



RE-APPRAISING THE SOVEREIGNTY OF STATES WITHIN THE CONTEXT OF CONTEMPORARY INTERNATIONAL HUMANITARIAN INTERVENTION

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ABSTRACT

In the era of highly public conflicts, cyberwarfare, and more forceful humanitarian standards, sovereignty is being rethought. It contends that as international humanitarian law, global civil society, and multilateral organisations push for greater accountability when states fail to protect people within their borders, the traditional Westphalian script in which states have almost total control over internal affairs is eroding. By tracing shifts in practice from Responsibility to Protect debates to the expanding authority of humanitarian actors in conflict zones, the paper shows that sovereignty is no longer just about control but about responsibility, legitimacy, and compliance with evolving humanitarian standards. The analysis ultimately suggests that sovereignty is morphing into a performance: states retain their formal status, but the substance of their authority depends on how well they meet humanitarian expectations in real time. This re-appraisal opens space for new research on power, protection, and global governance.

1.0 INTRODUCTION

In the famous *Island of Palmers case*,¹ Max Huber, the Arbitrator, declared as follows: sovereignty in the relation between States signifies independence. Independence regarding a portion of the globe is the right to exercise there, to the exclusion of any other state, the functions of a state.

In general terms, territorial matters and state security issues revolve around the limits of States' actions, including the airspace within the specified territories and the extent to which they can exercise such powers. On this score, it therefore becomes necessary to examine the attributes of a state to determine how such an entity can exercise sovereign rights.

Article 1 of the Montevideo Convention on the Rights and Duties of States, 1933 provides the conditions for the qualification for statehood. These include:- (a) permanent population (b) defined territory (c) , a government and (d) capacity to enter into relationships with other states. Although some of these conditions have been criticised, they still remain basic building block in determining the status of an entity in international law.

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¹ (1928) 22 JAIL 875.



2.0 INTERNATIONAL HUMANITARIAN INTERVENTION

The doctrine of sovereignty of states signifies independence regarding a portion of the globe; it is the right to exercise therein, to the exclusion of any other state, the functions of the state.² Basically, the doctrine of sovereignty of a state holds that a state exercises whatever acts of sovereignty it deems fit within its domestic jurisdiction to the exclusion and non-interference of other states in its affairs.

Article 2(4) of the United Nations Charter states that ‘All members shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any state, or in any other manner inconsistent with the purposes of the United Nations’. This article enshrines the principle of non-intervention and prohibits states from committing acts of aggression that infringe upon the rights or sovereignty and territorial integrity of another state.³

Today, states recognise the exclusive jurisdiction of other states in matters within their domestic competence. However, despite juristic opinions to the contrary, the international community also recognises that in the face of realities of war, human rights abuse, natural catastrophes. The principle can be subverted. In other words, there’s equally recognition that there could be the need for intervention by a concerned state or group of states in the domestic affairs of a sovereign in the event of any of the above mentioned failure. This is the doctrine of intervention. According to Oppenheim, intervention is an act of interference by one state with the internal or external affairs of another state in order to induce a certain behaviour of the latter, whereby the intervening state employs coercion and violates the sovereign will of its victim.⁴

The origin of humanitarian intervention can be traced to customary international law, which was based on a treaty between Turkey and several Christian Western powers, whereby the latter was permitted to protect Christians and other minorities in states such as Lebanon that formed part of the Ottoman Empire from atrocities against them in the 19th century. Though humanitarian intervention may appear to be an open violation of the doctrine of sovereignty

²*Island of Palmer's Case* 22 AJ IL 735 (1918).

³ See also Article II (3) Charter of the OAU.

⁴ Oppenheim, *Laiçryenuon* in 3 L:ncyclopedia of Public International Law 233 (R Benhardt ed 1982).



and is vehemently opposed by some jurists, especially those from the positivist school, the better view is that it is now permissible under contemporary international law.

Ian Brownlie has justified intervention on the grounds of individual self-defence, collective self-defence, action authorised by a competent international organ or a treaty provision, actions to terminate trespass, necessity arising from natural catastrophe and protection of nationals abroad.⁵

In practice, Article 2(4) seeks to protect two key aspects of a sovereign state, its territorial integrity and political independence. Thus, where intervening states resort to the use of force without the intent to permanently infringe on a state's territorial sovereignty or political independence, such an intervention is permissible within limits by the international community. Indeed, what Article 2(4) seeks to prohibit is the unauthorised abuse of the use of force and unnecessary interference in the internal affairs of sovereign states.

Thus, in the *Nicaragua case*⁶ between Nicaragua and the United State in which Nicaragua claimed that the United States contrary to customary international law on nonintervention and the 1956 U.S. Nicaragua Treaty of Friendship, Commerce And Navigation used direct armed force against it in laying mines in Nicaragua territorial waters which damaged its ships attacking its ports, oil installations etc. and aiding rebels seeking to overthrow the Sardinista Government. The court, by twelve votes to three, decided that the United States, by training, arming, financing, etc., the contra force or otherwise encouraging their activities in and against Nicaragua, has acted against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another state.

In spite of Article 2(4) and U.N. Resolutions such as General Assembly Resolution 44/240,⁷ which condemned the December 20, 1989, U.S. invasion of Panama leading to the overthrow of General Manuel Noriega's regime, the U. N. itself recognises and has resorted to the doctrine of intervention. This is implicit in Article 42 of the United Nations Charter which permits the Security Council to take such action by air, sea or land forces as may be, necessary to maintain or restore international peace and security. Furthermore Article 51 of the United Nation Charter recognises the inherent right of individual or collective self defense if an armed attack occurs

⁵I Brownlie, *International Law and the Use of Force by States* 432, 433, notes, 217, 233.254 (1963).

⁶ ICJ Reports 1986 14.

⁷ UN Press Release G A 7977.



against a member of the United Nations, subject to informing the Security Council which may still act if it deems it necessary to restore international peace and security. Humanitarian intervention under international law are still evolving. The controversy surrounding the doctrine is brought to the fore by the purpose of the United Nations as stated in Article 1 of the United Nations Charter i.e. to maintain peace and security, encouraging respect for human rights and the fundamental freedom of all without distinction as to race, sex, language or religion. However, the Security Council has been plagued largely by the political and economic divisions within the United Nations General Assembly. More so, lack of adequate resolve on the part of a veto-ladled Security Council, have left states particularly those in the Western hemisphere with little choice but to intervene on humanitarian grounds, on the rights of sovereign states in the interest of humanity.⁸ For this study, one area which has led to the growth. One of the areas that has given rise to humanitarian intervention under international law is human rights.

3.0 HUMAN RIGHTS ABUSES AS BASIS FOR INTERVENTION

The concept of human rights, as seen in various conventions, paramount of which is the Universal Declaration of Human Rights 1948,⁹ is an ideal which most ‘civilised’ nations have incorporated into their national laws. For example, Chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) lists out the fundamental rights of Nigerian citizens. Other notable international conventions enunciating the doctrine of human rights are the African Charter on Human Rights and Peoples’ Rights, 1981.¹⁰ The American Convention on Human Rights and Peoples’ Rights 1961,¹¹ The Four Geneva ‘Red Cross’ Conventions 1949,¹² European Convention On Human Rights 1950.¹³

The establishment of the U.N. Commission on Human Rights and U.N. intervention in Iraq, Somalia and Bosnia, though laudable, is still grossly inadequate to meet the humanitarian needs of contemporary times.

Jessup¹⁴ sought to justify humanitarian intervention when he said:

⁸TR Sebhata, *The Effects of United Nations Security Council Veto Power on Stability of States: A Case Study of Syria and its Neighbors* (Doctoral Dissertation, University of Nairobi 2020).

⁹GA Resolution 217 (A) GAOR, 1 SESS, Part 1, Res. 71.

¹⁰(1982) 21 ILM 59 in Force 1986.

¹¹ PAUTS 36, (1970) 91 LM 671 In Force 1978)

¹² McCoubrey, *International Humanitarian Law* (1990)

¹³ U. K. TLS 71 (1953) In Force 1953.

¹⁴P Jessup, *A Modern Law of Nations*, note 62 at 170 (1948) © A.J. Thomas & A. Thomas, *Non-intervention* 374 (1956).



It would seem that the only possible argument against the substitution of collective measures under the Security Council for individual measures by a single state would be the inability of the organisation to act with the speed requisite to preserve life.

This view was reiterated by Lord Shawcross¹⁵ in the following words: ‘The rights of humanitarian intervention on behalf of the rights of man trampled upon by a State in a manner shocking to the sense of mankind have long been considered to form part of the recognised law of nations.’

Modern society is complex, with inadequate resources to effectively enforce human rights or intervene on humanitarian grounds in the appropriate international sphere.

The basis of humanitarian intervention is indeed questionable in some cases. For example, it has been shown that states do not base their intervention on purely humanitarian grounds but on their own political, economic or other interests. Thus, the international community, under the auspices of the U.N., backed with military force the mass killing of Kurds in northern Iraq to forestall a refugee crisis in the Middle East and possibly Europe. It hardly took any steps to forestall the senseless slaughter of people in the Niger Delta, particularly the Ogonis in Nigeria under the Abacha military regime in Nigeria, other than the imposition of more or less irrelevant sanctions, which were easily countered and rendered nugatory.

Watson has pointed out that while jurists hasten to propound the international status of human rights, they have a confused vision of what international law ought to be and what it actually is. For Watson, because of the over-emphasis on multilateral treaties and United Nations Resolutions, actual state practice has been neglected. Furthermore, the current international order contains no means of punishing state violators of such rights.¹⁶

It has however been argued that human rights is not just a political and moral concept, it is a legal one as well. This explains why countries such as the U.S. have made it a legislative requirement that countries should have a good human rights record before they are eligible to receive foreign aid.¹⁷ Thus, the U.S bars economic assistance to countries which have

¹⁵P Sands, ‘Regarding United Kingdom Practice on the European Convention on Human Rights by Lord Shawcross’ *Rev. BDI* (2015) 48 432.

¹⁶ Watson, *Legal Theory: Efficiency and Validity in Development of Human Right Norms in International Law* 1979, 634-045

¹⁷ 22 US CS 215



persistently violated internationally recognised human rights... except where such aid would be directly beneficial to the needy people of such a country.¹⁸ For example, the U.N. intervention into Somalia, Iraq, and Bosnia in the 90s was also to provide material aid such as food, medicine and clothing to victims of the ongoing wars in those countries at the time.

The importance of humanitarian intervention as a rule of customary law is more showcased in cases of war. This is because, though a country may have internal strife, history records that the worst atrocious crimes against humanity are the non-observance of human rights leading to widespread cases of murder, genocide, theft, rape, torture, during such wars. This is not to say that acts of oppression by a state, by its government, on its citizens are any less decriable.

To be sure, many states, often anchor their humanitarian interventions and on the principle of protecting their nationals abroad, an outstanding case of humanitarian intervention which was not based on this ground was the 1979 Tanzanian invasion of Uganda. It was perhaps due to the extremely poor human rights record of the Idi Amin government in Uganda that the Tanzanian intervention did not receive global condemnation. The facts of the Tanzanian intervention, briefly stated, are as follows: After the successful ejection of Ugandan troops from illegally occupied Tanzanian territory, the latter government, with the aid of Ugandan rebels, overthrew the regime of Idi Amin and ended his reign of terror, which killed hundreds of thousands.

One is tempted to ask, Does Article 2(4), which prohibits intervention, justify the civilised nations in watching thousands of innocent people being butchered? Grave violations of human rights have long been recognized as possible threats to international peace and security and though post-World War II international conventions do not expressly provide for humanitarian intervention, it can be implied from the provisions of Article 39 of the United Nations Charter which charges the Security Council with the responsibility of promoting world peace and security. Leveraging on this provision, the Council may opt for intervention on humanitarian grounds if it deems fit. This explains why skeptics who question the validity of humanitarian intervention in contemporary international law have had to rethink, given the rise of tyrannical tendencies in governments like Bosnia and Iraq and the fact that human rights violations are increasing worldwide.

4.0 OTHER GROUNDS FOR HUMANITARIAN INTERVENTION

¹⁸ A D' Amato, 'The Concept of Human Rights' (1982) 10 (I) International Law 84.



International law recognises certain exceptions to the doctrine of non-intervention. It is intended to briefly discuss some of these other exceptions here.

1 Protection of Nationals Abroad

The right of nations to protect their nationals abroad was a customary international right before the creation of the U.N. Charter. It was stated that¹⁹

It cannot be denied that at a certain point the interest of a State in exercising protection over its nationals and their property can take precedence over territorial sovereignty, despite the absence of any convention provision. Thus, the French intervention in May of 1978 in Congo was justified on the grounds of saving European lives.

This exception seems to have gained some measure of notoriety during the period of gunboat diplomacy when states, especially the advanced western countries could intervene in other countries under the guise of seeking to protect the lives of its nationals in such countries.

2 Collective Intervention

This occurs when a group of states collectively decide to use force in accordance with an international agreement, for example actions sanctioned by the UN General Assembly, as seen in the NATO air strikes on Bosnia Herzegovina. In a way, the provision of Article 5 of the NATO treaty can also be used to collectively intervene in the affairs of any state which attacks a member of NATO.

3. Self Defense

This occurs when states intervene where there is to danger of armed attack. One view is that anticipatory self-defence is contrary to Article 51 of the UN Charter because it involves the use of armed force in the absence of a prior armed attack. It may be mentioned that one of the reasons for the Russian invasion of Ukraine is the fear of a possible Ukrainian membership of NATO which will pose serious threat to Russian security.

4. Intervention based on an invitation by the affected state to the intervening state.

Intervention based on invitation refers to the use of force by one state within the territory of another with that state's *valid consent*. Under contemporary international law, such intervention does not violate Article 2(4) of the UN Charter so long as the invitation is issued

¹⁹ Spanish Moroccan Claims Arbitration



by the government that is both internationally recognised and capable of exercising effective authority. The ICJ has affirmed this principle in *Nicaragua v United States (Military and Paramilitary Activities)*,²⁰ noting that intervention is unlawful when it supports opposition groups rather than an invited government.²¹ Similarly, in *Armed Activities on the Territory of the Congo*, the Court rejected Uganda's claim of consent because the alleged invitation was neither proven nor attributable to the competent Congolese authorities.²² It is however, generally agreed that such invitations must be explicit, temporally limited, and free from coercion.²³ A budding example is the ongoing debate on the proposed intervention of the United States in Nigeria to assist in tackling terrorism in response to the killing of Christians in Nigeria by Islamic terrorists.

5. Where the state which is subject to the intervention is guilty of gross breach of its obligation under international law regarding the intervening state. In US Diplomatic and Consular Staff Case,²⁴ the U.S. unsuccessful attempt to rescue its nationals would have been justified on this ground because Iran had breached its obligation to respect the diplomatic²⁵ immunities and right of the U.S. Embassy officials under international law.

5.0 CONCLUSION

The right of a sovereign state to exercise jurisdiction over its citizens, property and other actions occurring within its territory is recognised and adequately protected under international law. Indeed, the concept of state responsibility is a laudable advancement in the jurisprudence of international law. However, despite the commendable advancement that international law has made in the last two centuries, international law still has a long way to go, especially in the area of intervention on humanitarian grounds.

An examination of some of the cases and Advisory Opinions of the I.C.J. and the resolutions of the U.N. General Assembly shows that the international community, though often outraged by human rights abuses in countries like Bosnia, Nigeria, China, Sierra Leone and many others, lack the commitment to intervene even under customary international law, which recognises

²⁰ICJ GL No. 70 [1984] ICJ Rep 392.

²¹Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14.

²²*Armed Activities on the Territory of the Congo (DRC v Uganda)* [2005] ICJ Rep 168.

²³C Gray, *International Law and the Use of Force* (4th edn, OUP 2018).

²⁴A Rafat, The Iran Hostage Crisis and the International Court of Justice: Aspects of the Case Concerning United States Diplomatic and Consular Staff in Tehran' *Denver Journal of International Law&Policy* (1980) 10 425.

²⁵ Ibid.



the principle of humanitarian intervention. Indeed, there has never been a single case before either the PCIJ or the ICJ where the principle of humanitarian intervention was expressly recognised. Modern international law places emphasis on peaceful relations and resolution of disputes between states rather than on ensuring that states of the world conform to the standard set out in various conventions, such as the Universal Declaration of Human Rights 1948 and the Convention on the Prevention and Punishment of the crime of genocide 1948.

It would appear that the primary problem with the international community's acceptance of the principle of humanitarian intervention is that there is little consensus as to the acceptable level of human rights violations that would authorise states to interfere in the domestic affairs of other states. This is against the background that most of the states that are vehemently opposed to humanitarian intervention, such as China are themselves notorious for human rights violations. Another problem facing international humanitarian intervention is the absence of an effective enforcement agency at the international level, as the UN Commission for Human Rights does not have the capacity to carry out such enforcement. The Security Council, which is the recognised organ of the United Nations for the maintenance of international peace and security is often stalled in their deliberations due to superior power rivalry and conflicting national interests.

The principle of humanitarian intervention has evolved from customary international law to a point where it should legally transcend the territorial sovereignty and political independence of nations. It is time for humanitarian intervention to be given greater prominence in international jurisprudence to address increasing cases of massive human rights violations worldwide. That is the only way the establishment of the United Nations and its agencies concerned with promoting respect for human rights and the maintenance of international peace and security can be meaningful in this 21st century.