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HUMANITARIAN INTERVENTION AT THE CROSSWORDS: BETWEEN LEGAL MANDATES AND MORAL IMPERATIVES

AUTHORED BY - RASHI BUNG

1. Abstract:

To get a broad understanding of the legal and ethical aspects of humanitarian intervention in International Law this article serves best. Thus, the purpose is to provide a critical investigation of the changes in the legal regulation of humanitarian intervention, examine its various moral grounds as well as identify the prospects and challenges it poses to modern international relations. This research draws on a plethora of conventions and treaties, and several case studies that played a significant role in Developing the Doctrine of Humanitarian Intervention. Through analysing the inherent contradiction of the state-centered approach and human rights protection in the context of humanitarian intervention implicitly suggested by the international community of states, this paper will contribute to addressing the questions of legitimacy and effectiveness of using force in international relations as well as the future potential and limitations of humanitarian intervention as one of the tools for addressing the issue of critical humanitarian needs in a highly interconnected globalized world.

Significant part of the paper will focus on discussing the dark ethical aspect of humanitarian intervention. We will grapple with a series of challenging and often contentious questions: With regard to this matter, under which situations, if any, would it be acceptable to breach the sovereignty of a state for the purpose of practicing human rights? In what measure can the principle of non-intervention be preserved and the responsibility to protect the threatened populations be implemented? What are the consequences, positive, negative or otherwise likely to ensue from acts of humanitarian intervention?

Furthermore, this article will review on the geopolitical implications of humanitarian interventionism and focus on the manner in which power relations, interests, and politics of world nations determine if to intervene or not. As for the concept of humanitarian intervention, it is important to examine the arguments against it and take the criticisms that have been made seriously, namely, that it is selective, neo-colonial and open to abuse by powerful states. The remaining part of this research will thus seek to present an analysis of these legal, ethical, and

political aspects with a view of presenting a comprehensive analysis of the various issues associated with humanitarian intervention. This analysis also has a purpose of not only enriching the academic discussion on the issue but also providing the international community with real strategies on how they can balance between promoting the sovereignty of states and the equal protection of the human rights of individuals in the ever-expanding global interaction in this 21st century.

Keywords: Humanitarian Intervention, State Sovereignty, Non-Intervention principle.

2. Introduction:

Modern humanitarian intervention which is a complex concept that involves interaction between international law, ethics and politics has become one topic that continues to inspire much controversy and liveliness in contemporary international relations. That is why, as a law student having a great interest in the issues of human rights and international humanitarian law, I consider the intricate questions concerning humanitarian intervention not only intriguing and stimulating in conceptual terms, but also as critically important for the development of the further Dogmatics of humanitarian interventions.

In its very essence the concept of humanitarian intervention is a direct threat to the general Westphalian principle of state sovereignty. It suggests that there could be situations that are so severe that they violate human rights or take the lives of a large number of people. The international community has the right and even obligation to interfere into state's domestic affairs. This rather piquant thought generates a wide range of questions as to the definition of the state sovereignty and its possible elimination, the concept and scope of the international law protecting human rights, and the principles of responsibility uniting the world community in the cases of humanitarian catastrophes.

Thus, using this all-encompassing article, I want to start a journey of discovery of various aspects of humanitarian intervention. We will see how the idea has grown from being perceived as a theory that was quite often a subject of debate and often disputable to become a principle that has been provided with an ever-rising recognition and legitimacy within the legal order of international law. In our journey, we will be analysing in detail some of the major global conventions and treaties, which have played a part in shaping this doctrine. Moreover, to illustrate both the hopeful and ugly sides of humanitarian intervention, we will analyze the

most important case studies.

Consequently, this article aims at offering a critical, systematic, and futuristic perspective on humanitarian intervention which is considered as a tool for human rights protection that has a lot of controversies and issues. In this case, our quest will help to advance the scholarly and policy-making work in progress on how best to protect against mass atrocities and significant human rights abuses around the globe.

3. Legal Framework and Evolution:

The idea of humanitarian intervention can hardly be traced to the pre-World War II period, even though it has its seed planted firmly in the post-World War II period and the formation of the United Nations. The UN Charter states in Article 2(4) in this regard the prohibition on intervention in domestic affairs of sovereign states, but at the same time it calls for the protection of human rights across the globe.¹ This tension between sovereignty and human rights is actually the core subject of the debates on humanitarian intervention for years.

Humanitarian intervention has been legalised over the years and the legalisation has advanced in scale over the years due to alteration in notions of international law and the upsurge in human rights diplomacy. Key milestones in this evolution include:

- 1. The Genocide Convention (1948):** This treaty puts legal duties of genocide prevention and punishment on the country's signatory to the treaty, which may create legal grounds for intervention in case of such acts.² According to the convention, the meaning of genocide is "crime committed with the intent to destroy a national, ethnic, racial or religious group, in whole or in part" and stipulates it as the crime in the international law, which was breakthrough in the creation of human rights law.
- 2. The Geneva Conventions (1949) and Additional Protocols (1977):** These set out clear guidelines on the safeguarding of civilians in wars and other exceptional circumstances.³ The Fourth Geneva Convention contains rules concerning the

¹ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

² UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.

³ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287.

protection of civilians during war while the Additional Protocols offer a protection also to victims of international and non-international armed conflict.

3. The International Covenant on Civil and Political Rights (1966): This covenant reaffirms the basic principles which apply to the international community with regards to the rights of people. It encompasses civil and political liberties as well as rights and prohibits state parties to the treaty from practicing acts which are contrary to the rights enshrined in the treaty and thus the state parties are obliged to undertake administrative, legal and other necessary actions.⁴

4. The Helsinki Final Act (1975): Though mainly regulating the security of the European region, the other targets of this agreement included respect of human rights and fundamental freedoms that played a part in the increasing acknowledgment of human rights by the international community.⁵

5. The Responsibility to Protect (R2P) doctrine: R2P that was endorsed at the 2005 World Summit claims that sovereignty involves the responsibility to protect the populations from mass atrocities.⁶ This doctrine therefore presents a new way of perceiving sovereignty not only as a right, but also as a responsibility.

The development of these legal instruments shows that the process of change in international law went from the strict non-interference to the state sovereignty's approach to something more complex, in which the international community is involved in the protection of human rights. This change has been made possible by rising appreciation of the link between international security and the moral responsibility of stopping genocide.

Although, it should be apparent that the legal justification for humanitarian intervention is still rather ambiguous. There is no provision in the UN Charter for humanitarian intervention where there is no approval of the United Nations Security Council, which is why there has been an ongoing controversy as to the legitimacy of the unilateral or the coalition-based military interventions that have been made without consent of the United Nations.

3.1: Key Issues Addressed:

Humanitarian intervention seeks to address several critical issues that challenge the international community's conscience and test the limits of international law:

⁴ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁵ UN General Assembly, 2005 World Summit Outcome: resolution / adopted by the General Assembly, 24 October 2005, A/RES/60/1.

⁶ Constitution of India, 1950, Article 51.

- 1. Protection of civilians from mass atrocities:** These are stopping and averting genocide, war crimes, crime against humanity, and ethnic cleansing. In 1994 Rwandese genocide the international actors had watched impassively without lifting a finger; thus, the result was genocide.
- 2. Ensuring access to humanitarian aid in conflict zones:** Repeatedly, parties to a conflict will wilfully prevent humanitarian supplies from reaching those in need in some sort of warfare strategy. Humanitarian intervention may have objectives such as the protection of humanitarian corridors and viper age for the delivery of humanitarian assistance to the target population.
- 3. Halting systematic human rights violations by oppressive regimes:** This could be done with a view of preventing things, such as torture, extrajudicial killings and other forms of human rights abuses that are pervasive in many societies.
- 4. Preventing regional destabilization due to large-scale humanitarian crises:** Conflict driven forced migration displaced people when mobilized in huge numbers can destabilize countries and regions. Such crises may require humanitarian intervention in order to eradicate the causes of the crisis with an eye towards containing the general insecurity within a certain region.
- 5. Protecting vulnerable groups:** This involves protection of the basic human rights which include women and children, the minorities and others who are vulnerable during warfare or under oppressive regimes.
- 6. Upholding international law and norms:** Humanitarian intervention enables the international community to punish those who violated or assisted in the violation of international legal standards and norms.
These questions are normally related and tend to combine, forming complicated humanitarian crises that can hardly be solved by the international players.

3.2: Indian perspective and domestic laws to adequate measures:

The Indian approach to humanitarian intervention has been very careful and its peculiarities are based on the respect for the sovereignty of states and the inviolability of non-interference. This seems to be due to India's colonial past as well as its adherence to the policies set out in the Non-Aligned Movement. Nevertheless, India has also realized the need for humanitarian intervention at some occasions, showing that it has a rather complex stance in this issue trying to combine sovereignty and humanitarianism interests.

India has an engagement with humanitarian International Law especially on the basis of Article 51 of the Indian Constitution. “Article 51 directs the state to:

- a) Promote international peace and security;
- b) Maintain just and honourable relations between nations;
- c) Foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- d) Encourage settlement of international disputes by arbitration.”⁷

The UN Charter also intends to (a) maintain peace and security of people internationally. ⁸Hence the need of maintaining just and honourable relations if any between nations. Structure: (b) promote recognition of obligation incident to state membership or constituted nations in their relations to one another.⁹ The CYR also: (c) promotes the settlement of international disputes through arbitration.¹⁰

While India does not have specific domestic laws governing humanitarian intervention, its foreign policy is guided by principles that align with the spirit of humanitarian intervention:

- 1. The promotion of international peace and security:** India has always supported the concept of Peaceful settlement of disputes and has been actively participating in United Nation Peace-keeping forces.
- 2. Respect for international law and treaty obligations:** India is a member of most of these global human rights conventions and has in general endorsed UN endorsed operations.
- 3. Peaceful settlement of international disputes:** India prefers negotiations as effective ways in addressing international disputes since it affirms non-use of force.
- 4. South-South cooperation:** India occasionally sends aid in the form of food and other products to developing countries thus supporting the spirit of solidarity.

India’s response to Instance of humanitarian intervention has not been ideological, but situational. For instance:

- For instance, in 1971 when the Pakistan security forces were committing genocide against Bengalis in what was then eastern Pakistan now Bangladesh the Indian army intervened partly on the basis of the right to protect vulnerable persons. ¹¹

⁷ Constitution of India, 1950, Article 51.

⁸ Article 1(1) of the United Nations Charter.

⁹ Article 1(2) of the United Nations Charter.

¹⁰ Article 33 of the UN Charter ; in line with CYR (Charter of the Organization of American States

¹¹ **Gary J. Bass**, *The Blood Telegram: Nixon, Kissinger, and a Forgotten Genocide* (Alfred A. Knopf 2013)..

- In the Sri Lankan civil war, humanitarian aid was given in the initial years and in 1987 IPKF (Indian peace keeping force) was sent which was however dubbed as a Failure.¹²
- In recent times, India has intervened where its actions have been authorized by the UN but it has been reluctant where there are no clear UN charters. For instance, during the vote on intervention in Libya in 2011 India had declined to vote in the UN Security Council.¹³

India's stance on humanitarian intervention resonates with its broader foreign policy goals such as its desire for the non-permanent membership of the UN Security Council, the attempt to portray India as a responsible nation to the international community and the inherent principle of sovereignty and non-interference. That is the direction that India's foreign policy is expected to tread as it rises on the international system, perhaps assuming a more proactive role in humanitarian intervention.

3.3: Case Studies:

The stance is unimpressive and can be attributed to India's political background and its post-World War II foreign policy interest's country's adherence to principles of non-interference. Here are several case studies that illustrate India's involvement in situations that could be considered humanitarian interventions or related scenarios:

- 1. East Pakistan Crisis (1971):** We may therefore conclude that this is arguably the most blatant example of India participating in what may be characterised as a humanitarian war. India got actively involved militarily in the liberation war of East Pakistan which is now Bangladesh.¹⁴

Key issues:

- This is on humanitarian grounds in a bid to save Bengalis from the grip of the death squad.

¹² **Rajesh Rajagopalan**, *Fighting Like a Guerrilla: The Indian Army and Counterinsurgency* (Routledge 2007).

¹³ Libya 2011 UN Intervention; UN Security Council Resolution 1973 (2011) and C. Raja Mohan, *India and the Balance of Power*, Foreign Affairs(2011).

¹⁴ 5. Indira Gandhi, Statement on Bangladesh Crisis, in Lok Sabha Debates, 5th Lok Sabha, 11th Sess., Vol. X, at 127-28 (Dec. 6, 1971) (providing India's official rationale for its intervention, emphasizing the humanitarian nature of the action).

- Humanitarians' intervention with captivating propaganda of the sovereignty of the nations on the verge of ruin, and security threats, which have become a global menace.
- Effect of foreign interference on the policy of non-interference in the geopolitics of South Asian Association for Regional Cooperation countries

India retorted on ground of humanity stating that it was their duty to check the genocide of the Bengali people by the West Pakistani forces¹⁵. This intervention meant the birth of Bangladesh and made the whole international society ponder about the doctrine of humanitarian intervention and the so-called non-intervention.

2. Sri Lankan Civil War and IPKF Deployment (1987-1990):

One of the most complex examples of operation with certain humanitarian characteristics is a conflict in Sri Lanka or more precisely the Indian intervention in Sri Lankan Civil War through its utilizing the Indian Peace Keeping Force (IPKF).¹⁶

Key issues:

- On one hand, the geopolitical interests that the countries of the region pursue, on the other hand, humanitarian considerations that are to be taken into account.
- Some of the major challenges that are evident in the process of intervention in ethnic conflicts include the following;
- Constraints of Military Interventions for Humanitarian Crisis

First, India helped provide humanitarian aid and then it sends the IPKF in order to maintain the peace agreement. As this case is not one of the most clear-cut humanitarian interventions, it still illustrates the difficulties which may occur when intervening in a country's civil war even if humanitarian issues are involved.

3. Maldives Coup Attempt (1988):

India sent troops immediately in response to a coup attempt in the Maldives, even though this wasn't mainly humanitarian; the action does have aspects of protection of

¹⁵ S.R. Chowdhury, Bangladesh: The Role of India in the Liberation War, 21 J. Asian Aff. 45 (1972) (discussing India's involvement in the 1971 East Pakistan crisis and the humanitarian intervention doctrine).

¹⁶ Indo-Sri Lanka Accord, India-Sri Lanka, July 29, 1987, 27 I.L.M. 1256 (1988) (detailing the peace agreement that led to India's deployment of the IPKF to maintain peace).

a civilian government and preventing potential humanitarian disaster.¹⁷

Key issues:

- For instance, the administration of vaccines in an organized mass to curb possible outbreak of an ailment that has the potential of causing a humanitarian crisis.
- Participation on an invitation from a national authority
- This can only be achieved by balancing the regional political power and the humanitarian crisis that is faced outside this region.

This operation referred to as Operation Cactus showed India's readiness to act fast in its neighbourhood to restore and prevent possible humanitarian disasters.

4. Nepal Earthquake Response (2015):

Although this was not a military operation, India responded very quickly and extensively to the Nepal earthquake of 2015 to demonstrate its paradigm of humanitarian aid in the region 4.

Key issues:

- Soft power and humanitarian assistance which are the alternatives to war interventions
- As the events mentioned above, the co-ordination of the international humanitarian efforts
- On the one hand, they provide sufficient support to prevent the collapse of a country's political institutions but, on the other hand, they do not infringe upon the sovereignty of the country they are attempting to help.

India had staged its rescue teams, medical and relief support within hours of the occurrence of the earth quake through Operation Maitri hence it can launch a rapid and humanitarian disaster response in the region.¹⁸

These case studies detail the specific ways in which the OSR has concerned itself with the problem of humanitarian intervention and assistance within India. They are an embodiment of

¹⁷ R.H. Zahlan, India's Intervention in the Maldives: Operation Cactus and the Protection of Civil Government, 32 Asian Surv. 1021, 1024-25 (1992) (discussing India's response to the Maldives coup attempt and its focus on protecting the civilian government and preventing a potential humanitarian disaster).

¹⁸ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Nepal Earthquake 2015: International Humanitarian Response Report, OCHA/NPL/2015-001 (analyzing the coordination of international humanitarian efforts, including India's significant contribution through Operation Maitri).

considerations of sovereignty, leaders' desire for hegemony in their regions of interest and the call for humanitarian attention. Indian cases are a good example of the challenges that implementing intervention in South Asia is bottled with historical, cultural, and geopolitical factors that shape the decisions taken. The cases also testify to India's propensity for non-military action where possible, more especially where people are involved, exercising diplomacy, economical and soft power initiatives in responding to humanitarian disasters. It is in line with the principle of non-interference that India has always held while ensuring that the nation can get involved in humanitarian issues.

Having a look at the above-mentioned experiences, it clarifies the current stance of India regarding humanitarian intervention in international forums. They pointed out that India has unauthorised interventions by the UN and its restrained use of military power, its priority in the context of humanitarian crises and its strategic considerations for regional stability and cooperation.

3.4: Criticisms and Debates:

There is no doubt that humanitarian intervention remains an extremely contentious issue in international law, moral philosophy and politics. The main arguments and criticisms surrounding the concept include:

1. Legality and the UN Charter:

The critics say that humanitarian intervention, particularly the one that has not been mandated by the UN Security Council, is unlawful since it breaches on use of force and non-interference postulates of the UN Charter. Opponents are easily dismissed through pointing to the UN Charter provisions on human rights and the emerging doctrine of the right to intervene in special circumstances known as the Responsibility to Protect.

2. Selectivity and inconsistency:

Some critics argue that it is true that the idea of humanitarian intervention is carried out selectively and rich countries carrying out intervention in the regions where humanitarian goals are aligned with political ones. This has raised controversy and scepticism of the concept, which defeats its purpose of recognition.

3. Neocolonialism and Western dominance:

Some, especially from the Global South, may have a negative attitude to the humanitarian intervention since they think it might be an instrument of the Great

Powers to maintain their influence over the weaker states, which resembles the colonial justification of the interference

4. Unintended consequences:

Solutions can in some occasions be destructive by fuelling more hostility, altering the regime in the process or leaving the affected area insecure. In this regard the cases of Libya and Iraq are often cited as examples.

5. Sovereignty and the international order:

Some people worry that by practicing humanitarian intervention it will erode the theme of non interventionism that has been the base of international relations since Westphalia peace signing

6. Motivations and abuse:

Some argue that humanitarian rationales become merely figments to further the state's naked self-interests; the potential for the abuse of the idea is always possible.

7. Effectiveness and long-term impact:

Concerns still arise with regards to the efficiency of humanitarian interventions in maintaining peace, besides serving the role of a protective shield of people's rights; it is apparent that many a time humanitarian intervention does not seek to deal with the core issues that lead to conflict 31.

8. Alternatives to military intervention:

Critics, however, contend that more should be provided to preventive diplomacy, economics, and 'bottom up' reconciliation as the replacement for warfare.

9. Decision-making process:

The present paradigm where the UN Security Council bears the major blame of sanctioning interventions is faulted for being governed by the political self-interest of the five permanent members and their unwillingness to change by using their veto powers.

10. Post-intervention responsibilities:

Disputes arise as to the role and the duration of commitments by the intervening parties when the crisis has been ordinarily managed, with other issues being nation building duties and reconstruction stability.

These criticisms and debates are typical of the complexity of humanitarian intervention and problems of its application in the world with increasing tendencies towards globalization and diversification of the states' interests. But they have signalled the need to enhance the legal and ethical standards in humanitarian intervention and the

practice of humanitarian intervention as well.

4. Conclusion:

While studying the multifaceted problem of humanitarian intervention as a law student, I am rather impressed by the fact that a choice in this matter raises numerous questions to international law, ethics, and governance. Some of the core issues that define this debate include how far the rights of each sovereign state begin and end as well as how each sovereign state should handle human rights while sovereignty is maintained.

This proposed research on humanitarian intervention provides an in-depth and thoughtful analysis of the legal, ethical, and geopolitical challenges associated with this intricate issue. By exploring the historical development of international law, the moral justifications for intervention, and the potential repercussions, this research establishes a solid basis for significant contributions to the subject.

The gradual change of humanitarian intervention from a topic that was viewed as rather dubious and questionable to the principle with which more and more states agree speaks to the evolving moral understanding that the international community is obligated to protect people threatened with the worst human rights abuses. The formulations of the legal instruments such as the Responsibility to Protect principle are some of the advancements made in this particular regard. Nonetheless the realisation of this principle remains equally problematic and continues to this date to bring other controversies with mixed results.

Key areas of focus in the research include:

- **Development of the legal framework:** Investigate how international law has evolved to address humanitarian crises, focusing on influential treaties and principles such as the UN Charter, the Geneva Conventions, and the Responsibility to Protect.
- **Ethical challenges:** Address the moral complexities surrounding humanitarian intervention. Examine questions like: When is intervention in a sovereign state ethically justifiable? What are the moral implications of collateral damage and civilian casualties?
- **Geopolitical considerations:** Analyze how global power dynamics, national interests, and geopolitical contexts shape decisions on humanitarian intervention. Consider issues of selectivity, neo-colonialism, and the potential misuse by dominant nations.

- **Case studies:** Review real-world examples of humanitarian interventions to highlight the intricacies and difficulties they present. Examine both successes and failures to derive important lessons for future interventions.

By offering a well-rounded analysis of the legal, ethical, and geopolitical dimensions of humanitarian intervention, this research will help foster a deeper understanding of the topic and contribute to policy discussions. The emphasis on balancing state sovereignty with human rights protection is especially crucial in today's interconnected global environment.

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