

Article info

Received on: 23.10.2022

Accepted on: 28.11.2022

Published on: 30.11.2022

doi: <https://doi.org/10.52688/ASP45068>

Research Article

Review on The legal Nature of Contemporary Humanitarian Intervention

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ABSTRACT

After World War II, interest in the concept of human rights developed, and states became obligated to respect these rights more and more, which made some consider that the legitimate contemporary humanitarian intervention finds its basis in many international documents, the most important of which is the Charter of the United Nations and other international treaties, in addition to the multiplicity of international practices, which made Others base it on customary rules. Since addressing the basic international principles for the protection of human rights makes the principle of international humanitarian intervention a principle opposed to the principle of state sovereignty, it was necessary to know the applicable legal rules for intervention. In order to know the various aspects of these aspects, this topic has been divided into two objectives. The first deals with the rules applied in humanitarian intervention, and the second deals with the justifications for legitimate humanitarian intervention.

Keywords: Humanitarian intervention, justifications, human rights

INTRODUCTION

The legal framework for international humanitarian intervention consists of general rules and ethical rules, which we will discuss in detail. First: the general rules for humanitarian intervention. Many scholars consider that there are many general convention rules in contemporary international law that make The Charter of the United Nations referred to the intervention to protect human rights, where we find in the preamble of the Charter the commitment of the members of the organization to spare future generations the scourge of war, and in this way the United Nations directs its efforts to achieve tolerance, and to live in peace and good neighborliness [1],[2]. while affirming its belief in fundamental human rights and in the dignity of The individual, working to raise the standard of life in an atmosphere of freedom, and to indicate the circumstances favorable to achieving justice, regard for duties stemming from international agreements and the rule of law[3][4]. which made one of the reasons for creating stability the establishment of a peaceful relationship between peoples States, respect human rights and fundamental freedoms for all without discrimination, and that respect for these rights and freedoms is not limited to the borders of the state only, but also goes beyond its borders, through the readiness to take appropriate measures to protect these rights and freedoms in the event of their violation, and this confirms the text of [5][6]. of the Charter that Member States are obligated to act, individually or jointly, to realize the purposes [5]. Also, the text of [6]of the Charter, which provides us with an appropriate justification for defending the right of international humanitarian intervention. Concerning the goals and principles of the commission, it means that it directs its address to the other organs of the United Nations, and since all of these organs, with the exception of the Security Council, cannot take intervention measures except those of a non- military nature. Man is not limited to military actions only. It should be noted that this supports the view of the broad concept of the right of humanitarian intervention, and therefore it becomes appropriate to say that the above article determines its competence, because this article no longer constitutes an obstacle to the organization's intervention in all cases in which the intervention is desirable by the majority, because the decision rests with the majority. Within each of the United Nation's bodies. Some of the international jurisprudence tends, but the intervention finds another basis in [7], even though it constitutes an absolute definition of the use of force in international relations, as there are attempts to interpret this article in the sense of contravention in the sense of not prohibiting force in international relations or threatening it whenever it is. This does not affect territorial integrity or political independence, nor is the use of force intended to be coercive acts that are taken as measures that facilitate humanitarian intervention for the benefit of humanity.

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FRAMEWORK OF INTERNATIONAL HUMAN RIGHTS LAW

International human rights law has specified in its convention's ways and approaches for humanitarian intervention within the framework of original rules and principles that enhance the protection of human rights, which reflects the importance of humanitarian intervention as a mechanism for this branch of international law. Summarized by interfering in the light of international agreements and the committees emanating from them. The Human Rights Committee, at its first session in 1947, named this term for a series of documents currently being prepared, namely the Universal Declaration of Human Rights and the two International Covenants. The Universal Declaration of Human Rights aims to establish a global system of human rights, so that being satisfied with its literary value is currently unacceptable. Much of the jurisprudence imbues the Declaration with a binding legal force that finds its basis in its customary rules. During the International Conference on Human Rights in Tehran in 1986. As for the International Covenant on Civil and Political Rights of 1966, states are allowed to take the necessary measures between themselves to settle any dispute that arises regarding the application of the articles of the convention, and although this matter in fact refers only to peaceful settlements that are often stipulated in international agreements, some considered that this is permissible Humanitarian intervention as well, while the reports submitted by states to the Economic and Social Council on the extent of the implementation of the International Covenant on Economic and Social Rights can be considered, that is, the Council can submit reports in this regard to the Human Rights Committee, and the latter can submit recommendations to the General Assembly to take what it deems appropriate. This is a kind of humanitarian intervention as well. The contribution of international conventions to establishing the concept of humanitarian intervention is also highlighted, through some international conventions, or through committees emanating from international conventions, where the international legitimacy of human rights supports a number of other conventions [8],[9]. Such as the This Convention grants the original jurisdiction of the Security Council to intervene to prevent and punish the crime of apartheid, as do the Convention on the Political Rights of Women and the International Convention for the Suppression of the Crime of Apartheid, both of which were adopted in 1948; the Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1948 as well. Because the Charter does not give the Security Council the authority to exercise jurisdiction similar to that granted by the International Convention for the Suppression and Punishment of the Crime of Apartheid, the resolution did not name a specific United Nations body or mention punishment for the crime. Also, many treaty committees were formed under international conventions, where they practice what can be considered humanitarian intervention, which explains the objections of some to them as discussing internal matters. In fact, it does not represent a violation of state sovereignty, but rather an arbitrary restriction of state sovereignty. It is only a consensual intervention. For instance, the Convention on the Elimination of All Forms of Racial Discrimination of 1965 established [9],[10] the Committee on the Elimination of Racial Discrimination, whose responsibility it is to monitor and report on the implementation of the Convention. is to monitor the implementation of states The parties to the convention, by periodically studying the reports submitted by the parties' states, and by examining communications or complaints submitted by individuals, provided the state concerned declares its consent, and many other human rights committees. The United Nations referred to the intervention to protect human rights, where we find in the preamble of the Charter the commitment of the members of the organization to spare future generations the scourge of war, and in this way the United Nations directs its efforts to achieve tolerance, and to live in peace and good neighborliness, while affirming its belief in fundamental human rights and in the dignity of The individual, working to raise the standard of life in an atmosphere of freedom, and to indicate the a setting where justice can be served, and where treaties and international law are given the respect they deserve, are essential [11], [12] which made one of the reasons for creating stability the establishment of a peaceful relationship between peoples States, respect human rights and fundamental freedoms for all without discrimination, and that respect for these rights and freedoms is not limited to the borders of the state only, but also goes beyond its borders, through the readiness to take appropriate measures to protect these rights and freedoms in the event of their violation, and this confirms the text [13],[14] that Member States are obligated to act, individually or jointly, to realize the purposes. Also, which provides us with an appropriate justification for defending the right of international humanitarian intervention. Concerning the goals and principles of the commission, it means that it directs its address to the other organs of the United Nations, and since all of these organs, with the exception of the Security Council, cannot take intervention measures except those of a non- military nature. Man is not limited to military actions only. It should be noted that this supports the view of the broad concept of the right of humanitarian intervention, and therefore it becomes appropriate to say that the above article determines its competence, because this article no longer constitutes an obstacle to the organization's intervention in all cases in which the intervention is desirable by the majority, because the decision rests with the majority. Within each of the United Nation's bodies. Some of the international jurisprudence tends, but the intervention finds another basis in [15], even though it constitutes an absolute definition of the use of force in international relations, as there are attempts to interpret this article in the sense of contravention in the sense of not prohibiting force in international relations or threatening it whenever it is. This does not affect territorial integrity or political independence, nor is the use of force intended to be coercive acts that are taken as measures that facilitate humanitarian intervention for the benefit of humanity.

ETHICS RULES

The Charter of the United Nations has made human rights a source of moral inspiration and a principle for collective action carried out by the various United Nations organs, and although the Charter did not specify the concept of human rights, there are those who consider the absence of specificity to be limited only, and there are two aspects to that limitation, the first aspect is of a nature Legal resulting from the existence of either customary international obligations related to basic rights such as the right to life, the right to liberty and freedom of conscience, or an agreement. As for the second aspect of those limitations, it is related to

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the basic mission of the United Nations in maintaining peace. Accordingly, in the practical or applied field, it can be said that the activity of the United Nations in this field is characterized by four basic characteristics:

- A. A field activity based on providing direct humanitarian aid to groups that have been deprived of their basic rights, for example (refugees).
- B. Technical assistance represented in the implementation of specific programs and training in countries that need or request that, for example, giving instructions and directions to the military services, such as what is happening in Iraq.
- C. A media activity that aims to spread awareness of human rights through the use of media outlets (audio and visual) as auxiliary materials for the dissemination of knowledge.
- D. An activity aimed at protecting human rights and ensuring their respect by developing special mechanisms for receiving and examining complaints

JUSTIFICATION FOR LEGITIMATE HUMANITARIAN INTERVENTION

There are many legal and political justifications for giving legitimacy to the actions and decisions of persons of international law, especially the major permanent members of the Security Council, despite these decisions and those actions violating the rules and provisions of international legitimacy. Interfering in the internal affairs of states is carried out under the pretense of combating international terrorism at times, and protecting human rights, and the protection of nationals abroad and in order to achieve or restore democracy in some countries is invoked. Therefore, estimating the legality of international intervention is one of the important research studies to judge the extent of its compatibility or contradiction with the rules and principles of contemporary international law. Although it is a general rule in international relations that other states should not meddle in the internal or external affairs of other states and should refrain from using force to achieve their goals, there are some exceptions to this or threat of use of force, according to [13] in the fourth and seventh paragraphs of the Charter of the United Nations, this rule is not absolute..., but rather It has several exceptions based on legal grounds in accordance with the articles of the Charter of the United Nations, through which international action is legitimate. We divide the objective into three points, the first of which we address: Intervention to maintain international security and peace in conformity with [14] of the United Nations Charter, and in the second we refer to: Intervention in the case of legitimate defence, and the last we address: international intervention in order to preserve basic human rights, as follows:

First: Intervention to maintain international peace and security in accordance with Chapter VII of the Charter of the United Nations.

Maintaining international peace and security ranks high among the UN's stated aims and objectives. Instead, this objective is one of the primary reasons the United Nations was established in the first place: to protect the peace and security of the international community. It is clear from the preamble to [19], Paragraph 2 of the United Nations Charter that this is the goal: "For these purposes, the members of the United Nations resolve to embrace tolerance and live together in peace and good neighbourliness, and to organize and unite our forces in order to maintain international peace and security." To this aim, the Commission employs effective joint measures to prevent and eliminate threats to peace, to repress acts of aggression and other breaches of the peace, to settle international disputes by peaceful methods, in line with the principles of justice and international law. Not only does the Charter make many allusions to it, but it also includes provisions explicitly requiring its implementation., this is due to the fact that achieving international peace and security is the goal without which the other goals of the organization cannot be achieved, as it is the sure guarantee to reach the other goals and objectives. Achieving international cooperation in economic, social, cultural and humanitarian affairs or promoting respect for human rights and fundamental freedoms in the absence of peace or insecurity in society. Importantly, despite the Charter of the United Nations' repeated references to the principle of maintaining international peace and security, the drafters of the Charter did not include a definition of this term., which led to a disagreement about its concept.

Second: Interfering in the case of legitimate defense.

Among the exceptions to the principle of prohibiting the use of force in international relations is legitimate defence, which is the most common case in the light of contemporary international relations, which is the resort of the state or states upon which the aggression is located to the use of force to pay the harm inflicted on it in defense of its existence and entity, and to defend Legitimate right is a right established by all other laws for anyone who is attacked, and it is an armed response to armed aggression against a country 4, and it is also one of the natural rights that all countries enjoy as an inevitable result of the right to survival and self-preservation, and was stipulated in Article 41 of the Charter of the United Nations . "Until the Security Council adopts the necessary steps to ensure peace and security, nothing in this Charter shall undermine or reduce the legitimate right of nations, individually or collectively, to defend themselves if an armed force assaults a member of the United Nations. The Council, acting on the authority and responsibility drawn from the provisions of this Charter, may take such measures in the exercise of its right of defense as it deems necessary to preserve or restore international peace and security. As in internal law, legitimate defense in international criminal law presupposes the existence of an act of aggression on the one hand and an act of

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defense on the other, as stipulated through [19] on the controls related to the conditions and how to exercise it so that the state or group of states does not strive to use this right and arbitrarily in it.

CONCLUSION

The spread of the phenomenon of gross human rights violations has become a matter of concern to the international community as a whole, because these violations involve an ethical level of blatant defiance of the collective human conscience, and on the legal level they represent a flagrant violation of objective international legal rules. A wide, organized and continuous scale that in most cases leads to a threat to international peace and security or actually disturbing them, which requires the intervention of the international community to curb these violations. Since human rights issues were considered at the core of the internal jurisdiction of states, and the organization was forbidden to interfere in the affairs of states, even despite the stipulation of the need to respect them in the Charter of the United Nations, and stipulated in the constitutions and legislation of states, as this did not create legal obligations in the sense It is the responsibility of the states. This is because the charter did not specifically address specific rights and freedoms, did not generate obligations on states that they must be respected, did not establish penalties for them in case of their violation, and did not establish organs to monitor, protect and prevent their violation. And that the Charter does not include the link between the powers of the Security Council in accordance with Chapter VII and the achievement of international cooperation in the field of human rights determination, and by referring to the concepts of cases contained in Article 31 of the Charter, we find that human rights violations do not interfere directly within them, but by reference to the nature of the concepts of those cases, their flexibility and their demands As well as the authority of the Security Council to interpret its content and acknowledge its danger, as Article 31 came with general expressions and the Charter did not specify the concepts of those expressions, and what falls within and outside its concept, and that despite the jurisprudential efforts to define its concept and the official efforts in the United Nations to define and define it, it has The authority to define the situation, its gravity and its descriptions within the concept of cases contained in Article 31 remained in the hands of the Security Council exclusively and it may consider any situation or situation within the concept of cases contained in Article 31. Therefore, we find that it is not excluded that human rights violations are considered within the concept of those cases and this is clearly confirmed Referring to those established trends in the United Nations on the link between human rights and peace and the mutual effects between them.

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