



Humanitarian Intervention versus United Nations Charter:

A Critical Appraisal

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ABSTRACT

Humanitarian intervention is a widespread and proactive notion. The concept of humanitarian intervention is vast, and the main reason of humanitarian intervention practice connects to help the vulnerable people. This paper looks at the UN Charter to examine the humanitarian intervention on the base of UN Charter. It is undeniable that Charter provides the sovereignty of every member inside UN and gives no legitimate power to any member for using force. Although humanitarian intervention not independently regulated and based on United Nations Charter, it is become internationally an acceptable practice. This paper argue that UN Charter exhibit dual tendency in term of Humanitarian intervention.

Chapter One:

Introduction

1.1.

Humanitarian intervention is a comprehensive and proactive concept. The notion of humanitarian intervention is vast, and the main reason of humanitarian intervention practice connects to help the innocent citizens. Scholars have been examined the definition of humanitarian intervention in terms of varieties range of actions including humanitarian assistance and forcible military intervention. Indeed, humanitarian intervention defined by Sean as “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 recognized human rights”(Murphy, 1996:11). In addition according to Heinza (2004) Humanitarian intervention defined as the use of military force in another state by an outside actor for explicit purpose of preventing human suffering. Indeed, humanitarian intervention is now convincing with the foreign policy issue. However, what inspires the humanitarian intervention debate is a perceived tension between the values of ensuring respect for fundamental human rights and the primacy of the norms of sovereignty, non-intervention, and self-determination which are considered essential factors in the maintenance of peace, security and international order.

Apparently, United Nations as an international organization founded in 1945 after the WWII to maintaining international peace and security, developing relations among states and promoting social progress, better living standards and human rights(Hill, 2004:3). Currently, the work of UN reached every part of global corner. The main functions of UN are peacekeeping, peace-building, conflict prevention and resolution, and humanitarian intervention within international level. Indeed, it is undeniable truth that the UN’s act affects every state, community, and individual. The United Nations has made enormous positive contribution in maintaining international peace and security. Inside the United Nations, Charter is the constituting instrument, setting out the rights and obligations of member states and establishing United Nations organs and procedures. According to Paul the Charter established six principal organs of United Nations: General Assembly, Security Council, The Economic and Social Council, The Trusteeship Council, Secretariat and International Court of Justice (Baylis, Smith and Owens, 2008:314). It also contains numerous subsidiary organs, agencies and programs. According to Bennett and Oliver (2002) the UN Charter is significant because it is the fundamental law and constitution for general purposes that exist in today’s world. Thus, it creates an elaborate structure through which states have obligated themselves to cooperate for many activities. On the one hand, UN Charter prohibits the use of military intervention. Contrary, on the other side, UN Charter recognizes the legal status of individual human rights, which is embodied in the Universal Declaration of Human Rights.

The current United Nations Charter does not address the acceptable use of force for humanitarian intervention, causing debate among the members of the UN and scholars regarding when force is acceptable. Indeed, using force in protecting humanitarian issues has great impacts on international arena. For instance, Kosovo may have been an exception to the legality of force in humanitarian intervention, but similar incidents occurred in previous decade. According to Hehir (2008) however, with the end of the Cold War, the ideological bipolarity does not influence



decisions for humanitarian interventions anymore, but there are still cost and benefit calculations needs to consideration about taking humanitarian intervention or not. Indeed, current conflicts in the Sudan, Cote d'Ivoire, Libya, Syria and Rwanda exemplify the need for the body of international law to address the issue. But, the problem is when the use of force is appropriate? And, what is UN's role in addressing the problem?

1.2. Statement and Significance of the Problem:

The emergence of the international security studies is a response for the need of more understanding global issues and security events. Nevertheless, any international community needs a topic to debate and disagreement to get sufficient information about that event in international level concerning security matters. Indeed, any academic institution needs new ideas and theories. The current dominant topic without doubt is humanitarian intervention and the role of United Nations Charter. The problem is who give legitimacy of using force in the name of humanitarian intervention? On what bases humanitarian intervention takes place? Is it UN Charter that gives legitimacy of using force? What are the justifications inside the Charter that manifest to use force in humanitarian intervention? Certainly, by examining past UN involvement in humanitarian intervention, it is instructive to discuss the specific justifications for the use of force. The significance of this paper is to understand the appropriate relation between the humanitarian intervention and the Charter in particular, the legality of using humanitarian intervention under the United Nations Charter.

1.3. Methodology and Data Collection:

In this paper qualitative method has been used in collecting data. The way that data has been collected is through engaging with secondary references such as books, articles, journals, newspapers and academic publishing. The notions of the relevance thinkers have been collected from books and articles, international reports, newspapers, magazines and UN Charter that engage intensively with the specific area of the study. The main texts that used in this work are journals, scholar articles and books. This paper looks at the UN Charter to examine the humanitarian intervention on the base of UN Charter. It is undeniable that Charter provides the sovereignty of every member inside UN and gives no legitimate power to any member for using force. Although humanitarian intervention not independently regulated and based on United Nations Charter, it is become internationally an acceptable practice. **In this paper I argue that UN Charter exhibit dual tendency in term of Humanitarian intervention.**

Chapter Two:**Literature Review**

This part gives a presentation of literature about the study. The centrality of this study is to make debate about Humanitarian intervention and role of United Nations Charter. This part is about presenting and introducing some prominent thinkers' ideas and theories about Humanitarian intervention in the global arena.

2.1. Humanitarian intervention: Normative versus Realist perspective:

Realists see humanitarian intervention as undermining the basic doctrine of sovereignty and posing a danger to international order. In his effective book *“Humanitarian intervention after Kosovo; Iraq, Darfur and the record of global civil society”*, Aiden Hehir clearly exemplified the main theoretical perspective of normative and realists thesis on humanitarian intervention. Author demonstrates that the fundamental assumption inherit in the normative thesis is that human rights are universal and state sovereignty must be made subordination to these inviolable rights. According to Chatterjee and Scheid (2003) state's sovereignty shouldn't be defended from outside military intervention when it brutalizes it is own people. Indeed, according to normative perspective humanitarian intervention is more susceptible to accepting the moral pressure and advocacy is targeted at these states that violate human rights.

Realists' framework is different from the normative position. Indeed, the notion of common humanity is completely opposed to the statist paradigm which is predicted on the argument that states do not have moral responsibilities or the obligations to aid those beyond their borders as manifested by Chandler (2002). According to Aidan realist perspective concerning morality in international relations is based on four key premises relating to human nature, power, national interest and morality. Author illustrates that selfishness and self-interest are central to man's nature at the individual level and transfer to national interest at state level. The theories which are driven from realism perspective are; game theory, hegemonic stability and balance of power. In game theory, realists believe that states attain the relative gain and states are much concerned about what the state gain. In case of humanitarian intervention states only concern about their gain in military intervention and this produced war between states (Baylis and Smith, 2005:180). Indeed, in international security studies there is no overarching authority with the power to impose the order that overcome internally in functioning states. According to Knudsen (1997) any right of humanitarian intervention characterizes a serious threat to the element of international society. Consequently, morality is not an objective fact and certainly not the preserve of enlightened states in realistic perspective.

2.2. Humanitarian Intervention based on International Law:

In his famous book *“humanitarian military intervention; conditions for success and failure”* Taylor clearly distinguished and differentiated between natural law and positive law regarding humanitarian intervention. Certainly, natural law is derived from moral reasoning. It holds that the



proper behavior is governed by precepts that can work on the base of all national being. According to Taylor, natural law recognizes the right of sovereigns to use force to uphold the good of the human community. In this perception humanitarian intervention is morally an accepted acts that done under the authority of sovereign states. On the other side, under the influence of positive law, relations between states in international arena viewed that sovereign government has the right to rule within its own territory as it sees fit without fear of outside interventions.

Apparently, Bennett and Oliver epitomized the United Nations Charter as a part of the developing body of international law. The significance of the Charter as compared with other treaties lies in its principles, scopes and capacities for generating a chain of activity in international level. Indeed, according to authors, UN Charter is not a static legal instrument but has grown through interpretation and usage. International law in positive sides has been altered as the Charter has been modified and amplified by such interpretation. Certainly, the UN Charter is significant because it is the fundamental law and constitution for general purposes that exist in today's world. Thus, it creates an elaborate structure through which states have obligated themselves to cooperate for many activities. The point of departure for the debate on justified military intervention is the tension between state sovereignty and individual rights that is embodied in the principle of positive international law. Indeed, on the one hand, UN Charter prohibits the use of military intervention, but, on the other side, UN Charter recognizes the legal status of individual human rights, which is embodied in the Universal Declaration of Human Rights.

Chapter Three:

Discussion

Humanitarian intervention under the United Nations Charter's regularities has become one of the key causes of controversies in contemporary international debates. Indeed, each of the issues characterizes and hereditariness in this debate relates to human rights, state sovereignty, and role of United Nations in the process of humanitarian crisis.

3.1. Historical Background:

After bloodiest and brutal commitment in World War II, the governing norms of international system underwent transition toward humanitarian driven policy and providing international peace and security. Consequently, United Nations as an international organization founded in 1945 to maintain international peace and security, developing relations among states and promoting social progress and human rights as manifested by Stephan(2004). Indeed, the right of states to defend their sovereignty was at tension with the emerging principle of intervention in providing and preserving international peace and security. According to Mary despite growing public morality and emerging civil society, the twentieth century was plagued with human rights violations and mass



suffering (Kaldor, 2007:17). Furthermore, both state and international organizations has been rigorously criticized for their failure to prevent the death of innocent peoples. Indeed, international community faces two main realities; the obligation to humanitarian intervention to protect human rights, and the obligation to their member states (as individual states) to enact policies in within their border according to their national interest. Throughout historical analysis numerous humanitarian interventions takes place by the United Nations, European Union and most notably by North Atlantic Treaty Organization.

The transformation of international norms after WWII was due to series global movements started in the 1960s. Indeed, these movements challenges classical concepts and formed transnational networks on particular issues such as human rights as exemplified by Kaldor (2007). Certainly, the era of globalization increased the role of media in growing the legitimacy of global civic society and producing conflicts with the state sovereignty on the base of humanitarian intervention. Humanitarian intervention seen as a way of enforcing international law where the state has failed and in order to minimize the casualties on all sides, and protecting civilian citizens. According to Von Hippel (2000) the norm of non-intervention in the domestic affairs of other states has largely been maintained in international law since the Treaty of Westphalia. Indeed, western powers has little in defending these rights when they act humanitarian intervention principles to overthrowing cruel regimes in Somalia, Bosnia, Kosovo, Darfur and other countries.

Apparently, during Cold War humanitarian intervention was mostly based as political issue. According to Hehir (2008) the humanitarian reasons were always far less important than geo-strategic considerations: Not human rights, but power relation between the Soviet Union and the USA, determined the decision to intervene. Indeed, the reality of this condition could be seen in Vietnamese case. For example Klintworth (1989:59) examined that “Vietnam did not justify its actions by humanitarian issues, but by claiming to react in self-defense”. There is no doubt that the same case happened when Tanzanian invaded Uganda in 1979. Definitely, the Soviet Union and the USA intervened merely when they could either prevent the spreading of communism or overthrow regimes led by capitalists as demonstrated by Seybolt (2008). Consequently, Cold War conditions limited political will to trigger an intervention just for humanitarian crises.

Moreover, after Cold War era and end of bipolarity unsure United Nations responses to the humanitarian intervention begin. Indeed, the indecisive UN response over humanitarian intervention creates crisis started from illegal but legitimate unilateral intervention as exemplified by Nardin (2003). According to Hehir (2008) with the end of the Cold War, ideological bipolarity does not influence decisions for humanitarian interventions anymore, but cost and benefit calculations move into consideration. The end of Cold War catalyses a renewed interest in humanitarian intervention. The removal constraints imposed by bipolarity presented new opportunity for proactive international engagement for both UN and Western States, but the controversies surrounding humanitarian intervention according to Mertus (1999) relates to debate about nothing less than the very purpose of United Nations.

3.2. State sovereignty, humanitarian intervention and United Nations Charter¹:

Humanitarian intervention has been conducted where state are not capable of providing minimum degree of security and order for their own citizens. Consequently, their life as Hobbes described have become “poor, nasty, brutish and short”. Indeed, the case of humanitarian intervention is very controversial case under UN principles and regularities. Furthermore, in order to understand the problem of intervention and state sovereignty, it is useful to define sovereignty at first. The term sovereignty defined in term of internal authority and external autonomy and independency as manifested by Heywood (2004). State sovereignty can not only be understandable in term of internal control, but also external recognition in international level. According to Kingsbury (1999) the normative inhibitions linked with sovereignty moderate existing inequality between states, and provide a shield for weak states and institutions.

The current United Nations Charter does not address the acceptable use of force for humanitarian intervention. Indeed, there is no straightforward legal code when it comes to international law and humanitarian intervention. However, the Security Council makes decisions based on the body of existing international law, particularly the UN Charter. Within United Nations Charter there is no reference toward humanitarian intervention. Indeed, Article 2(7) of the United Nations Charter prohibits the UN from intervening in the domestic jurisdiction of any state as it asserts that:

“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”(United Nations Charter, Article 2)

Congruently, in Article 2(1) the sovereignty of all member states guaranteed as it asserts that:

The organization is based on the principle of sovereign equality of all its members (United Nations Charter, Article 2).

This concept examined in many current provisions of international law. Indeed, apart from Article 2(7) and its principle that prohibits state to intervene in matters domestic jurisdiction of another state, there is also the principle of *pacta sun servanda* that states are under a duty to fulfill treaties in good faith as manifested in Vienna Convention on Law Treaties in 1969 (Lukashuk, 1989:517). Consequently, state can't be bound by a treaty unless it expressly signs or ratifies it. Therefore, even though there is in place an international institution which provides that its member states should work together in creating and enforcing international law, it is very much bound by the principles of state sovereignty, which it expressly preserved, and which largely means that international law is based on the good faith and cooperation of states. Indeed, in order to creates and enforce international law there should be consensus and will by sovereign states before taking actions as exemplified by Fernando (1998). Defiantly, United Nations Charter as an international law protects state sovereignty and did not mentioned any cases in the name humanitarian intervention. In

¹ In order to read about UN Charter in <http://www.un.org/en/documents/charter/index.shtml>

addition, the UN Charter in Article 2 (4) prohibits the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN. Moreover, there is no state right to use humanitarian intervention. No government has under any circumstances the right to violate the territorial integrity and political independence of another state in order to assist, for instance, the starving population of that state.

The prohibition on the use of force also has been confirmed by the International Court of Justice in the Corfu Channel Case in 1949. Indeed, this is considered to be a rule of international law which no subject of international law may derogated the norm as demonstrated by O`Connell(2000). Consequently, in legal terms, "international peace and security" has traditionally been narrowly defined as the maintenance of inter-state order. However, the practice of the Security Council can be seen to have modified this concept to include grave humanitarian crises. However, Murphy argues that the notion of a 'duty to intervene' by the United Nations, regional organizations, or states does not appear present in international law (Murphy 1996:295).

The controversies of humanitarian intervention and United Nations Charter become a prominent case in current era, because most of humanitarian crisis controlled directly under the United Nations regularities and obligations. Indeed, the difficulty is concerned with the concept of sovereignty of member states within United Nations as Robert Jackson (1991) demonstrated that many Third World states are essentially areas of international society and thus heavily dependent on international recognition. Consequently, as we have already observed, the issue of sovereignty continuously stand in the way of humanitarian intervention under the role of United Nations agreement.

3.3. United Nations and Humanitarian Justification:

Apparently, under the current guideline of United Nations Charter, a most controversial issue of international law today is that without UN Security Council authorization or General Assembly action, any use of armed force for humanitarian intervention would be regarded as legal or not. Indeed, Chapter VII deals with military and non military actions which can be authorized by Security Council. Inside UN Charter Article 39 refers to threat to the peace or act of aggression in which UN military action could be justified as it asserts that:

The security council shall determine the existence of any threat to peace, breach of peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security.(United Nations Charter, Article 39).

However, since the end of Cold War, the Security Council has justified the right of humanitarian intervention by adopting series of resolution which have expanded the definition of threat to international peace and security and gives rights to intervene domestic humanitarian crisis as manifested by Thomas (1999). Murphy argues that Security Council has legal rights to intervene in a target of states to protect citizens from widespread deprivations (Murphy, 1996:288). Consequently, United Nations Security Council agreed over the actions in Kosovo (1999) and there have been military interventions in Somalia (1992), Bosnia and Herzegovina (1995), Liberia and Sierra Leone, Albania (1997) as exemplified by Oliver (1999). Indeed, most of the actions justified by threat to international peace under Article 39 that gives legitimacy to Security Council to intervene in humanitarian crisis.



The UN Charter in Article 2 (4) prohibits the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the UN. Whereas in Article 51 provides for the inherent right of self defense against an armed attack as it asserts that:

Nothing in the present Charter shall impair the inherent rights of individual or collective self defense if an armed attack occurs against a member of United Nations, until the Security Council has taken measures necessary to maintain international peace and security (United Nation Charter, Article 51).

The combined effect of these Articles concentrates all use of force illegal except where it is exercised pursuant to the right of self-defense in the event of an armed attack or enforcing the purposes of the UN Charter, which include maintenance of peace and security. Indeed, before UN intervenes, the Security Council must draw up a mandate specifying the objectives of the operations as exemplified by James (Mayall, 2007:17).

Moreover, numerous international legal scholars argued that humanitarian intervention can be justified in the international law (precisely United Nations Charter) if it doesn't result in territorial occupation as Fernando Teason argues that

The rights of states recognized by international law are meaningful only on the assumption that those states minimally observe individual rights. The United Nations purpose of promoting and protecting human rights has a necessary primacy over the respect for state sovereignty (Fernando, 1997).

Additionally, according to Jane Stomseth international law could be change and allow humanitarian intervention occur as the practice and conducting humanitarian intervention under the regularities of UN becomes a custom as he asserts that:

The customary law approach encourages states to explain the legal basis and justification for their action forthrightly and, as a result, is more likely to contribute to the development of a normative consensus regarding the circumstances in which humanitarian intervention should be understood as lawful (Stomseth, 2003:253).

Certainly as it has been examined there are only two legal exceptions: collective self-defense and Security Council enforcement action under Chapter VII of the UN Charter. Contrary according to Byer and Chesterman many scholars reject the existence of possible justification for humanitarian intervention under Article 2(4), which would hold that unauthorized humanitarian intervention is legal because there is a customary international law for this practice. Their argument, in brief, is that there is insufficient state practice to establish such a customary international law (Byers & Chesterman 2003). Hence, broadly speaking, on an international legal positivist reading of current international law, a humanitarian intervener is acting legally if its intervention is authorized by the UN Security Council and illegally if its intervention lacks such authorization as demonstrated by Joffe (1994).

Another distinctive justification for Humanitarian intervention under United Nations Charter is human rights violation. According to Bennett and Oliver (2007) in seven different references to human rights, United Nations Charter declares promotion of human rights to be one of the basic

purposes of UN and specifies the responsibilities of major organs for implementing the goals. Indeed, in Article 76 (C) the Charter exemplifies the objectives of Trusteeship system “to encourage respects for human rights and fundamental freedom for all” (United Nations Charter, Article 76). Indeed, Security Council resolutions regarding Rhodesia (Zimbabwe), particularly the 1968 decision identify human rights situation as a threat to peace as manifested by Van Dyke (1970). Furthermore, United Nations was able to deliver humanitarian assistance in Bosnia in difficult situation (Vayrynen, 2003:5)

When it comes to self defense it is necessary to differentiated self-defense with the self interest. Actually, many scholars indicated that humanitarian intervention is based on the self-interest of five permanent member of Security Council. For instance in the Rwandan’s genocide of 1994 most states were slow in taking decision and action, because the probability of intervention success was too low (Barnett & Weiss, 2008:48). In addition, it is obvious that human rights violations occurring in many countries, in which no intervention takes place, gives rise to the additional suspicion that any particular military humanitarian intervention is subjective to criticize as manifested by Merle (2005).

3.4. Case Study: United Nations and humanitarian intervention in Iraq (1991)

In order to understand the objectivity of humanitarian intervention under the regularities and principles of United Nations the case study of Kurds examined. Indeed, after Gulf War Kurdish citizens who lived in the northern of Iraq rebelled against dictatorial regime of Iraq. Consequently, Kurdish people controlled most of Kurdish cities in the north of Iraq. Contrary to this movement, Iraqi government had regained control via military process and started oppressing Kurds. According to Mc Dowell (1996) Iraqi government captured thousands of Kurds and killed more than 10000 civilians. As a result of this act, Kurdish people fled their homes toward Iranian and Turkish borders and after that humanitarian crisis started.

The humanitarian crisis pushed United Nations to act under the Security Council Resolution 688 and as a result UN launched first humanitarian intervention after post Cold War era. According to Hoskins (1997) the refugees in Iran were helped by the Iranian Red Crescent Society and UNHCR, but not in sufficient quality and as a result 23000 civilians died. In addition, UN agencies gave logistic assistance to the civilians and by putting ground security zone and no fly zone makes the process of humanitarian crisis more acceptable and successful.

United Nations and international government defined the repression as a threat to international peace and security as manifested by Stromseth (1993). It is clear that humanitarian intervention clearly based on the United Nations Charter and international law and principle, and consequently, UN resolved a difficult refugee situation in northern of Iraq.

Chapter Four:

Conclusion

In conclusion, humanitarian intervention turns out to be one of the prominent controversial debates in current global arena. Indeed, case of humanitarian intervention under the regularities and principles of United Nations Charter raises many controversial issues. This paper proved that United Nations Charter exhibit dual tendency toward humanitarian intervention in international arena.

In some Article within Charter United Nations provide sovereignty for all members states and prohibit the use of force against sovereign state, but on the other side, it give legitimate power to Security Council act whenever the international peace and security threaten. In addition, United Nations Charter accepts the human rights as a new phenomenon in order to protect human rights violation within any state sovereignty in international level.

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