

Problems of Theoretical and Normative Correlation of “Humanitarian Intervention” Definition

Elena V. Safronova, Aleksey A. Liventsov, Ivan N. Kuksin and Gennady A. Borisov
Belgorod State University, Pobedy St. 85, 308015 Belgorod, Russia

Abstract: The study describes, the conceptual content of “humanitarian intervention” definition. The researchers analyzed the views of the leading Western scholars on the issue of humanitarian intervention, a series of possible definitions that exist in the modern doctrine is presented and compared, the problem of theoretical and normative correlation concerning “humanitarian intervention” definition is studied. In order to develop a correct legal definition of a humanitarian intervention the definitional functions are revealed, i.e., the relationships expressing the concepts that are given at the determination of a phenomenon.

Key words: Humanitarian intervention, military humanitarianism, sovereignty, human rights protection, definition, doctrine, humanitarian intervention theory, international law

INTRODUCTION

The doctrine of “humanitarian intervention” in its modern form is quite young but the idea of a certain quasi-legitimate military justified intervention has a long history. For the first time, Hugo Grotius in his treatise “About the Law of War and Peace” (XVIIth century) Grotius and Neff (2012) described quite systematically and thoroughly similar the concept of “just war”. The doctrine of “humanitarian intervention” adopted by the UN Charter (CUNSIJ, 1968) and the systems of acts specifying its provisions which actually prohibited an aggressive war allows to discuss this term thoroughly. At that it is worth noting that a “humanitarian intervention” now a days has no regulatory statement as well as an authentic interpretation or at least an interpretation generally, accepted by the scientific community. Strictly speaking, only the international law which acts as a kind of coordinate system allows to mark its presence and its change. In the light of the recent year, events this system is undergoing a crisis, resulting in a practice of “humanitarian intervention” which is extremely heterogeneous and controversial in terms of a legal argument. Therefore, the theoretical and legal processing of the definition on the other hand, the careful revision of the fundamental international documents are highly relevant for the stabilization. Both are necessary for the purpose of sustainable cohering as the prohibition of a forceful intervention in terms of humanitarian objectives is hardly possible within the modern world and judging by the number of historical precedents (e.g., the war in Vietnam against Pol Pot regime (Klintworth, 1989)) this is not necessary.

MATERIALS AND METHODS

The study was based on a general scientific method of dialectics, a general logic of analysis and synthesis techniques as well as on special techniques: logical, comparative-legal, systemic-structural and systemic-functional one.

Main part: Wars always haunted humanity and for obvious reasons, demanded some plausible pretext (especially in the modern period). This situation has given rise to a number of conditional legal concepts seeking to justify a military intervention beyond a mere aggression. The political and legal language of modern time has many relative meanings described by the following phrases: “intervention for humanitarian purposes” (Anonymous, 1999a), “preventive defense”, “preventive diplomacy” (Ghali, 1992), “a democratic intervention right”, “defensive diplomacy” (Military Balance, 2009), “military humanitarianism” (Zolo, 2006), “the responsibility for protection” (Anonymous, 2001). According to the authors, the concept of “humanitarian intervention” is the most established in international legal doctrine (the report of the Evans-Sahmoun commission calls it “a widespread and generally accepted” within this context because of “the presence of a long and continuing tradition” of use (Feinstein and Slaughter, 2004)), so it is advisable to use this term, rather than any other.

Due to the fact that the Foreign science developed this phenomenon in much more detailed way than in the domestic science, let’s refer to the main interpretations which are common in the western doctrine. At that it is

necessary to stipulate that lexical transformations often occur during the translation of words in different languages. So, "Intervention" from English into Russian may be translated as "intervation": "invation" or "intervention" (Adamchik, 1998); in French (Ganshina, 1977) and German (Leping, 1976) languages this word also means "mediation". This breadth of semantics during the translation significantly blurs this lexical unit, equating it to some others from the above mentioned or even to fundamentally different ones.

According S.I. Ozhegov dictionary "humanitarian" means "relating to a human, to human rights and interests", "intervention" means "an aggressive interference of one or several states, mostly armed one in the internal affairs of any country" (Ojegov and Shvedova, 1999). It is obvious that in the phrase "humanitarian intervention" clearly demonstrates a negative semantic dissonance as mostly an armed aggression is hardly consistent with the human rights and interests. Based on these considerations, the International Committee of the Red Cross adopted the following official position: it uses this concept but it considers, it as an incorrect one and therefore, proposes to replace it with its own "an armed intervention in response to the serious violations of human rights and international humanitarian law" (Ryniker, 2001).

No wonder that none of the currently existing universal written sources of international law has no such a phenomenon. Even in the resolutions of the UN Security Council directly supporting the explicit "humanitarian" interventions used some more neutral expressions ("humanitarian efforts", "the necessary measures, including the use of force", "the necessary means to restore an international peace"). However, the reference of "humanitarian intervention" as a kind of a fact statement, however is present in the reports of officers and UN committees (such as the above-mentioned commission of Evans-Sahnoun (Annan, 2000)) and its specific meaning is not disclosed.

The scientific formulation of an adequate and a proper legal definition of humanitarian intervention also meets a number of obstacles. The chief one among them is the extreme heterogeneity of practical actions described during the use of this term. The stated goals, reasons, the quantitative and qualitative composition of the countries performing an intervention, the presence or absence of authorizing resolutions of the UN Security Council differ.

In recent history, one of the first authors of humanitarian intervention theory was the French International Law professor Mario Bettati. He proposed the following definition: "intervention, a unilateral or a multilateral one, a governmental or an intergovernmental is carried out with

the use of the armed forces or by diplomatic pressure to stop major violations of human rights, threatening the lives of many people" (Bettati and Kouchner, 1987). This definition relates to humanitarian intervention (in this sense makes it equal for the purpose of legitimization) an extremely wide range of actions without a competent entity specification, including retorsions and reprisals of individual states, various military interventions, the UN peacekeeping actions. In fact, the only criterion is the reason and the motive of an application.

Then some other more specific definitional functions were offered. According to Verwey (1985), humanitarian intervention is "a threat of use or the use of force by a state or group of states only in order to prevent or protect against serious violations of fundamental human rights, especially the right to life, regardless of nationality. It may take place without a permit of relevant UN bodies and without the permission of a legitimate government of a State".

The scientists of Danish Institute of International Relations defined a humanitarian intervention as "the violent acts of another state, including the use of armed forces, without the permission from the government of this state in accordance with the powers issued by the UN Security Council or without them in order to prevent or stop some grave violations of human rights or international humanitarian law (Anonymous, 1999b).

One of the leading modern researchers of this issue, a Canadian professor Francis Kofy Ebyu believes that humanitarian intervention is "a theory of intervention, based on the principles of humanity, recognizes the right of states to implement an international control over the actions of another state in the matters relating to its internal sovereignty in situations, contradicting with the norms of humanity" (Abiew, 1999). A number of this definition features should be noted. First of all, the rights and functions of international control rest not on a specially created and an authorized universal international organization the United Nations but on some state. Secondly, a certain deviation from the "standards of humanity" actually occurs in practice of any state, even if we take into account that humanity is an evaluation concept to a large extent if not a philosophical one. The sources of international human rights and humanitarian law do not show a critical volume in respect of human rights violations.

RESULTS AND DISCUSSION

Summary: Thus, we may try to determine the general contours peculiar for the Western international lawyers concerning an expanded understanding of this political

and legal phenomenon. The common elements are the presence of military intervention (or the threats thereof) and the alleged human rights protection. A single state or a group of states may act as an invader and judging by the context the group of states may be identified with an international organization that makes the distinction of humanitarian interventions and UN peacekeeping actions a problem. The specific condition giving the right to act accordingly remains an unsolved one. And the issue about the possibility of a preventive humanitarian intervention stays out of the equation.

CONCLUSION

Now a days, the institute of humanitarian intervention, defacto being the reality of the modern world is not directly reflected in the basic acts of international law and consequently has no legal definition. However, there is a lot of his doctrinal definitions but because of their significant contradictions, we can't talk today about a scientific consensus enough to start a legal structuring.

If you try to analyze and evaluate the acts from the terms of international law which may be considered as the examples of humanitarian interventions, it is possible to conclude that there is an essential contradiction of the spirit and the letter of the UN Charter.

The scientific views on the admissibility of humanitarian intervention or similar actions occurred throughout the whole existence of international law science, beginning with the moment of its inception and till the present day. During the period of an international law modern system existence the generalized line of doctrinal ideas concerning this issue experienced some qualitative changes.

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