

# Legality of humanitarian military intervention during armed conflicts

مشروعية التدخل العسكري الإنساني أثناء النزاعات المسلحة

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## Abstract:

Security is the main motivate behind establishing the international community with healthy relations in order to achieve the common international interest, faith in international cooperation to maintain international peace, security and solidarity to face any aggression that threatens humanity or violates human rights for political and legal considerations. Moreover, it allows military intervention after the Security Council resolution.

The issue of military humanitarian intervention is one of the main issues that provoke controversy in the law of international relations. Because the intervention is not considered legitimate only if it concerns serious violations of human and humanitarian rights in order to prevent and reduce them. The intervention is permissible based on the resolution of the Security Council to protect the nationals of the State from the arbitrariness of authority, the threat of genocide and crimes of all kinds that may threaten humanity. This what is considered as violation of the rules of the international law and which would cause turmoil International relations.

**Keywords:** military intervention – armed conflicts – humanitarian – human rights – legality of intervention

## Introduction

The roots of the phenomenon of international humanitarian intervention extend back to the history of international relations. However, its seeds extend after the end of the cold war due to the remnants, collapses and disintegrations resulting from religious and ethnic conflicts, which resulted in massacres, migrants and famines. In addition to the remnants of natural disasters, which imposed a humanitarian intervention at the international level that includes humanitarian assistance in time of peace and war under the United Nations. Because of that, intervention has become justified for the protection of minorities under the justification of protecting human rights, which is the focus of the international attention by ensuring their link to international peace and security, which are one of the objectives of the Charter of the United Nations and the international treaties. Therefore, the international community has settled on the principle of the maintaining humanity, even if it is necessary to use military force in order to give that intervention an international status that will be effective through military and armed humanitarian intervention. In this sense, the problem revolves around to what extent is this interference legitimate. In other words, if the legality of the intervention is legal or political? Moreover, Could its competence be limited to the international or domestic levels or both? Basing on this, we will try to establish hypotheses on the definition and legality of military intervention, as well as its types and objectives that it is based on it besides addressing the

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dialectic of competence between the national sovereignty of the State and the principles of international law. The character of a humanitarian military intervention should also be determined whether it is a right or duty of the State. It should be noted that the humanitarian military should determine the objectives behind its intervention, identify its legal basis and controls, and deciding on the question of competence between domestic and international to reach the most important changes in international law. In order to clarify all these meanings, the subject will be presented in two main axes, what military intervention is and the dialectic of humanitarian military intervention.

The first axis dealt with the definition and legitimacy of humanitarian military intervention, while the second axis dealt with the dialectic of humanitarian military intervention between right and duty and the dialectic of humanitarian military intervention between the field of sovereignty of the State and the international field.

### **First: What is humanitarian military intervention during armed conflicts?**

#### **1. Definition of military intervention**

The International humanitarian intervention is defined as the initiative of a state or a group of states to intervene to reduce flagrant violations of human rights. It must be said that the content of human rights is linked to human theory, the fundamental rights that are close to his person, the idea of international assistance and the maintenance of international peace, security and stability. It is also defined as the use of threat and force against a State by another State or a group of States for preventing or suppressing serious and widespread violations against the human rights or fundamental rights of individuals, even if they are nationals of the State to which force is exercised or applied without its authorization.<sup>1</sup>

It has already been said that intervention has been defined within the so-called protection of the rights of minorities and certain ethnic groups since the mid-19th century<sup>2</sup> after the Second World War, when the issue of human rights became one of the basic fundamental principles for organizing a contemporary international community. Moreover, humanitarian military intervention is not limited only to international and internal armed conflicts but it extends even in the natural disasters cases.

Therefore, the international community has settled on the principle of the protecting humanity even if it is necessary to use military force for humanitarian intervention. This is to provide an effective international status; under the heading of military and armed humanitarian intervention.<sup>3</sup> The Security Council has endorsed it in two cases. First, the Security Council authorizes one or two or more States to undertake it in connection with internal conflicts, as happened in Somalia under Security Council resolutions 794 and 940 to ensure the best conditions and provide assistance. The second case is under the direct supervision of Security Council resolutions by the United Nations through the intervention of its peacekeeping units, which are responsible for the protection of the civilian population and humanitarian distress.<sup>4</sup>

From the foregoing, it seems that the military humanitarian intervention takes two patterns, the first is non-coercive, such as the use of economic, diplomatic pressure or any other type of sanctions and the second is coercive in order to protect and save the citizens of the state even if the state is intervening itself. Both patterns are introduced for humanitarian considerations in order to save citizens from arbitrariness.<sup>5</sup>

In addition to what have been mentioned before, humanitarian military intervention derives its legal basis from the text of Article 2, paragraph 4, of the Charter of the United Nations, which prohibits the use of force against the integrity or political independence of any State. Therefore this intervention does not affect the territorial integrity of a State or its political independence, but it must be consistent with the demands, purposes and objectives of the United Nations, which are the maintenance of international peace and security.<sup>6</sup>

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It should be noted that the types of humanitarian military intervention, which are represented in four types, each one of them has a specific implementation strategy as required by the type of intervention, namely:

- **Assistance in the distribution of humanitarian aid:** This intervention is limited to the provision of aid and the provision of the conditions to be guaranteed in order for the aid to reach those in need in the name of humanity, such as transportation, construction of camps... etc. This is according to the avoidance strategy.

- **Protection of humanitarian assistance:** This type of intervention is limited to humanitarian policy in order to provide a safe and sound environment that is not tainted by horror, such as relief for victims of disasters that may be caused by humans such as genocide or that are beyond the hands of humans such as drought. Subsidies may be either through the provision of food and medicines, for example, or through humanitarian organizations such as the Red Crescent and the Red Cross, which were instrumental in the creation and development of most international conventions on international humanitarian law in 1968.

This type of military and humanitarian intervention is in accordance with the strategy of deterrence and defense, such as the defense of state reserves.

- **Rescue of victims of violence:** This type of intervention aims at a ceasefire or cessation of fight in order to protect victims from violence and attack by resorting to a strategy of deterrence, defense and subjugation, also called the imposition of peace to save victims from repression, such as the protection of civilians.

- **Stopping the perpetrators of violence:** The tasks of intervention are limited in this case to stop the perpetrators of violence from continuing their offensive actions in order to provide protection and security to the population on which the attack is subjected, and this is achieved through attack and subjugation.

By presenting the types of humanitarian military intervention, it is clear that there is a strong relationship between intervention and the imposition of world peace, which will be explained in the table below to illustrate the vision.

**Table 1: Clarification of Types of Military Humanitarian Intervention<sup>7</sup>**

<b>Types of military humanitarian intervention</b>	<b>Strategy</b>	<b>Example</b>	<b>Application</b>
Humanitarian Aid	Avoidance	Assistance to the Iraqi people	Northern Iraq in 1991
Protection of humanitarian aid	Deterrence Defense	Protection of reserves	Bosnia and Herzegovina 1993-1995
Rescue of the victims of violence	Deterrence Defense Subjection	Safe Zones	Ronda in 1994

Stopping perpetrators of violence	Attack and subjugation	Negotiated Peace	Bosnia and Herzegovina in 1995
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## 2. Legality of military humanitarian intervention

The general rule of public international law stipulates the principle of non-interference of any State in the affairs of another State to consider the principle of intervention as a fundamental pillar governing international relations to ensure its right to survival and existence except in exceptional cases. An opposing trend and another in favor respectively .

**2.1. Opposing trend:** This trend goes to the illegality of humanitarian military intervention by States because it opposes the principles of international law in terms of compromising the national sovereignty of the State, which leads to the obstruction of international relations and the spread of chaos in the international arena.

**2.2. Favortrend:** This trend goes in contrast to its previous counterpart by supporting the legitimacy of humanitarian military intervention because the concept of sovereignty has changed and developed international law from the traditional concept to the modern one, imposing restrictions on the sovereignty of States after they were absolute in ancient times, It has witnessed a remarkable development in line with the developments of international law and the demands of the international arena. Intervention for the purpose of protecting human rights is not interfered in the internal affairs of a State, but rather an implementation of international conventions that were concluded and agreed upon before the violation occurred and which these States had previously signed and approved at their own will without coercion and exerting pressure on them.

In line with what has been mentioned, humanitarian military intervention is an act of frequent adoption, since the rights set forth in international conventions have been recognized throughout the world so that they have acquired the binding legislative character of all States of the world, whether they are organized or not, because they are objective rules closely linked to international peace and security, and this is what the Charter of the United Nations as well as international treaties are keen on as a result of the scourge of wars experienced by the world.<sup>8</sup>

The Charter of the United Nations has taken care of the issue of human rights in its preamble by stipulating its belief in the fundamental rights of the individual, the promotion of his dignity, the realization of the principle of equality between men and women and the exclusion of all criteria of discrimination between peoples, whether on the basis of race, sex, language, religion or any other considerations.

In several of its articles, including article 1, 55, 56, 62, 68 and 76, the Charter also affirmed international cooperation in all social, economic and humanitarian fields and the promotion of human rights in order to support world peace and the achievement of international peace and security in view of the devastation caused by the Second World War of material and human losses caused by Nazism and fascism. The impetus for the United Nations to link international peace and security to fundamental human rights to mitigate existing conflicts was Andak.<sup>9</sup>

Perhaps the greatest event in the history of the United Nations was the promulgation of the Universal Declaration of Human Rights on 10 December 1948, a universal document containing the fundamental rights of the individual, but controversy has arisen over its legal value in terms of obligation. Some argue that it lacks mandatory status and contains only moral value because it is merely a declaration resulting from the intentions of the international community and is therefore nothing but a recommendation devoid of the element of international

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obligation. On the contrary, it views the opposite direction as binding on all States of the world because it is a supplement to and interpretation of Articles 55 and 56 of the Charter that is preponderant.<sup>10</sup>

However, the Universal Declaration of Human Rights is flawed by the fact that it did not provide for humanitarian military intervention by the United Nations, which made the legality of its intervention conditional on the basis of a Security Council resolution:

- The existence of severe cases of suffering and gross flagrant and violations of fundamental rights - which are considered the property of the individual and must be fortified and not infringed upon - have been proven to threaten world peace and thus impede international relations.

- Exhaust all peaceful and friendly means to reduce human rights violations before resorting to military and humanitarian intervention, i.e. the latter must be subsequent to peaceful means.

- The intervention must not be directed against the integrity of the territory or political independence so that it must be limited to the maintenance of the violated rights without prejudice to the elements of the State.

- The means used are proportionate to the objective for which the humanitarian military intervention was carried out.<sup>11</sup>

**Second: The dialectic of military humanitarian intervention**

**1. The dialectic of military-humanitarian intervention between right and duty**

There has been controversy among scholars of international law about whether intervention is a right or a duty, especially in the difficult circumstances that the world has lived through, in which many human lives have been lost and natural disasters have been exacerbated by the spread of diseases and epidemics that have affected peoples, causing them to suffer from famine, malnutrition and the lack of a minimum standard of living. The violation of the humanity and the rights of innocent people was primarily a question of whether humanitarian military intervention was a right or a duty of States.

Many jurists believe that intervention is an inalienable right of states, as many conventions on human rights and respect for humanity have been monitored and increased oversight by specialized committees such as the Human Rights Committee established in 1996. However, intervention in the name of humanity requires that a State act within the limits of its sovereignty and refrain from the use of force except in the case provided for in a treaty or convention and what international norms require of a State,<sup>12</sup> in order to avoid the method of aggression between States He therefore notes the possibility of a State intervening in the territory of a State to curb human rights violations even if the Charter does not provide for it, since it is for the purpose of providing assistance to poor States or for the protection of nationals of the State abroad.<sup>13</sup>

There are those who believe that military and humanitarian intervention is the duty of the State because it is one of the purposes pursued by the United Nations for the purpose of achieving it in order to save humanity from the scourge of the prevailing wars. It is on this basis that the achievement of international cooperation and peaceful coexistence imposed by public international law can contribute to international peace and security and to the establishment of a friendly relationship among the persons of the international community in peace, tranquility and the exclusion of persecution.<sup>14</sup>

From the foregoing, it can be said that military intervention is a right, a duty and, at the same time,<sup>15</sup> a right because every State has the right to live in a secure environment characterized by internal and global peace and in which security and stability prevail. In return, they must intervene in the name of humanity in order to consolidate international relations and

achieve international cooperation among States, which is often resorted to by international organizations.<sup>16</sup>

## **2. The dialectic of humanitarian military intervention between the sphere of state sovereignty and the international sphere**

The recognition of the principle of sovereignty of States requires non-interference in their internal affairs, but they have reversed this idea as a result of the expansion and consolidation of the norms of international law and the latter has become known as collective security, the latter of which can only be achieved by intervening to reduce violations of human rights, to stop the use of means of mass destruction that cause human casualties and to intervene in order to protect the environment and to live in it peacefully in an appropriate climate at the level of land, sea and air.<sup>17</sup>

Thus, the predominant principle is the principle of universal sovereignty, which both human race and humanity possess, which grants themselves the right not to be infringed upon through indispensable international cooperation. States have also recognized the change of the idea of sovereignty for the sake of the international interest, since the international interest has prevailed over the individual national interest, restrictions on national sovereignty have been placed upon the recognition of fundamental rights and freedoms and the prohibition of war has been sanctified for humanity and human race as a whole.

It should be noted that the notion of international responsibility based on damage should be excluded because, in the event of a conflict of international interest with nationalism, the latter is excluded in order to achieve international peace and security and global stability among States and international organizations and The state becomes a welfare state instead of a police state where the interest of the state shrinks internally and the interest of the international community expands, and the principle has prevailed since the promulgation of the Universal Declaration of Human Rights, which gave sovereignty a humanitarian character.

It is recognized, however, that the issue of human rights requires that the international conventions is not violated as a guarantee and mechanism for the control of any violation of them, whether at the regional or global level, which pushes States to review their domestic laws so as not to contradict the provisions of international law.<sup>18</sup>

### **Conclusion:**

Undoubtedly, humanitarian military intervention in armed conflicts encompasses both the international and national levels, motivated by violations against humanity and the exclusion of the idea of compromising territorial sovereignty and political independence, since the aim of intervention is to defend human rights without prejudice to territorial integrity. On the basis of this, intervention is legitimate in the name of human rights after the individual has become the primary concern of the international community and all international and national conventions have come to call for humanity since they have objective rules binding on all States of the world.

It may be useful to emphasize that humanitarian military intervention occupies a prominent place in international law because it is one of the principles established in its rules and is considered a novelty of the law of international relations and therefore we find that it does not adhere to the question of internal jurisdiction Rather, it expands to an external scope because armed interventions to put an end to violations of humanity are legitimate provided that their territorial sovereignty or political independence are not compromised, since the aim of the

intervention is to protect human and human rights without the Impairment of territorial unity .

Therefore, humanitarian military intervention may be legitimate if its goal is to create democracy and the principles of the modern State and any harm to humanity is considered a threat to international peace and security, so we hope that there will be believing mentalities that work on the interaction of new formulas between the United Nations and the existence of oversight bodies for coordination and cooperation at the international level on human humanity before it is insulted. In addition to supporting poor peoples who are experiencing difficulties at various levels of humanitarian assistance, the protection of minorities and the maintenance of fundamental rights. We also find that international law opens up modern horizons for the protection of humanity without compromising the national sovereignty of the State or interfering in its internal affairs, but rather intervention aimed at eliminating and reducing crimes against humanity. With regard to the use of force, the Security Council has established controls to legitimize humanitarian military intervention:

- The use of force after all friendly and peaceful means have been exhausted, meaning that humanitarian military intervention is the last available alternative to friendly means or after all peaceful means have failed.

- Proven real violations of fundamental human rights that would impede and destabilize world peace and threaten international peace and security.

- Humanitarian military intervention should not have objectives other than the defence of humanity, i.e. the exclusion of political objectives.

- Lack of selectivity in the practice of humanitarian military interventions.

- Military and humanitarian intervention should not cause loss and damage to humanity.

Through the study, it is possible to reach a set of recommendations, which are summarized in:

- Prevent any humanitarian military intervention except on the basis of an explicit prior decision of the Security Council so as not to have a political character.

- The concept of sovereignty should be developed so as not to affect national sovereignty and to eliminate the contradiction between the ideas of sovereignty and military intervention.

- To work to fortify as much rights as possible and to safeguard humanity before it is marred by any international deficiency or vacuum, or to compromise or diminish its value, through activating the role of the organs of the United Nations to eliminate famine, malnutrition and diseases suffered by some peoples of the world.

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