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Humanitarian Intervention Concept: Necessity for change

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Abstract: The current article explores necessary reform of the concept of humanitarian intervention starting with its historical background and definition(s). The main argument the paper raises is whether or not reform in the humanitarian intervention concept is necessary. Thus, the research is theoretical and exploratory and based on secondary data. There is a plethora of previous literature conducted on the issue, since ethical, political and legal justifications for humanitarian intervention have become prevalent in practice. The findings are divided into three sections: the first is defining the concept and understanding its functions, the second is demonstrating the concept's ineffectiveness in practice, and the third is providing certain reforms to better the current concept.

Key words: Humanitarian intervention, reforms, ethics of humanitarian intervention

1. Introduction

Humanitarian intervention was introduced in the 19th century, and its first practical example was the Greek Independence War of 1821, in which the Coalition of Britain, France, and Russia intervened to secure Greek independence from the Ottoman Empire (Heraclides & Dialla, 2015). Later, the principle was established in the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), the International Committee of the Red Cross (ICRC), and the

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European Commission on the European Civil Protection and Humanitarian Aid Operations (Ryniker, 2001). Although there is no specific definition of humanitarian intervention in these mandates, the principles of the concept are present; as such, the UNOCHA mandate proclaims that humanitarian intervention must occur with the principles of humanity, neutrality, impartiality, and independence. Furthermore, Chapter VII of the UN Charter clarifies the usage of the UN Security Council (Article 39) and the UN Military Staff Committee (Article 41-47) in case of aggravation and its prevention. Additionally, Fernando Teson (2005) explains the criteria for the conduction of humanitarian intervention as (a) if it aims to end tyranny, (b) if it is governed by the doctrine of double effect, (c) if the tyranny is severe, and (d) if it is approved by the community of the democratic states (Lang, 2013). Lastly, humanitarian intervention is preferred if there are systemic violations of human rights, expulsions, ethnic cleansing, and genocide (Bell, 2019).

The definition of humanitarian intervention is complex, which makes its practical application even more arduous. Although the doctrine of humanitarian intervention can be practically applied to prevent and protect the lives of millions of people, it is only reactive rather than proactive. In other words, unless there is an imminent threat to people due to ongoing military conflicts, the war against humanity by the government, or due to the absence of the government, humanitarian intervention is incompetent and ineffective. Simultaneously, there are unfortunate examples of long delays by the responsible actors to initiate strategies, regardless of the existing atrocities. As a result, humanitarian intervention is conducted only after the horrors have occurred, thus responding late and reactively. As such, the current paper focuses on the reform of the humanitarian intervention concept to make it more proactive and timely. To demonstrate the need for the change, the paper will question: If the reform is indeed necessary (1), If yes, then what and how the reforms should be augmented (2).

2. Methodology of the Study

This work is a theoretical paper that is exploratory in structure and based on secondary data. Data collection was gathered from the legal documents and reports of the UN Charter, the UNOCHA, the European Commission, and the ICRC. Likewise, scholarly articles on the topic of ethicality and legality of humanitarian intervention were used to collect data. Gathered data will be discussed

further in the paper to demonstrate either the effectiveness or ineffectiveness of the current humanitarian intervention and whether reform is needed.

3. Theoretical views

Humanitarian intervention is closely interconnected with the theories of international ethics, international law, and international relations. Therefore, this section is devoted to the Grotian theories that explain the concept ethically, Realism and Liberalism theories – politically, and the Customary law theory – legally.

3.1. Three Grotian theories

Hugo Grotius was an outstanding seventeenth-century Dutch scholar and diplomat with contributions to the field of International Ethics and International Law. He left remarkable books for humanity, and one of his books is the *Laws of War and Peace*, on which he based two of the following theories. Although the third theory was not developed by Grotius, it was inspired by his work (Criddle, 2015). The first Grotian theory or the international punishment theory purports that when the state violates human rights, foreign states have the right to punish the state violator in the name of international norms. This theory is based on the *ius naturale* and *ius gentium* – states are responsible for punishing violators of international norms and the law of nations, respectively. Grotius's theory of international punishment is widely discouraged, although it was used by the United States and the United Kingdom against Syria in 2013. Once the news on chemical weapon usage by the Syrian government aired, the US and the UK issued the intervention without the consent of the UN Security Council (Criddle, 2015). Although neither the US nor the UK suffered directly from chemical weapons, both governments reacted unilaterally in the name of humanity. The second Grotian theory or the guardianship theory dictates that the foreign states serve as the guardians for the nations of the other state that exposes its people to inhumane cruelties under the law of nature. The guardianship theory is not as well favored by many, yet in 1999, NATO issued a proposal to act to protect ethnic Albanians in the Kosovo war. Although the proposal did not enjoy support, it attempted to create *opinio juris*, making guardianship a customary international law (Criddle, 2015; Henckaerts, 2005). The third Grotian-inspired theory or fiduciary theory is a perfected form of Grotius's two theories. Evidently, Grotius could not leave the idea of creating

the UN Charter that would include guidelines for the states to act unilaterally, yet the Charter is in fact inspired by his two concepts. It explains that under certain conditions, foreign states may use some force to aid the nations of the cruel state once it legally fits the framework of the UN Charter. Fiduciary theory dismisses the full authority of foreign states to punish the state violator unilaterally; hence, it is only commonly accepted Grotian theory today.

3.2. *Realism and liberalism theories*

Realism is commonly known as the concept of anarchical, interest-driven, and self-esteeming politics. There is classical realism that focuses on power-seeking human nature and neorealism that focuses on an anarchical international system. Nevertheless, realism theory in general is driven by the notion of state actors, power, and national interests (Yoshida, 2013). Liberalism, on the other hand, believes in the protection of human rights as the core of ethics and purports that international organizations for the mutual gain of all. Additionally, liberalism claims that all people have the fundamental natural right to preserve themselves (Yoshida, 2013). Likewise, realism theory would claim that the Anglo-American coalition intervened in Syria because it feared losing influence in the Middle East, hence losing the oil reserves. Consequently, the US and the UK acted to protect their national interests. Liberalism theory, on the contrary, argues that the Anglo-American coalition intervened with the aim of ending tyranny, promoting democracy, and preserving human lives in Syria (Yoshida, 2013).

3.3. *International customary law theory*

Humanitarian intervention is usually dismissed by legalists, yet customary international law is one of the few approaches to international law that supports the concept of humanitarian intervention. Provided that humanitarian intervention as a concept and as a practice exists, there is the necessity for legal grounds, since the concept is practiced only when international norms are violated. As a result, according to international law and customary law, violation of the laws may lead to the creation of new laws to protect the existing laws (Jayakumar, 2012). Hence, customary law comes into action, and the state that violates human rights should be held responsible by foreign states according to customary law. Provided that humanitarian intervention is practiced, it must be approved by the UN Security Council priorly. Nonetheless, past cases have proven that if the

humanitarian intervention was to be practiced, the wait for the approval of the UN Security Council is irrelevant, since there either would be veto rejection or belated. Consequently, foreign states are known to prefer criticism by acting without approval yet responding either timely or effectively in accordance with customary international law.

4. Analysis and findings

This section looks at previously raised questions and provides some findings starting with how humanitarian intervention can be defined and what its functions are (1), whether or not the current humanitarian intervention concept is ineffective (2), and what and how reforms should be added to the humanitarian intervention concept (3).

4.1. Notion of the humanitarian intervention concept

Humanitarian intervention can be defined as actions taken by a foreign state or by a coalition of foreign states to ease human suffering in a sovereign state (Bell, 2019). Similarly, it is conceptualized as the right of one state to authorize international control over the acts of another state on the ground of humanity (Abiew, 1999). However, it is also explained as a forceful action, which includes armed force taken by one state in the territory of another state, yet without its consent and proper authorization, to prevent or stop massive atrocities (Ryniker, 2001). Although the concept lacks a unanimous definition, it has become a focal point for debates in international ethics, law, relations, political science, and moral philosophy.

As Bell (2019) writes, humanitarian intervention has existed previously, although attitudes of states were different pre- and post-Cold War periods. India's interference in the Bangladesh Liberation War of 1971, Vietnam's intervention in Cambodia in 1978, and Tanzanian operations in Uganda in 1979 were the major operations carried out by the foreign state during the Cold War period. India claimed that its aim was purely altruistic; in a similar manner, Tanzania purported that it was self-defence of the territory of Tanzania from the Ugandan attacks on the borderlines, while Vietnam claimed that it aimed to end the Cambodian genocide and overthrow the Khmer Rouge from power. Regardless of the interveners' purposes and operations' consequences, India, Vietnam, and Tanzania were condemned and criticized for violating national sovereignty and

Article 51 of the UN Charter. However, after the Cold War period, states' views on humanitarian intervention were altered. For example, humanitarian interventions in Somalia (1991), Kosovo (1999), Libya, Syria, and Iraq (2011) were vastly accepted but still criticized. As a result, the 1990s was marked as the decade of humanitarian interventions.

The principles of humanitarian intervention have been marked in the mandate of the UNOCHA by Simon Bagshaw, the ICRC by Anne Ryniker, and the European Commission on the European Civil Protection and Humanitarian Aid Operations. Bagshaw (2012) explains that there are four principles guiding humanitarian intervention. First, it is a principle of humanity; it dictates that the suffering of human beings must be addressed regardless of their locations. The second is the principle of neutrality. This principle is about the neutrality and non-interference of humanitarian actors, while the third principle – the principle of impartiality – is about the actors' fair judgment and disinclination towards the suffering people. The last principle of humanitarian intervention is the principle of independence. This principle guides the actors to be autonomous from the governments' political, economic, and military interests when aiding the people. The principles originate from the International Committee of the Red Cross and the Red Crescent Societies; they were established by the 20th International Conference of the Red Cross and Red Crescent Movement. Moreover, it is important to comply with the principles of humanitarian intervention since interference occurs in a highly politicized and militarized environment. As a result, UN OCHA's role is to ensure that actors adhere to the principles.

The other essential mandate to be considered on the topic of principles of humanitarian intervention is the ICRC and its position on the concept [of humanitarian intervention]. According to Ryniker (2001), on the position of ICRC, international humanitarian law does not serve as the basis for armed intervention, while the ICRC does not decide on the legality of armed intervention; international humanitarian law functions only if the intervening parties are in conflict, while the ICRC advances the concept of armed intervention to prevent mass atrocities. Ryniker (2001) also develops the idea of customary acceptance, that is, regardless of the lack of unanimous definition, states tend to intervene if there is a grave violation of human rights, hence customarily. Ryniker (2001) advances the idea of humanitarian intervention in the legal framework - although the states are discouraged from using military force internationally, Chapter VII of the UN Charter makes

the exception for the cases of mass atrocities. Another responsibility of the ICRC is to alarm the states on the limit reaching breach of human rights, such as genocide; however, the ICRC does not decide on the means and legitimacy of intervention. Last, similar to the UNOCHA, the ICRC must remain neutral and impartial to the conflicting parties regardless of the conditions.

One of the most important mandates to be considered is the UN Charter, Chapter VII On the Action with respect to threats to the peace, breaches of the peace, and acts of aggression. Chapter VII is specifically designed to address the state violator, and according to it, UN Security determines whether or not the violation exists and what means should be used (Article 39). Article 40 claims that the approval of the UN Security Council is necessary before intervening in the state, while Article 41 claims that the UN Security Council should use diplomatic means beforehand. Provided that diplomatic means are unhelpful, the UN Security Council may execute more determined means, such as blockade and sanctions (Article 42). Article 43 is on the necessity of the UN member states assistance and readiness if an intervention is necessary under the initiative of the UN Security Council, while Article 44 is on the necessity of the discussion with the member states and the UN Security Council before taking action. If an intervention takes place, the member states should have a prepared military "contingent" or Military Staff Committee according to Article 45, and the decisions, responsibilities, and authorizations should be made under the cooperation of the UN Security Council and Military Staff Committee according to Articles 46-47. Cooperation and support of the member states of the UN and the UN Security Council and their joint effort are essential to dictate Articles 48-49. The UN Security Council is an advising body and chief decision-making body regarding the issues of intervention; therefore, it is supposed that economic and political concerns arose, and the states should consult the advising and decision-making body (Article 50). Last, Article 51 claims that a state can exercise its right of self-defense if a foreign state attacks it; however, a state exercising its right of self-defense should report to the UN Security Council for future consultation and preservation of peace and security. Gray (2019) in his *Walking a fine line: the pros and cons of humanitarian intervention* is an informative work on the concept used in practice. As Gray (2019) explains, the concept of humanitarian intervention emerged commonly after the Cold War as a solution to universally promote human rights. In fact, the UN optimistically started the decade of humanitarian intervention in the 1990s, and NATO's operations

in Kosovo and Bosnia, Libya and Syria were initiated. Although the concept in practice was supported at first, after NATO's failure, states sought a reform in humanitarian intervention. Hence, Gray (2019) demonstrates the advantages and disadvantages of the concept of humanitarian intervention in practice.

One of the main advantages of humanitarian intervention is the protection of citizens from their respective governments. This ability is also reflected in the guardianship theory of Hugo Grotius and addressed as the "doctrine of welfare of ordinary people ". For example, despite criticism, NATO's operation in Kosovo was successful since it ceased atrocities against Kosovians. Although NATO is held responsible for the death of 500 combatants in Kosovo, it is justified since the "outcome exceeds the income". Humanitarian intervention is also praised for promoting international norms and influencing middle powers. For example, Operation uphold Democracy in 1991 by the UN Security Resolution 940 to overthrow the military power in Haiti was one of successful humanitarian intervention cases. The operation officially ended in 1995 with the triumph of the Operation and the first democratically elected President Jean-Bertrand Aristide with the help of US troops and the UN military. Due to the rise of the humanitarian intervention concept, middle powers can also bring change. For example, in 1999, Australian peacekeepers were deployed in East Timor for a harmonious transition of the states into independence from Indonesia. The operation was successful, and Australia had the largest commitment to humanitarian peace. Last, humanitarian intervention is appreciated for its ability to prevent small disagreements from turning into large conflicts. For example, the United Kingdom's intervention in the Sierra Leone Civil War in 2000 was known as Operation Palliser. Although the purpose of the British army in Freetown, Sierra Leone, was to evacuate British and other European citizens, General Sir David Richards persuaded the British Military of Defense to aid and intervene before the mass atrocities would start. British intervention in Sierra Leone was another case of successful intervention with limited troops and proof of the benefits of humanitarian intervention in practice.

4.2. Ineffectiveness of humanitarian intervention

Criticism towards the concept of humanitarian intervention is received from the Global South, which is deterministic in the principle of national sovereignty and the status quo and is reluctant

to adopt the concepts of humanitarian intervention and cosmopolitanism. For instance, supporters of anti-intervenism argue that states are sole powers with the interest of improving only their own countries. They also argue that states' egoistic nature always exceeds their altruistic nature, for example, the case of Rwandan genocide and states' reluctance in ending the atrocity. Supporters of anti-intervenism also claim that the principle challenges national sovereignty and exemplifies the Russo-Georgian conflict of 2008. That is, Russian troops advanced into Georgia with the purpose of liberating Abkhazia and South Ossetia from Georgian due to the alleged violations, hence being a groundless humanitarian intervention with an unjust cause. Moreover, the Global South has a pessimistic view of humanitarian intervention, as it claims that the West intervenes groundlessly and countlessly to regain the influence, control and power of the South. Lastly, non-supporters argue that once humanitarian intervention has been conducted, the aftermath conditions in the respective countries are devastating. Although the foreign army has deposed the tyrant, the local militia is still functioning and harassing civilians and noncombatants; Libya and Somalia are example cases. In Libya, after overthrowing Gaddafi, different militias are present and target each other, thus harming the overall well-being of the citizens and the country, while in Somalia, two UN Operations were initiated, soon failed and left Somalia in the shambles.

Humanitarian intervention and UN peacekeeping operations have been active over the past two decades, yet only selectively. Binder (2017) argues in his work *why UN humanitarian intervention remains selective*. Hence, the UN humanitarian intervention is ineffective due to its preferences. It takes action immediately if (a) human suffering extends largely, (b) neighboring states are affected, (c) military power is present and (d) the level of material commitment is large. Therefore, the people of a tyrant state in which the UN has no or little interest are discriminated against and left to suffer until the atrocities reach the climax. For instance, the UN Security Council was immediate in its actions in Northern Iraq, Somalia, Bosnia and Sierra Leone, while it was reluctant in Colombia, Myanmar and Sudan. Its actions in Northern Iraq are explained by efforts committed by the US and the UN, while those in Bosnia are explained by its location (fear of damaging neighboring European states). On the other hand, the UN Security Council was not sudden in Colombia, Myanmar and Sudan due to the lack of interest and extent of atrocities. Therefore, Binder (2017) argues that although each case of humanitarian intervention is specifically unique,

human suffering should not be neglected, hence revealing the other disadvantage of UN humanitarian intervention.

Critical views towards humanitarian intervention due to its ineffectiveness are demonstrated by Nathan Trimble (2018) in his work *Humanitarian war is an oxymoron, so why do we keep doing it?* Trimble (2018) explains that humanitarian intervention is an oxymoron since the actions carried out by the operations are different from the notion of humanitarian intervention. In other words, humanitarian intervention has become a humanitarian war in which intervention is the practice of force to prevent the violation of human rights, while war is a major use of armed force in the name of humanitarianism. Hence, the state actors and international organizations are using armed force to expand their sphere of influence and their interests. Consequently, humanitarian intervention and peacekeeping operations receive denunciation due to the massive usage of military force and ineffectiveness.

Furthermore, a study by Binder (2015) demonstrates the ineffectiveness of humanitarian intervention conducted by the Security Council of the United Nations. That is, the author has conducted a qualitative comparative analysis of 31 humanitarian crises between 1991 and 2004, demonstrating that involvement is not random but rather selective. The selection criteria should adhere to a large extent of human suffering, combined with likely spillover to neighboring countries (a) or low capabilities of the state (b). The countries that are capable of militarily standing against international intervention (1) and that have not been a target for intervention previously are not selected (Binder, 2015). Such selection yet again portrays that humanitarian interventions should undergo some change and reforms.

4.3. Reforms to better humanitarian intervention concept

The reform of humanitarian intervention has been a focus of debate for many years. Therefore, there are many suggestions on this issue. This section generates the most commonly purported reforms to be added to the humanitarian intervention concept. Kirdim (2017) writes that there have been many efforts to reform the humanitarian intervention system and highlights three approaches that have been the most attractive. The first is removing the veto power of P5 members of the Security Council in the context of mass atrocities. This proposal has been warmly accepted by

many nation-states, not only in the period of crises but also as a whole. Kirdim (2017) explains that regional organizations of the African Union, the Arab League, and the Group of Non-Aligned Nations have expressed their wish for the abolition of P5 veto power. This proposal for reform is the most appropriate, as (a) the members overrule for their own benefits, and as a result, (b) the members abuse their powers.

The second proposed reform is empowering regional organizations to intervene in humanitarian crises in the case of the Security Council's unresponsive nature. Such a reform would necessitate, first, a reinterpretation of the UN Charter to give permission for respective regional organizations to act and, second, an establishment of legal rights for regional organizations to intervene legally without the Security Council in the case of massive atrocities. In fact, there were cases in which regional organizations acted without prior authorization by the Security Council, for instance, the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone. Despite the approval of the Security Council for ECOWAS' effectiveness, the intervention was legally unlawful (Kirdim, 2017). Therefore, devolving responsibility to regional organizations is a necessary reform to be made within the humanitarian intervention system.

Last, Kirdim (2017) proposes creating a cosmopolitan UN army ready to intervene in the case of massive humanitarian crises. The creation of such an army has certain challenges, the first being that the states will send their troops and resources to protect foreign lands. Therefore, the word cosmopolitan in the reform should be highlighted, referring to the fact that soldiers should not be aligned to any nation and should be volunteers. Such an army would offer the advantage of not being dependent on any nation-state to contribute their troops. It is evident that the UN army would welcome more debates and criticism; nevertheless, in the context of the overall ineffectiveness of humanitarian intervention, reforming the system by adding an army would allow us to overcome the ineffectiveness.

5. Conclusion

The doctrine of humanitarian intervention has become one of the most debated concepts in international relations and law. After being introduced and exercised, many scholars and practitioners have seen certain flaws in the concept. As such, this paper explores the concepts of

humanitarian intervention from a theoretical framework addressing its ethical, political, and legal aspects. Likewise, previous research conducted on the issues of the concept itself, its effectiveness or ineffectiveness, and possible reforms were discussed. As a result, it can be concluded that indeed, the humanitarian intervention concept lacks certain aspects and hence should be considered for reforms. Such reforms vary, but three are mostly accepted. They are removing the ultimate veto power of the Security Council members in the case of massive atrocities and the members' unresponsiveness (1), providing legitimate regional organizations with legal and political rights to intervene without prior authorization of Security Council in the case of humanitarian crises, and establishing a nonaligned and cosmopolitan UN army ready to intervene.

Reforming the humanitarian intervention concept invites another major question of rightful authority – that is, who should decide when, how and why to intervene. Many authors and practitioners call upon the international community for such decisions, as their voices would be objective. However, the international community itself is non-existent, and it cannot seek non-existent authority due to the concept of equal sovereign states. Consequently, the rightful authority should be decided upon based on its legality, military power and political power. At the moment, only the Security Council has a legal right to intervene; therefore, there is a need for either customary international law or any other treaty to be established to decide a legitimate rightful authority to decide on humanitarian interventions. Second, as one of the reforms is the creation of a cosmopolitan army, this authority must be able to establish military capabilities for successful interventions. Last, the authority should have political capabilities among major powers to achieve effective and successful humanitarian intervention. One may argue that these criteria describe the current day Security Council and its capabilities. However, it should be noted that the Security Council itself has become an outdated and undemocratic institution, and it has lost its effectiveness in the midst of massive atrocities. Therefore, reforms addressing insufficiencies of the humanitarian intervention system will yield better institutions.

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