



THE STANCE OF THE UN REGARDING THE PROCESS OF HUMANITARIAN INTERVENTION AMID THE NEW INTERNATIONAL VARIABLES

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Abstract:

The question of humanitarian intervention raises a hot debate amid the legal and political environments and in the international events, as it contradicts with the principles of the international law provided for by the international conventions, such as the respect of the national sovereignty, inadmissibility of intervention in the domestic issues, and the avoidance of force or threatening. In addition, the individual turned into the absolute aim of any legal domestic or external policy, as many international conventions and domestic constitutions protected the human rights and freedoms in times of peace and war, and even granted him the right to resort to the human rights international courts to defend his rights. Thus, we can deduce the recognition of the international legal personality of the individual. The role of the UN and some other international organizations increased with interventions in the domestic issues of some states, what affects the sovereignty and its domestic and external features and aspects. Thus, we believe the future international relations shall witness a decrease in exercising the sovereignty of some states due to the political and legal mechanisms.

Keywords: UN, humanitarian intervention, military intervention, international law, armed conflicts.

INTRODUCTION:

After the Cold War, the international society started interventions for humanitarian purposes, using military force sometimes. The successive international insights of the humanitarian intervention proved the inefficiency of such interventions and obliged the UN, based on the decisions of the Security Council, to take another path for the humanitarian intervention under the umbrella of the military intervention or the humanitarian armed intervention. Thus, the concept of the humanitarian intervention was seen as the initiative of one state or a group of allied states to achieve a mission under the supervision of the UN to stop the flagrant violations of the human rights. The humanitarian intervention confirms that the concept of humanity is related to the human rights theory and the notions of aids and maintaining the international stability.

The importance of this study lies within the work of the armed humanitarian intervention parties, such as the UN and the unofficial humanitarian organizations, and the general international law and the humanitarian issues scholars. In addition, the study analyzes the status-quo of the international security, which decreased after the Cold War and the emergence of the unipolar world. Further, it studies many cases that still hold a big position in the minds of the international conventions and relations' stakeholders amid the international society changes, mainly the armed humanitarian intervention. Based on what was said, this study shall tackle the stance of the UN towards the processes of international intervention amid the new international variables that take place under the human rights umbrella and in the light of the attempts of legalizing the intervention through influencing the UN and the Security Council.

The problematic of the study revolves around the balance between the general international law and the human international law in the cases of international humanitarian intervention amid the international variables and their effect on the UN Charter and the achievement of its legal aims, mainly those mentioned in Article 01. Besides, the study investigates the effect on the international law subjects, and how we can ensure the humanitarian intervention achieves its legal aims. In this regard, we shall refer to previous actions

in different conflicts, such as in Kosovo, Somalia, Darfur, Rwanda, Afghanistan, Iraq, Libya, and Syria. In so doing, we find ourselves obliged to grapple with a paramount question that can be stated as follows, “**is the humanitarian intervention a violation of the UN Charter or an enforcement of its humanitarian aims?**”

As for the study goals, we shall restudy the scope of the humanitarian intervention according to the modern practices. Besides, we shall focus on how the international law dealt with the different cases of the humanitarian intervention in order to find out more about its legality and coherence with the UN Charter. We shall use the analytical and descriptive methods to analyze the texts of the UN Charter, the recommendations of the UN and of the regional organizations, the decisions of the international justice, mainly the international Justice Court, and the stances of states and organizations towards this concept.

First: The humanitarian intervention in the international law

1. The legal basis of the inadmissibility of intervention principle:

It is one of the traditional principles in the international law. It emerged from the notion of sovereignty that bans any other state to intervene in the domestic issues, because such intervention is a violation of the sovereignty and subjects the international policy to danger¹, and because the states' commitment to respecting the rights of each other imposes the inadmissibility of intervention in the domestic issues. In addition, in its project of the states' rights and duties of 1947, the UN international law committee embraced this stance, as Article 03 of the project provides that states must not intervene in the foreign and domestic issues of other states².

As for the principle of banning the use of force in the international relations, many attempts and initiatives, like Article 2/4³ of the UN Charter, were launched after WWII to ban wars and the use of force in the international relations. The Charter includes many principles that aim at maintaining international peace and security. In addition, the General Assembly issued Decision 25/26 that provided for not using force or threat in the international relations, either against the territorial integrity or political independence of the states, or in a way that goes against the UN aims.

2. The aspects of the humanitarian intervention:

a. intervention through the General Assembly:

The UN General Assembly is one of its main bodies. It has a key role in the humanitarian intervention, as it adds the legal nature to it and grants the delegation to the states that intervene humanitarily and controls the enforcement of the human rights international conventions. We can say that the General Assembly plays a preventive role that includes monitoring the enforcement of the human rights conventions, such as monitoring the enforcement of the humanitarian international law and the human rights international law. Most of the jurisprudents describe the decisions issued by the General Assembly as recommendations and ethical commitments that may be accepted or refused by the states. Therefore, they have no binding legal value and are not an intervention in the domestic issues⁴.

¹ This principle is a natural outcome of the principle of equal sovereignty, which is the basis on which the international organizations are founded, such as the League of Nations and the UN. When the League of Nations emerged, all along with the new international principles, such as banning colonization and calling for permanent peace and equality among states, the principle of inadmissibility of intervention imposed itself in the international relations. Thus, it was provided for in the era of the League of Nations by paragraph 08 of Article 15 and paragraph 07 of Article 02 of the UN Charter, in addition to a set of decisions of the General Assembly, mainly Decision 2131 of 1965.

² Abu Hif, Ali Sadek, the general international law, knowledge facility, Egypt, 1981, pp. 210-211.

³ Paragraph 02 of Article 04 of the UN Charter states that all members shall refrain in their international relations from 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.

⁴ Hendaoui Houssen Ahmed Mohamed, the humanitarian international intervention: a jurisprudent and applied study in the light of international law rules, Arab renaissance house, Egypt, 1997, p. 44.

b. Intervention through the Social and Economic Council:

The Council issues unmilitary measures and procedures. In this regard, Article 62/3 of the UN Charter provides that it (the Economic and Social Council) may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.⁵

c. The intervention through the Security Council:

It is in charge of maintaining international peace and security, according to Article 24 of the Charter. Thus, it has the right to issue decisions against the violations of the human rights to preserve the international peace and security. Chapter 06 of the UN Charter calls for the peaceful conflict resolution while Chapter 07 provides for resorting to the Security Council, which draw its prerogatives from Articles 41 and 42 of the UN Charter. Since this military intervention expresses humanitarian motives, the military activities are an exception because the use of force is banned. In this context, they are launched after massive and recurrent violations of human rights take place within a given territory⁶. Thus, the humanitarian intervention takes different forms, ranging from the peaceful to the military aspects, in order to stop the human sufferance that results from natural or human-made disasters.

The international society's need for intervention in some cases is not a violation of the sovereignty; rather, it is an internationally ensured right. Nevertheless, the problematic that arises during the enforcement of the humanitarian international law manifests when the intervention is based on revenge or political and economic interests. Despite the intervention has apparent noble principles, the results of the international practices confirm that the humanitarian interventions are based on geopolitical interests and the vitality of the states. Therefore, many humanitarian interventions covered by the international legality are a neocolonial invasion⁷.

Second: The exceptions of banning the use of force in the UN Charter:

The UN Charter provides for important exceptions under the necessary legal mechanisms for self-defense against the external aggression, and for maintaining the collective peace and security.

1. The legal defense:

War was not banned in the traditional international law because the right to legal defense played an important role in justifying the use of military force in times of peace. Many states justified their war waging by the legal defense. However, with the start of the 20th century, war was criminalized and the use of force in the international relations was restricted by the international law and the UN Charter. In this regard, Article 51 of the UN Charter enshrined this principle and considered it an exception for using force in solving the international conflicts⁸. Some jurisprudents who support the humanitarian intervention see that it is a collective legal defense because the violation of the human rights is a violation against the whole international society.

The exercise of the right to legal defense based on Article 51 is temporary, not absolute, until the Security Council intervenes to maintain the international peace and security. Article 51 identifies the case of

⁵ Hachache Rami Nemer Radi, the humanitarian intervention and its problematic with the state sovereignty, Magister thesis in general law at the Faculty of Higher Studies of the National Success University, Palestine, 2015, p. 144.

⁶ Fawzi Ouseddik, the principle of inadmissibility of intervention: why and how?, Vol. 01, the modern book house, pp.232-233.

⁷ Al Jendi Ghassan, the theory of intervention for humanity in the general international law, the Egyptian journal, issue 43, 1987, p. 161.

⁸ Sellam Samira, the principle of sovereignty between the humanitarian intervention and the protection responsibility, journal of laws and political sciences, University of Khenchla, 07 January 2017, p. 261.

legal defense, distinguishes it from the revenge, and shows the difference regarding the content and meaning of using armed force⁹. Based on what was said, the use of force for legal defense has three conditions:

a. Facing an external aggression:

Article 51 provides that facing an external aggression is the basic condition for the right to legal defense to deter the external risk.

b. The necessity of the natural defense:

The legal defense stems from the existence of a case that necessitates resorting to military defense to deter the risk and face the foreign armed force that aims at militarily attacking the states to harm its vital elements.

c. Being subject to the control of the Security Council:

Exercising the right to legal defense is a temporary measure by which the state immediately notifies the Security Council about all the measures taken to defend itself. In addition, the legal defense must stop if the Security Council intervenes to take the necessary measures to maintain the international peace and security. Since the Charter did not define the aggression, other entities, such as the General Assembly, set a unified definition of aggression in Resolution 3314 of 1974. Thus, we must point that the rules of this condition were violated and distorted, what made Article 51 a pretext for intervention in the domestic issues and the exercise of violence and force. For instance, USA launched war against Afghanistan in 2001 after 09/11 events and used two discourses about the events; the 1st was political and called for fighting terrorism while the 2nd was addressed to the UN because the attacks were an aspect of aggression and gave USA the right to respond in correspondence with Article 51 of the Charter¹⁰.

In fact, the condition of armed aggression, its descriptions, and the conditions of self-defense are not found in the US war against Afghanistan and Iraq; USA launched traditional wars with no legal basis. Besides, the war was not temporary and with no right to immediate response. Therefore, this act was a revenge and a prevention at the same time.

2. Maintaining international peace and security:

The main aim of the UN Charter is maintaining international peace and security¹¹. A system of collective peace and security was built through the UN institutions and branches, and may even require the use of force by the Security Council to deter any aggressive state in accordance with Chapter 07 of the Charter. In this regard, there are exceptions to the principle of banning the use of violence, mainly in case of legal defense as mentioned in Article 51. We must point that despite its complementarity, this system witnessed issues and different interpretations were given to its texts, mainly those regarding maintaining peace and security¹².

The UN Charter has no explicit reference to the concept of maintaining peace and of peace actions, but is related to the basic concept of establishing the UN. In this context, it emerged as a correlation that the Charter did not tackle. However, the international circumstances needed it due to the failure in exercising the full role in the context of collective security¹³. The concept of maintaining international peace and security is related to the concept of sovereignty and the right to self-defense. A development was witnessed in this concept, as the domestic conflicts in the states and the severe violations of the human

⁹ We must point that the revenge works are legally banned. In addition Article 51 does not provide for the armed activities the state exercises under preventive measures.

¹⁰ Abd al Hakim Suleiman Wadi, the exceptions of banning the use of force in the international law, axis: legal studies and researches, the civilized dialogue, issue 15, 2021/10/4119, <https://www.ahewar.org/debat/show.art.asp?aid=363455>.

¹¹ Paragraph 01 of Article 01 of the UN Charter.

¹² See Articles 33, 39, 41, and 42 of the Charter.

¹³ Omar al Jouili, the UN and the human rights: the development of the international political mechanisms, issue 127, July 1994, p. 160.

rights turned into 1st degree threats according to the definition of the UN while the environmental threats were considered 2nd degree threats. The focus shifted towards protecting the international policy from chaos that may result from the domestic conflicts.

According to the strategic defense report by NATO in 1998, priority must be given to the dangers that affect stability, such as the state division, which may lead to international conflicts, terrorism, organized crime, violations of human rights, spread of mass destruction weapons, and other illegal practices. Unlike the era of Cold War, where the focus was on the big states that influence the balance of power, the focus now shifted towards the weak states, which are a cradle for terrorism, immigration, and instability.

In addition to the military and security dimensions that accompany the actions of maintaining peace, other dimensions were imposed by the nature of the conflicts, which require spreading peace maintenance forces, or by the new orientation of the UN after the Cold War, which sheds lights on the threats against the international peace and security. Thus, the peacekeepers' mission got developmental and humanitarian dimensions. Regarding the humanitarian dimension, the UN pays increasing attention to the human rights, as the mechanisms of protecting and respecting these rights witnessed a core development and shift from the humanitarian diplomacy to recognizing the international penal liability of the individual or the group that violates the human rights. Moreover, the right to intervention for humanitarian aid was enshrined and the human rights and maintaining the international peace and security were linked. Consequently, imposing the human rights respect and protection gained an important position in peacekeepers tasks, and many associations were established for the protection of this right that turned into one of the main dimensions in the new tasks of peacekeepers, who provide humanitarian aids, protect people from the diseases, hunger, and armed aggressions, and focus on human rights to achieve international and national peace and security. In addition, the peacekeepers' intervene to take off the weapons of the conflicting sides and collect, identify, and get rid of the weapons in the actions of comprehensive peaceful settlements and reintegration of the conflicting sides in the civil life. Finally, they remove the landmines in their endeavor to maintain peace.

CONCLUSION:

The international conventions insist on protecting the national sovereignty and on the inadmissibility of direct or indirect interventions. This is a binding rule set by the international law. Its violation is illegal. Nevertheless, lately, mainly after the end of the Cold War, we witnessed many practices that affect the states' sovereignty despite that Article 02 of the UN Charter explicitly provides for the inadmissibility of intervention and bans the use of force in the international relations.

In addition, the study confirms that some international interventions, whose pretext is protecting the human rights or fighting terrorism, are mere actions with political interests that aim at violating the sovereignty and gaining profits. This is an aspect of exploiting the human rights issues. We notice that some effects of the Security Council interventions were not in harmony with the aims of the UN, and that the experiences of the humanitarian intervention did not succeed.

SUGGESTIONS:

- It is necessary to respect the principle of state sovereignty, which was promoted in the international conventions. Besides, the big states must aspect the binding legal rules and insist on the real practice of the sovereignty.
- The UN must regulate the international intervention and identify clear conditions and criteria.
- The humanitarian intervention without delegation from the Security Council must be considered an aggression. Therefore, the Security Council must react and refer these cases to the International Criminal Court to sue the violators.

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