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Humanitarian Intervention, Support and Objection

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Abstract: The chief aim of this paper is evaluating the arguments that challenge the Humanitarian Intervention as an exception to the prohibition on the use of force. The Humanitarian Intervention still did not become an exception to the prohibition on the use of force, it can be traced back to the 19th and 20th centuries. The study examines the advantage of the Humanitarian Intervention in the first part. Comparative analyses were carried out between Tanzania used of force against Uganda and NATO's intervention in Kosovo. The consequence of the precedents gives a great impact for the development of the regulations. In the second part, it shows that Humanitarian Intervention does not comply with international law. And the American's intervention in Somalia provides support for Humanitarian Intervention fails to create lasting peace. And it will become a powerful tool for developed countries to intervene in the interests of developing countries. To sum up, there are so many controversial aspects of Humanitarian Intervention. It protects the human rights and ensure the region stability. However, it breaches the state sovereignty and disrupts the international orders. Many scholars do not recognize humanitarian intervention as an exception to the use of state use of force.

Keywords: Humanitarian Intervention; Human Right; Use of Military Force.

1. Introduction of Humanitarian Intervention

Humanitarian intervention has existed in the international community for a long period of time. Sean Murphy defines this in his book as being the threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognised human rights. [12] However, these forces will cross national and international borders without first receiving permission from the Security Council for this use of force. The use of force in this situation according to the Charter of United Nation chapter VII, failed to achieve 9 affirmative votes or vetoes by the members of the UN. There are only two exceptions to the prohibition on the use of force in international law. The primary rules do not permit the use of force for humanitarian intervention. The principle of humanitarian intervention is extremely controversial. It cannot consist with the Article 2 (4) of the Charter, as a unilateral use of force. [26] In fact, humanitarian intervention suffers from a lack of state practice, with only a few states willing to justify their operations on the basis of the doctrine of humanitarian intervention.

This article will critically analysis the doctrine of humanitarian intervention in relation to the use of force. For the supporters, humanitarian intervention justifies saving human rights from being violated. This is a legitimate act in line with the responsibilities of the State. In this circumstance, human rights violations are effectively settled and people are protected from them. Meanwhile, it also can remove unjust regimes and deter future atrocities. On the other hand, the people who oppose humanitarian intervention deems it is an excuse for the state to interfere with the sovereignty of other countries which is an illegal reasoning for employing force through human intervention and is unable to create lasting peace. It also provides the powerful states with an excuse to pursue their own interests.

1.1. The History of HI

The first instance of humanitarian intervention occurred in the early nineteenth century, during the Greek War of Independence. In the battle of Navarino, Britain, France, and Russia intervened and helped the Greek people gain independence from the Ottoman Empire. During the early 20th century, World War I and World War II displayed a high period of humanitarian intervention. The humanitarian intervention, during the two world wars coincided with the rise of nationalism, criticism of imperialism, protect their country, and prevent genocide. After the Second World War, international states finally recognised the importance of peace and established organisations such as the United Nations and NATO, with the intention of strengthening national cooperation and protecting the international community. The late 20th century also saw the introduction of various efforts of humanitarian intervention such as India's intervention in the Bangladesh Liberation War, and the NATO intervention in Bosnia. Many examples of humanitarian intervention arose during the 1990s, some of them succeed and others failed. Nonetheless, these instances are enough to prove the rationality of humanitarian intervention.

2. The Humanitarian Intervention is Rational

When the states consider humanitarian intervention, although this kind of conduct is demonstrated without any approval from authority and conflicts with the principle of territorial sovereignty and the principle of non-intervention, it would be a necessary measure to halt mass violence. Immediate humanitarian intervention can be effective in preventing impending human rights violations, and according to the Chapter VII of the United Nation Charter, it stipulates that states should act with respect to threats to the peace, breaches of the peace, and acts of aggression. [27] Peace and consideration for the wellbeing of humans are vital that should be delineated by international powers for the betterment of the human race. States know that the doctrine

of the Humanitarian Intervention may conflict with the chapter 2 (4) and chapter 7 set out by the UN Charter – it is a unilateral and unauthorised operation. Although merely using the state practice to prove that Humanitarian Intervention can become an acceptable international law legislation seems very illogical. The supporters state that international communities cannot deny that Humanitarian intervention exists. A lack of legally binding material on Humanitarian Intervention creates a legal black hole. [8]

For the support of humanitarian intervention, the success of previous instances would present a strong defence. Tanzania's use of force against Uganda in early 1979 would be a good example. Before the Tanzanian war, Idi Amin imposed an eight-year dictatorship upon Uganda, under which countless people died in the political repression and genocide. In this circumstance, lots of African states chose to remain silent, except the president of Tanzania, Julius Nyerere. President Nyerere gave three reasons why he intervened in Uganda. He believed that the growing unrest within Uganda, and the anti-human action of the Amin government would not get the support of the people in Uganda. Nyerere also mentioned the humanitarian intervention is rational, if the organization of African Unity is unable to do so, then each country in Africa has a responsibility to intervene. [28] Tanzania's motivation was based on the long-standing Amin tyranny. This is a consideration based on moral dimensions. In Wheeler's book, he said that Tanzania's intervention in Uganda obviously meets the requirement of a legitimate humanitarian intervention. Internal wars were incapable to end the atrocities, whereas only external military intervention could do so. [28] So, for the supporters, Tanzania's War against Uganda could be a good precedent for the support of humanitarian intervention. A moralistic perspective was perhaps more important than compliance with regulations in helping to restore the rule of law and remove the unjust regime in Uganda. Like Paddeu said 'it is illegal but justified'.[29] Although the Tanzania's intervention was not in accordance with international law, it is in line with the international community's concept of respect for human rights.

Another case in point is when the North Atlantic Treaty Organization intervened Kosovo in 1999. Although the problem between Serbia and Kosovo were not fundamentally resolved after NATO's forcible humanitarian intervention, NATO did prevent Serbia from committing inhumane acts against ethnic Albanians. It can be said with certainty that the expulsion and massacre of Albanians by the Serbs had been happening for a long time. During the war in the 1990s, millions of Kosovo Albanians had been driven from their homes. NATO also tried to negotiation between Kosovo and Serbia, but failed. However, the difficult lies in the fact that NATO had not sought an explicit mandate in the form of a United Nation Security Council resolution. [30] In the view of the present situation, NATO's actions were in the interests of the international community and UN Charter. Before the actions of NATO, the UN Resolution 1160 had already acknowledged Serbia's use of force against the civilian population of Kosovo, and called on Albanians to condemn all acts of terrorism. [19] Following that, in the UN Resolution 1199, the UN reported on increasing violations of human rights and international humanitarian law in Kosovo. [20] In this scenario, there is no other solution than the use of external force. In a statement issued by the North Atlantic Council on 12th April 1999, the crisis in Kosovo represented a fundamental challenge to the values of democracy, human rights, and the rule of law. [17]

For the doubters of NATO's humanitarian intervention, it is undeniable that Kosovo's internal forces were no longer able to prevent war. So, NATO's actions were to a certain extent in line with moral international community. The Independent International Commission on Kosovo said NATO's intervention was 'illegal but legitimate', and argued for a new legal convention for military 'humanitarian intervention'.[18] This would have demonstrated that NATO's intervention in Kosovo could serve as a strong support for the international law exception to the prohibition on the use of force and lay a foundation for the subsequent Responsibility to Protect.

State practices can act as a strong advocate for humanitarian intervention. But to what extent is humanitarian intervention justified? The responsibility of the state for the protection of international peace also needs to be observed. The sovereign states have a duty to protect their citizens' fundamental human rights. If they cannot do this, they may find it difficult to refuse the involvement of outside force. Hedley Bull in his book said, intervention sometimes is justified, the principle of non-intervention also has exception. [31] That is to say that a paradox arises here – international law and state responsibility require the states to protect human rights, while it does not allow a state to intervene on a humanitarian basis when things get worse. In brief, if the Security Council does not allow, states cannot act. However, in considering Russia's accusation that NATO's action was unlawful, Slovenia suggested that the Security Council was not the only organisation responsible for maintaining the international peace and security. [21] Slovenia deems that all states are liable to protect human rights. The German government believed that the SC's veto over NATO was accompanied by the international community's common defence of humanitarian standards. [21] If NATO's action was rejected, this implied that the purpose of international law to protect human rights would be overruled. A major support of humanitarian intervention from the UK government is the belief that military intervention is justified as an exception to prevent overwhelming humanitarian disasters. [7] Recently, the UK government gave the interpretation that an airstrike in Syria was necessary and in accordance with international law within these circumstances. To put it simply, these three conditions are: an existent situation of extremely large-scale humanitarian distress, no practicable alternative to the use of force, and the use of force must be necessary and proportionate. [7] These conditions are acceptable in the context of an objective assessment of humanitarian intervention as an exception to the prohibition on the use of force. Where a limitation is placed on humanitarian intervention with reference to precedents, it can then be invoked by international states as an exception.

On the other hand, humanitarian intervention is also justified in maintain regional stability and preventing refugee flows affecting neighbouring states, which was influenced by the Responsibility to Protect act adopted by the Security Council resolution 1674. Undoubtedly, international communities will value humanitarian needs over that of the state sovereign. More specifically, in the Kosovo report, the commission pointed this question out. The refugees, growth of criminality, and the political impact produced by the Kosovo conflict have affected the surrounding region. [18] NATO's member states justify humanitarian intervention in

order to maintain stability in the European region and protect their citizens. In the Security Council report S/PV.3989, Argentina mentioned that the obligation to protect and ensure respect for human rights falls to everyone and cannot and must not be debated. [21] Argentina does not believe that states can ignore a serious humanitarian disaster merely because states do not have an agreement from the Security Council. It is the responsibility of every country to work to restore lasting peace to the region. This is an act in accordance with national interest. The former UK prime minister Tony Blair in his speech in Chicago also mentioned this point. He argued that anti-human rights acts such as genocide can never be a purely internal matter. When the massive flows of refugees influence surrounding states, it can be described as 'threats to international peace and security'. [3]

Along with the international community's increasing attention to human rights and the enactment of new regulations, humanitarian intervention has gradually become one of the exceptions to the prohibition on the use of force. The article 41 of Responsibility of States for Internationally Wrongful Acts published by United Nation general assembly stipulates that states shall not recognise the breach of an obligation arising under a peremptory norm. States shall cooperate to bring to an end to this breach. [16] Subsequently, the doctrine of Responsibility to Protect allows states to intervene when a state fails to protect its citizens within the state. More importantly, in some special circumstances, humanitarian considerations justify the use of force. It is noticeable that the rights of Humanitarian Intervention have been implied in some situations.

3. The Controversy of Humanitarian Intervention

But the problem is not so simple. As has been mentioned above, humanitarian intervention does solve extreme human rights violations. However, humanitarian intervention is inevitably controversial. Many states, institutions and scholars have challenged the humanitarian intervention as an exception to the prohibition on the use of force.

A serious weakness with the humanitarian intervention, however, is that HI is inconsistent with the stipulate of international law, especially UN Charter Article 2 (4) and Article 2 (7). Although the calls for punishment for human rights violations have been growing in the international community, because of limited state practice and the use of force without UNSC authorization, the legitimacy of humanitarian interventions has been questioned. There is no denying the fact that the principle of the sovereignty of states is a central point for the establishment of international law. According to Lan Brownlie, he said that the principle of prohibition of the use of force are among the 'least controversial examples' of jus cogens. [4] In this consequence, most states agree with the idea of prohibition for use of force as a 'jus cogens'. Therefore, Nico Schrijver stated that in the extremely humanitarian situations, the right to invoke the unilateral use of force does violate the principle of the prohibition of the use of force under international law. [14] It also has been mentioned in the United Nation resolution A/RES/36/103 – the duty of states to refrain in their international relations from the threat or use of force in any form whatsoever to violate the existing internationally recognized boundaries of another state. [22]

It has to be noticed that the Article VIII of the Convention on the Prevention and Punishment of the Crime of Genocide uses the phrase 'they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts.' [5] Undeniably, even though the genocide is a humanitarian problem, as Welsh mentioned, international law hardly supports the unilateral action of a state in response to acts of genocide. [24] The conclusion can be drawn that in the current international law, there is no lawful treaty authorizing unilateral armed action by states under the pretext of humanitarian intervention. The measures to protect human rights has a seen a great development, while such measures have not influenced the interpretation of Article 2(4) of UN Charter.

Another major argument against humanitarian intervention is that it failed to create lasting peace. The process of Humanitarian Intervention is often accompanied by a greater loss of life and a significant investment of money from a state. Let's take how NATO intervened in the Kosovo situation to illustrate this.

Although the 78 days airstrike in Kosovo finally forced the Serbian Army to withdraw its troops and allowed the Albanian refugees to return to Kosovo, NATO seems did not solve the issues of Kosovo fundamentally. In a report investigating the airstrikes in Kosovo, it was shown that NATO bombing still caused civilian casualties in Albania and Yugoslavia. Similarly, after the airstrike, the members of minority communities continue to be victims of intimidation and assaults. [18] As a result, the bombing was incapable of stopping expulsions and murder, lack of law and the poor economic situation made it hard for Kosovo to develop.

This is a consequentialist-based view. For realist consequentialist, humanitarian interventions create an irrational policy, and may create more questions than it solves. [24] This can be illustrated with the American intervention of Somalia. Although the UN resolution 794 and 914 authorised the US and other countries to intervene in Somalia on a humanitarian basis under the Chapter VII, finally the humanitarian intervention failed in Somalia. Alex de Waal holds the view that the operation restore hope was wrong to think that the cause of killing civilians was famine, the real reasons of killing civilians was disease. [25] Meanwhile, the unified task force failed to tackle local armed groups and the constant warfare made it difficult to carry out rescue work. The violence was deeply rooted in social structure. The UN could not strike a balance between short-term Humanitarian Intervention and long-term Humanitarian Intervention. [28] Overall, these two examples of humanitarian intervention show that the states do not fundamentally address human rights problems. What's more, untimely interventions led to the plunging of civilians into famine and disease. No one knows for sure the unique consequences of Humanitarian Intervention, but it can be understood that in some cases, the use of force causes more problems than it solves. The problems of social structure require long-term intervention instead of relying on force for short-term benefits.

Critics have also argued that humanitarian intervention not only fails to produce a lasting peace, but would also be a way to promote the states' own interests. It is vital that the state's choice of humanitarian intervention should be heavily influenced by the pure protection of human rights and not based in the interests of the state, however this is not always the case. The realist describes the humanitarian intervention as a way to access the interests of state, as Morgenthau said, a statesman is believed to think and act serve to the interest of

power. [9] More specifically, western countries take into account various factors when they decide to intervene or not intervene. A well-known example of this is when the US intervened in Somalia.

The interests of intervention in Somalia conflicted with those of the United States itself. The US government felt that moral value of intervention in Somalia could not be equated with the lives and property consumed by the US. The losses outweighed the reputation that humanitarian intervention would bring. If it is an egoistic humanitarian intervention, it is likely to become a tool to conceal the power's expansion of its own interests, political and economic position. Furthermore, as Jude mentions, humanitarian intervention is also determined by the cost-benefit analysis and geopolitical interests. [10] When the US intervened in Libya, it considered this intervention with Libya's vast oil reserves in mind. The US was able to reap significant benefits. In such a case, humanitarian intervention will take place when national interests are at stake.

Humanitarian intervention is a moral issue based on thinking at the level of the international community, while the decision to undertake humanitarian intervention is one made at the national level. As Mohammed Ayoob stated, it is impossible to prevent considerations of national interest from intruding upon decisions regarding international humanitarian intervention. [1] To sum up, the reason for criticism of the state's humanitarian intervention is there is a lack of proper consideration based on morals and a hope to help out another nation. In other words, Humanitarian Intervention can also be a means for a particular nation to fulfil their own goals through the use of force in other countries, effectively enhancing their own power while weakening the military prowess of others. International community will question for this HI whether it is fair.

Humanitarian intervention is complex and the states cannot reach a consensus on what constitutes a humanitarian intervention. The nature of humanitarian intervention is such that it can easily disrupt the original social order. The use of force in humanitarian intervention is a special kind of approach. While it addresses the issues of human rights violations, it is different from intervening politically or economically. It can disrupt the otherwise peaceful order of the international community and, through a small human rights issue, trigger a larger disruption of order. Ayoob shows further concern about the humanitarian intervention as an exception of use of war. He argues that humanitarian intervention could be a tool for the interference by the strong in the affairs of the weak. [1] He raises a number of questions about how humanitarian intervention will breach the international order. State sovereignty is a bridge that underpins the functioning of this international community and grants equality between the weak and strong. Ayoob also believes that state sovereignty is the only way for governments to provide domestic order, and to allow the domestic order to support the international order. If it is broken then it has the potential to have an impact on the international community and the demands of citizens for a civilized existence. [1] It is certainly true in the case of when the United States intervened with the situation in Somalia as it had been authorised by the Security Council. The US force and the UN forces have not succeeded in establishing a democratic regime in Somalia. However, the humanitarian intervention sparked a massive civil war in Somalia, in which civilians and soldiers died. In conclusion, this is clearly in line with Ayoob's view that NGOs and external regimes do not have the capacity to establish a sovereign state. [1] The use, or misuse, of humanitarian intervention will breach state sovereignty, and in this circumstance, civilians are the most vulnerable group in a state of anarchy.

4. Conclusion

The aim of this study was to evaluate the arguments both for and against the idea of humanitarian intervention as an exception to the prohibition on the use of force. Tanzania's intervention in Uganda and NATO's intervention in Kosovo are examples of the positive influence of humanitarian intervention in stopping mass human rights violations. The protection of human rights is valued and it is the responsibility for the sovereignty states and international community to ensure that regional stability and human rights are respected. However, humanitarian intervention is still an operation not stipulated by international law. It breaches the principle of state sovereignty and disrupts the international order. More importantly, it can become a tool used for power and profit. Additionally, humanitarian intervention cannot create lasting peace and is not effective for sustainable development. The international community needs to implement concrete regulations for humanitarian intervention that is both fair and transparent, while the UN Security Council should respond quickly to situations of human rights abuses and prevent states from abusing their power through the use of humanitarian intervention.

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