



HUMAN RIGHTS, THEIR VIOLATION AND HUMANITARIAN INTERVENTION

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ABSTRACT

Human rights are rights inherent to all human beings, whatever their nationality. These rights are expressed and guaranteed by law, in the forms of treaties and customary international law and by national legal frameworks. The internationalization of human rights has been increasingly recognized. International law traditionally considered relation between a state and its citizens to be a domestic affair, falling under the principle of state sovereignty. Individuals were objects of state action, but not international subjects. The Universal Declaration of Human Rights is a milestone document in the history of human rights. Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations. UDHR is widely recognized by almost every country of the world. With this wide recognition, conflict emerged between the rights of states i. e. sovereignty and rights of the people i.e. human rights. In the post-Cold War era, the recognition of the linkage between violations of human rights and international peace and security has opened the room for humanitarian intervention in international relations. Humanitarian intervention may be defined as: Forcible action by states to prevent or to end gross violations of human rights on behalf of people other than their own nationals, through the use of armed force without the consent of the target government and with or without UN authorization. In the present paper attempt has been made to examine the concept of human right, their violation and humanitarian intervention to stop their violation.

INTRODUCTION

Human rights are rights inherent to all human beings, whatever their nationality. These rights are expressed and guaranteed by law, in the forms of treaties and customary international law. In democratic regimes, human rights are enshrined and further protected by national legal frameworks.¹ The internationalization of human rights has been increasingly recognized. International law traditionally considered relation between a state and its citizens to be a domestic affair, falling under the principle of state sovereignty. Individuals were objects of state action, but not international subjects. Especially from 1948, international law has confirmed that individuals are atleast partial

subjects of international law." The Universal Declaration of Human Rights is a milestone document in the history of human rights. Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations. UDHR is widely recognized by almost every country of the world. With this wide recognition, conflict emerged between the rights of states i. e. sovereignty and rights of the people i.e. human rights.ⁱⁱ

In the post-Cold War era, the recognition of the linkage between violations of human rights and international peace and security has opened the room for humanitarian intervention in international relations. Humanitarian intervention may be defined as: Forcible action by states to prevent or to end gross violations of human rights on behalf of people other than their own nationals, through the use of armed force without the consent of the target government and with or without UN authorization.

Adam Roberts defines humanitarian intervention as a "military intervention in a state, without the approval of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants".

For Tonny Brems Knudsen, humanitarian intervention is "dictatorial or coercive interference in the sphere of jurisdiction of a sovereign state motivated or legitimated by humanitarian concerns".

According to Martha Fennimore, humanitarian intervention is a "military intervention with the goal of protecting the lives and welfare of foreign civilians".

In the words of Bhikhu Parekh, humanitarian intervention is "an act of intervention in the internal affairs of another country with a view to ending the physical suffering caused by the disintegrations or gross misuse of authority of the state, and helping create conditions in which a viable structure of civil authority can emerge".ⁱⁱⁱ

There is usually disagreement over whether the action is limited to instances without consent from the host state, or when authorization comes solely from the UN Security Council. More recently, interventions that initially began as military operations with political goals and later developed into humanitarian emergencies have blurred the clarity of the concept. There is a tendency to regard today's emergencies as a blend of humanitarian impulses coupled with more complex political objectives".^{iv}

On the human rights policy front, civil society organizations dedicated to protection and promotion of human rights are best placed, and must have a seat at the table alongside governments, technologists, the private sector and others, in creating Internet governance mechanisms that prioritize global human rights in the digital realm.^v

Technology has exacerbated another problem from the pre-digital era: human rights violations committed in the name of national security and counterterrorism, even by democratic, human rights-respecting governments. New generations of digital technology have brought many significant changes to government capacities in law enforcement, counterterrorism, and foreign surveillance. The human rights implications of many of these new capacities were not fully appreciated before they were put to

use. But security agencies around the world have been unwilling to rein in those new capacities, despite our deeper understanding of those implications.

Furthermore, in many countries facing terror threats, imposition of vague and expansive cyber-related laws — without adequately considering or protecting human rights — has led to erosion of some very basic human rights principles (e.g., that surveillance programs must be both necessary and proportionate). Ambiguous, imprecise, and unnecessarily intrusive counterterrorism laws have been replicated around the world by governments of all stripes. Even governments that see themselves as human rights champions have found it difficult to bring their counterterrorism activities under the rule of law.^{vi}

But the intervention in Afghanistan in 2001 and Iraq in 2003 and Libya 2011 are taken in the present study as major concern. Humanitarian intervention in Afghanistan is an international conflict beginning in 2001 that was triggered by the September 11 attacks and its public aims were to dismantle al-Qaeda by removing the Taliban from power. The War in Afghanistan refers to the intervention by NATO, the United States and allied forces. The humanitarian intervention in Iraq in 2003, by combined force of American, British and Australian troops under US leadership was termed as ‘the Second Gulf War’. Their object was to locate and destroy suspected ‘weapons of mass destruction’. Within three weeks coalition forces had seized Baghdad and the corrupt and brutal dictatorship of Saddam Hussein was overthrown. However, no weapons of mass destruction were found. The coalition’s victory was followed by a difficult ‘nation building’ and counter-insurgency campaign to prevent Iraq sliding into civil war.

When international norms require that war making decisions be justified before international opinion, such essentially realist considerations usually have to be dressed up in moral garb in order to assuage skeptics, silence critics, and provide emotional comfort both to the governmental decision-makers and to the leaders of the community of states, who may have to endorse such decisions or at least live with their consequences. Normative justifications of decisions to go to war have, therefore, become routine since the end of the Cold War.

Armed humanitarian intervention was not a legitimate practice during the cold war because states placed more value on sovereignty and order than on the enforcement of human rights. During the 1990s, various developments that include the end of the Cold War and the fall of the Soviet Union led to greater agreement on the UN Security Council over issues of humanitarian intervention. The end of the Cold War opened the door for states to cooperate on behalf of peoples in need around the world. The phenomenal rise of concept of human rights and human freedom paves the way for humanitarian intervention to secure important position in international relations.^{vii}

The UN Charter is fundamentally based on non-interventionist principle and limits the right of states to use force.^{viii} Article 2(1) state that the United Nations is based on the principle of the sovereign equality of all its members.

According to Article 2(4), “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the objectives of Purposes of the United Nations.”

Article 2(7) notes: ‘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.

Article 51 provides: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

The Charter leaves some scope for humanitarian intervention in two main ways. The first arises from the references to fundamental human rights and their protection as central purposes of the UN in the Preamble and in Article 1. The Preamble of the Charter affirms, “Faith *in* fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nation large and small.” The UN includes in its purposes, in Article 1(2): ‘To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace’; and in Article 1(3): ‘To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion’.

Article 39 reads, ‘The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.’ Article 41 gives the Security Council the power to determine non-military responses to a perceived threat. Article 42 comes into effect if measures taken under Article 41 prove inadequate and allows the Security Council to sanction more robust measures ‘as may be necessary to maintain or restore international peace and security’. The provisions of Chapter VII enable the UN to empower regional actors and organizations to carry out military activity to restore international peace, but as Article 53 asserts, ‘no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council’. NATO’s Charter reflects this legal proscription: Article 1 pledges that NATO members will, ‘refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations’.

Some of the most controversial interventions in the Cold War period were: The USSR’s Intervention in Hungary (1956), USSR in Czechoslovakia (1968), India in East Pakistan (1971), Vietnam in Cambodia (1979), Tanzania in Uganda (1979) and United States in Panama (1989).

The US or the USSR intervened within their spheres of influence to fulfill their selfish national interests. The humanitarian motives were highlighted as their primary purpose to the intervention to

hide their geo- strategic motives. The collapse of the Soviet Union and the end of the Cold War in 1990s changed the international system regarding behavior of states and international institutions. The new era has begun, in which governments can no longer hide behind state sovereignty and violate the human rights of their citizens. One of the main purposes of the norm of non-intervention i. e. the prevention of conflict among great powers was eliminated.

The protection of human rights has accepted as an international norm. The instances of humanitarian intervention in the post cold war period that led to trend towards the reduction of sovereignty in favour of humanitarian objectives are: Operation Provide Comfort in Iraq (1991-93), US Intervention in Somalia (1992), Serbian Intervention in Bosnia-Herzegovina (1992-1995), Rwandan crisis (1994), NATO's intervention in Kosovo (1999), East Timor (1999-2000).

The post-cold war changes in the conception of sovereignty remain relevant in a post-11 September world. The terrorist acts of 2001 brought reality to Western states that instability within or collapse of a state anywhere in the world can have implications that reach far wider than that particular region. Following the 9/11 attacks, US intervened Afghanistan in 2001 and Iraq in 2003.

The official goals of the intervention in Afghanistan, to prevent terrorist attacks, to respond to terrorist threats and to limit the power of terrorist organizations, to remove the Taliban regime as a supporter of al-Qaeda and to capture Osama bin Laden and destroy his terrorist organization, were used to justify unilateral preemptive war.^{ix}

Afghanistan has lived dangerously between the jaws of major or regional powers in one form or another. This time, it is landed between being once again very weak and vulnerable nationally and the USA's geo-strategic pre-eminence which recognizes no limitations when it comes to America's interests as the greatest and most powerful actor ever to have existed on earth.^x The terrorist attacks of 9/11 were the main cause of humanitarian intervention in Afghanistan in 2001.

The issue emerged when the Islamist insurgents hijacked four commercial airliners and on September 11 2001, crashed them into the World Trade Center in New York and the Pentagon in Washington, DC, destroying the World Trade Center and killing almost 3,000 people.^{xi} Intelligence agencies around the world immediately recognized the signature of al-Qaeda, and bin Laden himself shows his own acknowledgment in candid videotapes released afterward. This is not the first attack, before that twice first in August 1996, and again in February 1998, Osama bin Laden had issued public declarations of jihad (holy war) against the United States.

The United States demanded that the Taliban government extradite bin Laden and threatened to "make no distinction between the terrorists who committed these acts and those who harbor them," as Bush told the nation the night of September 11. Despite having no diplomatic relations with the Taliban regime in Afghanistan, the USA communicated its demands to the Taliban through the government of Pakistan. These demands were:

- Deliver to United States authorities all the leaders of Al Qaida who hide in your land.

- Release all foreign nationals, including American citizens, you have unjustly imprisoned.
- Protect foreign journalists, diplomats, and aid workers in your country.
- Close immediately and permanently every terrorist training camp in Afghanistan,
- Hand over every terrorist and every person in their support structure to appropriate authorities.
- Give the US full access to terrorist training camps, so we can make sure they are no longer operating.

These demands are not open to negotiation or discussion. The Taliban must act and act immediately. They will hand over the terrorists, or they will share in their fate. The Taliban rejected these demands. The Taliban attempted to bargain, demanding diplomatic recognition, termination of foreign support for the Northern Alliance, and a resumption of foreign aid. Omar also demanded "convincing evidence" of bin Laden's involvement.

The second major intervention is intervention in Iraq in 2003. It highlighted that any one intervention does not simply violate the sovereignty of any given target state in any one instance; it also challenges the principle of a society of states resting on a system of well-understood and habitually obeyed rules.^{xii}

The U.S. led intervention of Iraq in 2003 has entered the discourse on humanitarian intervention with much controversy. The reason being that the intervention was not initially justified as a humanitarian intervention, but rather as an act of preemptive self-defense, whereby the United States perceived Saddam Hussein's alleged illegal weapons programs and his potential ties with al Qaeda terrorists as an intolerable threat to its security. Once the original justification for the intervention turned out to be largely overstated and based on faulty intelligence as no evidence of WMD found and Saddam had no links with al Qaeda, then the George W. Bush administration continued to insist that the intervention was still justified on humanitarian grounds because it liberated Iraq from the yoke of tyranny.^{xiii}

Humanitarian motives are almost always mixed with other political or strategic goals; states do not wish to make it easier for potential interveners to cloak self-interested intrusions with a mantle of humanitarianism. The countries of global south are continued to worry that humanitarian intervention was a "Trojan horse": rhetoric designed to legitimate the interference of the strong in the affairs of the weak. Besides, governments are often going to be more interested in shoring up their own security—as against external interventions—than in defending the rights of faraway non-citizens.^{xiv}

In 1999 Kofi Annan, then Secretary-General of the United Nations, wrote, 'State sovereignty, in its most basic sense is being redefined'. Annan cited three main challenges to the sovereign state; the process of economic globalization, international cooperation as manifest through international organizations, and the rise of human rights. While there is no doubt that globalization and international institutions have both impacted on the sovereignty of states to a very significant extent, but the tension between human rights and state sovereignty, has most relevance to the issue of humanitarian

intervention. Sovereignty and intervention function as a binary pair, where the former resides on the side of the good and normal which just is and must be, while intervention resides on the side of the pathological and problematic, which always is in need of justification.

After the drafting and adoption of the Universal Declaration of Human Rights in 1948, to which all the countries of the world subscribe, at least rhetorically, the modern international human rights system developed slowly within the constraints of the Cold War. Human rights were among the more powerful ideas to emerge from the U.N. Charter. Philosophers, political theorists and legal scholars have conceptualized and updated the meaning of human rights for centuries. Key historic documents, such as the English Magna Carta (1215), the French Declaration of the Rights of Man (1789), and the US Constitution's Bill of Rights (1791) – all drafted at a time when human beings were far from equal – describe human rights as inalienable individual rights.

There are three generations of human rights: first-generation rights described as the heart of the international human rights regime, which include political rights and civil rights; second-generation rights, which include economic and social rights; and, third-generation rights, which comprise the rights of peoples, among which the human right to peace. There is a certain prioritization of basic human rights, and the most basic one is, evidently, the right to life.^{xv}

Within the UN, until the 1980s, the issue of human rights was essentially an ideological football, kicked back and forth in a match between West and East. Western players prioritized political and civil rights, and their Eastern counterpart economic and social rights. The divide was part of Cold War competition, which left little room for the possibility of joint promotion. The end of the Cold War and the elimination of the most serious security threat to the United States abruptly raised expectations that human rights and humanitarian concerns would take center stage in the conduct of international relations.^{xvi}

The collapse of the Soviet Union, and the fall of communism generally, lifted these constraints as Moscow no longer propped up communist regimes and the US interest in previously strategically important states waned. 'The end of the Cold War,' according to Francis Fukuyama, 'left a band of weak or failed states stretching from North Africa through the Balkans and the Middle East to South Asia'. Within many of these 'failed' and 'weak' states 'new wars' broke out which, 'involved a blurring of the distinctions between war, organized crime and large scale violations of human rights.

Supporters of humanitarian intervention welcomed this shrinking of sovereignty in favour of conditional sovereignty whereby a state's sovereign rights were dependent on its human rights records. The more extreme manifestation of this view held that the West, by virtue of superior humanitarian record, had engage in 'a new kind of imperialism. Kofi Annan, the secretary-general called for new thinking on this issue. This call led to the establishment of the International Commission on Intervention and State Sovereignty (ICISS). The ICISS began its work in August 2000 and published The Responsibility to Protect (R2P) in December 2001.

R2P employs the concept of 'human security' as the basic framework for its approach. Building on the emerging principal, inherent in this idea, R2P argues that intervention is legitimate when major harm to civilians is occurring or imminently apprehended, and the state in question is unable or unwilling to end the harm, or is itself the perpetrator. Rather R2P, puts forward three aspects to this responsibility; the responsibility to prevent, responsibility to react and the responsibility to rebuild. The ICISS offer six 'Principles for Military Intervention', criteria that must be met for an intervention to be legitimate: right authority, just cause, right intention, last resort, proportional means and reasonable prospects. In the non-Western world any change to the status of sovereignty was viewed with great suspicion. The intervention of Afghanistan in 2001 and Iraq in 2003 had created a 'poisonous' atmosphere in the General Assembly, and thus the potential for the kind of reform suggested by R2P was greatly reduced.

The 2005 World Summit, held in New York from 14-16 September, marked 60th anniversary of the United Nations. Representatives from all of the world's states attended, and engaged in negotiations in an atmosphere clouded by the US-led intervention of Afghanistan and Iraq.^{xvii}

The most vociferous champions of the idea of a responsibility to protect are Western, and the rationale underlying the idea is a basic principle of Western liberal democracy. There is skepticism in the developing world over the motivation driving this pressure for change, particularly as the key proponents of R2P are overwhelmingly Western. The G-77 have routinely rejected humanitarian intervention, with many members arguing that the focus on human rights is designed to facilitate Western expansion. President of Venezuela Hugo Chavez described R2P as part of a movement whereby 'a few countries try to reinterpret the principles of international law in order to impose new doctrines', and he asked rhetorically, 'Who is going to protect us? Are they going to protect us?' Sovereignty is considered by many states in the developing world to be a Bulwark against colonialism, and the rhetoric of human rights and 'sovereignty as responsibility' is reminiscent of the arguments proffered by European empires in the 19th century and 'raises the gamut of a return to colonial habits and practices on the part of the major Western powers'. The Bush doctrine is being criticized as the intervention in both Afghanistan and Iraq were concerned with securing access to oil supplies. The usual argument is that the US wanted to secure oil pipelines through Afghanistan, while Iraq is potentially the second-largest supplier of oil in the world today. Moreover, double standards and military might are experienced by many of the world's population, not as the promotion of human rights, but as the imperialist exercise of power. This is all the more visible in the light of the unilateralism of the Bush administration.

The principle of might is right suitable here. US is powerful and hegemonic state in international relations. Due to its position, US and other powerful countries captures resources of other states and gave justifications as it pleases like white man's burden during colonial era and burden to provide freedom to people in present era of neo-colonialism. No state or government want that their

people suffer. But either they don't have resources or they don't have the technique to utilize them, or powerful states make them unable to do so by capturing their resources for their own benefits.

Even US who consider himself as champion of human rights also violates the human rights of its own army as the army officers joined for the protection and safety of their own country, but they send to various humanitarian interventions where their own life is at high risk. The so-called champions of human rights send their troops for intervention only there, where they have profit or interest. Whether, the 2003 intervention in Iraq was a case of 'humanitarian intervention' tested by the distinction between an intervener's intention and motive. The supporters of humanitarian intervention said that although the British and Americans may have had dubious motives but their intention was humanitarian. This intention was regime change, to bring to an end Saddam Hussein's tyrannical rule. The issue of Iraq's weapons of mass destruction (WMD) and the threat they pose to its neighbors as a justification for war lacks credibility in the Arab world for two reasons. First, it is commonly recognized in the region that Saddam's WMD capability had either been wiped out during the 1990s or so degraded that it posed no real threat to its neighbors. This view, held across much of the Arab world, has been proven largely correct in the aftermath of the Intervention and the U.S. failure to produce credible evidence of Iraqi WMD.

CONCLUSION:

The common perception is that the war against Iraq was planned in order to control its oil resources and to consolidate Israeli hegemony in the region by decimating the residual capabilities of the only Arab state with the potential to pose a challenge to Israel.^{xviii} The previous behaviour of the British and American governments in imposing sanctions against Iraq fits in with this pattern of behaviour. These sanctions exacted a terrible humanitarian toll on Iraq. As many as 500,000 Iraqi children died of thirst, malnutrition, and preventable diseases as a result. Yet the US and the UK continued to support sanctions against Iraq, despite opposition to sanctions from many other governments. Thus, the coalition lacked a humanitarian intention. For this reason, the 2003 war on Iraq was not a case of 'humanitarian intervention'.^{xix} Thus the record of humanitarian interventions evidences two trends; first, the presence of a large degree of national interest whenever states have launched a supposedly humanitarian intervention. Second, a marked unwillingness amongst states to intervene when national interests are not at stake regardless of humanitarian suffering taking place. The strong co-relation between national interest and exercise of humanitarian intervention indicates that when states do not have national interest at stake, the scale of human suffering has not convinced them to act unselfishly. There exist many parts of the world where the humanitarian situation remains intolerable. Rwanda provides with a clear example. Despite grave humanitarian concerns, the powerful states not intervened because there existed no strategic interests.^{xx} The moral rhetoric and humanitarian rationale used in the intervention of Iraq (2003) and Afghanistan (2001) simply masked geopolitical,

strategic and imperialistic motives and misuse of humanitarian agenda. The notion of humanitarian intervention being misused by powerful states to exploit less powerful states.

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