

Legality and Legitimacy of Humanitarian Intervention

Yixin Zhang^{1,a,*}

¹*Department of philosophy, University of Washington, Seattle, 98105, U.S*

a. yixinzhang526@gmail.com

**corresponding author*

Abstract: "Humanitarian intervention" has been a controversial topic in the international community. Some scholars believe that humanitarian intervention has legitimacy, as it can avoid extreme situations such as large-scale genocide, and can protect human rights and save lives. However, there are other scholars who have expressed some disagreement with them and question humanitarian intervention. They believe that the essence of humanitarian intervention is hegemonism, especially in the Kosovo and Iraq incidents, which use humanitarian intervention as an excuse for war. Although the United Nations has relevant regulations on humanitarian intervention, the binding force for superpowers is relatively lacking. In this condition, this article explores humanitarian intervention by consulting relevant literature and combining humanitarian intervention events, and analyzes the complexity of humanitarian intervention in the international community.

Keywords: Humanitarian intervention, legitimacy, international community

1. Introduction

After World War II, the use of force has continued to be employed for the purpose of maintaining peace and security. However, there is ongoing controversy surrounding the legality of using force during humanitarian intervention.

Kofi Annan, a former Secretary-General of the United Nations, has extensively discussed the triumph achieved through humanitarian intervention in the ethnic cleansing in Kosovo, as well as numerous conflicts such as those raging in Sierra Leone and Sudan [1]. He also emphasized that humanitarian intervention is necessary for maintaining international peace and avoiding tragedies like what happened in Rwanda. The International Commission on Intervention and State Sovereignty (ICISS) suggests accepting an exception of "humanitarian intervention" to justify the use of force against a state's sovereignty in extreme cases [2].

However, scholars like Liebflich [3] doubt the legality of "humanitarian intervention" without the support of the United Nations Security Council (UNSC) and the United Nations (UN) Charter [3]. There are concerns that humanitarian intervention may become a new "justa causa" for the 21st century, as expressed by Douzinas [4]. This raises questions about the legitimacy and effectiveness of such interventions.

2. The Definition of Humanitarian Intervention

Humanitarian intervention has gained popularity in the international community as a term used to justify the use of military force by one or more states across borders without the permission of the

state in question [5]. It has been cited as the legal justification for UK and US no-fly zones in Iraq [6] and NATO's intervention in Kosovo [7]. It is typically employed in situations of extreme humanitarian violations, such as large-scale genocide, where immediate action is necessary [8]. It is important to note that the use of force in humanitarian intervention should only be considered when there are no feasible alternatives, and when the force used is necessary and proportional [8]. Despite broad acceptance of humanitarian intervention by the international community, it is still considered illegal or lacking in legality under the UN Charter.

Normally, it happened when UN lack or struggles to take action when a government commits genocide against its own citizens. Since it is without the permission of the Security Council, such intervention is seen as interfering with the authority of another state and is prohibited under the UN Charter. However, humanitarian intervention initiated by NATO has been recognized as legitimate when they intervene to protect human rights and save lives [9].

Kofi Annan, in his 2000 Millennium Report, challenged member states to find common ground in defending the principles of the UN Charter and in defense of humanity [1]. He stated that "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?" [1].

It is important to distinguish between legality and legitimacy. Legitimacy is not solely based on legal constraints but also encompasses moral considerations [10]. Legitimacy does not always imply legality. If humanitarian intervention wants to achieve universal acceptance, both legality and legitimacy should be required.

3. The *Juris Opinio* of Humanitarian Intervention

The main debate surrounding the legality of humanitarian intervention focuses on whether human rights can "supersede" the authority. The establishment of the UN Charter saw the recognition of state authority and human rights as the foundation for the international community equally, specifically the United Nations. Humanitarian intervention challenges the sovereignty and authority of states.

According to Article 2 (4) and (7) of the UN Charter (1945), states are prohibited from using force against the territorial integrity or political independence of any state, or in a manner inconsistent with the purposes of the UN. Article 43 (1) further limits the use of force by stating that states should obtain permission from the Security Council before using force. Article 43 (2) also suggests that states should report their number and types of force. Therefore, it is apparent that humanitarian intervention without permission from the Security Council is considered illegal in the international community.

Secretary-General Annan expressed his belief at the Geneva Human Rights Conference on April 7, 1999, that an international standard opposing atrocities committed against minorities is gradually emerging and will go beyond concerns about sovereignty. He also emphasized that no state can hide behind authority and continue to commit serious violations of human rights [11].

Furthermore, the concept of Responsibility to Protect (R2P) initiated by ICISS in 2001 is aimed to redefine authority by making it subordinate to human rights. They sought to establish a strong link between state sovereignty and "Responsibility to Protect" which is the duty to protect citizens. In paragraphs 138 and 139 of the 2005 World Summit Outcome Document [12] demonstrated each state's responsibility to protect their own populations from "genocide, war crimes, ethnic cleansing, and crimes against humanity". When a government violates this responsibility, it no longer holds authority, allowing other states or organizations to intervene in their territory by force; It can seen as possibility for the "adoption" of rights [13] However, neither of the sources encouraged the use of force without the consent of the UNSC or UN. Furthermore, the World Summit Document is also a soft law without binding in international law. [13]

The International Commission on Intervention and State Sovereignty (ICISS) proposed that the implementation of a new definition of authority under international law could be accomplished by means of a resolution in a UN Plenary Session, thus avoiding the need for a complete redrafting of the UN Charter [14]. Striking the right balance between legality and the protection of human rights is crucial to ensure the international community can effectively respond to humanitarian crises.

4. The Legitimacy of the Use of Force during the Kosovo Issue

The Kosovo intervention has been seen as a successful humanitarian intervention for the international community to take action without Security Council approval. NATO initiated the humanitarian intervention to prevent genocide when the Security Council failed to act [7]. The legitimacy and legality of this intervention have been debated in international law.

NATO's air campaign during the Kosovo conflict successfully damaged Yugoslavia's integrated air defense system [9]. This campaign was in response to the Serbian ethnic cleansing campaign, which resulted in the displacement of over 1.5 million Kosovars [9]. The U.S explained the legality of the action since the purpose of the intervention was to maintain human rights. However, neither NATO nor the U.S could give rights for states to intervene in another state's authority and sovereignty.

Instead of humanitarian intervention, Chen & Huang [11] recognized Kosovo as hegemonic intervention. Skordas [2] argues that hegemonic intervention can be justified if it is supported by the majority of states and is in response to a threat or danger to the international community. In the end, the United Nations will concede to its violation to the UN Charter.

Critics of the Kosovo event suggested that the use of force should only be legal or illegal, and the legitimacy of an action should only be binary. Furthermore, The US, as a non-State Party to the ICC's Rome Statute and International Court of Justice (ICJ), would be exempt from the crime's jurisdictional reach, even if it does activate [15]. It is unclear if the US's missile strike was intended to fall within the doctrine of humanitarian interventions and whether the success of NATO's action could be seen as the achievement of humanitarian intervention. They also worried that the glorification of the event in Kosovo would cause countries to blur the terms legality and legitimacy to advance their own interests [16].

5. Difficulties Facing the Legality of Humanitarian Intervention

The redefinition of authority or evaluation of the UN Charter has not been supported by almost all superpowers, including Russia, China, and the United States, who are permanent members of the UN Security Council [6]. Kofi Annan has suggested that the UN charter is a "living document" [8] and has called for a reform of the UN or its charter. However, the revolution of the UN and UN charter has become "impossible" due to the existence of the veto. In 2015, France proposed the idea of "not to veto" in the face of mass atrocity crimes, and 112 states joined the Accountability, Consistency, and Transparency (ACT) Code of Conduct to address such crimes [17]. However, none of the permanent members of the UN Security Council - Russia, China, and the United States - have agreed to this initiative [6]. Even the US and China, although they have participated in the R2P concept, have not fully supported these measures. Moreover, the Chinese government has become more vehement in its opposition to the legality of humanitarian intervention. With the Libyan intervention transitioning into NATO support for the overthrow of the Qaddafi regime, and recent Western sanctions and condemnation of the Syrian government's attacks on civilian protesters [18]. Furthermore, another superpower, the US, may not be subject to the jurisdiction of humanitarian intervention even if it is legalized. The effectiveness of constraints on humanitarian intervention for states not under the jurisdiction of the ICC's Rome Statute and ICJ is questionable. Monitoring

powerful states that have the ability or likelihood to initiate humanitarian intervention becomes difficult.

Additionally, there seems no extra benefit for the international community to legalize humanitarian intervention. When humanitarian intervention is considered as a socio-legal concept, the success or failure of such intervention is often perceived only in terms of morality and legitimacy. But if we legalize humanitarian interventions, the failure of human rights interventions will be seen as a failure of international organizations or of international law [2]. This would be very damaging to the credibility of international organizations. As well as negatively affecting the public's perception of the seriousness of the law and the effectiveness of international organizations such as the UN.

The legalization of the use of force during humanitarian intervention has raised concerns that it could become a new *justa causa* [19]. Yao Huang, and Marina Storying [11] oppose unilateral humanitarian intervention. They argue that powerful states use the discourse of human rights to re-legitimize principles of sovereignty and non-intervention, prioritizing their own interests as universal concerns [4]. An example of this is the case of Iraq, where the United States initiated military action without consulting the Security Council, causing significant harm to the Iraqi population. The World Health Organization found that most Iraqis suffered from near-starvation for years, with 32% of children experiencing severe malnourishment [4]. The recent situation between Russia and Ukraine also raises concerns, as Russia has justified its intervention as humanitarian [20]. The use of force without following the UN Charter and later justifying it as necessary for humanitarian intervention may set a dangerous precedent, allowing countries to exploit this concept for their own interests.

6. Conclusion

The legalization of force during humanitarian intervention remains a complex issue in international law. Critics raise valid concerns about the potential misuse of humanitarian intervention and the need for a balance between legality and legitimacy. However, when genocide occurs and the government or sovereignty fails to protect its civilians' lives, both standing aside and using all available means can seem like inadequate solutions. To prevent using humanitarian intervention as a *justa causa* for war, it may be necessary to involve third-party organizations such as NGOs to verify the necessity of intervention. Furthermore, the use of force during humanitarian intervention should still adhere to the principles of *ad bellum* and *in bellum* law. Resolving the challenges to authority and determining the legitimacy and legality of humanitarian intervention, even in the face of failure, is an ongoing process.

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