to provide development assistance to address inequities in the distribution of resources and to promote economic growth. These measures include at the international level, the financing and promotion of international investment and the facilitation of trade exchanges.
- **Legal measures:** These include efforts aimed at strengthening the rule of law and protecting and guaranteeing the independence of the judicial organs of the State. At the international level, it includes resorting to arbitration and international jurisdiction in the case of internal conflicts.
- **Military measures:** Include the reforms of the military and security institutions of states and ensure accountability of the security services, and at the international level can take military measures such as

the deployment of preventive forces, as happened entirely in Macedonia.

### **Responsibility to respond**

When preventive measures fail to settle any dispute and when the State is unable or unwilling to remedy the situation, it calls for intervention measures and reaction by the parties of the international community such coercive measures may include political, economic or judicial measures and, in extreme cases Also includes military measures.

This does not mean, however, that the failure of preventive measures to address the root and immediate causes of the conflict makes military action necessary, but must first take measures coercive, such as economic and political sanctions and in this regard, former United Nations Secretary-General Kofi Annan indicated that his efforts To mediate the Kenyan crisis that followed the disputed elections at the end of 2007 and the beginning of 2008 aimed at a peaceful settlement, because peaceful means of settling disputes are the true embodiment of the principle of the responsibility to protect.

In recent years, sanctions targeting security leaders and organizations responsible for gross human rights violations have emerged as an important alternative on the sanctions established in Chapter VII of the Charter of the United Nations these sanctions are termed "smart sanctions" and these are:

- **In the military sphere:** By putting an end to military cooperation and training programs as well as banning the sale of arms.
- **In the economic sphere:** Through the imposition of financial sanctions on financial assets abroad of a state, a terrorist organization or a rebel movement, which may include restrictions on economic activities and petroleum products as well as the prohibition of flight at times.

- **In the political and diplomatic spheres:** Restrictions on diplomatic representation, including expulsion of international staff, suspension or rejection of membership of a State in an international body or organization.

### **Responsibility for reconstruction**

The responsibility of protection involves not only prevention or reaction, but also the responsibility for follow-up and reconstruction. This means that if a military intervention in a country is caused by its collapse or inability to protect its nationals, there should be a genuine commitment to help rebuild a lasting peace and achieve Sustainable development by international staff working in partnership with local authorities.

Planning for military intervention should therefore begin with the development of a specific post-intervention strategy for the prevention of humanitarian conflicts. The aim of such a strategy should be to help ensure that the causes that led to military intervention are not repeated.

The intervention forces must commit themselves to providing basic security and protection to the entire population, especially since ethnic cleansing and genocide are usually carried out during the intervention, such as the Iraqi situation after the invasion of Kuwait in 1990, It is therefore necessary to develop a plan for reconstruction after the intervention and the need to provide real security for all the population when the intervention occurs.

It should be noted that the Security Council has begun to oversee activities of a domestic nature, namely, the establishment of democratic political systems through its assistance to States in the conduct of elections free and fair, thus evolving the role of the Security Council from what it was during the cold war, to focus its attention on the political trends

of countries by rebuilding peace, not just preserving it, and this is what happened in Somalia and Cambodia.

## **CONDITIONS FOR THE APPLICATION OF THE RESPONSIBILITY TO PROTECT**

The Committee on Intervention and State sovereignty has established several conditions for the principle of the responsibility to protect.

- **Condition of the just cause:** The just cause is genocide and large-scale ethnic cleansing is meant.

The Committee on Intervention and State sovereignty has pointed out that humanitarian military intervention is in two cases: The first is when military intervention is to stop or avoid significant loss of life due to a state-orchestrated action or its inability to act. The second case is that in case of intervention in order to stop the ethnic cleansing in case it occurs or to avoid it in the event that it does not occur, Thus, if one or both of the cases are available, the requirement of a just cause is an element of the decision to intervene.

- **Appropriate authority requirement:** The Committee on Intervention and State sovereignty has stressed that the Security Council should be the body that authorizes any intervention since it is the main security-keeping Officer international peace and the Charter of the United Nations clearly provides for the use of force necessary for the maintenance of international peace and security when the Security Council authorizes In accordance with the system of collective security set out in Chapter VII of the Charter.

However, the Security Council has so far been neither very consistent nor very effective in dealing with large-scale cases of ethnic cleansing, and its behavior often comes too late, hesitant and sometimes not acting at all and he unanimity of the five permanent members of the Security Council is rarely achieved

in terms of identifying violations of peace, condemning acts of aggression, authorizing the use of military force, This is due to the different political and strategic interests of the five members., whose disagreement led to the repetition of the massacres of Rwanda (the cases of Darfur and Zimbabwe), on the one hand, and military interventions that could be said to be morally legitimate but illegal (as in Yugoslavia) by NATO, (Liberia and Sierra Leone) by the Economic Community of West African States (ECOWAS), on the other hand.

In that regard, the Committee on Intervention and State sovereignty had pointed out that the solution to the problem was to discuss the possible roles of the General Assembly and regional organizations for authorizing military intervention, so that if there was a license to intervene by the General Assembly and supported by the majority of Member States, it Will legitimize military intervention.

As for the authorization by the regional organizations, the Committee on Intervention and State Sovereignty indicated that collective intervention by a regional organization within its borders in application of Chapter VIII of the UN Charter may be effective in addressing humanitarian disasters, in accordance with the common interest of Neighboring states, the intervention of regional organizations is often better than collective intervention by the United Nations, provided that the intervention of a regional organization concerns one of its members and does not accept interference in a non-member State, as was the case with NATO intervention in Kosovo in 1999.

In addition, the Commission on Intervention and State sovereignty had emphasized that military intervention was justified only if it was the last means if all alternatives and methods were used for the peaceful settlement and resolution of the conflict. Military intervention should be planned according to a specific scope and duration to ensure that the objective of

the intervention is to protect human rights and stop grave violations.

## **CONCLUSION**

The fundamental principle underlying humanitarian intervention is the use of military force with the aim of protecting human rights and preventing gross and grave violations of human rights, and international humanitarian intervention has evolved considerably and visibly during the 19th century, and its application has become more acute after the end of the Cold War because The nature of the conflicts that are taking place in the world has shifted from conflicts between States to intra-State conflicts.

However, regardless of the legality or illegality of international humanitarian intervention, international practice has shown that in some cases its application has been outside the customary controls and rules governing humanitarian intervention, as in Somalia, and in other cases, as in Rwanda, there has been a late intervention, while no at all in other cases.

Moreover, as a result of criticisms of humanitarian intervention because of its incompatibility with the principle of State sovereignty, the principle of the responsibility to protect which seeks to protect human rights but without prejudice to the sovereignty of States has emerged, The proper implementation of the principle the responsibility to protect in accordance with the legal frameworks established by the Commission on Intervention and State sovereignty would be an important guarantee for the protection of the fundamental rights and freedoms of individuals, respect for the equal sovereignty of States and the prevention of any external interference in their affairs for humanitarian purposes, which would only be achieved with the genuine political will of the

Member States of the international community to respect the conditions and controls established by the Commission on intervention and the sovereignty of States in any military intervention for the protection of human rights, and the objectives of intervention must be strictly humanitarian and free from the political interests of the intervening states.

The military intervention must be based on a declaration by the Security Council or the General Assembly and the regional organizations in the event that the Security Council is unable to do so. Finally, the violations that occurred in the intervening state must be commensurate with the nature of the measures taken to stop large-scale purges or prevent violations of International humanitarian law.

Finally, we would like to point out that peaceful political solutions remain the best means of avoiding military interventions that have exposed international practice to the self-interest of intervening states, as has been the case in Iraq, Somalia and Libya. Thus, States experiencing popular revolutions must work to realize the demands of their peoples in peaceful and democratic ways to avoid any military intervention in their territory.

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