

UN Humanitarian Interventions

Abstract

The primary aim of this paper is to map out the complex legal basis of the United Nations' reactions to the so-called gross violation of human rights. Additionally, this essay seeks to critically explore the new political doctrine (called Responsibility to Protect, R2P) from the legal perspective in order to identify some of its deficiencies and to emphasize the role of international legal approach within the context of general discussion.

For the purpose of this paper, the above-mentioned reactions of the UN are referred to as "UN humanitarian interventions" and they are defined as:

interventions by an organ of the UN which presents a reaction to impending or ongoing gross violation of human rights in a UN member state – a reaction taken without a consent of this state – aiming to halt or prevent these violations.

Within this definition, "intervention" is understood as in the article 2(7) of the UN Charter.

This paper examines three kinds of interventions: "soft" humanitarian intervention, "hard" humanitarian intervention and forcible humanitarian intervention. The latter two types are coercive measures taken by the UN Security Council (SC) according to Chapter VII of the Charter. The distinction among them is whether or not military force employed. On the other hand, the so-called "soft" UN intervention encompasses all other possible reactions utilized primarily by remaining UN organs (be it the General Assembly, the Economic and Social Council, the Human Right Council etc.).

Part I examines the legal basis for the least intrusive form of "UN humanitarian intervention". The paper examines with scepticism states' defences on basis of the article 2(7) against a UN intervention in the area of human rights. The essay documents that in cases of gross violations of human rights, article 2(7) defence was never accessible to individual states. Moreover, nation states have never been arbiters in cases determining the extent of domestic jurisdiction. Such disputes have always necessitated a reference to international law.

Having analysed relevant provisions of the Charter, the paper shows that the commitments of states in the area of human rights imposed by the UN Charter are sufficient to restrict gross violations of human rights. Thus, not only the Security Council, but also other relevant UN organs (e.g. the General Assembly) have been from the outset granted powers to intervene, albeit "softly", in situations of gross violations of human rights.

Part II analyses another controversial issue in the Charter: the role and powers of the Security Council in the area outside of original intention: (effectively) solving humanitarian crises created by or including gross violations of human rights as well as facilitating bringing all perpetrators to justice.

The paper shows how important was the expansion of the article 39 (threat to the peace) to the legal ability of the SC to address situations of flagrant violations of human rights an international humanitarian law.

The intention of the authors of the Charter was to endow the SC with a power to interpret and define the term "threat to the peace" using the SC's discretion in accordance with the development of international relations. Thus, the Security Council has gradually – especially after the end of the Cold War – understood and determined situations of gross violation of human rights as "threats to the peace".

This shift in the meaning of the terminology of the article 39 has enabled the SC to address certain humanitarian situations with all vehemence. Legally, Chapter VII of the Charter has provided the Council with the options of "hard" or forcible intervention.

Exploring the legal basis and limits for these two types of interventions, this paper argues that only in the instances of "hard" intervention can the UN order member states to execute it. In the case of forcible intervention, the Council cannot impose *an obligation* on the states to join the military operation, it can only "authorize" them to use force by delegating to them certain powers of Chapter VII.

The legal limits for forcible humanitarian interventions are not synonymous to the general limitation imposed onto the SC (i.e. *jus cogens* norms and to some extent also the purposes and principles of the UN Charter). Additional specific requirements are necessitated by the process of delegating Chapter VII powers from the SC to the member states.

Part III deals with legal aspects of the current political doctrine "Responsibility to Protect". It tries to demonstrate that the two basic principles of R2P (sovereignty implies responsibility and international responsibility/duty to protect) raise serious questions of international law. Moreover, this paper argues that the content and possible consequences of "Responsibility to Protect" as a new customary norm of international law, have not been properly considered from the legal perspective. The consequences of the norm could be potentially dangerous for the UN's prestige as well as for the R2P idea.

In conclusion, this paper warns against marginalizing and even neglecting legal aspects of proposed political solutions. A range of current political and international debates covers spheres traditionally regulated by the international law. In such instances, the discussion of legal aspects must be an inherent part of the debate.

Keywords: "United Nations", "human rights", "Responsibility to Protect".

Klíčová slova: „Organizace spojených národů“, „lidská práva“, „Odpovědnost za ochranu“.

