

## The extent of legality of one-sided humanitarian intervention in international law

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### Abstract

The Charter of the United Nations clearly states the principle of prohibiting the use or threat of force in international relations, which means that one-sided humanitarian interventions are unlawful, and yet there is a side of jurists and researchers trying to circumvent this principle to justify the legitimacy of one-sided humanitarian interventions. They offer several arguments and justifications, such as that one-sided humanitarian interventions do not contradict the proper interpretation of the United Nations Charter, and that there is an emerging rule in customary international law that permits such interventions, and that endorsement of the principle of the responsibility to protect includes authorization to undertake one-sided humanitarian intervention. This article seeks to emphasize the illegality of one-sided humanitarian interventions in international law, and this conclusion is reached after careful analysis and refutation of the previous arguments and allegations made by some to legitimize these interventions.

**Keywords:** one-sided humanitarian intervention- customary international law- UN Charter- Security Council- responsibility to protect.

### Introduction

The fourth item of the second article of the Charter of the United Nations has stipulated the principle of prohibiting the use or threat to use force in international relations, with two exceptions to it: 1- Self-defense (Article 51 of the Charter) 2- The Security Council permits the use of force in response against a threat or violation of the peace or an act of aggression (Article 42 of the Charter). Therefore, the use of force is only permitted in the case of individual self-defense, but even in this case, this right can only be invoked until the Security Council has made the necessary measures to maintain international peace and security.

The principle of prohibiting the use of force is closely related to the principle of equality in sovereignty between states stipulated in the first item of the second article of the United Nations Charter; so that, no state can interfere in the course of events that occur within the territory of another state. Nevertheless, the gross violations of human rights launched a debate concerning the appropriateness of this rule that was introduced by the Charter of the United Nations, which is based on only two exceptions on the principle of the prohibition of the use of force.

The debate concerning the prohibition of the use of force, and the impermissibility of one-sided humanitarian intervention is based on the lack of an effective response from the international community, which has led in certain circumstances to disasters and humanitarian crises. Also, gross violations of human rights are no longer the domain of the internal affairs of states, and therefore no state can commit such violations without taking responsibility, invoking the principles of sovereign equality and non-interference.

### Aims and Objectives

The importance of the research lies in shedding light on the controversy over the legitimacy of one-sided humanitarian

interventions and the use of force within their work, as some jurists and researchers present arguments to justify the legitimacy of these interventions. Therefore, the research aims to refute these arguments and justifications and to prove the absence of a right to use force within the work of one-sided humanitarian intervention.

### Research Question

Some researchers have preceded arguments and allegations to justify the legitimacy and legality of one-sided humanitarian interventions, and they relied on the United Nations Charter, on customary international law, and on the principle of the protection responsibility.

Based on the mentioned above, the research seeks to answer the following question:

Could a unilateral humanitarian military intervention constitute an exception to the principle of prohibiting the use of force? In other words, are there cases in which it is permissible under international law to resort to unilateral use of force by some countries in the context of humanitarian interventions?

The answer to this question requires asking other sub-questions, as follows:

1. What is the real interpretation of the fourth item of the second Article of the United Nations Charter, which includes the principle of prohibiting the use of force?
2. Is there really an emerging rule in customary international law that permits one-sided humanitarian intervention and the use of force within its work?
3. Has one-sided humanitarian intervention become permissible after adopting the principle of protection responsibility, or does this last principle contradict so much with the concept of one-sided humanitarian

intervention?

### Research Methodology

The research requires following the descriptive and analytical approach to clarify, analyze and refute the allegations and arguments presented to justify the legitimacy of one-sided humanitarian intervention; in addition, it requires analyzing international rules and stating their position on this type of intervention.

### Research division

Based on all the previous concepts, we will divide the research into the following sections:

**The first section:** interpretation of the articles of the United Nations Charter related to humanitarian intervention.

**The second section:** the perspective of customary international law concerning one-sided humanitarian intervention.

**The third section:** humanitarian intervention within the principle protection responsibility.

### The first section: interpretation of the articles of the United Nations Charter related to humanitarian intervention

Humanitarian intervention received a great support from different states before the establishment of the United Nations, but when this organization was established its charter established a clear system regarding the prohibition of the use of force between states. So, it can be said that at the present time, if any state wants to invoke the right of humanitarian intervention in international law, it must prove either that this right does not contradict the provisions of the United Nations Charter, or that this Charter does not prevent one-sided humanitarian intervention as a form of self-help permitted in customary international law when the collective security system, as stipulated in the Charter of the United Nations, fails. United, in addressing a humanitarian crisis<sup>1</sup>. In this section, we will work on analyzing the text of the fourth item of the second Article of the Charter of the United Nations, provided that we address the hypothesis regarding customary international law in the second section.

The fourth item of the second Article of the *United Nations Charter* states that:

“All members of the Commission shall refrain in their international relations from threatening or using force against the territorial integrity or political independence of any country or in any other way that is inconsistent with the purposes of the United Nations.”

If we read the text of this article in the sense of contravention, then it seems that the use of force will not be illegal if it is not directed against the territorial integrity or political independence of a country, or if it is consistent with the purposes and principles of the United Nations.

The question that should be asked and taken into consideration in this case is that:

Should the phrase “against the territorial integrity or political independence of any country, or in any other way not in accordance with the purposes of the United Nations” be interpreted as a strict prohibition of any use of force against another state; or does it allow the use of force provided that the aim is not to overthrow the government of the intervening state or to occupy its territory?

Several perspectives were shown as an answer to such a question:

### First: The supporting perspective of one-sided humanitarian intervention

One aspect of jurisprudence holds that the prohibition of force mentioned in the Charter is limited to cases in which the political independence or territorial integrity of the state is threatened. Thus, as long as one-sided humanitarian intervention does not seek to bring about regional change or challenge the political independence of a country and does not conflict with the purposes of the United Nations, this intervention is legal<sup>[2]</sup>.

According to this perspective, the real humanitarian intervention does not lead to an invasion of the territories of other countries or a political threat to their independence. Humanitarian intervention aims to protect human rights. This protection is one of the principles of the United Nations. Therefore, the use of force to address dangerous human rights violations is not only consistent with the purposes of the United Nations, but also serves one of its main purposes and is in line with it. Consequently, it is not good to say that one-sided humanitarian intervention is prohibited under the second Article, the fourth item of the United Nations Charter<sup>[3]</sup>.

This aspect of jurisprudence also indicates that one-sided humanitarian interventions do not violate the provisions of the Charter of the United Nations, because they do not include the prolonged military presence by the intervening state in the territory of the invaded country, and this presence does not result in the loss of lands from the invaded state or a change of the regime in it, or any measures that conflict with the principles and objectives of the United Nations<sup>[4]</sup>.

### Second: opposing perspective of one-sided humanitarian intervention

The prevailing trend of international jurisprudence believes that one-sided humanitarian interventions are inconsistent with the Charter of the United Nations, and this perspective is based on several basis and justifications, including:

1. The prohibition of force mentioned in the Charter of the United Nations is an absolute prohibition in practice, and the evidence for this is that the General Assembly of the United Nations supported this absolute interpretation of the prohibition of the use of force in many of its decisions, such as Resolution No 2625 of 1970, which includes the principles of the international law related to cooperation between states<sup>1</sup>, And Resolution No. 3314

<sup>1</sup> It was stated in the preamble to Resolution No. 2625: - Convinced of it (the General Assembly) that the precise observance of states to the obligation not to interfere in the affairs of any other state is a prerequisite for ensuring that nations live together in peace, because practicing any form of interference is not limited to violating the Charter as a whole, but it also creates situations that threaten international peace and security, Recalling the duty of states to abstain in their international relations from exercising military, political, economic or other forms of coercion directed against the political independence or territorial integrity of any country,

Considering it necessary for all states to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other way that is inconsistent with the purposes of the United Nations.

See: United Nations General Assembly Resolution, dated 10/12/1970 - including the Declaration of Principles of International Law relating to Friendly Relations and Cooperation between States, Resolution No. A / RES / 25/2625, Preamble.

- of 1974 which defines aggression.<sup>2</sup>
2. There is no intervention by states against another one without involving the use of force in a manner that does not conflict with the territorial integrity or political independence of the invaded state. All cases of use of force within the one-sided humanitarian intervention, no matter if it is permanent or temporary, result in a violation of unity of the territories of the invaded countries<sup>[5]</sup>.
  3. It is clear from the negotiating record on the Charter of the United Nations that the second and the fifty-first articles of the Charter<sup>3</sup> aimed at restricting and even eliminating the resort to force from one side except in the case of responding to an armed attack by one state on another one, which makes it difficult to interpret the texts of these two articles; however, do not prohibit all humanitarian interventions that involve the use of military force, even if it is under the pretext of stopping gross violations of human rights<sup>[6]</sup>.
  4. There are two observations that must be noted in the context of the preparatory work for the second and fourth articles of the Charter of the United Nations, these observations are:
    - A. The draft text presented in the Dumbarton Oaks Proposals of October 7, 1944 was as follows: "All members of the Commission shall refrain in their international relations from threatening or using force in any way inconsistent with the objectives of the organization."
    - B. It is clear from this text that it is broader than the current text and was not intended to limit the prohibition of the use of force to situations that affect the territorial integrity or political independence of a state<sup>[7]</sup>.
    - C. Despite the amendments made to the draft text of second and fourth articles of the Charter of the United Nations, the conclusion adopted in the report of the decision of the First Committee of the United Nations Conference on the International Organization, which was presented on June 9, 1945, clearly confirmed that the use of force from One side or any other similar coercive action is unauthorized and unacceptable<sup>[8]</sup>.

Simply, there is no indication or evidence that the amendment to the draft text was intended to fundamentally change the draft text submitted. Thus, the statement that one-sided humanitarian intervention does not violate the prohibition mentioned in the fourth item of the second article of the Charter of the United Nations ignores the preparatory work for the text of this article.

The researcher believes that the wording of the fourth item of the second article of the Charter of the United Nations was clear and unambiguous, and it prohibits one-sided humanitarian intervention and the use of force that it entails.

<sup>2</sup> In the preamble to Resolution 3314 and in many of its articles, especially the first article, it affirms the prohibition of the use of force and the threat of it in relations between states. See: United Nations General Assembly Resolution. Date 12/14/1974 containing the Declaration on Principles of International Law relating to Friendly Relations and Cooperation between States, Resolution No. 3314, Resolution Code A / RES / 3314 (XXIX).

<sup>3</sup> Article 51 of the United Nations Charter states: Nothing in this charter weakens or detracts from the natural right of states, individually or collectively, to defend themselves if an armed force attacks a member of the "United Nations" until the Security Council takes the necessary measures to maintain peace and international security, and the measures taken by the members using the right to self-defense shall be immediately reported to the

As for countries claiming otherwise, they rely on laws and rules prior to the establishment of the United Nations the United Nations and its charter, and these rules and laws no longer exist at the present time.

### **The second section: the state of customary international law of one-sided humanitarian intervention**

One aspect of international jurisprudence claims that there is an emerging rule in customary international law that gives states the right to indulge themselves in one-sided humanitarian intervention in other states.

Before responding to this allegation, the perspective of the International Court of Justice on the formation of custom must be clarified in the course of its consideration of the issues of the continental shelf of the North Sea, as the court repeated in this case the necessary elements for the existence of a customary rule in international law, and clarified these elements as: repeated state practices - and the belief of compulsory.

The International Court of Justice said that even when there is the possibility of a custom to emerge within a short period of time, the practice of states must be widespread and unified among them, and that state practice must come from a sense of the commanding of these practices; so that, the repetition or habitual practice of an act is not enough to form a custom in the international law. Consequently, any attempt to claim the existence of an emerging customary rule in international law permitting one-sided humanitarian intervention and the use of force within it must combine these elements<sup>[4]</sup>.

In the case of the American intervention in Nicaragua in 1986, the International Court of Justice also addressed the issue of the possibility of a customary rule modifying the principle of non-permissibility of fixed interference in the Charter of the United Nations, as the court indicated that it is important for it in this area the basis provided by the intervening state as a justification for this intervention. The court also indicated that the reliance of a state on a new right or an unprecedented exception to the principle of non-interference, if other countries participate in this claim, may lead to amendments in customary international law. However, the International Court of Justice did not give into an in-depth analysis of this hypothesis because the United States of America did not claim that it interfered in Nicaragua on the basis of a new customary rule in international law that constitutes a new exception on the rule of impermissibility of intervention and the prohibition of the use of force.

Some jurists have cited a long list of cases of one-sided intervention to justify its legitimacy, and among these cases, the Tanzanian intervention in Uganda in 1979, the French intervention in Central Africa in 1979, the Indian intervention in Eastern Pakistan / Bangladesh in 1971, and the American intervention in Grenade in 1983. The intervention in Iraq in 1991, the intervention in Liberia in 1990, the intervention in

Council, and these measures do not in any way affect the Council - by virtue of its authority and responsibilities derived from the provisions of this Charter - the right to take at any time what it deems necessary to take in order to protect Peace and international security or restoring it to place.

<sup>4</sup> Judgment: ICJ, 20 February 1969- North Sea Continental Shelf cases, Judgment.

See also: Al-Hindawi Ahmed Abdel-Hamid Ibrahim, 2018 - Borders disputes and Arab maritime wealth within the exclusive economic zone and the continental shelf before international courts, PhD thesis; Ain Shams University - Faculty of Law - Department of Public International Law, p. 186 and beyond.

Somalia in 1992, the intervention in the former Yugoslavia between the years 1991-1992, the Belgian intervention in the Congo in 1960, the US intervention in the Dominicans in 1965, etc.

The aim of these jurists was to highlight these interventions by proving that they indicate the availability of one of the elements in the formation of international norms that is reflected in the practice of repeated states. However, with the existence of this long list of one-sided interventions, it is difficult to assert that there is an emerging rule in customary international law regarding one-sided humanitarian interventions that fulfills the criteria set by the International Court of Justice mentioned above since the practices of states in the intervention are not widespread. It is also not united; essentially, there is nothing to suggest that these intervening states feel obligated to intervene<sup>8</sup>.

In addition, most of the cases of one-sided intervention mentioned above took place either to protect the intervening countries from abroad, or it was an expression of the history and colonial ambitions of the intervening countries in the areas in which they interfered. Consequently, in none of these instances of intervention was humanitarian concerns that justified humanitarian intervention and one-sided use of force<sup>[9]</sup>.

In general, it can be said that the absence of elements that constitute international costumes deprived state practices of any possibility and ability to change international law in a way that allows one-sided humanitarian intervention; therefore, it is difficult to interpret these precedents of one-sided interventions as indicating the emergence of a right to intervention Humanitarianism from one side would overthrow the traditional principles of state sovereignty and non-interference in their internal affairs.

### **The third section: humanitarian intervention within the principle of protection responsibility**

One aspect of international jurisprudence relied on the principle of the protection responsibility to justify the legitimacy of one-sided humanitarian interventions. Before going into the details of this claim and the controversy that it raised, it is necessary to emphasize a practical fact, which is that the principle of the protection responsibility in itself is not an argument in favor of justifying a one-sided humanitarian intervention. They are two different aspects.

One-sided humanitarian intervention is a coercive military intervention for humanitarian purposes, nothing more or less. As for the protection responsibility, it is a broader concept, as it includes effective preventive measures. Nevertheless, the gradual measures included in the protection responsibility may have inspired to some that one-sided humanitarian intervention falls within its rules<sup>10</sup>.

In fact, the principle of the protection responsibility affirms that the state's sovereignty is not separated from its responsibility protecting individuals who inhabit in its territory, and that the international community has a duty to take appropriate measures when the concerned state neglects or violates this responsibility. It is not permissible to understand from the protection responsibility that it is an open invitation to military humanitarian intervention, which must always be the last option, and it may not be exercised except in exceptional circumstances. The principle of the protection responsibility is, in fact, a call for states to play their legitimate role in recognizing, respecting and protecting the rights of their people.

It can be said that the protection responsibility formally arose as a result of the report offered by the International Commission on Intervention and State Sovereignty in December 2001, and this committee was established by the Canadian government after the crises of the former Yugoslavia and Rwanda.

According to the International Commission on Intervention and State Sovereignty, there are four main goals that this new approach to humanitarian intervention should include<sup>[11]</sup>:

1. Establishing clear rules, procedures and standards to determine when and how intervention must take place.
2. Establishing the legitimacy of the military intervention when necessary, after the failure of all other methods.
3. Assuring that the military intervention, if it occurs, is carried out only with the aim of achieving the goals and purposes for which it was initiated, and that it is an effective intervention and places in its attention the reduction of human loss and other damages that could result from it.
4. Helping to eliminate the causes of conflict while enhancing the prospects for permanent and sustainable peace.

At first, it may seem that the protection responsibility supports actions by states that may include one-sided military interventions, but this belief fades when we realize that the International Committee on Intervention and State Sovereignty has emphasized that when taking protection measures, especially when there is a military intervention. It should be done in a way that reinforces the collective responsibility of the international community in addressing humanitarian issues rather than providing opportunities and justifying one-sided actions<sup>[12]</sup>.

The International Committee on Intervention and State Sovereignty has sought to address concerns arising from the possibility of one-sided military humanitarian interventions by focusing, above all, on the central and pivotal role of the United Nations Security Council and its responsibility to take any required action. The Security Council is a source of authorization to allow humanitarian military intervention<sup>[13]</sup>. The issue in the principle of the protection responsibility is based on the following criteria:

"The governments of sovereign states are responsible for the primary responsibility to protect their citizens from human violations (mass killing - rape - ethnic cleansing - terrorism - deliberate starvation etc.), when the governments of these countries are unable or unwilling to assume their responsibility, the responsibility must be taken by the international community through a continuous and gradual series of measures, which includes: prevention, military intervention if necessary, and rebuilding shattered societies."<sup>[14]</sup>

Based on this, the primary focus of the protection responsibility must be concentrated on helping to stop violence through mediation and other peaceful means, and protecting people through various measures such as sending humanitarian missions. Force can only be used as a last resort<sup>[15]</sup>.

The General Assembly of the United Nations endorsed the principle of the protection responsibility, on the basis that military action should be resorted to. It should be with the permission of the Security Council. This was also emphasized in the Final Document of the International

Summit in 2005, which stressed the responsibility of every state to protect its population from human violations. The international community, represented by the United Nations, has a responsibility to use appropriate diplomatic, humanitarian and peaceful means in accordance with the sixth and eighth chapters of The Charter of the United Nations, in order to help protect the population from genocide, war crimes, ethnic cleansing and crimes against humanity, and if necessary, collective action must be taken in a timely and decisive manner through the Security Council in accordance with Chapter Seven of the Charter of the United Nations and in cooperation with the bodies and regional organizations, when peaceful means are insufficient and when national authorities fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity<sup>[16]</sup>.

We conclude that the protection responsibility is much broader than the use of force in situations of disaster and humanitarian crises, and that it seeks to address humanitarian violations by focusing on prevention and preventing humanitarian crises rather than rescue through the use of force, but in a situation where the international community is forced to resort to force to stop humanitarian violations, this must be done with the permission of the Security Council of the United Nations, and it is not permissible under any circumstances for any country to claim that it is interfering humanely and singly in another country saying that it is exercising its humanitarian duties within the principle of the protection responsibility.

### Findings and Conclusions

The research concluded the following results:

1. The debate over the legality of the humanitarian intervention is based on the lack of an effective response from the international community in facing the gross violations of human rights that occur in some countries, which led in certain circumstances to major humanitarian disasters and crises. Also, gross violations of human rights are no longer the concern of the internal affairs of states, and therefore no state can commit such violations without taking responsibility, invoking the principles of sovereign equality and non-interference.
2. There is no so-called right of one-sided humanitarian intervention in the current international legal system, and we reached this conclusion based on the following considerations:
  - A. The correct interpretation of the Charter of the United Nations, especially the fourth item of the second article allows us to say that one-sided humanitarian intervention is illegal.
  - B. There is no emerging rule in customary international law that permits one-sided humanitarian intervention.
  - C. The principle of the protection responsibility does not allow one-sided humanitarian interventions. Rather, this intervention must be collective, if necessary, as a last resort, and after obtaining authorization from the Security Council of the United Nations.
3. The countries, especially the superior ones, which intervene singly in other countries saying that they seek to stop the gross human rights violations occurring in other countries, have no motive for these interventions except to achieve political and military objectives in the invaded countries. Consequently, it serves its desires and its colonial history to weaken the invaded countries and

steal their wealth. Consequently, there is no legal, humanitarian or even moral legitimacy for such interventions.

### Recommendations

1. There is still a lot of work to be done between states and within the United Nations in order to create strong and effective international institutions that, through the use of diplomacy, can address gross human rights violations and stop committing the international crimes around the world. In return, the need for more explicit rules in order to enable the effective functioning of the collective security system that protects individuals and human rights, does not mean that the current legal system regarding the prohibition of humanitarian intervention and the one-sided use of force must change.
2. While we admit that there is a weakness in international diplomacy that deals with humanitarian issues, but nevertheless this weakness can be overcome by strengthening the United Nations, especially by establishing a permanent UN force whose mission is to respond to violations and serious humanitarian crises. In any case, any state is not allowed to intervene singly in other countries under the pretext of humanitarian reasons, because this is in violation of the most important principles of the United Nations, especially those related to the equality of sovereignty between states and non-interference in their internal affairs. These interventions cause greater and more dangerous crises in the countries in which the intervention is made than the humanitarian crises that occur at the beginning.

### References

1. Tams C. *Enforcing Obligations Erga Omnes in International Law*, Cambridge University Press, USA, 2005, 92.
2. Chesterman S. *Just War or Just Peace?* New York, 2001, 47.
3. Gray C. *International Law and the Use of Force*, op. cit., New York, 2008, 31.
4. Gray, C. *International Law and the Use of Force*, op. cit., New York, 2008, 32.
5. Higgins R. *Problems & Process*, New York, 1994, 240.
6. Franck T. *Recourse to Force*, Cambridge, 2002, 136-137.
7. Gray C. *International Law and the Use of Force*, op. cit., New York, 2008, 34.
8. Gray C. *International Law and the Use of Force*, op. cit., New York, 2008, 33.
9. Holzgrefe JL. *Humanitarian Intervention*, Cambridge, 2003, 180.
10. Evans G. *The Responsibility to Protect*, Washington D. C, 2008, 56.
11. ICISS, the Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty, the Protection Responsibility, 2001, 28.
12. ICISS, the Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty, the Protection Responsibility, 2001, 98.
13. ICISS, the Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty, the Protection Responsibility, 2001, 75.
14. ICISS, the Responsibility to Protect: Report of the International Commission on Intervention and State

- Sovereignty, the Protection Responsibility, 2001, 96-97.
15. Report of the High Level Panel on Threats, Challenges and Change, December 2, 2004 - Our world is safer. Our Joint Responsibility, Fifty-ninth Session, [http://www.un.org/en/ga/search/view\\_doc.asp](http://www.un.org/en/ga/search/view_doc.asp) Document No.: A / 59/565, Paragraph 201. p. 76.
  16. General Assembly Resolution, 9/16/2005 – International Summit Outcome, from the Sixtieth Session of the General Assembly, United Nations, Document No. A / RES / 60/1, Paragraphs: 138-139, p. 41.