

HUMANITÁRNÍ INTERVENCE – PRO A PROTI

HUMANITARIAN INTERVENTION – PRO ET CONTRA

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Abstrakt

Tento článek se zabývá konceptem humanitární intervence. Intervence do vnitřních záležitostí státu z humanitárních důvodů představuje jeden z nejsložitějších právních a politických problémů týkajících se současných vztahů v mezinárodní komunitě. Vážné porušování lidských práv, genocida a rozsáhlá rasová, národnostní či náboženská diskriminace bezpochyby představují nutnost zásahu mezinárodní komunity. Předchozí i současná praxe však ukazují, že humanitární důvody jsou často využívány jako záminka k intervenci se zcela jinými cíly – ty jsou často v protikladu k důvodům lidskosti. Celý koncept humanitární intervence se tak stává předmětem vážného podezření. Článek představuje několik charakteristických příkladů a pokouší se osvětlit koncept humanitární intervence.

Abstract

The paper deals with the concept of humanitarian intervention. To make an intervention into interior affairs of a country for humanitarian reasons is one of the most complex legal and political issues regarding contemporary relations in the international community. There is no doubt that a serious violation of human rights, genocide, and racial, national and religious discrimination on a large scale make the international community intervention necessary. However, the previous as well as current practice shows that humanitarian reasons are often used as a pretext for an intervention with entirely different goals - often directly counterpoising to the reasons of humaneness, thus placing the whole humanitarian intervention concept under a serious suspicion. The paper presents a few characteristic examples in an attempt to shed light on the concept of humanitarian intervention.

Klíčová slova

Humanitární intervence, nevměšování, vnitřní jurisdikce státu.

Keywords

Humanitarian intervention, non intervention, internal state jurisdiction.

In accordance with the natural law approach, the first international law theorists acknowledged the so called “justified wars” – military interventions the aim of which was punishing law violators as legally permissible. *Justa causa* for such wars was the violation of international law regulations. The actions that we call *humanitarian intervention* may fall within this framework.

There are different definitions of humanitarian intervention. It seems that the most accurate among them is the one given by Oppenheim. He says that “A common concurrence remains that the state, based on territorial and personal sovereignty exerts power upon its citizens in accordance with its discretionary authorization. However, public opinion and practice make a point of the need to define the boundaries of that discretion, and that the intervention is legally permissible, when in the interest of humaneness; for example, in case a state is accountable for grave atrocity and

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repression over its citizens, which means the negation of basic human rights, and shocks the consciousness of humanity”.

The majority of theorists who advocate legal positivism acknowledge the humanitarian intervention as a legally permissible exception to the principle of non intervention. None the less, there exists a perceptible discrepancy among the theorists arguing for the permissiveness of humanitarian intervention. They all underpin a restrictive and cautious approach. But, in the next step, the level of restrictiveness regarding the criteria that define the acknowledgement of a humanitarian intervention differs from one author to another. Lawrence says: “When the atrocity is so great that the best sides of human nature get despised, and when the opportunity occurs, such state of affairs should be ended and the sources of its origin removed. There is nothing that would prevent a group of states to intervene”. Contrary to him, Hull defines the circumstances permitting a humanitarian intervention in a more restrictive fashion, and warns of the possibility of abuse.

The practice of states in the 19th century gives a number of examples of humanitarian intervention. Oppenheim points out that the practice of intervening was not as frequent as the conditions called for. The most frequently mentioned examples of a humanitarian intervention in the 19th century is the intervention of Germany, France, and Russia in Turkey in 1827; the intervention of France, on the basis of concordance of “European Concern in Syria”, in 1860, and according to some theorists, the intervention of the U.S.A. in Cuba in 1898.

The opinions of various authors differ regarding the intervention of Great Britain, France, and Russia in order to help the Greek insurgents in their struggle against the Sultan, in 1827. None of the authors claims that the intervening countries were driven by humanitarian reasons exclusively, but they all agree that the Turkish slaughtering the Greek population in the Morey Peninsula decisively influenced the decision of the three then powers to engage in the intervention. It was only then that this intervention was labeled humanitarian and the very concept of humanitarian intervention was formed at the end of the 19th Century. It is important to say that the governments of the intervenient states explained their actions by stating not only humanitarian reasons but also the need for the parties at war to make peace, reasons of humanity, and peace interests in Europe.

Realistically speaking, the reasons for the intervention of France and the U.K. are the upshot of the need of these two powers to prevent Russia from entering the East Mediterranean individually.

The French intervention in Turkey, in the area where Syria and Lebanon are today is closer to the concept of humanitarian intervention. The intervention ensued after the Christian Maronite had been in that area. The slaughtering was done by Druze Muslim tribes, and it could be partially ascribed to the fact that the Turkish administration in that area was not in order. In 1860, at the Paris Conference, France was authorized to intervene in Syria with the aim of establishing order in that area¹. In October, the same year, the French Army occupied the crisis area. The European powers also established an international commission that demanded that the two ethnic groups be separated. As in the previously mentioned case, the action was not motivated by purely humanitarian reasons.

The European powers that had given France authorization to intervene in internal Turkish affairs did not entirely consign the intervention to this power. They formed the commission which supervised the actions.

Both mentioned interventions were done with the consent of the Turkish Government, expressed in signed agreements (The London Accords, signed July 6, 1827, and the Paris Accords, signed August 3, 1860). In both cases, it is possible to talk about an agreed intervention – the intervention permitted by the domestic government, in this case, the Turkish one.

In the period between the intervention in Syria and the Berlin Congress, there were a number of actions that could be labeled humanitarian: the demands of Austria, Italy, France, Prussia, and Russia addressed to Turkey to improve the position of Christian population in Crete (1866-1868), and the Russian intervention in Turkey, in 1877, which ensued as a consequence to Turkish treatment of the Christians in Bosnia-Herzegovina and Bulgaria. Later on, it escalated into Russian-Turkish War 1877-1878.

Some authors mark the US intervention in Cuba as humanitarian. Potemkin says that the American statement that they intervene in Cuba for humanitarian reasons “is not without humor”.²

Examples from the 19th Century show that, truth be told, there were no authentic humanitarian interventions in that period except, perhaps, the French intervention in Syria, in 1860. Many authors point out that the program of a humanitarian intervention is in its doing that only the big powers may afford taking such actions, and that the declared “humanitarian reasons” are only a cover-up for selfish interests of the intervening big powers. All this diminishes the respect of humanitarian intervention rules as the rules of International Law to a large extent. It has been mentioned that the big powers acquired the consent given by Turkey for their armed actions in the territory of the Turkish Empire. In this respect, their actions change the general consideration of International Law of that time. Undoubtedly, this example is, by no means, the foundation of a change of general International Law, and those accords cannot be the basis of passing a general rule on the acquiescence of humanitarian interventions. The 20th Century knows several examples of humanitarian intervention. The pressure of big European powers on Turkey regarding the position of the Christians in Macedonia; Russia, threatening Turkey with an armed intervention for having slaughtered the Armenians in 1913; and the European powers intervention during the Second Balkan War in the matter of establishing Albania, follow the 19th Century models, and serve as examples of a legal humanitarian intervention to some authors (Oppenheim).

The period between the two world wars gives rise to a different situation. The period of relative peace in the first years after World War I is succeeded by a period of frantic preparations for World War II, the introduction to which were military interventions of Japan in Manchuria, in 1933, Civil War in Spain accompanied by foreign interventions (1936-1939), the intervention of Germany in Czechoslovakia, in 1938, the pretext of which was a “humanitarian” intervention in order to protect the “endangered Sudeten Germans”.

None of the mentioned interventions is humanitarian. The countries which established the principle of humanitarian intervention in the 19th Century did not succeed in developing the principle of humaneness as an element of the being of humanitarian intervention and by doing so to provide for an easy way of making a distinction between an authentic humanitarian intervention and a downright aggression with totally different goals using the humanitarian reasons only as a pretext. During the Spanish Civil War, France and the U.K. proclaimed the principle of non intervention, and the respect of that principle contributed to the success of German and Italian military intervention, the bloody course the War in Spain took and the way it ended.

Throughout the stage of its most dynamic growth and development, Nazism fully usurps the right to humanitarian intervention. In the second part of the thirties, the Nazi propaganda abundantly uses “humanitarian” arguments in describing the unbearable position of the German national minority in Czechoslovakia and Poland. Declaring the occupation of Bohemia and Moravia, Hitler puts among the main reasons for this act the “attacks on lives and freedom of the minorities” which, of course, definitely calls for “disarming Czech units and terrorist groups that threaten the lives of the minorities.”

Interestingly enough, the supporters of humanitarian interventions do not state these examples of misuse of humanitarian interests in their works.³ The period after World War II is marked by the foundation of the United Nations Organization, ban of force using, and birth and development of the system of collective security, as well as the origin of system of human rights and fundamental liberties protection.

Modern supporters of the humanitarian intervention theory concur that the international community has formulated legal definitions of situations which justify a humanitarian intervention (crimes against humanity; genocide) that serves its purpose, because the international community has not yet been able to find adequate ways of fighting the mentioned phenomena. According to them, it is true that humanitarian intervention does not have the nature of international mores; therefore, it is “an intervention the aim of which is to stop barbaric and inhuman atrocities and crimes, a sublime political doing that is above the mores and law.”⁴

The quoted opinion contains a lot of inconsistencies and contradictions. Primarily, it disregards the options and edge that the organized international community gives. The entire UN practice shows that the international community cannot resolve various problems within the framework of UN collective actions. Therefore, we may rightly raise the issue of what kind of guarantees we have that an individual state or a group of them (that is, by definition, much more bias than the whole international community) would resolve those problems better than the UN. Further, the authors agree that so far humanitarian interventions have been misused to a great extent, and that none of the interventions was entirely and completely humanitarian. Permitting the use of force to the end of a humanitarian intervention would undoubtedly increase the suspicion of some states regarding the real goals of any armed action on the part of other states.

The legal system of International Law opens a whole set of important issues and restraints relating to the use of force in any given form, the armed force in particular, for any reason. The records show that sublime humanitarian reasons have been called upon only too often when actions with very prosaic reasons and even more prosaic outcome are in question, so it is very difficult to embed those reasons in the system of International Law.

The discussion on the rights and duties of states, defining the crimes against peace and security of the humanity, and defining aggression, that has been going on in the International Law Commission since the first years, has not yet taken a definite stand on the issue of permissiveness of humanitarian actions. In an early stage of the argument on the definition of aggression, led in the Sixth (legal) Board of the UN General Assembly, the Greek delegate Spiropoulos brought out a question, "Would an action the aim of which is to prevent genocide over a minority in a neighboring state (the intervenient is the state which, from the ethnical point of view, is the native state of the minority in question), and which is taken after an unsuccessful UN call for action, be an aggression, or not?"

According to the prevailing standpoint, such an action is permitted only in compliance with Chapter 7 of the UN Charter, and only as a collective action. It is by no means permitted as an exclusive action of any state, including the neighboring ones, being the native state of the people that suffers the genocide notwithstanding.⁵

In the further development of UN rights, doubts and different viewpoints appear regarding the cogency of the rules relevant in the area of humanitarian intervention (The UN Charter, Chapter 7, Article 2). Ideas regarding the relativity of the principle of banning the use of force, or threatening with using force, as well as the need to assess the value of the goals of the UN Charter in the light of each particular context appear. Some theorists argue that the content of Chapter 7, Article 2 of the UN Charter that prohibits interfering into the affairs that, by their nature, are an internal matter of a state, is excessively relative, and that the content of internal jurisdiction is entirely dependent on international relations. According to this understanding, calling upon internal jurisdiction is not permitted when a case of violation of human rights is in question, especially a case of flagrant and mass violation of human rights.⁶ It is absolutely true that anything that is the subject of regulation of International Law cannot be the subject of the exclusive authority of the state. This can be understood the best when the procedure of implementation in the area of human rights is in question, not in the sense of allowing for the use of individual force and restricting the range of Chapter 2, Article 4 of the UN Charter. In the discussions, the purpose of which was to prepare the declaration of the principles of International Law pertaining to the friendly relations and collaboration among the states, in compliance with the UN Charter, two different groups of viewpoints appeared.

- The large majority of participants gave precedence to peace keeping and therefore thought that the issue of states legally using force should be addressed restrictively.
- According to the viewpoint of a smaller number of participants, primarily from the Western countries, the principle of banning the use of force should be addressed from the standpoint of the intent that the states want to achieve by this principle.

The advocates of this standpoint argued for a wide interpretation of Article 51 of the UN Charter, and for complying with the common law rules of self defense.

In the debate about the content of the principle of non intervention, at the first session of the Special Board for the preparation of the mentioned Declaration, the US representative argued that the ban in Chapter 7, Article 2 of the UN Charter does not refer to the states that are under obligation in compliance with Chapter 4, Article 2 of the UN Charter. According to this understanding, countries can easily intervene into internal affairs of other countries, if they do not use force, or threaten to use it.

The opposite opinion, advocated, among others, by the Yugoslav delegate Sahovic, that Chapter 7, Article 2 of the UN Charter forbids even the U.N. to intervene in the matters falling exclusively under the internal state jurisdiction, *a fortiori* forbids an identical action taken by any state, prevailed. A vast majority of delegates voted for the ban of intervention that would include all forms of intervention.

However, the debate also affirmed the opinion of the majority that the principle of home jurisdiction must not serve as an excuse to the states, especially the ones cogently important, to break the rules of International Law. In connection to that, flagrant violations of international law human rights regulations, the principle of self determination and racial discrimination ban were particularly highlighted as the international norms that are very often violated, and to justify such actions before the international public opinion, domestic governments call to the principle of internal jurisdiction. The debate clearly defines the standpoint that the examples of colonialism, racial discrimination, apartheid, and state terrorism cannot be protected under the pretext that they are the affairs falling to the exclusive jurisdiction of the state. The content of this debate finds its place in Chapter 7 of the Declaration that defines the self determination principle, and in Section 3 of this Chapter that refers to non intervention, and reads as follows, "The use of force to the end of preventing a nation from self determination makes the violation of their inherent rights and of the principle of non intervention." This formulation is not absolutely clear, and perhaps it would have been better to specify the cases that permit a divergence from this principle. It is clearly visible from this that the International Law moves the boundaries of internal jurisdiction. Some authors see in that an exclusion from the principle of non intervention. The quoted part of the Declaration does not specify the cases of the use of force to the end of preventing a nation from self determination, and as the same formulation is used in the Declaration of Inadmissibility of Intervention, it thereupon becomes the reason for a debate about the cases presented by the delegates (apartheid, racial discrimination, examples of colonialism, occupation, genocide, state terrorism, etc.), subsequently, it is clear that the exceptions to the rule of non intervention refer to a limited number of cases.

Truth be told, there was no explicit arguing on the parts of the delegates to determine any specific exceptions from the principle of non intervention, but the viewpoint prevailed that the mentioned cases make for an illegal state of affairs, and that any intervention is also illegal. Sanctions against the state that engages in the stated activities are permitted by the International Law.

In reference to the above mentioned, the question is whether the current International Law allows individual use of force. The debates in connection with the Declaration are very illustrative in that aspect. In the debate about the principle of not using force, that took precedence over all others, the majority of the delegates argued for a restrictive approach, so that the use of force is allowed only in compliance with Article 51 of the UN Charter, and a UN collective action only in compliance with Chapter 7 of the UN Charter. In accordance with this viewpoint, all forms of using force, except self defense, are legally inadmissible. It is explicated in the debate that self defense is permitted only in the case of an actual armed attack, and not as a "preventive" action.

A group smaller in number, consisting mainly of the representatives of the Western countries thought that the right to self defense should be construed in a broader sense of "international Custom Law". The theory of rules belonging to the state on the grounds of the principle of self

preservation follows this trail. Similar to the course and results of the debate on the issue of non intervention, as an exception to the principle of not using force, the opinion of the majority was formed that helping with an armed struggle for freedom from colonial power is not a violation of the principle of not using force. This rule is confirmed in a large number of UN resolutions, practice of states, and law doctrine so that, in modern times, it is a part of Custom and International Law.

Modern conception of inadmissibility of individual use of force is further backed up by the standpoints of some authors that a humanitarian intervention is not allowed. There are many cases in contemporary world that request a humanitarian intervention of one or a group of states. In this day and age, such inadmissible acts that “offend the consciousness of humanity” are, more or less, defined, and UN actions are directed to their eradication. Humanitarian intervention, as the action taken by one or more involved states, without the approval of the UN Security Council, which is not allowed, is substituted by other mechanisms within the U.N. Organization.

Naturally, no system solves a problem all by itself. We may say that the UN action against colonialism is successful, which cannot be said for some other actions. It is for this reason that some authors consider the issue of humanitarian intervention to be a relevant legal issue. The issue of ban of the use of force, or threatening with force is better solved in principle, only as a multiparty action upon the approval of the UN Security Council. The fact that the representatives of superpowers of that time when formulating Chapter 7 of the UN Charter did not argue for definite, binding solutions that would, at least legally, prevent the Organization from acting arbitrarily is not accidental. The fact that some armed interventions in recent past were defended by motives of collective self defense leaves a lot of room for consideration.

The practice of collective interventions did not reaffirm the doctrine of humanitarian intervention in the General Assembly and the Security Council. From the end of World War II to the end of the cold war i.e. the disintegration of the USSR and the Warsaw Pact, there were a relatively small number of interventions that were attempted to be presented as humanitarian. The Belgian intervention in Congo, in 1960, bears this explanation, but the Security Council does not accept the reasons given by the Belgian Government, and it demands an immediate retreat of Belgian forces from Congo. Further, the Security Council sends special UN forces to help the Government of Congo in the aftermath of the intervention. The thesis of humanitarian intervention is not accepted in this case, and the demand for the retreat of intervening forces is sent owing to the fact that the intervention is not founded on any legal grounds. Therefore, the Security Council starts an action on its own accord, including the engagement of UN international forces, to solve the problem that the Belgian Government tried to solve by intervening.

Particularly inconsistent is the practice of the Security Council in the case of armed intervention of the U.S.A. in the Dominican Republic. The U.S.A. justifies its intervention with the wish to protect its citizens in the Dominican Republic, although the diplomatic correspondence from that time shows that the primary goal was to prevent the “extremists” from coming to power. In the debate in the Security Council the intervention is not taken into consideration as an important issue. Instead, the UN Security Council takes the attitude that the problem is of regional nature, and is falling within the scope of US interests. The Security Council does not supply a single basis on which this intervention could be justified by humanitarian reasons.

The ambiguities in the UN Security Council and the UN General Assembly viewpoint in the case of Turkish intervention in Cyprus are fewer. Turkey states its deepest concern for the lives of members of Turkish minority in the island as one of the reasons in support of the legitimacy of its intervention, in the debate led in the Security Council. This concern is justified to some extent due to the escalation of Greek nationalism prior to the intervention. In their resolutions, the General Assembly and the Security Council demand that the intervention be stopped, the foreign troops withdrawn, and the sovereignty, territorial integrity, and political independence of Cyprus respected (The UN Security Council Resolutions No. 353, 357, 358, 359, and 390, from 1974, and the General Assembly Resolution No. 3212). The fact that the Security Council accepts some kind

of respective status and subjectivity of the Greek and Turkish community in Cyprus, by resolutions passed at the end of 1974, does not change its basic viewpoint and condemnation of the intervention, and cannot serve as reason to justify the intervention by humanitarian actions.

The case of Indian intervention in Pakistan in 1971 is the closest to a true humanitarian intervention from the standpoint of humanitarian intervention doctrines, among all cases brought before the UN Security Council and the UN General Assembly. It expresses the humanitarian aspect to the fullest, not only because of 10 million Bengali refugees in India, but also because of prevention of atrocious crimes committed in Bengal by the Pakistani Army. Those crimes made 10 million people flee across the Indian border. India did not explain its action with the thesis of legitimacy of humanitarian action. The essence of the Indian explication is in the following: the core of the problem is the fact that Pakistan does not recognize the right of the Bengali nation to self determination, and exerts brutal repression over this nation. When the main cause of this state of affairs is removed, and the Bengali nation gains their right to self determination, the conditions for voluntary repatriation of the refugees will be established which will, in turn, solve other humanitarian problems. Further, India argues that Pakistan deliberately causes the refugee crisis with the intention to weaken India. In this respect, the flood of refugees, caused by Pakistan, may be construed as a specific act of aggression. Indian delegates in the UN do not mention the thesis of humanitarian intervention in their speeches. The UN General Assembly appeals to India and Pakistan to stop their hostilities and return their military forces to their respective territories. The humanitarian aspect of the issue is addressed separately in this case. It appears before the UN more than half a year prior to the intervention. The UN tries to resolve the situation utilizing the mechanisms that are already active in this territory (UN High Commissioner for Refugees), and the International Red Cross Committee is also present.

The Thesis of humanitarian intervention is used to the end of justifying the Israeli military action to liberate the hostages taken by a group of terrorists at Entebbe Airport in July 1976. In this case, the US veto prevents the UN to condemn the Israeli violation of territorial sovereignty of Uganda, and apply the principles of not using force and non intervention. The US proposal of a resolution based on the theory of humanitarian intervention, and struggle against terrorism, without mentioning the Israeli violation of International Law does not get support. The thesis of humanitarian intervention is rejected in this case. The paralysis of work of the UN Security Council caused by the American veto may by no means serve as an argument in favor of the thesis of humanitarian intervention. We are of the opinion that the rejection of justification by humanitarian reasons of an intervention is the basis for the evaluation of similar actions in the near past, but also in the future.

NOTES

¹ LILLICH, Richard B, *Humanitarian intervention and UN*, p. 26.

² STOWELL, Ellery C., *Intervention in International Law*, p. 47.

³ Documents on British foreign Policy 1919-1939, Editors: E. L. Woodward, Rohan Butler, p. 257.

⁴ Lawrence Finkelstein, *Politics in the United Nations System*, 1988. pp 127..

⁵ 9th General Assembly Session (1954), 6th Board, Official Records Meetings 292 (section 7), 417 (section 31), and 418 (section 18).

⁶ ERMACORA, Felix. *Human rights and Domestic jurisdiction*, p. 68.

LITERATURE

- [1] Documents on British foreign Policy 1919-1939, Third series, volume VII. Editors: E.L. Woodward, Rohan Butler, Her Majesty's Stationery Office, London, 1954. 259 p. COBISS.SR-ID 124735224.
- [2] ERMACORA, Felix. Human Rights and Domestic Jurisdiction. *Recueil des cours*. 1968, volume 124, issue II, p. 371-451. ISBN: 321400204X.
- [3] LAWRENCE Finkelstein, Politics in the United Nations System, Duke University Press, 1988. p. 127 ISBN: 0-8223-0820-7.
- [4] LILLICH, Richard B, Humanitarian intervention and UN, New York, 1973, 240 p. ISBN: 0-8139-0505-2.
- [5] STOWELL, Ellery C, Intervention in International Law, Washington, DC, John Byrne and Co., 1981. 558 p. ISBN: 0-7099-3260-X.
- [6] 9th General Assembly Session (1954), 6th Board, Official Records Meetings 292 (section 7), 417 (section 31), and 418 (section 18). COBISS.SR-ID 17604876.