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Unauthorized Humanitarian Intervention in International Law

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Abstract:

Humanitarian intervention (HI) is not a new idea and has been a contested issue throughout its history. The concept was formally introduced in 17th century by the so-called father of International Law, though, the Just War theory has been claimed its start point, which dates back to the writings of the Greek Philosophers, and at least, to the lifetime of Augustine (354-430 AD). The Treaty of Westphalia (1648), *inter alia*, led to the rise of Legal Positivism and nation-State system, which in turn strengthened the norm of State sovereignty and non-intervention. The sufferings of 30 Years Religious Wars had made Europeans cautious about interference in the affairs of each other, and therefore, human rights violations of citizens by a State's authority after the treaty of Westphalia was not a satisfactory justification for intervention. After the end of the Cold War, the situation changed, and the UN Security Council authorized many interventions on humanitarian basis. The Security Council considered internal conflict and violation of human rights as a threat to international peace and security invoking collective use of force rules of the Charter. The discussion of Just War may be attractive in legal and intellectual circles and not in practical ones. As without an authentic superior authority to judge the justice or otherwise of war, there seems no fruit in basing HI on Just War. Although Just War might have helped in the development of the laws of war, nevertheless, its impact on the behavior of States is a contested issue. Therefore, it cannot go parallel with the debate of HI in the contemporary world. Thus, it seems plausible not to base the use of force in general and HI in particular on pure moral grounds.

Keywords: Use of force, Humanitarian intervention, UN charter, International law, Conventions and Human Rights.

1. INTRODUCTION

The political situation of the world, however, started changing gradually in 19th century. Considerable improvement was seen in *jus in bello* part of the use of force throughout 19th century. Some interventions were also carried out during that period, yet no rule of conduct was set out for these kinds of interventions. In the first half of the 20th century the League of Nations (1919) and the Pact of Paris (1928) put some restrictions on the use of force making the circle smaller. These developments of international law and Legal Positivism caused the States to hesitate and vacillate in using force without satisfactory justifications.

The main problem at that stage was the paralysis of the UNSC in face of human rights violations that could prove harbinger of annihilation. The outcome was the formation of International Commission on Intervention and State Sovereignty (ICISS) in two thousand and publication of its report named responsibility to protect (R2P) in two thousand one. The report changed the debate from right to intervene to that of responsibility to protect and sovereignty as control to that of sovereignty as responsibility, which would shift to international community by the

failure of the State concerned. Thus, in order to diverge the people and make them yield to the norm of R2P against far more controversial HI, it kept the same skeleton with a bit change in fleshes. Despite the responsibility to prevent and rebuild, the main focus was on responsibility to react, and therefore, was stamped with different apocalyptic words and expressions. Although the norm of R2P is still a hot issue among the writers, yet it has not achieved the desired results of who should intervene when and why if the SC fails to tackle the issue of human rights violations.
This essay goes on further to assess the justifiability of UNAUTHORIZED HI. It assesses its legality according to *corpus juris gentinm*. First of all it analyses and negates different distorted interpretations of the Charter law regarding the use of force. It goes on further to negate the claims of those who consider Article 2 (4) of the Charter as obsolete. Similarly, it refutes the clash among the provisions of human rights and use of force of the Charter law. Moreover, it refutes the emergence of any customary international law of HI and stresses on the binding nature of the general prohibition on the use of force and its *jus cogens* status. It reaches the conclusion that unauthorized HI is *contra legem* on the bases of being contrary to the rules of international law, self interested, and for political and economic motives rather than humanitarianism.

2. METHOD

I have studied and examined relevant legislation, case law and legal doctrines. I started with the UN Charter particularly Art.2(4) for examining legality of humanitarian intervention. Furthermore, I have studied human rights provisions of the Charter and as well of other relevant human rights conventions such as the Genocide Convention 1948 and the International Convents on Human Rights 1966. I have also examined customary law and decisions of the international court of justice. Additional sources have been utilized to explore different perspectives and views on humanitarian intervention in the contemporary legal discourse.

Unauthorized Humanitarian intervention, its justification and the UN charter

Meaning of unauthorized HI

If HI was carried out without the UN Security Council's authorization, then it is called unauthorized humanitarian intervention. It is also referred to as one-sided humanitarian intervention. Unilateral here does not indicate being conducted by one sate, rather is pregnant with the meaning that the intervention is not collective (authorized by the UNSC) and, therefore, an intervention carried out bb many states such as one by NATO will still be unilateral if acting o its own authority instead of the UNSC.
As earlier mentioned in the legal perspectives on HI that despite the charter enthusiasm in the principle of non-intervention, the political situation of the world has greatly changed, and the prohibition contained in the charter is being attacked from many sides including from within and outside the charter. Apparently article 2(4) of the UN charter looks to have banned all kinds of the uses of force except the two exceptions provided for in the charter itself, which is "self- defense and the collective use of force"[1] under the auspices of the UNSC. Thus, those who plead for the right of HI, sometimes, claim on these exceptions to justify their plea and at others on other considerations. Hereby we start analyzing these claims one by one[2]:

Art. 2(4) of the UN charter

[2] Between a Rock and a Hard Place: Unauthorised Humanitarian Intervention and the Preservation of International Law. https://www.cips-cepi.ca/wp-content/uploads/2011/10/Bernstein.pdf Last accessed on 11/06/2021.

Misreading of A 2(4) of the UN charter as basis for humanitarian intervention

In order to justify their interventions, while not finding nay authentic prove for the legality or unilateral HI, some writer, rather powerful state, try to hoodwink the people and delude them by asserting different distorted interpretations of A 2(4) of the charter and other relevant articles, which is impossible to be accepted by a normal mentality, they diddle with these rules of international conduct and are not serious about it. Their first attack is on A 2(4), which is considered the backbone of the UN charter and has arguably achieved the status of jus cogens.

The phrases, "territorial integrity" political independence, and inconsistent with the purposes of the United Nations have been interpreted by some states and writers as allowing HI. Christie Gray puts the question as such:

Should the words against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations be constructed as a strict prohibition on all use of force against another state? Or did they allow the use of force provided that the aim was not to overthrow the government or seize the territory of the state provided that the action was consistent with the purposes of the UN.[3]

Little uses of force were pleaded by UK in the Corfu channel as not being against the territorial integrity and political independence of the states, and therefore, did not come within the prohibition of the use of force. In the same way, if inconsistency with the purposes of the UN is not found in a particular use of force, it is contended that such use of force does not come within the scope of the prohibition contained in A 2(4) of the UN charter. Hence, those who argue on this particular interpretation of A 2(4) of the UN charter claim that use of force in HI Is not against the territorial integrity or/and political independence of the target state, and is not inconsistent with the purposes of the UN rather they assert that it promotes the purposes of the UN, which is, inter alia promotion of human rights, and they claim that HI is very much concerned about furthering this particular purpose[4]. Michael Reisman and Myers McDougal put it this way:

The prohibition on the use of force is found in charter Article 2(4). A close reading of it will indicate that the prohibition is not against the use of coercion per se, but rather the use of force for specified unlawful purposes… since a Humanitarian intervention seeks neither a territorial change nor a challenge to the political independence of the state involved and is not only not inconsistent with the purposes of the United nations but is rather in conformity with the most fundamental peremptory norms of the charter. It is distortion to argue that it is precluded by Article 2(4)[5]

The above contentions have been rejected by many writers, and the prevailing opinion among international law lawyers is that the aim or A 2(4) was not to dent the general prohibition on the use of force with loopholes and lacunas[6]. Similarly, the *travaux preparations* of the UN charter unequivocally shows that these terms were not added to qualify A 2(4), rather to make minor interventions and forces also

[3] Christine Gray, International Law and the Use of force, 3rd ed. (New York: Oxford University Press.2008), 31.

[4] Lowe and Tzanakopoulos, " Humanitarian Intervention," 4. See also Heinze, *Waging Humanitarian War*, 62.

[5] Michael Reisman and Myers McDougal, , " Humanitarian Intervention to Protect the Ibos," in, Humanitarian Intervention and the United Nations, ed. Richard B. Lillich (USA: University of Virginia Press, 1973), 177 quoted in Arrocha , "The Never ending Dilemma," 17.

[6] Heinze, *Waging Humanitarian War*, 62.

illegal.[7] The ICJ Corfu channel rejected the united Kingdom's claim on these interpretations of A 2(4) of the un charter, and considered its action as manifestation of policy of force. The ICJ in Nicaragua desperately reaffirmed the prohibition on the use of force, likewise, it stated that the use of force could not be the appropriate method to monitor or ensure . . . respect for human rights. Oscar Schachter considers the narrow interpretation of A 2(4) as requiring the Orwellian construction of those terms[8].

Even if these interpretations of A 2(4) are accepted, it could not be ignored that HI inevitably affects the territorial integrity and / or political independence of the target state. Sporadically interventions could achieve their purposes and are mostly targeted against the ruling regime, consequently, proving in either its removal or disablement. Dame Rosalyn Higgins states that "most uses of force, no matter how brief, limited, or transitory, do violate a stat`s territorial integrity"[9]. She continues, even minor military incursions are unlawful uses of force[10]. Her reasoning is quite satisfactory when she states:

No matter how much one wish it otherwise, no matter how policy directed one might wish to choice between alternative meanings to, there is simply no getting away from the fact that the charter could have allowed for sanctions for gross human rights violations, but deliberately did not do so. The only way in which economic or military sanctions for human rights purposes could lawfully be mounted under the charter is by the legal fiction that human rights violations are causing a threat to international peace.

The claim that HI is not inconsistent with the purposes of the UN could also be rejected on the ground that one of the primary purposes of the UN mentioned in A 1(4) of the charter is the maintenance of international peace and security, and HI will inevitably disturbed this. For those who consider order importance, could claim that placing the purpose of maintenance of international peace and security before that of human rights in order of the charter articles show that they are not on equal footing with each other and emphasize is on the peace purpose, thus indicating that if there is a clash between peace and human rights, peace should be given the priority. Further, using force in HI is pernicious to the charter system, as abandoning the collective use of force by the UNSC realty damages the system overall[11].

Article 2(4) of the UN Charter and *Desuetude*

There are claim that suggest the obsoleteness of A 2(4) due to frequently being violated by states. The argument is based on two different claims of the obsoleteness of Article 2(4), and accordingly, the legal effect of these violations. Frank, while explaining the record of compliance with this provision states that, states have violated it, ignored it, nun roughshod over it, and explained it away. He again goes on to state that, they have succumbed to the temptation to settle a score, to end a dispute or to pursue their national interest through the use of force without having regard to the rule. Back in 1970s, he considered the law as to the use

[7] Ibid. see also Chesterman, Jast War or Just Peace, 48-53.

[8] Oscar Schachter, " The Legality of Pro-Democratic Invasion," American Journal of International Law 78, no. 3

[9] Phillip Morgan, "Unilateral deployment of Armed Force for the protection of human rights" JOURNAL OF INTERNATIONAL LAW & POLICY Vol. V, A student-run publication at the University of Pennsylvania.

[10] Dame Rosalyn Higgins, Problems and process: International Law and How to Use It, (New York Oxford University Press, 1994), 240.

[11] Lowe and Tzanakopoulos, " Humanitarian Intervention," 5.

forces as not changed from its previous pre charter format[12].

According to the principle of desuetude if a law becomes subject to frequent violations, it loses formal force and no longer could be sustainable Ian Hurd states: as a formal legal process, the idea that law fail as law if it is routinely bypassed is common in domestic and international legal systems. It is known as desuetude. This is the concept that allows some outmoded laws to remain on the books despite relevant and major changes in sensibilities.

On the basis of this reasoning some writers are of the opinion that A 2(4) has become obsolete and have no legal force any more. They therefore, do not consider the American uses of force after 2001 as breaching the rules of international law. Likewise, they are of the opinion that while there are no legal restraints on the use of force, HI is also a possible legal intervention. The above argument has not been furthered by any state yet, albeit beacons of its dangerous outcomes. Ian Hurd while assessing this claim states that, "indeed it follows by implication that aggression itself is also once again legal, and we have returned to the pre-1945 state of affairs, though no state has yet used this argument to justify its use of force"[13].

More importantly, the general assembly has reaffirmed the binding nature of the general prohibition on the use of force in many resolutions. For example, in resolution 1231 of 1965 it rejected the use of armed force for any reason whatsoever, and considered the armed intervention synonymous to aggression. Again in 1970 in its resolution 2625 it reaffirmed the prohibition on the threat or use of force against the territorial integrity or political independence of any state. Similarly, clause IV of the final act of 1975 of Helsinke accords read that, the participating states will respect the territorial integrity of each of the participating states. Accordingly they will refrain from any action. Against the territorial integrity, political independence, or the unity of any participating state. Thus the claim does not take into account the insistence of the international law lawyers, the decisions of the ICJ, and the stance of states on the binding nature of the prohibition of the use of force , and Is therefore , not tenable[14].

Human rights provisions of the charter and other conventions and treaties as bases for HI

Some writers are of the opinion that if unilateral HI is not allowed, then the charter law contains contradictory by them as impossible. In response, it could be said that the drafters of the charter did not have in mind HI when drafting the charter and the charter is dealing an issue which is was not intended to deal with. Similarly, the drafters might have in mind the collective use of force under the auspices of the UNSC as the protector of human rights of individuals. Moreover, in the drafting process of the charter the French proposal for unauthorized HI in cases of the failure of the council was rejected[15]. The narrow interpretation of A 2 (4) further causes the problem of the nature of the right invoking humanitarian intervention. Erci A. Heinze while discussing this issue states:

But even if we were to assume that the human rights provisions in the charter provide a loophole to the prohibition on the use of force, the charter`s rules provide no clear textual guidance regarding the specific human rights violations under

[12] Thomas M. Frank, "How Killed article 2/4?, "The American Journal of International Law 64, no 5 (1970) 810-835.

[13] Hurd, "Is Humanitarian Intervention Legal?," 303.

[14] The final Act of the conference on security and cooperation in Europe (Helsinki Declaration), 1975.

[15] Frank, "Interpretation and Change in the law of humanitarian Intervention," 207

which the use of force would be permissible[16].

Although the UN charter emphasizes the protection of human rights and is one of its purposes; nevertheless, it does not clearly provide for these rights and standards. Moreover, the charter law lacks legal commitment to these rights. Ian Hurd explains this point as thus:

They do not create legal obligations or commitments, and they do not modify the general prohibition on the use of force. Had it been proposed in 1945 that these goals could trump the ban on war, the idea would undoubtedly have been soundly defeated by a large majority of the delegation, including all five of the security council`s permanent –members-to-be[17].

Therefore, the insufficiency of the charter law is obvious in conducting HI and regard must be given to other human rights treaties and conventions. The standards missing in the charter could be found in the universal declaration on human Rights (UDHR), yet, international law; it is widely considered as having no binding effect. Therefore, one must discuss the legally binding human rights treaties and conventions.

The Genocide Conventions 1948

It is one of the important human rights treaties that have much to do with HI, as it uses the words which, apparently, could be construed as allowing the use of force. Article 1 of the conventions states: the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.[18]

The UN charter obliged the states to promote human rights, but this convention went further by obliging the states to promote and punish those involved in this particular crime. Thus, the confusion is caused by the blurred language used in the convention, and on the basis of this language it has been argued that HI could be carried out to halt or avert this crime, albeit, explicitly it has not been discussed by neither drafters nor the convention itself[19].

The *travaux prepartoiers* of the convention, however, negates the above claim, and considers the prevention and punishment of this crime as being exhausted with judicial and legislative initiatives and not extended to the use of force as such. An international tribunal for the punishment of the crime of genocide was discussed by the sixth committee of the GA in which the states were to decide the extent to which national legislatures will provide in their laws about the prevention and punishment of this particular crime." Prohibiting the incitement and propaganda for racial or religious hatred … or racial superiority" is an exemplary measure. The unilateral use of force seems to have never been contemplated by the drafters. France made clear that if genocide was perceived a threat to international peace and security, then, the issue would be brought before the UNSC for determination and further action[20].

3.4.2 The International Covenants on Human Rights 1966

The international covenants on Civil and political rights (ICCPR) and the international covenant on economics, social, and cultural rights (ICESCR) actually accommodated the rights and

[16] Heinze, *Waging Humanitarian War,* 63.

[17] Hurd, "Is Humanitarian Intervention Legal?," 299.

[18] Convention on the Prevention and Punishment of the Crime of Genocide.

[19] Samantha Power, A Problem from Hell: America and the age of Genocide (New York: Perennial, 20020, 58, cited in Heinze, Waging Humanitarian War, 67.

[20] Official Records of the third session of the General Assembly (Paris UN, 1948), 4-56

standards contained in the UDHR in a binding treaty. By accepting the UDHR as the human rights standards of the charter on could reasonably presume the standards contained in the two covenants as the UN charter`s human rights standards for legal purposes. Relying on the above contention, the rights contained in the two covenants are the human rights standards for the purposes of the UN charter law. Of course, those who are not party on the covenants are not bound by it.

Now, considering the covenants as manifestation of the charter`s human rights standards causes some problems. As previously stated, although UN charter urges the states for the promotion of human rights, yet it does not enumerate them. Therefore, one could claim that by accepting the two covenants as the charter`s human rights standard, HI could be carried on the basis of the violation of these rights. Apparently it may seem laudable; nonetheless, allowing HI on the infringement of every minor right such as right to form trade unions and the like will extremely exacerbate the situation, and an international disorder will be inevitable. Therefore, a conscience being will oppose it and will not permit it.

By presuming that the ICCPR makes some rights special by declaring it as nonderogable under its A 2(4), such as freedom from torture, rights to life, freedom of thought, etc., one may claim that these rights are extremely important, and HI will invoke on the infringement of these noderogable rights, and by declaring it nonderogable it does not essentially prove its superiority. Likewise, the aim of article 4 is not to prove their superiority with reference to their enforcement, rather to ensure their application in the time of emergency as well. Hence, by its preservation in the times of emergency the duty is finished for the purposes of Article 4 of the ICCPR. Moreover, the travaux of the covenant does not indicate any distinct enforcement framework for these rights such as use of force[21].

The ICESCR also emphasize on the subsistence rights such as the right to cloth, food, housing, etc, like ICCPR. Nevertheless, neither the travaux nor the covenant itself provide for any extraordinary enforcement measure for these rights. Therefore, in relation to HI it is on equal footing with ICCPR, rather its position is weaker[22].

Self-defense as loophole for the right of HI

Some writers and states may try to, somehow, justify HI on the basis of self defense which is an accepted exception on the general prohibition on the use of force in the UN charter yet, it seems to have no fruit. The north Atlantic assembly have received proposals calling for the widening the area of self-defense as to include attacks on shared common values and interests (the one caused by humanitarian calamity not excluded) war crimes, and the crimes against humanity. Arguments have also been made for the extension of the ambit of self defense in order cover attacks on population also. Albeit, international law does not seem to have gone that far, nor it seems to even want to go.

India, while intervening in East Pakistan (Bangladesh), claimed before the general assembly that the influx of refugees is considered a civil aggression similar to an armed attack; however, her all justifications we rejected by the GA and were ordered withdrawal. Likewise, as is evident in Article 51 of the UN charter that self defense could be justified only if an arm attack occurs. Moreover, it does not extend to the regime change and other activities, rather, its limits exhaust by

[21] Heinze, Waging Humanitarian War, 68-69.

[22] General Comment 4 of the Committee on economic, social and cultural rights, the right to adequate Housing (1991), annex 3 at 444, Para. 1.

countering the attack consequently; one could satisfactorily exclude the justification of self-defense from the row of the justifications of unilateral HI[23].

Examining customary law and other justification of Unauthorized HI

Decisions of the ICJ in Corfu channel and Nicaragua

The ICJ rejected the pleas of the interveners on the basis of human rights and little uses of force that was claimed as not constituting the violation of sovereignty in the following cases, which proves the intactness of the general prohibition on the use of force.

Corfu Channel 1949

The United Kingdom tried to interpret the prohibition on the use of force in a way that left a chance for the little uses of force that did not reach the standard of interventions mentioned in article 2 (4) of the charter, and tried to justify its action in the Albanian water on the same basis. Her contentions were, however, rejected by the ICJ and the ICJ responded as thus:

The court can only regard the alleged right of intervention as the manifestation of a policy of force. Such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things. It would be reserved for the most powerful state. And might easily lead to perverting the administration of international justice itself[24].

Thus the UK failed to prove her contention on the basis and the court rejected the narrow interpretation of the general prohibition on the use of force that tries to dilute the scope and strength of the prohibition.

Nicaragua 1986

This case is also one of the evidence for the general prohibition of the use of force refraining from unnecessary details; only the part of the decision relevant to the topic has been incorporated. Thus in this case the ICJ, while rejecting the US congress contention, ruled that the questions of human rights, political ideology, and the form of government are the issues that fall within the ambit of the state`s domestic policy, and therefore a state could not be subjected to the use of force on these grounds. Similarly, it rejected the establishment of democracy as legal ground for the use of force. The following quotation from the merits of the case will make this point clear:

The US congress expressed the view that the Nicaraguan Government had taken significant steps towards establishing a totalitarian communist dictatorship. However the regime in Nicaragua tb defined, adherence by a state to any particular doctrine does not constitute a violation of customary international law…. Nicaragua`s domestic policy options, even assuming that they correspond to the description given of them by the congress finding, cannot justify on the legal plane the various actions of the (US)…. the court cannot contemplate the creation of a new rule opening up a right of intervention by one state against another on the ground that the latter has opted for some particular ideology or political system...

In any event, while the US might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the

[23] Lowe and Tzanakopoulos, " Humanitarian Intervention," 9.
[24] Corfu Channel, 35.

destruction of oil installations, or again with the training arming and equipping of the contras… [25]

The court further strengthened the scope of the prohibition by considering A 2 (4) of the charter as codification of customary law regarding the use of force. Hence, a closer examination of the court`s decision reveals that the use of force is not a proper method to urge the states for the compliance with their human rights obligations.

Customary international law as a plea for HI

One of the arguments in favor of HI is that it has become a customary norm of international law. Custom and treaty are being considered the primary sources of international law and the attachment of norm with either of these gives the norm the required legality. Albeit, there are some requirements that need to be fulfilled before considering a particular norm legally binding on the bases of customs and treaties. The required state practice and *opinio juris* for customary international law in relation to HI has not been due in the opinion of some writers unlike others. Therefore, a bit scrutiny in the issue will most probably overcome this difficulty.

The economic zone of 200 miles and the territorial zone of 12 miles are often cited as the example of the persistent state behavior that consequently modified the treaty law the 1958 convention on the law of sea. It indicates that the state practice could possibly change the treaty law. For there to be a binding custom two elements should be fulfilled, namely general practice of states "*diuturnitas*" and *opinio juris*. These requirements have been set by Article (b) of the statute of the ICJ, and have been reiterated by the ICJ in its decisions in *Nicaragua 1986, North sea continental shelf cases 1969*. Etc. thus in our case, one has to see whether there is enough state practice that could acquire the state of custom, and hence, could change the status of the treaty, the charter law relevant to the use of force that has arguably acquired the status of *jus cogens*[26].

Examining the state practice regarding unilateral HI, one could safely exclude those intervention that have been carried out under the auspices of the UNSC, as authorization greatly enrich them with legality and exclude them from the row of required state practice authorized HI cannot be considered right state practice, because the state practice that is forming the custom is always illegal in its initial periods until it gains legality. Allen Buchanan while explaining this point states that, the first acts a state performs hoping to initiate the process of creating the new norm will be illegal (because) they will violate the existing norms concerning the scope of sovereignty[27].

In order to prove the existence of a customary international law regarding the legality of unilateral HI, by putting in practice the principle of *opinio juris*, the intervener states should have claimed and justified their interventions on humanitarian grounds, and should have claimed the legality of their intervention on this ground respectively. If the states themselves do not claim their intervention to be on humanitarian grounds, then, others cannot interpret it as being on a particular ground. This reasoning was given by the ICJ in *Nicaragua* in which it negated the authority of others to ascribe to states legal views which they do not themselves advance. Given that, the claim

[25] Nicaragua Para. 263, 268.

[26] Bergh, "The Legal Status of Humanitarian Intervention," 18; Nicaragua, Para. 190.

[27] Allen Buchanan, "From Nuremburg to Kosovo: The Morality of Illegal International Reform," Ethics 111, no. 4 (July 2001): 129, http://www.jstor.org /stable/10.1086/233569. Last access on 11/06/2021.

of the states become necessary for the prove of the *opinio juris*, and in the above mentioned cases only India claimed in its intervention in East Pakistan to be on humanitarian grounds, which was also not the sole of its justification, rather in

Frank, while discussing the flexibility of international law, notes that even an illegal action, if instrumental in bringing about results widely desired by a community, will not seriously undermine a resilient legal system one with the causticity to make allowances for mitigating circumstances[28].

3. CONCLUSION

Humanitarian intervention could be referred to as the cross border use of military force, by an extrinsic party to the atrocities, in a foreign territory, by a State, a bunch of States, a group within a State, or international organization, against the consent of the target State, galvanized and motivated by humanitarian concern, for the protection of the nationals of the target State. Across border use of force, being extrinsic party to the hostilities, absence of the consent of the target State, humanitarian impulse, and rescuing the nationals of the target State are generally accepted characteristics of HI. By the end of the 19th century and the beginning of the 20th century, almost, the only loophole for the use of force was self-defense. Although, there were no proper rues for the conduct of warfare, yet-at that time, the states were in habit of providing some justifications for their uses of force, and they were considering the self-defense as a good caus. Other causes were not that strong. The League of Nations also failed to provide a satisfactory system for the use of force.

The debate of HI entered a new phase by the coming into force of the UN Charter in 1945. Although there are opinions to the effect that consider the Charter law ambiguous on the basis of its contradictory rules inter se between human rights protection and prohibition of the use of force; nonetheless, the UN Charter have completely banned the use of force on other than two accepted grounds provided for by the Charter itself. In addition, those who try to create doubts about the Charter rules are calculatedly confusing the people in order to justify their lawless interventions. The norm of non-intervention held the leading position during the Cold War period, though; super powers did intervene claiming moral grounds, etc. Some interventions in the Cold War era have been claimed to have helped in alleviating humanitarian crisis. Yet, the interveners' justifications were either not based on humanitarian grounds at all or were in tandem with other justifications.

Moreover, the idea was further strengthened by the idea of R2P, as it reiterated the importance and the binding nature of the Article. The claim of those who want to legalize HI on the basis of human rights provisions of the Charter

[28] Thomas M Frank, "Lessons of Kosovo," American Journal of International Law 93, no. 4 (October 1999): 859, quoted in Hehir, Humanitarian Intervention, 97.

could be rejected on the ground that the Charter did not contemplate coercive implementation of these rights. Similarly, the Charter law does not provide sufficient information about the rights that could invoke HI, and therefore, suffers from deficiency in this regard.

Finding no legal authority on the basis of Charter law, some thinkers put forward the plea that R2P has legalized unauthorized HI. Yet, despite the hot debate about R2P and its coming into existence as a way-out for the protection of human rights in the time of the paralysis of the Council, it has not legalized unauthorized HI and the approval of the SC is still necessary.

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13. Frank, "Interpretation and Change in the law of humanitarian Intervention," 207
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15. Hurd, "Is Humanitarian Intervention Legal?," 299.
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