

The Dilemma of Humanitarian Intervention

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Abstract

The aim of this paper is to define humanitarian intervention, to analyze its purpose and to evaluate its value in international law. The researcher aims to analyze if unilateral intervention and use of force could be legalized in modern political situation, with the hope that it does not undermine human rights. The intention is to provide suitable suggestions which may prove beneficial in dealing with the lingering issue of unilateral intervention.

Keywords: Humanitarian Intervention, United Nations, Human Rights, Security Council, Violation of Human rights.

Introduction

“Humanitarian intervention is entry into a country of armed forces of another country or international organization with the aim of protecting citizens from persecution or violation of their human rights” (Oxford University Press). The issue of existence of humanitarian intervention right in international law is debatable. The lawyers and scholars fail to draw a definite line between the ethics, politics and legality of this intervention. The question that, can we use force under humanitarian intervention without the authorization of Security Council to protect minorities of State population from massive human rights abuses has no definite answer. Owing to the progress in the field of human rights, the concept of sovereignty has begun to change. Now sovereignty relates more to the responsibility to protect human rights of state’s individuals. Ratner claims, “That traditional integrity and sovereignty of states have incorporated human rights values”.¹ A major development in this context is International Commission on Intervention and State Sovereignty (ICISS) report in 2001, *The Responsibility to Protect*, commissioned by Canadian government –R2P argues that if states failed to protect human rights of its citizens, then international community will respond and the sovereignty of the state is temporarily suspended.

It means that there is universal responsibility to undertake humanitarian intervention to protect populations from severe crimes against humanity. The head of member states in UN world Summit in 2005 accepted universal responsibility to protect in cases where national authorities failed to protect their populations from war crimes, genocide and crimes against humanity (UN 2005; 30). Among UN, NATO, Regional organizations, a state or group of states, who has to discharge this responsibility, remains unclear. It is necessary to resolve this dilemma as early as possible otherwise as Alex Bellamy asserts, ‘there is real danger that appeals to a responsibility to protect will evaporate amid disputes about where that responsibility lies’ (2005; 33). The followers of this intervention justify this by saying, “we should not let people die” and rooted this idea in UDHR 1948. Intervention can only be legalized when there is massive violation of human rights values and is motivated by international organization particularly by United Nation Security Council. Unilateral intervention is still controversial and seldom gets international community approval. Chapter VII of UN Charter authorizes Security Council to undertake intervention and allows the measures to be taken in accordance with Articles 41 and 42 to maintain international peace and security in the event of threat to peace. Since 1990, the UN Security Council has widened its scope of authorization under humanitarian basis to include interstate war and internal oppression as well.

¹ Bogdan Wierzbicki, Gnanapala Welhengama, “The Problem of Humanitarian Intervention: Developments And Trends” *The Liverpool Law Review* Vol. XVI (2) [1994] at 162 on Page 161.

Those who oppose this intervention rely on article 2[7] of UN Charter that says, “nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.” The need is to clear the legal and political boundaries of humanitarian intervention. This intervention should not become a tool of powerful nations to attack on poorer countries. In practice, the powerful nations do not become a target of humanitarian intervention. There should be some reliable criterion that invokes humanitarian intervention without being influenced by powerful nations. The poorer nation has registered this fear of use of “so called right of humanitarian intervention of powerful states” in G-77 summit.

Purpose

The main purpose of intervention is to protect the individuals and group of individuals against the abuses of their own states. The international organizations should respond to massive human rights violation genocide and crimes against humanity. The protection of human rights, provide the basis of modern humanitarian intervention doctrine and this protection sometimes becomes more important than state sovereignty. In 1994 General Assembly clearly declared that, “promotion of all human rights is a legitimate concern of the international community”.ⁱⁱ

Professor Lillich says, “Even forcible self help can be used when substantial deprivation of human right values has occurred or is threatened.....”ⁱⁱⁱ Professor D’ Amato argues “any nation with the will and the resources may intervene to protect the population of another nation against any kind of tyranny existing anywhere in the world”.^{iv} But Thornberry does not agree with them. He says, “Humanitarian intervention by individual States could hardly serve as a model for the future. It is something of a blind alley, dangerously destabilizing to international society and ultimately counter-productive for its intended beneficiaries. International law could hardly afford such a doctrine in the age of advanced technological wars”.^v

When there is massive violation of human rights values the international community can take action firstly under chapter VII of the UN Charter, secondly under Genocide Convention and lastly by general principles of humanitarian law.^{vi} Some international lawyers argue that it is justified to intervene in internal affairs of the states to prevent humanitarian catastrophe. They claim that as international law is still developing and UN Charter is not able to cover all matters that happened in states so individual states should have legal powers to intervene to stop humanitarian crisis until the time Security Council takes the charge.^{vii} One may agree with it because the protection of human rights is matter of international concern, so where there is massive violation of human rights, states with power, will and resources should respond and stop the ill treatment of the states against her own citizens only when Security Council fail to react or unwilling to take action.

Legal Scenario

The possibility that state practices before First World War can constitute customary rule of law allowing for humanitarian intervention is out of question. At that time wars were not legally regulated and also states did not need customary rule, allowing intervention on humanitarian grounds nor is customary law expected to develop under such conditions.^{viii} After the First World War attempts were made to stop states to go in wars. All this goes against the development of customary rule allowing intervention on the humanitarian grounds. However, after the Second World War the ‘main stream approach’ to the status of right to humanitarian intervention under UN Charter can be summarized as:

ⁱⁱ Id page 162, See also Gen. Ass.Res.A/Res/48/141 June 1994.

ⁱⁱⁱ Supra note 1 page 157, See also R. Lillich, *Humanitarian Intervention and the United Nations*, University of Virginia Press, 1973

^{iv} Supra note 1 page158, **See also**, R. D’ Amato, "The Panama invasion was a lawful response to tyranny", *84/2 American Journal of International law* (1990), 519

^v Supra note 1,page 158, P. Thornberry, *International Law and the Rights of Minorities*, Clarendon Press, 1991,

^{vi} Supra note 1, page 162

^{vii} P. v. ROGERS', "HUMANITARIAN INTERVENTIONAND INTERNATIONAL LAW",2004,Harvard Journal of Law and Policy, Vol. 27(3) page 725 AT 726

^{viii} Peter Hilpold,' Humanitarian Intervention, Is there a need for a legal Reappraisal?',2001,EJIL, Vol. 12 No 3 , 437 at 443
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1: Unilateral humanitarian intervention is prohibited without any doubt
 2: However, the collective humanitarian intervention right with the authorization of UN Security Council, whose effects will not go beyond the boundaries of that particular state, is debatable.^{ix}

A large numbers of armed interventions after the Second World War were motivated by humanitarian motives in one way or the other way. The main intervention between period of 1945 to 1990 were Belgian Congo Intervention of 1964, the US intervention in Dominican Republic of 1965, India's intervention in Pakistan in 1971, Vietnam intervention in Kampuchea in 1978 and 1979, Tanzania intervention in Uganda in 1979, and US intervention in Grenada in 1983 and in Panama 1989 and 1990. In all these interventions there are no doubt that intervention has provided some humanitarian relief. But at the same times, in most cases there were other elements also present that forced interveners to undertake humanitarian intervention.

In interventions by Vietnam and Tanzania the justifications that were raised by the interveners were—they were acting under act of self defence.^x Similarly, UN intervention in Dominican Republic was justified by humanitarian reasons in official declarations but it played a minor role in reality.^{xi} By examinations of these interventions it became clear that necessary element for the formation of customary international law is lacking and also there is not enough state practice to prove this customary law. The UN's 'humanitarian role' was changed dramatically after the cold war. The breakthrough came in 1991. The Security Council resolution 688 of 1991 not only condemned repressions of the Kurds and other civilians in Iraq but also showed affirmed commitment with Iraq's sovereignty and political independence. Through this resolution Security Council had set new standards against State's ill treatment of its own people.^{xii} Similarly, Resolution 770 in 1992 guarantees the humanitarian assistance in Bosnia by allowing the possibility of use of outside military force and resolution 794 in the same year responded to crisis in Somalia, Security Council authorized UN troops to adopt 'all necessary means' to create secured environment in Somalia.

For the first time Security Council directly related magnitude of human tragedy as a threat to international peace and pointed out special situation in Somalia for which the term 'failed state' is used in literature.^{xiii} Likewise, the UN resolution 940 (1994) responded to Haitian crisis and Security Council called the situation of Haiti of 'unique character requiring an exceptional response'. The most genuine case of collective humanitarian intervention is the Resolution 929 (1994) which responded to crisis in Rwanda. The Security Council purely states that human tragedy in Rwanda is threat to international peace and did not refer to trans boundary effects of crisis or presence of 'failed state'.^{xiv} On reading these resolutions one may infer that United Nations has started treating Human Rights violations as threat to international peace. It is clear that protection of human rights is an international matter and states can not infringe these rights under the blanket of sovereignty. From these resolutions it became evident that Security Council has started giving importance to internal crisis if conflicts lead to severe humanitarian crisis. Though, there are different readings of current law of humanitarian intervention, but here the focus is on two main readings.

International Legal Positivists Readings of International Law

International legal positivism is a part of legal positivism. They hold that there is conceptual difference between what the international law is and what morality demands.^{xv} It means that *lex lata* 'the law as it is' is not the same as *lex ferenda* 'as the law ought to be'. There are two sources of international law, customs and treaty. They argue that there are two exceptions, under which article 2(4) of UN charter can breach, unilateral or collective self defence and Security Council measures under Chapter VII of UN Charter.^{xvi} Most international positivists reject the claim that unauthorized humanitarian intervention is legal, because there is insufficient state practice to support this claim under customary international law (Byers and Chesterman 2003).

^{ix} Id page 443

^x id page 444

^{xi} Id page 444

^{xii} Id page 445

^{xiii} Id page 446

^{xiv} Id page 446

^{xv} James Pattison, "Humanitarian Intervention and international law, The Moral Importance of intervener legal status", 2007, *Critical view of International Social and Political Philosophy*, Vol. 10, No 3, page 301 at page 304

^{xvi} id

They argue that humanitarian intervention is legal only when it is undertaken under self defence or when Security Council authorizes it. One may agree with Pattison when he rejects International Legal positivists' arguments that humanitarian intervention is legal on the basis of self defence. As ICJ has made it clear that claims under self defence can be made only in case of arm attacks. Therefore intervener should seek Security Council authorization to legalize its action. In short, legal positivists only favour intervention that is supported by United Nations.

A Naturalist Reading of international law;

Fernando Tenson (1997) does not agree that United Nations authorization is necessary to make an intervention legal. He rejects the argument that there is any difference between law and morality. He based his arguments on Ronald Dworkin's interpretive natural law theory, according to which current status of law on certain issues such as humanitarian intervention also similar in part what the law ought to be.^{xvii}

He further argues that neutral analysis of two sources of international law is not possible and therefore one has to rely on best moral theory to interpret these sources, which is human rights based approach – it sees individuals as subjects of international law and the role of international law is the protection of human rights.^{xviii}

Tenson argues that if an intervener takes an action under this approach its action is legal even if that action is not authorized by United Nations, but subject to certain normative criteria such as intervener has humanitarian purpose, uses force when it is necessary, welcomed by the oppressions etc. He reached to the conclusion by claiming that possible precedents that lead to establish or deny the existence of customary law permitting intervention on humanitarian grounds is affected by the interpreter's views on the role of international law.^{xix} Tenson claims 'that we need to appeal moral political values to interpret possible potential precedents' (1997; 166).

Tenson, mentioned nine interventions on the basis of which he argues that in current international law there is legal right of both authorized and unauthorized interventions,

1. India 1971 intervention in East Pakistan
2. Tanzania 1979 intervention in Uganda
3. France 1979 intervention in Central African Republic
4. The US intervention in Grenada in 1983
5. US led intervention in Somalia in 1992-93
6. the US, UK and French intervention in Iraq in 1991
7. US led 1994 intervention in Haiti
8. French led intervention in Rwanda in 1994
9. NATO's intervention in Bosnia in 1994.

Pattison seems right that some of the unauthorized interventions that Tenson mentioned do not meet the criteria of opinion juris.^{xx} According to ICJ the opiniojur is condition of customary international law requires; "Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is 'evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it'" (in Chesterman 2003: 58n.26).

He argues that some of the unauthorized humanitarian intervention that Tenson mentioned did not have evidence that humanitarian intervention is legally obligatory. The acting states had not claimed that their interventions were legal in international law on humanitarian intervention nor their intervention was legally accepted by international community (Chesterman 2003, 49-50). Pattison argues that neither India in East Pakistan (at least primarily), Tanzania in Uganda nor France in Central Africa based their interventions on humanitarian grounds nor these interventions are considered legal by international community. However, other unauthorized humanitarian interventions (*UK intervention in northern Iraq in 1992, ECOWAS intervention in Liberia 1990 and Sierra Leone 1997 and according to Stromseth (2003; 251) NATO's legal justification in Kosovo based on the right of humanitarian intervention or humanitarian necessity*) met the requirement of *opinojuris*. But it is difficult to develop any customary right of unauthorized interventions completely on the basis of these interventions.

^{xvii} Id page 305

^{xviii} id page305

^{xix} Id page 305

^{xx} Id ,page 306

So, in current international law UN authorized interventions are legal.

Opinions of international lawyers about humanitarian intervention right;

Rogers quotes that international lawyers have mixed views about humanitarian intervention as use of force without the authorization of Security Council to protect sections of state's population from human rights abuses. In fact they are divided in six groups,^{xxi}

First, members in this group say that right of humanitarian intervention is unlawful.^{xxii}

Second, there are lawyers who argue that humanitarian intervention is presently unlawful, but it will be lawful in future, as an exception to UN charter system of collective enforcement, in closely defined circumstances. Some argue in this group that states independently develop principles to regulate humanitarian intervention other want to develop principles within UN Charter system. However, this involves the acceptance from international community of a duty to protect loss of human lives on large scale "ethnic cleansing". In such situation principle of non intervention have duty to protect and five permanent members' states of Security Council will not apply veto power.^{xxiii}

Third, there are lawyers who support humanitarian intervention only in cases where there is fear of loss of human lives on large scale of any country ,not only of nationals of intervening state. Lives of people would have been saved by intervention but these lawyers do not support intervention to "restore democracy".^{xxiv}

Fourth , some argue in this group that intervention is justified only in cases of 'collapsed state', where there is immediate emergency, and action taken to rescue the lives of people is short and would result in fewer casualties than would have been expected from non-intervention.^{xxv} Others talk about grey zone. They based their views on the fears of the non – Western countries of giving discretionary powers to powerful nations in using right of humanitarian intervention, as existing international law has not settled this matter yet . They want to set legal basis for humanitarian intervention and that it would only be allowed in clearly defined circumstances. They mentioned two situations where intervention is justified;

1-permanent human rights violations

2-where civil society is in great suffering and risk of failure of that state.

They added that in these situations also, the right of intervention is subject to some preconditions. It means that force used in such circumstances to achieve humanitarian goals and not to defeat opposing armed forces.

Fifth, the members in this group proclaim that right is still developing and it is in its infancy stage.^{xxvi}

Sixth, they claim the existence of legal right of humanitarian intervention but only in situations of extreme nature and also as a matter of last option.

Such right invokes when;

1- There is a threat of most serious humanitarian emergency that results in loss of lives on large scale

2- And military action is necessary to stop this humanitarian crisis as a matter of last resort and when all other peaceful ways have failed.

Some lawyers in this group argue that right can only be exercised when the magnitude of humanitarian crisis is recognized by the United Nations as constituting threat to international peace and security and the Security Council is unwilling or unable to act.^{xxvii}

^{xxi} A.P.V. Rogers', "Humanitarian Intervention and International Law", 2004, Harvard Journal Of Law And Policy, Vol. 27(3) Page 725 At Page 730

^{xxii} .Id Page 730, See Also ., Simon Chesterman, Just War Or Just Peace?: Humanitarian Intervention And International Law (2001); Brownlie & Apperley,; Byers,

^{xxiii} Supra note 21 pages 730, See also INT'L CoMM'N ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001), available at <http://www.dfait-maeci.gc.ca/icissciise/pdf/Commission-Report.pdf>.

^{xxiv} Supra note 21 page 731, See also M. N. SHAW, INTERNATIONAL LAW 1045-48 (5th ed. 2003);

^{xxv} Supra note 21 page 731, See also Ian Brownlie & C. J. Apperley, *Kosovo Crisis Inquiry*;

^{xxvi} Supra note 21 page 732, See Paecht, *Kosovo as a Precedent: Towards a Reform of the Security Council? International Law and Humanitarian Intervention*, 13(1) HUMANITARES VOLKERRECHT 34, 34-44 (2000)

^{xxvii} Supra note 21, page 732, See also Wheatley, *Chechnya and Humanitarian Interventions*, 150 NEW L. J. 30 (2000).

One may disagree with this perspective, as humanitarian intervention is based on humanity, so where there is violation of human rights and intervention is a last resort, and then this tool should be used to end the sufferings of our fellow human beings. It is the primary duty of international organizations to respond towards humanitarian crisis, if they fail to do so because of their procedure complexities (for instance veto right or lack of mandate) than rest of international community (states with will, power and resources) should not become a mere spectator of that violation but should try to do something meaningful to stop humanitarian crisis. We owe this duty from morality.

The views and opinions of lawyers in all groups are very convincing as they are based on facts and it is very difficult to ignore them. But arguments of lawyers in the fourth group appear to be more reliable. Though there are two different opinions of lawyers in this group but each opinion looks very realistic and really helpful in getting some meaningful done.

They really focussed on the objectivity of the intervention, rather than just making this intervention permissible, and could be allowed only in cases of collapsed states, dire emergency and most importantly only when that intervention results in lesser casualties as compared to non intervention. The sole purpose of the intervention is to reduce the suffering of the people and protect human lives but if intervention itself contributes towards more casualties by ignoring ground realities, it will become meaningless and in fact a crime. There is no doubt that suggestions should be taken to make amendments in UN Charter to facilitate intervention. Because any intervention, that has support of United Nations rapidly gains approval of international community. Though they permit intervention in the situations they mentioned but also in these situations they want to restrict the use of force to achieve humanitarian intervention goal. It means the force should be used in proportion to objectives.

Right of unilateral humanitarian intervention;

In positive international law there is no right to unilateral humanitarian intervention even after Kosovo. During 1990s, the authors like Sean Murphy and Matthias Pape proved that UN Charter has no right to unilateral intervention and state practices also failed to emerge this right even after the end of cold war.^{xxviii} Gray, Chester man and Wheeler also agreed to this view point. For a right to unilateral humanitarian intervention to emerge it is necessary to have positive assertions from the acting states as well as its acceptance from the international community.^{xxix}

To argue for right to unilateral humanitarian intervention in international law one has to rely on Tsagourias 'discursive model of human dignity'.^{xxx} According to him, the concept of human dignity will help us to grip the 'essence' of the problem. As Kirsch says, Tsagourias tries to 'trump positive law by morality'. Wheeler argues the same, 'that in solidarist conception of international relations a right to humanitarian interventions would be recognized, while refusal to do so by pluralist views reflected their moral bankruptcy' (p.296). Tsagourias and Wheeler claim that morality demands the right to unilateral humanitarian intervention. However, as humanitarian intervention represent the tension between state sovereignty and human rights, human rights are based on moral grounds and sovereignty is not or up to some extent. Kirsch says that this claim has two obstacles.

First, according to Wheeler States should satisfy the basic requirement of decency before they qualify for the protection of sovereignty and principle of non intervention (p 28). According to Kirsch this claim resembles with claims of Michael Reisman and Fernando Teson who argues that international law is based on individual's rights and popular sovereignty and states that ignore these are likely to have forcible intervention by other states.^{xxxi} But Kirsch argues that, in current international law this claim seems to be doubtful as there are no sufficient state practices to prove such significant limitation on state sovereignty. Wheeler asserts that current status of international law is not decisive for this moral agreement and further inquiry into foundations of sovereignty is needed to accept or reject it.^{xxxii} Walzer asserts that sovereignty gives protection to self determination of people and this protection is set aside in cases of severe human rights violations.^{xxxiii}

^{xxviii} NicoKrisch, 'review essay, Legality ,morality and Dilemma of Humanitarian intervention after Kosovo', EJIL (2002) Vol. 13, No 1, 323 at page325

^{xxix} Id page 326

^{xxx} id page 327

^{xxxi} id page 329

^{xxxii} Id page 330

^{xxxiii} id page 330

Charles Betiz wants to enforce international order in individuals rights, but Hedley Bull has doubts on it ,’in general the well being of all individuals is best served by rejecting a right to unilateral humanitarian intervention because in using such rights states act on the basis of their own moral principles and disturb peaceful and just international order’.^{xxxiv}

Second, as the primary tension is between human rights and sovereignty but, since 1990s the power of United Nations to intervene in humanitarian crisis is broadly accepted which indicates that sovereignty is not the main concern, and every intervention regardless of actor interferes with sovereignty.^{xxxv} So it is better to locate the conflict between human rights and peace rather than human rights and sovereignty. There are strong moral arguments to support both sides. The opponents of unilateral humanitarian intervention seek UN authorization because they want to preserve international peace and do not want to let arbitrary interventions prosper. The UN General Assembly confirmed the right of people to national and international peace. It is arguable whether protection of peace is more important than protection of human rights in all circumstances and rejecting unilateral humanitarian intervention right. In such circumstances UN Charter gives importance to maintain peace to save upcoming generations from evil affects of war and relies on strong moral arguments.

It is quite difficult to decide which protection is more important either human rights or peace. Both claims are deeply rooted in considerations of justice. But, one would agree that the magnitude of humanitarian crisis will help us in preferring one protection over the other. If severe humanity crimes like genocide or ethnic cleansing are going on and UN Charter fails to take action because of its procedure complexities, then states should take action. In such cases the claim of, not to take action just to preserve peace is meaningless. We cannot preserve peace at the expense of loss of lives of our fellow beings.

‘Illegal Humanitarian intervention is not abusive itself’

Illegal humanitarian is considered abusive; Illegal humanitarians are abusive because they are imperialistic (Trojan horse Objection)^{xxxvi} but Pattison rejects the argument that illegal humanitarian intervention is abusive itself.

He quotes Chandler 2002, and Krisch 2002, according to them, the basic purpose of imperialistic and neo colonial intervention is to gain territorial, economic and strategic advantage.^{xxxvii} But such interventions are not humanitarian, as humanitarian intervention is undertaken to halt egregious violation of human rights. One other version of Trojan horse objection of use of word ‘abusive’ mean, *illegal motive of intervener (self interested reasons) undermines the legitimacy of intervener.*^{xxxviii} On the other hand Pattison appears more convincing when he says that no doubt motivation is important for intervention but in addition to humanitarian motivation there are other factors that are more important to determine intervener’s legitimacy. He argues that effectiveness, representativeness and means of use of an intervener are more important in deciding its legitimacy.^{xxxix}

For instance if state B wants to intervene in State A on humanitarian grounds with reasonable expectation of saving lives of 1000 people, and State C also wants to intervene in state A but with reasonable expectation of saving 1001 lives. Obviously state C will be preferred as it is protecting an additional life. Likewise he argues, that representative self interested intervener is preferred over less representative well motivated intervener. It is important that humanitarian intervener should use humanitarian means to achieve his goals. So, it is really important to determine these factors along with humanitarian motives. One other view is that it is not necessary for intervention that intervener should have humanitarian motive.^{xl} As Stein (2004, 35) says, ‘the strong element of self interest makes it more likely that the intervener will secure the necessary commitment for effective humanitarian intervention’. In practice, it is difficult to find purely humanitarian motive, it is coupled with political, economics, security intentions.

^{xxxiv} id page 330

^{xxxv} id page 331

^{xxxvi} James Pattison, “Humanitarian Intervention and international law, The Moral Importance of intervener legal status”, 2007, Critical view of International Social and Political Philosophy, Vol. 10, No 3, page 301 at page 309

^{xxxvii} id

^{xxxviii} id page 309

^{xxxix} id page 311

^{xl} id page 311

As ICISS (2001a; 36) said, “an intervener needs a political motivation to undertake humanitarian intervention as well, which means that it can justify its commitment in terms of the interests of its citizens”. So the argument that illegal humanitarian intervention is abusive because it has self interested motives and being imperialistic seems to be incoherent. The other allegation that is made against illegal humanitarian intervention is that it leads to abusive intervention, and this allegation is based on illegal intervention in Kosovo led to war in Iraq in 2003(Wheeler 2005). This allegation seems unconvincing because in recent years abusive wars are justified on grounds of self defence (Iraq war 2003). As Stein (2004, 37) asserts, that US new justification of ‘anticipatory self defence’ is more likely to lead to abusive interventions,’ than the possibility, feared by opponents of unauthorized humanitarian intervention , that like cases will lead to unlike cases’ Stein (2004, 37). So there is no need to invoke humanitarian reasons to justify abusive wars.

The quest for Criteria;

Though there are international human rights instruments that help us in evaluating the legitimacy of humanitarian intervention, but some authors have also designed some lists that should be fulfilled to undertake intervention the most authoritative catalogue is of International Law association published in 1974

1. There must be imminent or persistent human rights violations.
2. All non intervention remedies should have been failed.
3. If time permits the intervener should submit its views to the Security Council that how planned intervention would achieve its specific limited purpose.
4. The goal of the intervention is to stop human rights violations and not to achieve other goals relating to intervener self interests.
5. The intent of the intervener must be as limited an effect on the authority structure of the concerned state as possible and targeted towards achieving its specific limited purpose.
6. The intent of the intervener is to intervene for as short time as possible and should stop its action after the achievement of its specific limited purpose.
7. The intent of the intervener is to use as less coercive measures as necessary to achieve its purpose.
8. If possible the intervener should try to obtain invitation from the recognised government and there after cooperate with it.
9. The intervener before its action should request the meeting of Security Council and inform it that humanitarian intervention will take place only if Security Council fail to take action first.
10. The intervention by United Nation is preferred on the intervention by regional organization, and regional organizations intervention is preferred on the intervention by group of states or individuals states.
11. Before intervening, the intervener must give warning or ‘peremptory demand’ to the concerned states to stop gross human rights violations.
12. Any intervener who has not followed above criteria is deemed to breach the international peace thus invoking Chapter VII of the Charter of the United Nations.^{xli}

This list looks very impressive but Hilpold has some reservations for it. He argues that submission of views to security council, the request of meeting, peremptory demands are the hurdles for the intervener who has mala fide intention, but these requisites are just formalities for permanent members of security council and similarly if conflict is between some permanent members the UN is failed to perform its primary duty of maintaining international peace and security.^{xliii} Likewise, the condition that intervener should not be motivated by self interested reasons is also not practically possible. It is difficult to find pure humanitarian motive, in fact humanitarian motive is a mixture of political, self interest, security and economic intentions.

Some international lawyers want to increase the role of ICJ and ICC in order to limit the possibility of abuse.^{xliiii} This criterion of invoking the jurisdiction of the ICJ or International Criminal Court seems unconvincing. As this will not apply to US, as US has declared that in any case it will not accept the jurisdiction of International Criminal Court.

^{xli} Peter Hilpold, ‘Humanitarian Intervention, Is there a need for a legal Reappraisal?’, 2001, EJIL, Vol.12 No 3 , 437 at 456

^{xlii} Id

^{xliiii} Id page 458

And as far as the ICJ is concerned the point is, whether its jurisdiction is limited to violations of international law committed in course of humanitarian intervention or the more basic question that whether intervener has fulfilled the criteria mentioned in catalogues or not.^{xliiv} Hilpold is right that all these criteria fail to answer the questions like why and when humanitarian intervention is acceptable. What constitutes gross human rights violations? And when diplomatic remedies are exhausted? In spite of making a long list of rules, the catalogues should be focussed on issue that whether human rights violation is going on or not and most importantly what constitutes human rights violation. And inquiry of the fact that there is massive human rights violation is to be done by international organs. After proving the fact the intervention should be undertaken with the UN authorization. We as humans cannot wait for procedures to complete or criteria to be fulfilled at the expense of losing lives on large scale.

Development of new customary law;

The possibility that NATO intervention can be set as precedent that leads to the development of new customary law cannot be ignored. The court examined the situation but did not find any evidence to turn this possibility into reality. The justifications that acting states raised during intervention and acceptability of those justifications by international community can provide a sufficient evidence that whether new rule of customary international law is emerging or not. But the justifications raised by the NATO members were of political nature (and were lacking juridical content) and this intervention was also criticized from states all over the world and at the same time states were not ready to accept coming into being of new customary law rule that unilateral acts of humanitarian intervention are permissible.^{xliv} Hilpold has cited Cassese, who managed to collect enough evidence to prove the existence of customary international law rule in favour of humanitarian intervention, admit that it is early to say that customary law has emerged, as element of Usus is clearly lacking. Hilpold argues that only time will tell that the creation of customary law allowing humanitarian intervention will depend only on usus or psychological element is also formed by unilaterally defined element of necessity.^{xlvi}

Conclusion

There is no right to unilateral humanitarian intervention in international law. However, it is morally difficult to disapprove unilateral resource to force that end grave humanitarian crisis but difficult to give it a legal status. The interventions, without UN authorization are widely regarded as illegal, and discourage the interveners whose interventions are justifiable on humanitarian grounds but fail to win UN authorization. Similarly, states also use this authorization as an excuse to avoid intervening. So to overcome these hurdles the need to reform the international law, as Pattison suggests, by supplementing the powers of Security Council to regional organization such as African Union, EU. Also by treaty based laws which help them to undertake humanitarian interventions in more transparent way. But in current situation it is good to have strict observance of use of force. Surely, abusive use of force leads to abusive war. In current position to undertake humanitarian intervention UN authorization is necessary and also the effective intervener should be NATO because of its effective military infrastructure as UN lacks its own standing army and relies on troops from its members' states.

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^{xliiv} id page 459

^{xliv} Peter Hilpold, ' Humanitarian Intervention, Is there a need for a legal Reappraisal?', 2001, EJIL, Vol.12 No 3 , 437 at 460

^{xlvi} Id page 462