

HUMANITARIAN INTERVENTION IN THE BALKANS

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Abstract

Humanitarian intervention is a controversial issue of international law: even though the legal framework is set up by the Charter of the United Nations, the justification may cause difficulties for the interfering party. What can be regarded as a threat to peace, which is disquieting enough to launch the use of armed forces in a third state? Can it be a protective measure while threatening the life of civilians at the same time? Can the intervention purely be "humanitarian"? The aim of this paper is to find answers to these questions by analysing the example of the NATO intervention during the Kosovo War.

Key words: *Humanitarian Intervention, United Nations, NATO, Kosovo War, Belgrade bombings, Justification of Intervention*

1. Humanitarian Intervention

1.1. *The place of Humanitarian Intervention in the International Law*

Humanitarian intervention can be perceived as a form of international interventions, which means the use of coercion and armed forces by a third state. This action causes a powerful intervention into the internal affairs; consequently, the acceptance of it is debated even until these days, as the reason of intervention cannot be justified unequivocally in most cases. Using armed forces in a different country can only be initiated in circumstances that are unacceptable under international law and that threaten regional safety. A possible justification from the intervening party can be based on the protection of human rights, if it provides international armed forces in order to help the troubled country, or if it uses armed forces in order to exercise its individual or collective right to self-defence.¹

Humanitarian intervention differs from the other types of intervention in a way that in this case the intervention is justified because human rights have heavily been violated, or because the state is not able or does not intend to protect the nations living in its territory, or it expressively persecutes these nations.²

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¹ TÖRŐ Csaba: Humanitárius intervenció: dilemmák a nemzetközi jog és politika határvidékéről, PhD. disszertation, Budapest, 2003, 15-19.

² JAYAKUMAR, Kirthi: Humanitarian Intervention: A Legal Analysis, In: E-International Relations, 2012-02-06.
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1.2. The notion of Humanitarian Intervention

As there is no generally accepted notion of humanitarian intervention that would be unequivocally defined, some key features are going to be presented below.

As it has been mentioned above, humanitarian intervention can only be applied in the case of serious and mass violations of human rights, and only in these cases can it be proved legitimate. Moreover, it is equally important to emphasize that the applied violence must be proportionate to the aim pursued, and once the aim has been achieved, it is no longer possible to continue the armed intervention. The aim of intervention, however, cannot be linked with other – political, economic, commercial – interest, which can be perceived as the prohibition of self-interest.³

1.3. Legal Framework of the Intervention

The Charter of the United Nations (1945) has a key role in regulating international interventions: Chapter VII regulates the procedure applicable in the case of threats to peace, breaches of peace and acts of aggression. Under Article 41, *“the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”*⁴ Despite the fact that the Charter does not expressly mention the notion “Humanitarian Intervention”, those who apply it refer back to this article when justifying the legality of the intervention.

International armed interventions, however, cause several problems, among which sovereignty as a constitutional principle, the principle of non-intervention and the prohibition of violence should be examined more thoroughly.

The principle of sovereignty is defined in Article 2 (1) of the Charter: *“the Organization is based on the principle of the sovereign equality of all its Members”*.⁵ Consequently, it requires a mutual respect from the part of the Member States of the equality of each other. As a result of intervention, the sovereignty of a state is violated, since the armed forces come from outside, from a third party without the intention of the state to initiate a war with the intervening party. On the other hand, the protection of the principle of sovereignty can be a justification of intervention too, since the reason of intervention is just the prevention of the future problems caused by the state that might affect the whole region, not only the state, thus violating the sovereignty of other states. In the conflict between intervention and sovereignty, the limited nature of the sovereignty of a state should also be considered, since sovereignty is not absolute – this is the fact that can provide legitimacy to the birth and operation of a supranational organization, such as the United Nations.⁶

The second problem that arises related to humanitarian intervention is the principle of non-intervention (or prohibition of intervention), which is guaranteed by Article 2 (7) of the Charter. The prohibition of intervention means that the United Nations is not given the authorization to interfere in the internal affairs of the Member States. The Charter also declares that this

³ KULCSÁR Attila: A humanitárius intervenció fogalma, jogi háttere, a líbiai beavatkozás körülményei és következménye, In: Nemzetbiztonsági Szemle, MMXIV/Különszám II., 40-41.

⁴ Charter of the United Nations, 1945. Chapter VII, Art. 41-42.

⁵ Charter of the United Nations, Chapter I, Art. 2 (1)

⁶ MIYOSHI Masahiro: Sovereignty and International Law, Aichi University Press, 2009, 6-7.

principle is not applicable in the issues detailed in Chapter VII, thus it can be regarded as an exception from the prohibition of non-intervention.⁷ The fact that the Charter does not mention certain issues that are "*essentially within the domestic jurisdiction of any state*", thus, it is commends the United Nations to decide discretionally in each issue, examining the matters and circumstances of the cases one by one.⁸

The Charter also deals with the third issue: the one that is related to the prohibition of violence. Article 2 (4) of the Charter says that "*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 Purposes of the United Nations.*"⁹ This statement of the Charter restricts the *ius ad bellum* (the right to engage in war), moreover, it prohibits the use and threat of force, although it does not provide the definition of force. The application of humanitarian intervention breaks this rule, since intervention is realized by the use of force. However, the Charter gives authorization to the states to use armed forces for self-defence, even in a collective manner, furthermore, it empowers the Security Council to authorize certain measures in order to maintain or restore international peace and security.¹⁰ Consequently, the most important rule regarding humanitarian intervention is the following: it can only be initiated legally – except the case of self-defence – only if it is authorized by the Security Council.¹¹ Concerning humanitarian intervention for self-defence, it cannot be applied for achieving individual national interests, but for community protection purposes.

The problematic issues of the humanitarian intervention are rooted in the deficiencies of the regulation, as there is no other relevant international document other than the Charter that deals with intervention. Moreover, the Charter does not clarify the meaning of certain fundamental notions, such as threat to peace or breach of peace, thus, leaving "black holes"¹² in law. This uncertainty makes the execution of law inconsistent, since – by not defining the key notions that are indispensable to understand the application of intervention – it entrusts the Security Council with the assessment of individual cases.

Regarding humanitarian intervention, a further principle should also be highlighted which can be found in the Charter: the principle of the responsibility to protect.¹³ This is the obligation of the Security Council and it has an important role in the functioning of the United Nations as it was created after the two world wars in order to maintain peace and security and to prevent future wars, thus bearing responsibility of realizing and maintaining these purposes.¹⁴ That is the reason why the United Nations has an outstanding role in international humanitarian law, because only after the Second World War did the protection of civil population arise, especially after the use of weapons that are able to mass destruction (nuclear bomb, poisonous gases, tanks). The responsibility to protect (often referred to as R2P) includes the protection of the civil population, the efficient intervention in due time, as well as the complete reconstruction, which generally belong to the power of the Member States themselves, however, they delegate

⁷ Charter of the United Nations, Chapter I, Art. 2 (7)

⁸ MOORE, John Norton: *Law and Civil War in the Modern World*, The Johns Hopkins University Press, Baltimore 1974, 402.

⁹ Charter of the United Nations, Chapter I, Art. 2 (4)

¹⁰ Charter of the United Nations, 1945. Chapter VII, Art. 42.

¹¹ TÖRÖ Csaba: *ibid*, 86-87.

¹² JAYAKUMAR, Kirthi: *ibid*, 2.

¹³ Charter of the United Nations, 1945. Chapter V, Art.24

¹⁴ GILDER, Alexander: *The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations- terrorism · UN Security Council · International humanitarian law · Use of force · Responsibility of international organizations*, In: *Netherlands International Law Review* 2019, 48.

this right to the Security Council in order to carry out a rapid and effective acts. The delegation of the responsibility can also be perceived as a limit to the sovereignty of the Member States, which is reconcilable with the nature of an international organization, as the states should subject themselves to the aims of the organization in order to maintain peace, which – in some cases – can lead to the restriction of sovereignty.¹⁵

2. Humanitarian Intervention in the Balkans

The problematic issues in the practice of humanitarian intervention are going to be presented hereafter through the example of the Yugoslav Wars.

2.1. Kosovo War (1998-1999)

The wind of change across Europe in the 1990s also affected the Balkans, however, in a very different way than the other states of the Eastern Bloc. In the region, the "regime change" did not happen peacefully, moreover, the motivation was also fundamentally divergent: the main aim was not to reach a complete change of the political regime but to organize the Federal People's Republic of Yugoslavia into nation-states, since the FPRY integrated several different cultures, ethnicities and nations. Tensions between ethnicities lead to Slovenian, Croatian and Bosnian Wars of Independence, however, the conflict culminated in the Kosovo War. This territory had a key importance for Serbian nationalists – lead by Yugoslav Head of State Slobodan Milošević –, since its history had been intertwined with Serbia for centuries: for instance, Serbs beat the Ottoman army in 1389 in the battle of Kosovo Polje.¹⁶ The Kosovan Albanian ethnic group was fighting for the declaration of independence which finally realized in 2008. The problem, however, left several questions unanswered, since the Serb Constitution still refers to Kosovo as an autonomous province of the Republic of Serbia, therefore, it does not recognize the independence of Kosovo. Even though Serbia is officially a candidate state of the European Union, even the Member States do not share a common point of view on the independence: the majority of the states do recognize it, however, five of them – namely Cyprus, Greece, Romania, Slovakia and Spain – consistently refuse to do so. Nevertheless, reaching unanimity within the EU is absolutely necessary for the successful accession of Serbia.¹⁷

The Kosovo War broke out in 1998: Albanian guerilla warriors launched a large-scale attack against Serb police and military units. During the war, both sides repeatedly committed ethnic-based cleansing and the mass execution of the civilian population, but none of them were able to achieve any significant results.¹⁸ NATO attempted to solve the conflict at the Rambouillet Conference held on 15 March 1999. The intervention was primarily based on the agreement of 25 October 1998 between the Federal Republic of Yugoslavia and the NATO, in which the Yugoslav state declared to subject itself to the provisions of the agreement. According to the proposal concluded in Rambouillet, the parties shall have made a ceasefire until the status of the territory is not clarified. Kosovo would have been an autonomous region

¹⁵ CARVALHO Benjamin de – SANDE LIE Jon Harald: Conceptual Unclarity and Competition: The Protection of Civilians and the Responsibility to Protect, In: The Protection of Civilians in UN Peacekeeping, 2012, 54-57.

¹⁶ COTTEY, Andrew: The Kosovo war in Perspective, In: International Affairs, Blackwell Publishing Ltd. 2009, 593-596.

¹⁷PERERA, Sandesha: Recognition of Kosovo with Regard to International Law, In: International Journal of Advanced Research 6(5), 1217-1218.

¹⁸ Under Orders: War Crimes in Kosovo. Human Rights Watch, 2001, 34.

of Yugoslavia. Even though the Albanian delegation accepted the conditions, Serbia completely rejected it, as they did not tolerate even a temporary, conditional independence.¹⁹

Milošević, ignoring the proposal of NATO, attempted to put an end to the conflict: he ordered ethnic cleansing in the region which immediately led to the interference of NATO: on 24 March 1999 it launched air attacks against Serbia, aiming to break Milošević. NATO's main goal was to prevent mass violations of law, further acts of violence and ethnic cleansing of Kosovan Albanians, which already forced thousands of Kosovans to flee their homeland. According to NATO, the bombing of Serbia was the only way to prevent the repetition of the bloody events of the Bosnian war.²⁰

2.2. *Justification of the Intervention*

As it had been mentioned previously, humanitarian intervention is a particularly strictly regulated instrument of international law, since it allows to interfere into the decisions of an independent, sovereign state. Therefore, several criteria must be fulfilled in order to justify the legality of the intervention. In the following, the possible justifications brought up by NATO, as well as the arising questions and problems are will be presented.

NATO has essentially sought to justify the need for intervention from two perspectives: from humanitarian and strategic points of view. The humanitarian reasons were based on the belief that without the intervention of the international community, the horrors of the Yugoslav war would have continued, thousands of civilians, including children and women, would have fallen victim to ethnic and religious cleansing, of which the bloodiest example was the Srebrenica massacre which resulted in the death of nearly 8700 Bosnian Muslims.²¹ This justification could be problematic though: the Račak massacre which was cited as the main cause of the NATO action and which resulted in the death of forty-seven Albanian civilians does not constitute a grounded reason for the intervention, since – according to several critics – it is not a high number of executed so as to be called a *mass* homicide.²² The analysis of the executions is further complicated by the lack of information available on those slaughtered (gender, clothing, signs of group execution), as no investigation was allowed after the events.²³

Furthermore, the strategic justification of the intervention was the prevention of the escalation of the war which is in accordance with the objectives of the North Atlantic Treaty (1949), such as safeguarding international peace, security and justice,²⁴ and at the same time, it strengthens the credibility of NATO itself, while maintaining the cooperation between Europe and America.

The humanitarian intervention in Kosovo was not approved by the Security Council of the United Nation; therefore, the question of legality can arise, as it cannot be considered an intervention based on self-defence which is the only exception of the obligatory approval of the Security Council. It is obvious though that the United States stood behind the NATO-actions,

¹⁹ Statement by the Secretary General of NATO, Dr. Javier Solana, on the outcome of the Rambouillet talks, NATO Press Release (99)21, 1999-02-23

²⁰ President Clinton, Address to the Nation, Washington, DC, 24 March 1999' in Weller (1999a), 498.

²¹ BRUNBORG, Helge – TORKILD, Hovde Lyngstad – URDAL, Henrik: Accounting for Genocide: How Many Were Killed in Srebrenica?, In: European Journal of Population, 2003, 229-248.

²² HERMAN, Edward S. – PETERSON, David: The Politics of Genocide, New York: Monthly Review Press, 2010, 97.

²³ RAINIO, Juha – LALU, Kaisa – PENTTILÄ, Antti: Independent forensic autopsies in an armed conflict: investigation of the victims from Racak, Kosovo, In: Forensic Science International/116, 2001, 171-172.

²⁴ North Atlantic Treaty, Art.1.

the fact the President of that time, Bill Clinton sought to prove the justification of the necessity of the interference towards the American nation, proves this statement.²⁵

Since NATO did not receive the approval, nor was able to prove the necessity of the intervention, certain critics suppose that the real reasons behind the interventions might not be revealed to the public. One of these hidden reasons could be the emphasizing of NATO's power in a region which is clearly an area of interest of its opponent, Russia: NATO attempted to demonstrate its power through Serbia, a strong ally of Russia. The independence of Kosovo can be considered a break of the power of Serbia, and therefore, of Russia.²⁶ The creation of a puppet state can certainly be a perfect solution to change the one-sided international relations of the region, making a quasi ally of Kosovo by helping it to declare its independence. The geographical location of Kosovo is not negligible either: its proximity to Russia makes it easier to demonstrate power more effectively. Some critics even go further: they think that in return for guaranteeing Kosovo's relative independence, NATO expects to fully implement its own political goals.²⁷

It is also debated whether the intervention was "humanitarian": the bombings of 24 March to 10 June attacked the civilian population – a key target was the Serbian state television and radio building in Belgrade, which resulted in no news about the attack. The case of the bombing, which resulted in the death of 16 civilians, had been brought by some Yugoslav citizens to the European Court of Human Rights, alleging violations of the right to life and freedom of expression. The request was rejected by the Court because Yugoslavia was not a signatory to the European Convention on Human Rights at that time.²⁸ Another attack worth mentioning was the Belgrade-Ristovac railway line on the Grdelica bridge: Human Rights Watch reported that at least twenty civilians have been killed in the attack.²⁹ According to the reports, nearly five hundred Yugoslav citizens died as a result of the NATO-attacks. NATO later stated that endangering the civilian population was not intentional, but "there is always a price to pay to defeat evil," said Jamie Shea, a NATO spokesman.³⁰

3. Conclusion

Humanitarian intervention is a unilateral interference in the internal affairs of a sovereign state, alleging a violation of human rights committed by that state against its own citizens. It is extremely difficult to justify an intervention because it is not clarified in the scientific literature what constitutes a valid reason to initiate an intervention or exactly up to which point it may extend. As we have seen before, NATO's intervention in Yugoslavia is extremely problematic, as the need for intervention has not been sufficiently clarified, and further researches seek to

²⁵ See for instance the previously cited speech entitled "Address to the Nation" (Fn.20.)

²⁶ HOLZGREFE, J.L.: *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, Cambridge: Cambridge University Press, 2003, 42.

²⁷ GIBBS, David: *First do no harm humanitarian intervention and the destruction of Yugoslavia*, Nashville: Vanderbilt University Press, 2009, 185.

²⁸ Inter Press Service (IPS), "NATO and Serbian TV Accused of Rights Crimes", 19-26 October 1999

²⁹ Amnesty International Report (2000): *NATO/FEDERAL REPUBLIC OF YUGOSLAVIA "COLLATERAL DAMAGE" OR UNLAWFUL KILLINGS? Violations of the Laws of War by NATO during Operation Allied Force*

<https://www.amnesty.org/en/library/asset/EUR70/018/2000/en/e7037dbb-df56-11dd-89a6-e712e728ac9e/eur700182000en.pdf> (Downloaded: 2020-03-23)

³⁰ KRIEGER, Heike (ed.): *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Cambridge University Press, 2001, 335

point out that it may have had some underlying, possibly political purpose. In view of the above, it can be concluded that humanitarian intervention is an instrument of international law that can be abusive, as it gives an external power the right to carry out unilateral intervention in a state, all in such a way that the real interest behind the intervention may remain hidden.