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DOES HUMANITARIAN INTERVENTION VIOLATE SOVEREIGNTY OF THE STATE?

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ABBREVIATIONS

1. ASEAN - Association of South East Asian Nations
2. AU - African Union
3. AUPSC - Protocol Relating to the Establishment of the Peace and Security Council of the African Union
4. CSCE - Commission on Security and Cooperation in Europe
5. ECJ – Eupean court of Justice
6. ECOWAS – Economic Community of West African States
7. EP - European Parliament
8. EU – European Union
9. FR Resolution - Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States
10. HFA – Helsinki Conference and Final Act on Security and Cooperation in Europe
11. ICCPR - International Covenant on Civil and Political Rights
12. ICESCR - International Covenant on Economic, Social and Cultural Rights
13. ICISS - International Commission on Intervention and State Sovereignty
14. ICJ – International Court of Justice
15. IO - International Organizations
16. NATO- North Atlantic Treaty Organization
17. NGO- non-governmental Organizations
18. R2P- Responsibility to Protect
19. RN2V – Responsibility Not to Veto
20. RwP - Responsibility while Protecting
21. SEA - South East Asia
22. UDHR – Universal Declaration of Human Rights
23. UN – United Nations
24. UNGA – United Nations General Assembly
25. UNSC - United Nation Security Council
26. USA - United states of America

ABSTRACT

The idea behind this thesis comes from the real life examples of humanitarian crisis like Syria, where we see civil war causing deaths of a large number of human beings. This idea lead to research of both the humanitarian intervention and states sovereignty, and especially how humanitarian intervention is aimed to restore the peace and security and to protect human rights in the target state, and how it interacts with states sovereignty. Moreover, we studied reasons why some interventions succeed while others fail, and the process of intervention itself.

The doctrine of humanitarian intervention belongs to contradictory relationship between the principle of state sovereignty and the protection of human rights. While some theorists define humanitarian interventions as violation of the principles of non-intervention and state sovereignty, other see it as the legal and legitimate way to protect all of humanity. The research firstly discusses the theory of humanitarian intervention: its theories, possible definition, and legal side of this phenomenon. Second chapter discuses: states sovereignty and its theories and definitions. The third chapter regards the new approach of humanitarian intervention- the R2P doctrine and its possible addition – the RwP. Third chapter focuses on the newly created R2P and issues it is dealing with as well as possible additions.

After the research, we came to an opinion that the peace, security and human rights are depending on state's sovereignty, but sometimes humanitarian intervention is needed for the greater good.

SANTRAUKA

Šio darbo idėja kilo analizuojant įvykius Irake, Afganistane, Libijoje ir dabar Sirijoje, bei nuolatinius neramumus kylančius pasaulyje ne tik kovojant su augančia terorizmo grėsme, bet ir augantį nepasitenkinimą žmogaus teises pažeidinėjančiais rėžimais. Pažymėtina, kad nuo tada kai prasidėjo civilinis karas Sirijoje jis nusinešė bent 400 000 gyvybių, ir vis dar nesimato Jungtinių Tautų Saugumo Tarybos poveikio užbaigiant neramumus, nepaisant nemažo skaičiaus pasiūlytų rezoliucijų, kurios dėl vienokių ar kitokių priežasčių nebuvo priimtos. Visa tai privertė susimąstyti apie humanitarinę intervenciją ir jos sąveika su valstybės suverenitetu. Tad gilinantis į humanitarinės intervencijos istoriją, sampratą, bei tarptautinės bendruomenės vystomą praktiką, bei Tarptautinio Teisingumo Teismo argumentus, kilo logiškas klausimas, kodėl vienos jos yra sėkmingos, o kitos žlunga. Taip pat, kaip stengiamasi išspręsti šių kertinių tarptautinės tiesės sampratų susidūrimą, kaip sumažinti žalą, kurią daro humanitarinė intervencija šaliai į kurios vidaus reikalus yra kišamasi.

Humanitarinė intervencija yra seno ir nei akademinės bendruomenės nei tarptautinės bendruomenės neišspręsto konflikto centre, tarp dviejų viena kitai prieštaraujančių ir kartu viena kitą papildančių sąvokų t.y. valstybės suvereniteto it žmogaus teisių apsaugos. 2001 metais Tarptautinė Komisija pristatė doktriną „Pareiga ginti“, kuri buvo patvirtinta 2005 metais, ši doktrina yra naujausias siekis apibrėžti šį itin sudėtingą dviejų doktrinų santykį. Šis darbas siekia objektyviai ir lakoniškai pristatyti humanitarinę intervenciją ir valstybės suverenitetą, kartu pateikiant ir pareigos ginti, kaip įgyjančios vis daugiau palaikymo doktrinos apimančios abi anksčiau paminėtas teisės doktrinas, pagrindinius argumentus, bei sulaukiamą kritiką. Taip pat nepamirštant ir galimų ateities scenarijų siejamų su šia doktrina t.y. šios normos galimą tapimą tarptautinės teisės norma.

Valstybės suverenitetas išlieka dviprasmiška tarptautinės teisės norma nepaisant to, nuo antrosios žmogaus teisių konferencijos įvykusios pasibaigus šaltajam karui, valstybės nebegali naudoti Jungtinių Tautų Chartijos 2(7) straipsnio kai tam tikra situacija yra susijusi su žmogaus teisėmis. Nepaisant sulaukiamos kritikos, dėl pažeidinėjamų žmogaus teisių, iš tarptautinių organizacijų, kitų valstybių ar Nevyriausybinių Organizacijų, kai kurios valstybės vis vien teigia, jog bet kokia intervencija pažeis jų suverenumą. Šią poziciją palaiko tokios valstybes kaip Kuba, Kinija ar Iranas, bet ir Jungtinės Amerikos Valstijos, Europos sąjunga[1], ar kitos valstybės, kurios propaguoja humanitarinę intervenciją.

[1] Manfred Nowak. *Introduction to the International Human Rights Regime*. (Raoul Wallenberg Institute Human Rights Library 14. Leiden ; London: M. Nijhoff, 2003). P. 34.

Šis darbas pradedamas skyriumi apie humanitarinę intervenciją: jos teisėtumo kriterijus ir jai keliamus reikalavimus. Trumpai yra pristatoma paties termino ‘humanitarinė intervencija’ kilmė ir vystymasis galiausiai trumpai yra apžvelgiamos teorijos paremiančios ir paaiškinančios šį terminą, ir pačią procedūrą. Tuomet pirmasis skyrius nagrinėja kaip yra priimamas sprendimas įsikišti į kitos valstybės vidaus sprendimus ir kas gali tai padaryti, bei kokį vaidmenį šiame procese atlieka Nevyriausybinės Organizacijos, tarptautinės organizacijos bei Regioninės organizacijos. Pateikiama teisės aktų analizė, padedanti suvokti kaip skirtingi regionai, organizacijos ir akademinės bendruomenės nariai aiškina humanitarinei intervencijai taikomas teisės normas.

Antrame skyriuje pristatoma valstybės suvereniteto sąvoka, jos kilmė, raida ir suvokimas, bei apibrėžimas šiandienos tarptautinėje teisėje. Nepraleidžiama ir trumpa valstybės suvereniteto tipologijos apžvalga, kuri padeda aiškiau suvokti kas yra valstybės suverenitetas, ir kaip jis veikia tarptautinėje teisėje. Antras skyrius užbaigiamas teisės aktų analize.

Galiausiai trečias skyrius apjungia teoriją pateiktą pirmame ir antrame skyriuje per praktinę pusę t.y. pareigos ginti doktriną, kaip modernią humanitarinės intervencijos interpretavimą, susijusį su valstybės suverenumo. Trečiajame skyriuje yra apžvelgiami kriterijai keliami karinei intervencijai ir su tuo susijusios problemos dėl kurių tarptautinė bendruomenė, atstovaujama Jungtinių Tautų Saugumo Tarybos, vengia naudoti humanitarinę intervenciją.

Šiame darbe naudojami metodai apima teorinių tyrimo metodus, kuriais remiantis buvo atskleidžiama atlikto tyrimo esmė taisyklingai ir teisingai samprotaujant ir formuluojant pateikiamus teiginius. Šiai grupei priklausantys:

- *Lyginamasis metodas*- buvo neatsiejama šio darbo dalis lyginant ne tik humanitarinę intervenciją ir jos įtaką valstybės suverenitetui per atskirus veiksmus, kurių buvo imtasi skirtingais atvejais, bet ir lyginant skirtingus teisės aktus.
- *Bendrinimo metodas*- padėjo tinkamai apibendrinti viso tyrimo metu sukauptą medžiagą ir ją teisingai įvertinus pateikti ją išvadoje.

Visi faktai buvo renkami remiantis naudojantis empirinių tyrimų metodais, iš kurių pagrindinis buvo *teisinių dokumentų analizė.* Šis metodas buvo naudojamas lyginant mokslinėje literatūroje, Jungtinių Tautų Saugumo Tarybos Rezoliucijose, tarptautinės teisės aktuose, bei teismų

praktikoje išdėstytus argumentus susijusius su nagrinėjamo darbo objektu t.y. ryšiu tarp humanitarinės intervencijos ir valstybės suvereniteto.

Tyrimo metu buvo keliami šie uždaviniai:

- Ištirti santykį tarp valstybės suvereniteto ir humanitarinės intervencijos;
- Nustatyti reikalavimus humanitarinei intervencijai;
- Ištirti pareigos ginti teisinį humanitarinės intervencijos reglamentavimą;
- Atlikti literatūros bei tarptautinės teisės aktų analizę, kuri leistų patvirtinti arba paneigti, kad humanitarinė intervencija nepažeidžia valstybės suvereniteto.
- Ištirti kylančias problemas vykdant humanitarinę intervenciją ir pateikti rekomendaciją, kaip esamą padėtų būtų galima pakeisti į gerąją pusę.

Apibendrinant galima teigti, kad atlikta mokslinės literatūros bei tarptautinės teisės aktų analizė leido padaryti dvejopą išvadą kad humanitarinė intervencija turi potencialą pažeisti valstybės suverenitetą, bet tam tikrais atvejais tai yra leistina ar net būtina. Kalbant apie šias išimtis reikia išskirti žmogaus teisių pažeidimus pavyzdžiui: karo nusikaltimus bei nukaltimus žmoniškumui, kai aptikus bent vieną iš jų ar net jų užuomazgas, yra pakankamas pagrindas teigti, jos valstybės suverenitetą pažeisti galima, vardan didesnio gėrio t.y. žmogaus teisių, apsaugos. Tačiau, šia teise negalima piktnaudžiauti, kadangi valstybė savo piliečiams, lieka pirmąja žmogaus teisių gynėja ir puoselėtoja. Tad siekiant pateisinti intervenciją humanitariniais pagrindais, reikia pateikti nenuginčijamų nurodymų, kurie neleistų abejoti jog tai vienintelė galima išeitis.

INTRODUCTION

R2P doctrine was introduced in 2001, as means to end an old discourse of human right protection vs. states sovereignty. This discourse for a long time was based on international law not being clear about describing humanitarian intervention, allowing for opinions that this elusiveness makes almost anything, from the speech given in national Parliament to forceful occupation of foreign territory, a just cause for intervention, as long as it has humanitarian purpose attached to it.[2] This work attempts to show how it harms international law and international community to act 'blindly' trying to apply humanitarian intervention.

The novelty of the work.

The concept of State sovereignty derives from international customary law, the UN Charter and (to a lesser degree) regional communities laws. Nevertheless, it stands in direct conflict with another doctrine deriving from the same sources - the doctrine of humanitarian intervention. As the principle of states sovereignty is one of the fundamental principles of the international law, it is immeasurable to the maintenance of world order and peace. On the other hand, the increasing international concern for human rights and humanitarian necessities in recent years have led to armed interference by one or several states into internal affairs of another sovereign state.[3]

The cases of Rwanda and Kosovo established the idealistic task for the international community to prevent such hideous violations of human rights from happening ever again.[4] However, there is still no consensus regarding the question whether the right to intervene exists and if it does to what extent it can be invoked. Those differences in opinions range from critique[5] to endorsement in favour of humanitarian intervention, some dismiss even the possibility of intervention, asking since when are states the moral actors, or since when tinkering with other countries inner mayhem can be considered as non-violating to its sovereignty.[6] Nevertheless, the

[2] Vaughan Lowe, Antonios Tzanakopoulos "Humanitarian Intervention" published under the auspices of the Max Planck Foundation for International Peace and the Rule of Law under the direction of Rüdiger Wolfrum. Last modified in May 2011, accessed on <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e306> [2017-03-25].

[3] "The Global Human Rights Regime." Last modified in June 19, 2013. Accessed online <http://www.cfr.org/human-rights/global-human-rights-regime/p27450> [2017-03-26]

[4] Fred Aja Agwu. "The Challenge of Humanitarian Intervention Since Rwanda" published online on Aug 6, 2014. Available at <http://www.cfr.org/councilofcouncils/global_memos/p33324> [2017-03-25]

[5] Like the one found in the work of Emmerich De Vattel „The Law of Nations or the Principles of Natural Law (1758)" book 2, chapter 4 accessed online <http://lonang.com/library/reference/vattel-law-of-nations/vatt-204/> [2017-03-26]

[6] Lammer-Heindel, Christoffer Spencer. "Does the state have moral duties? State duty-claims and the possibility of institutionally held moral obligations." (PhD thesis, University of Iowa, 2012). Accessed on <http://ir.uiowa.edu/etd/3330> [2017-03-27]

topic remains in the front of our minds as interventions happen during humanitarian crises, or does not happen when clearly it should.

Researched problematics

This thesis attempts to clarify what are legal and legitimate basis for humanitarian intervention by examining international documents, focusing of UN Charter as the most important international document. In addition, this work investigates what are the limits of states in fulfilling their duty to protect the rights of their citizens, while concentrating, on not only the form of intervention, the way it is organized, the institutions and actors that are involved, ant also the aims of humanitarian intervention itself.

The basic issue throughout this thesis is the ever-changing global political structure, namely, the growing importance of NGOS's, the creation of regional communities, which in time might lead to global governance. Moreover, thesis analyses the historical background, and how it influences both doctrines in modern world.

Despite the fact, that interventions existed pre-1945, whether they were humanitarian is another question altogether and requires different research to be done as well as the question of self-defence as possible purpose of intervention, thus neither will be researched in this thesis. In addition, this work will focus on broader parts of both doctrines, namely: history, definitions and legal background and new understanding of humanitarian intervention and states sovereignty via the R2P doctrine.

Objectives of the research

Throughout this work, we have raised certain objectives that will be explored:

- The relationship between the notions of humanitarian intervention and states sovereignty will be explored;
- Criterias for humanitarian intervention will be analysed;
- The doctrine of R2P as a modern combination of both humanitarian intervention and states sovereignty will be explored;
- Legal literature and legal acts will be explored with a purpose to either confirm or deny the hypothesis of this work that humanitarian intervention violates states sovereignty;
- To give a recomendation after anaylsing the current problems areising from the application of humanitarian intervention.

To explore these objective following **methods** were used.

Analysis system method - which promotes systemically view of the object and helps to see it in a wider scheme of things, or doctrines, of international law, and law in abstract. This method was chosen because it allows to research humanitarian intervention as a part of the legal system while also keeping in mind its connection to the other elements of international law, like the principle of sovereignty or principle of non-intervention.

Comparative historic method - this method was chosen because it allows to base findings of the research on the historical evolution of both the humanitarian intervention and principle of States sovereignty, because it is impossible to deal with either of these two doctrines without looking at them from a historical point of view.

Logical - analytical method, which process of thinking, is used to sum up and understand the provisions of various legal documents, as well as to concentrate on new concepts and draw conclusions.

Analysis of different legal documents - it is one of the fundamental aspects of empirical studies, also the bridge between the theoretical and empirical parts of the research. It is going to be used to show the existing legal rules and doctrines.

1. BRIEF STUDY OF HUMANITARIAN INTERVENTION

"[F]or one thing, there's a history of humanitarian intervention. You can look at it. And when you do, you discover that virtually every use of military force is described as humanitarian intervention."[7]

The world has never been a peaceful place to live in and wars, uprisings and humanitarian crises lead to interventions.[8] In the times before the UN Charter, there was no rule for actions in other states territory, because until the Second World War, international law did not regulate how sovereign states should treat their subjects.[9] Nevertheless, interventions with a purpose to protect human lives were and still are carried out.[10] Antoine Rougier in his study of humanitarian intervention noted that it is impossible to differ the humanitarian bases from political ones to ensure complete independence of institutions, which carry out interventions.[11] Moreover, because of this difficultness, he says, some may consider humanitarian intervention as novel and legal way to lower the status of an independent state until it is halfway sovereign, at best.

The term "humanitarian intervention" can be attributed to Emmerich de Vattel, as the father of international law,[12] who agreed to the existence of an exceptional right to intervene, if it is done in support of the oppressed (when they revolt against their oppressor –government). However, he rejected any interference in the inner workings of another State in other circumstances.[13]

[7] N. Chomsky, interviewed by Alexandros Stavrakas. Bedeutung Magazine, December 2009 Accesed on: <https://chomsky.info/200912__/ > [2017-02-28]

[8] Liesbet Heyse, Andrej Zwitter, Rafael Wittek, Joost Herman. *Humanitarian Crises, Intervention and Security– A Framework for Evidence-Based Programming. (*Routledge Studies in Intervention and Statebuilding, 2014). p. 137 accessed on on <https://books.google.lt/books?id=W_bDBAAAQBAJ&printsec=frontcover&hl=lt#v=onepage&q&f=false> [2017-02-15]

[9] Manfred Nowak. *Introduction to the International Human Rights Regime*. (Raoul Wallenberg Institute Human Rights Library 14. Leiden ; London: M. Nijhoff, 2003). p.33.

[10] For example the intervention in 1827 by Britain, France and Russia in the Greco-Turkish struggle. For more information see "Greek War of Independence" <http://www.newworldencyclopedia.org/entry/Greek_War_of_Independence> [2017-02-02]

[11] Young Sok Kim "*Responsibility to Protect, Humanitarian Intervention and North Korea*," Journal of International Business and Law: Vol. 5: Iss. 1, Article 3. (2006) Available at: <http://scholarlycommons.law.hofstra.edu/jibl/vol5/iss1/3> p. 74–87 [2017-02-15]

[12] Biography of Emerich de Vattel accessed on <http://www.duhaime.org/LawMuseum/LawArticle-589/Emerich-de-Vattel-1714-1767.aspx> [2017-04-03]

[13]Emmerich De Vattel. Supra note 5.

Furthermore, humanitarian intervention, even before the UN Charter, required consent or invitation of the target state in cases where the use of force was involved.[14]

1.1. Legal aspects of humanitarian intervention and principles of UN Charter

Over the years, governments have justified intervention in other States with reference to the 'customary law' in one form or another, and without exception, the international community has refused to recognize these actions as legitimate.[15] Nevertheless, 'customary law' offers no clearly defined rules to the correct way in which the intervention should be carried out. Still, when a time for a possible intervention comes, one must look at the UN Charter, as it is one of fundamental documents in international law, and its basic principles,[16] because the UNSC has the primary power to intervene, which is given to it by UN Charter Art. 2(7).

On the 20th of September 1999, when the Secretary-General of UN[17], presented his annual report to UNGA in which he stressed that "the world cannot stand aside when gross and systematic violations of human rights are taking place,"[18] but intervention must remain legal. Thus, it must abide certain universal principles set out in the UN Charter: the principles of sovereignty and non-intervention. Moreover, the UN Charter article 2(7) says: *"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."*[19]This Article may be looked at as a provision for sovereignty as well as for the general principle of non-intervention; however, it is Article 2(4) of the UN Charter that actually protects the sovereignty and political independence of states by forbidding any use of force, or even threat of use of force. The exception to this principle, from which no derogation is permissible,[20] is the right to self-defence under Article 51 of the UN Charter, and measures of Collective Security under Chapter VII of the UN Charter. This article forward the provision that:

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[14]Vaughan Lowe, Antonios Tzanakopoulos Supra note 2.

[15] Alex de Waal and Rakiya Omaar "Can Military Invention be "Humanitarian"?" mention in the text of Kirthi Jayakumar. "Humanitarian Intervention: A Legal Analysis" published Feb 6 2012. Accessed on <http://www.e-ir.info/2012/02/06/humanitarian-intervention-a-legal-analysis/> [2017-02-13]

[16] Sovereign equality of States (Art. 2 (1)); the obligation to settle disputes peacefully (Art. 2 (3)); the prohibition of the use of force (Art. 2 (4)); and the principle of non-intervention by the UN in the domestic jurisdiction of States (Art. 2 (7)).

[17] Kofi Annan – was 7th Secretary –General from 1997 to 2006.

[18] Secretary-general annual report to general assembly. Press Release SG/SM/7136 ;GA/9596. 1999-09-20. Accessed online on < https://www.un.org/press/en/1999/19990920.sgsm7136.html > [2017-02-11]

[19] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

[20]*Yearbook of the ILC, Documents of the second partof the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly*. vol. II, (1966). p. 248. Accessed on <http://legal.un.org/ilc/publications/yearbooks/english/ilc_1966_v2.pdf> [2017-01-17]

"Nothing ... shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."[21]However, humanitarian intervention based on self-defence could happen only if state used force due to the violation of its rights. Therefore, this means that humanitarian intervention could be possible on the ground that another state is protecting its nationals on foreign soil.[22] On the other hand, UNSC has wide jurisdiction, when judging potential threats to peace, but the threat to international peace is examined in each individual case. Besides, the Charter, as well as customary law, has no clear mechanism for the use of force, which oversteps the boundaries of one state.

The second exception to the prohibition of the use of force is the use of UNSC sanctioned military force in accordance to Charter chapter VII, which implies a real threat to international peace and security. This is about Article 39 of the Charter, which set forth that UNSC *"shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."*[23] Which means, that UN Charter does not name UNSC as the only possible worldwide legislator, but more like a legislator in a specific case,[24] when a threat to international peace and security was found.[25]

Nonetheless, humanitarian intervention may not include the use of force. Yet still, some academics rely on the use of force criteria to distinguish humanitarian intervention from humanitarian assistance. They call humanitarian intervention as any "forcible military action by an external agent in the relevant political community with the predominant purpose of preventing, reducing or halting an ongoing or impending grievous suffering or loss of life."[26] However, that is

[21] UN Charter. Supra note 19.

[22] J. L. Holzgrefe. ,,The humanitarian intervention debate" mentioned in a text "Humanitarian intervention: ethical, legal, and political dilemmas", Ed by. J. L. Holzgrefe, Robert O. Keohane. (Cambridge: Cambridge university press, 2008) P. 18. Accessed on <http://catdir.loc.gov/catdir/samples/cam034/2003269355.pdf> [2017-02-02]

[23] UN Charter supra note 19.

[24] Gabija Grigaitė "The concept of humanitarian intervention and its legitimacy in the un Charter's context". Published in VU journal „Teisė". (2010). P.177. Accessed on <*http://www.zurnalai.vu.lt/teise/article/viewFile/229/179*> [2017-02-01]

[25]Andrea Bianchi. "Assessing the effectiveness of the UN Security Council's anti-terrorism measures: the quest for legitimacy and cohesion". European Journal of International Law, 17, 2006, p. 881–912. Accessed on <http://www.ejil.org/pdfs/17/5/106.pdf> [2017-02-26]

[26] The UK House of Commons inquiry „*Intervention: Why, When and How?"* published on 17 July 2013 accessed on <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmdfence/writev/intervention/int10.htm> [2017-02-14]

not an absolute right, and demands strong proof, as was shown in the Nicaragua Case,[27]where the ICJ ruled as follows: *"With regard to the alleged militarization of Nicaragua, also referred to by the United States to justify its activities, the Court observes that in international law there are no rules, other than such rules as may be accepted by the State concerned, by treaty or otherwise, whereby the level of armaments of a sovereign State can be limited, and this principle is valid for all States without exception."*[28]Moreover, the fact that a state did use force does not mean it is a precedent for further application in similar situations. Since "*although state practice is deemed a source of law considering the hegemony of the sources of law in the same provision, there is a generally accepted notion that state practice cannot over rule treaty and customary law, both of which denounce the use of force except in self-defence."*[29]

1.2.The basic theories for humanitarian intervention

There are a few theories of humanitarian intervention that can help to understand it better. The first theory of humanitarian intervention – the Purist theory - claims that only ethical reasons are bases for humanitarian intervention when a calculated decision to strengthen international society through intervention has been made.[30]However, idea that the self-interest of the intervening state cannot be forgotten and from this idea came the argument of realist theory. This theory - based on the notion that one of the key points to a decision making for humanitarian intervention is a persuasion of other states of the need to intervene,[31] because the intervening state needs this decision to be made to gain something. The supporters of this theory and opposition of humanitarian intervention consider that all that is alike to humanitarian intervention happens only when human rights defence agrees with goals of political government.[32] Furthermore, then we need to admit that UN Charter Art. 2(4) does not prohibit humanitarian intervention, and the realist theory has no credible foundations. This can be seen in Nicaragua case, when the ICJ together with

[27] *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits*, International Court of Justice (ICJ), 27 June (1986). Available at: <http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5> [2017-03-23].

[28] Ibid.

[29] "The Responsibility to Protect: Humanitarian Intervention in the 21st Century". 2002 Wesson Lecture in International Relations Theory and Practice, by Gareth Evans, Stanford University. Accessed on <http://old.crisisgroup.org/en/publication-type/speeches/2002/the-responsibility-to-protect-humanitarian-intervention-in-the-21st-century.html> [2017-01-25]

[30] R. J. Vincent, Peter Wilson. *Beyond Non-Intervention* in *Political Theory, International Relations, and the Ethics of Intervention.* Ed. Ian Forbes,Mark Hoffman. (Palgrave Macmillan UK, 1993) mentioned in a text David Vessel, The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World, 18 BYU J. Pub. L. 1 (2003). p.5. Available at <http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1315&context=jpl> [2017-01-22]

[31] Thomas G. Weiss, *Humanitarian intervention*. John Wiley & Sons, (2016). p.8. Accessed on <https://books.google.lt/books?id=8mwe_NShBWYC&printsec=frontcover&hl=es#v=onepage&q&f=false> [2017-01-15]

[32] Ibid. p.8.

other actors of international community, established that unilateral humanitarian intervention has no legal grounds.[33]

Another theory to consider is pluralism, which promote principles of sovereignty and non-intervention as key-principles to both order and justice in the international community.[34] The supporters of this theory consider that there is an existing union of states, which could stop or condemn the actions of certain state, because states take on international obligations in process of becoming the members of international communities, and in doing so are responsible to this community.[35]Furthermore, pluralist theory is in support of humanitarian intervention, but only when it is sanctioned by UNSC, because sovereignty of the state, alongside prohibition on the use of military force, are the foundation of international community.[36]

However, completely different is the theory of solidarism. Where plurists rely on a right belonging only to states and not people, solidarism call "human rights" universal just because all human beings belong to human race. The supporters of this theory try to widen and codify law in favour of unilateral humanitarian intervention, because intervention based on this theory in itself is done purely on moral, political responsibility of the international community to respond to humanitarian crises.[37] An example of such theory in practise is the preamble of the UDHR in 1948, stating, "[t]he inherent dignity ... and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."[38] Therefore, solidarism prefers human right norms being the "leading norms" of international law, (the authors of the UDHR seem to acknowledge this by saying that "*it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected*."[39]) while plurists prefer states independency as being more important norm. In fact, plurists criticize the solidarist theory on three grounds:

- Cultural relativism - based on the assertion that there is no universal conception of human rights and it is only Western countries that place emphasis on human rights, while many other consider individual freedom last, and the needs of family or community as first;

[33] Ibid. p. 39.
[34] David Vessel, "The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World", 18 BYU J. Pub. L. 1 (2003). p. 6. Available at: <http://digitalcommons.law.byu.edu/jpl/vol18/iss1/2> [2017-02-15]
[35] Thomas G. Weiss. Supra note 31.
[36] David Vessel. Supra note 34. p. 6.
[37] Ibid.
[38] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), p.153.
[39] Ibid..p. 151.

- The importance of maintaining order - based on the dangers that humanitarian intervention can be "hijacked" and the chance that a right to intervene might be abused;
- Lastly, the ineffectiveness of humanitarian intervention.[40] The main idea behind this critique is that intervention can be viewed only as short-term solution to complex and long-term problems, while much more effective plan might be created. For example, a long-term project of international assistance in economic and social sectors for countries in need, instead of forcible intervention to the target state.[41]

In addition, the International Commission on Intervention and State Sovereignty, established by Canada in September 2000 came up with a different understanding of humanitarian intervention. Instead of looking at the problem from 'the side' of the State wanting to intervene, they looked at it from the position of people suffering mass atrocities, by developing R2P. This doctrine sets a responsibility to react to situations in need for humanitarian protection by saying *"[w]hen preventive measures fail to resolve or contain the situation, and when a state is unable or unwilling to redress the situation, then interventionary measures by other members of the broader community of states may be required."*[42] This doctrine clearly shows that modern humanitarian intervention is based on the solidarists version of humanitarian intervention. Its further examination is provided in a third chapter.

1.2.1. The definition and meaning of humanitarian intervention

Unilateral humanitarian intervention is committed by one (or more than one State) in another sovereign State, based on humanitarian purposes, but without authorisation from UNSC,[43] or if no invitation of target state was given. Those two elements are the core elements for intervention. But if this broad two-element rule is the only applicable rule, then humanitarian aid and development programs by individual states, the UN and NGOs diplomatic and economic sanctions or attempts at mediation are all to be considered as humanitarian interventions.

Many different meanings and definitions came after 18th century when Emmerich De Vattel first introduced the term of humanitarian intervention to the world. However since the 19th century one common element can be seen - the use of force. Nevertheless, to concentrate only on

[40] D.R.L. Ludlow „Humanitarian Intervention and the Rwandan Genocide" Journal of Conflict Studies, Volume 19.1 (1999): accessed on <https://journals.lib.unb.ca/index.php/jcs/article/view/4378/5055#a15> [2017-03-25]

[41] Ibid.

[42] Gareth Evans. "The responsibility to protect" accessed on <http://www.nato.int/docu/review/2002/issue4/english/analysis.html> [2017-02-14]

[43] To which the UN Charter gives the monopoly on the right to authorize the use of force, with the exception of the right of self-defence, which is limited ratione materiae and ratione temporis.

the military aspect is not enough. Therefore, in 1965 by adopting the Declaration on the Inadmissibility of Intervention into Domestic Affaires of States, the UNGA suggested that: *"No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law."*[44]The UNGA's position was supported by the decision of ICJ in 1986 in Nicaragua vs USA case. Where ICJ ruled that the use of force could not be the appropriate method to monitor or ensure respect for human rights, and there is no general right of intervention in international law and, therefore, USA intervention violated international law.[45]

Nevertheless, the lack of consensus on the definitions of humanitarian intervention has long been bemoaned. It varied from the broad end of the spectrum, which called intervention as a simple interference in sovereign state, while the narrow end of the spectrum promoted 'dictatorial interference'. However, during all the discussions and distinctions of various definitions, one could be labelled as traditional: *"*[humanitarian intervention] *is calculated action of a state, a group of states, and international organization or some other international actor(s) to influence the political system of another state (including its structure of authority, its domestic policies and its political leaders) against its will by using various means of coercion (forcible or non-forcible) in pursuit of particular political objectives."*[46] This definition was perfect for a post-Cold War period, when the number of newly created states was growing. When discrepancies, in relations between old states and newly founded states, and general development of all states created perfect conditions for interventions. This traditional definition still tries to gather it all without going so far as to try to base it on one concrete case of intervention.

1.3. The decision making of when to intervene

Some of the modern world international law actors view interventions as a danger, because States may use humanitarian intervention as a tool for pursuing their own political and economic goals. For example, in the intervention in Iraq, the USA and its allies did not get the authorisation of UNSC; they invaded Iraq on the bases of self-defence, and it lead to an overthrow of the

[44] UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV), available at: <http://www.refworld.org/docid/3dda1f104> [2017-03-25]

[45] *Nicaragua v. United States of America*. Supra note 27.

[46] Deon Geldenhuys. *Foreign Political Engagement– Remaking States in the Post-Cold War World*. (Springer, 2016). p. 6 accessed on <https://books.google.lt/books?id=BDu_DAAAQBAJ&printsec=frontcover&hl=lt#v=onepage&q&f=false> [2017-01-22]

government of Iraq.[47] However, if humanitarian intervention is to remain authorized by the UNSC and only it, and if it a unilateral measure is not allowed, who is to ensure that UNSC will act in time. There have been situations when the UNSC and regional organizations failed to act because they were *"paralyzed by great power disagreements over the sacrosanct principles of sovereignty and non-intervention, outside of the colonial and para-colonial contexts – have been unable or unwilling to take any significant measures."*[48] In addition, Chapter VII of the Charter speaks of what the UNSC can do, but says nothing on humanitarian intervention and how it must be carried out. Therefore, the importance of regional communities alongside NGO's and states needs to be examined.

1.3.1. Role of regional communities

The right to decide upon intervention is not strictly limited to UNSC, even when it is a basic authority for legal humanitarian intervention, regional communities can have provisions for it too. For example, AU has established the early warning system for humanitarian crises that would require intervention, which facilitate a fast response and action to prevent escalation of rising crisis.[49] Even if the AU does not mean the use of force when writing 'response', considering that if prevention is carried out successfully, it means no conflict, which in turn means no use of force. But that is not all the provisions in the AU legal framework: the AU also included a provision that "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity"[50] in its Constitutive Act. This Act together with the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (AUPSC), are legal foundations for humanitarian intervention because it introduced radical legal reforms to the law on military intervention in Africa.

The EU has a well-known Common Security policy the creation of which alongside the Defense Policy was urged by a huge amount of critique addressed to EU for its inactivity during Balkan crisis in 1990s, and in 2003, when EU was expected to intervene in the catastrophic violence

[47] Dominic Tierney, "The Legacy of Obama's 'Worst Mistake'", Last modified Apr 15, 2016. Published in the Atlantic. Available at <https://www.theatlantic.com/international/archive/2016/04/obamas-worst-mistake-libya/478461/> [2017-03-22]

[48] Jean-Pierre L. Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter, 4 CAL. W. INT'L L.J. 203 (1973). Quoted in Kirthi Jayakumar „*Humanitarian Intervention: A Legal Analysis*" published on Feb 6 2012. Accessed on <http://www.e-ir.info/2012/02/06/humanitarian-intervention-a-legal-analysis/#_ftn3> [2017-01-25]

[49] See Birikit Terefe Tiruneh, "Establishing an early warning system in the African peace and security architecture: Challenges and prospects." *KAIPTC Occasional Paper* 29 (2010). Available at <http://www.operationspaix.net/DATA/DOCUMENT/6763~v~Establishing_an_Early_Warning_System_in_the_African_Peace_and_Security_Architecture__Challenges_and_Prospects.pdf> [2017-04-23]

[50] Organization of African Unity (OAU), Constitutive Act of the African Union, July 1 2000. Accessed online <http://www.achpr.org/instruments/au-constitutive-act/> [2017-01-15]

that broke out in Darfur.[51] Then EU only offered monetary and technical assistance but without actual intervention, these methods fell short.[52] Moreover, USA acknowledged Darfur's crisis as a genocide in 2004, and after this decision EP adopted a resolution, asking the Sudanese authorities to bring justice to those whose crimes could amount to genocide.[53] However, refusal to name crimes, during Darfur's humanitarian crisis, as genocide, the EU and UN avoided their obligation to prevent genocide (as is established under both the UN Convention on Genocide and the R2P). Some fear that by dodging its obligations to upkeep international peace, the EU risks to undermine its own credibility as a promoter of peace, actor of international politics and its interventions are only valid when it serves some self-interest and/or when it costs little.[54]

1.3.2. Role of NGO's

Another form of international actors is NGOS, and their growing number influenced humanitarian interventions, for example, about 240 NGOs were active in time of Bosnian intervention while in 1980's there were around 37 NGO's dealing with foreign conflicts.[55]From this increase in numbers, we can draw the conclusion that the problem in the form of armed conflicts requires more and more attention. Another point worth making is that while speaking for the fifty-third annual Department of Public Information/Non-Governmental Organization Conference Hibaaq Osman said, "in countries where humanitarian interventions were undertaken, national NGOs were better informed about the particular crises, because many of those organizations dealt directly with the target populations."[56]During this speech, an opinion was raised that if a decision to intervene was being made, then NGO's must be included in the process. This opinion is based on the fact that NGO's participate in many actions and programs in different countries territories, also they are recognized by the policy-makers as actors of the worlds political system.[57] Furthermore, since 1990's their missions have increasingly included an element of human rights, but, their

[51] Dana Marie Parke. "The Institutional Limits of the European Union in Humanitarian Intervention: The Case of Darfur." *(*Dissertation Oakland University, 1913). p. 37 Accessed on <https://our.oakland.edu/bitstream/handle/10323/2759/Honors%20College%20Thesis%20Dana%20Parke.pdf?sequence=1> [2017-01-22]

[52] Ibid. p. 10.

[53] Rory Carroll, "Sudan massacres are not genocide," The Guardian, 10 August 2004. <www.guardian.co.uk/world/2004/aug/10/eu.sudan> [2017-04-04]

[54]Ibid. p.37-39

[55] Daniela Irrera, "NGOs Roles in Humanitarian Interventions and Peace Support Operations." Multilateral security and ESDP operations (2010). p. 5. Available at <https://www.researchgate.net/profile/Daniela_Irrera/publication/242512942_NGOs%27_roles_in_humanitarian_interventions_and_peace_support_operations/links/542e84db0cf29bbc126f2787/NGOs-roles-in-humanitarian-interventions-and-peace-support-operations.pdf> [2017-05-04]

[56]"Role of civil society in humanitarian intervention subject of dpi/ngo conference panel discussion" Press release 29 AUG 2000, NGO/378 PI/1277. Para 3. Accessed on <http://www.un.org/press/en/2000/20000829.ngo378.doc.html> [2017-02-04]

[57] Daniela Irrera, Supra note 54. p. 1.

biggest advantage is that they can be both service providers (delivering humanitarian assistance, or monitoring human rights, also help in conflict resolution peacefully) and advocacy groups (putting pressure on governments and IOs).[58]

Therefore, two types of NGO's are significant and need to be understood, concerning humanitarian interventions: humanitarian and human rights NGOs.

1) Humanitarian NGOs have a purpose of providing relief to those who suffered from war, but it has come to include all types of disasters resulting in mass suffering: floods, earthquakes, etc. Humanitarian assistance is distributed through NGOs and, because of that NGOs are becoming increasingly dependent on governmental funding.[59]
2) Human rights NGO's basic concern lays primarily with state repression and with violations of human rights.[60]

Moreover, when the UN's or Regional Community's forces are not yet present in the "target state" the only way to get accurate information about the actions taken by the government, and/or local civil forces (like rebels, partisans etc.) comes from NGO's working there. As they evolve, we see various new types of NGO are emerging.[61] And considering that the UN, the States or even Regional Communities, cannot see everything, and react fast enough, NGO's are becoming invaluably important to fast and well informed decision making not only for humanitarian intervention, but other mechanism regarding human rights, for example, dealing with refugee crisis.

To sum up, this chapter shows that the UN draws it right to intervene from the UN Charter and under it only UNSC can decide when intervention is needed. However, UN is not the only one capable to intervene; regional communities like EU and AU have provisions for the protection of peace allowing and providing for interventions. However, provisions do not mean that the community will use them wisely. Thus, the importance of NGO's is visible as they are the first line of monitoring in so called 'hot spots' of the world and have a right to address the UNSC in its meetings.

[58] Mary Kaldor. *Human Security*. (John Wiley & Sons, 2013). Accessed on https://books.google.lt/books?id=PdOtmBwzPmMC&printsec=frontcover&hl=lt#v=onepage&q&f=false [2017-02-05]

[59] Mary Kaldor. *A Decade 0f Humanitarian Intervention: The Role Of Global Civil Society*. In Global Civil Society Yearbook. Eds: Marlies Glasius, Mary Kaldor and Helmut Anheier. (Oxford: Oxford University Press. 2001) p. 109-134 <http://www.gcsknowledgebase.org/wp-content/uploads/2001chapter51.pdf> [2017-02-25]

[60] Ibid. p. 112.

[61] See F. Dar, "Emerging Role of NGOs in the World's Socio-political Affairs." Review of the article. International Journal of Peace and Development Studies 6 (1). (2015). Available at < http://www.academicjournals.org/journal/IJPDS/article-full-text-pdf/65C3A4949285>[2017-05-01]

2. BRIEF EXAMINATION OF THE PRINCIPLE OF SOVEREIGNTY

Among the developers of the notion of humanitarian intervention is Emmerich de Vettell who wrote "[o]f all the rights that can belong to a nation, sovereignty is doubtless the most precious."[62] Hence, states sovereignty was always high in the hierarchy of international principles. Moreover, some even consider that international law is based on the abstract entity 'state', and by extension, its sovereignty.[63] Since a state without its sovereignty cannot be a functional part of the international community as "state responsibilities come from the nature of the international legal system, which relies on states as a means of formulating and implementing its rules, and arises out of the twin principles of state sovereignty and equality of states."[64]Nevertheless, critics like Jan Scholte and Richard Falk argue that "the state non longer has the capacity to uphold sovereignty in terms of territorial integrity, and hence state capacity no longer meet the criteria of sovereignty."[65] However, the notion itself was never universal to begin with: as F. H. Hinsley wrote:*"[h]aving learned that sovereignty is not the sole concept that states need in their relations with each other - a sign of sophistication and progress- we long for the sovereign state to be superseded altogether. And forgetting that sovereignty is only a concept, we seek to supersede the sovereignty of the individual state by superseding the individual state."*[66]

Nevertheless, while some view interventions as effective, other criticize its legality and possible drawbacks. In addition, it is the assumption, that human rights protections is not an internal matter, which has destroyed many attempts to promote the notion of sovereignty in present times[67]. Still, modern dangers in form of non-state actors acting from the territory of states that fail to prevent their terrorist endeavours created new wave of discussions regarding states sovereignty.

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[62] Emmerich De Vettel. Supra note 5. Also mention in Vaughan Lowe, Antonios Tzanakopoulos „Humanitarian Intervention" Supra note 2.

[63] Nathan Rotenstreich. *Order and Might*. (SUNY Press, 2012). p.129. Available at <https://books.google.lt/books?id=Hnxh9Lzz9hEC&printsec=frontcover&hl=lt&source=gbs_atb#v=onepage&q&f=false> [2017-03-25]

[64] M.N. Shaw, *International law*, 5th edition (Cambridge: Cambridge University press, 2003). Quoted in "Mashood A. Baderin and Manisuli Ssenyonjo. *International human rights law: six decades after the UDHR and beyond. (* Routledge, 2010).p. 398.

[65]Gisle Kvanvig "ASEAN, sovereignty and human rights.*"* Available at <http://www.jus.uio.no/smr/english/about/programmes/vietnam/docs/asean-sovereignty-and-human-rights---gisle-kvanvig.pdf> [2017-03-20]

[66] Michael Ross Fowler, Julie Marie Bunck. *Law, Power, and the Sovereign State– The Evolution and Application of the Concept of Sovereignty*. *(*Penn State Press, 2010). p.127. Accessed on <https://books.google.lt/books?id=oAp_97VvpMIC&printsec=frontcover&hl=lt&source=gbs_atb#v=onepage&q&f=false> [2017-03-20]

[67] *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, Published by the International Development Research Centre, (2001), <http://responsibilitytoprotect.org/ICISS%20Report.pdf> [2017-01-12]

2.1.Basic theories describing sovereignty

Before talking about legality or possible drawbacks of sovereignty, the first problem we encountered was various understandings and definitions of the term itself. The term "sovereignty" is considered as one of the most adapting legal principles,[68] because it can be tracked down to at least 1648 when Westphalian treaty was signed. This notion meant many things, during different times for various reasons, once it was resting in a divine being, and had many forms throughout the history. For example, Jean Bodin defined sovereignty as absolute power limited only by the power of God.[69] According to him, there are two forms of sovereignty: internal and external. Internal sovereignty he describes as absolute control of internal actions in state, while external meant independence from any other states influence. This distinction is still reliable for us, meaning that internal sovereignty indicates the exercise of authority by states within their territory, while external sovereignty indicates equality of status between states consisting of the community of states. Furthermore, internal sovereignty shows that the state has authority over its subjects; meanwhile the external sovereignty refers to the independence of states. The two sides remain connected even in modern globalizing world: if a state, or its people, have an internal sovereignty, then outsiders are forbidden from interfering, when internal sovereignty gives states a certain degree of autonomy in their "international relations" (in other words - external sovereignty).[70]

Alternatively, sovereignty could be understood as "Hobbesian sovereignty" which means that, the state is a legal creation or product of a covenant or a contract between individuals. Furthermore, "Hobbesian sovereignty" could be meaning that the sovereign owes his authority to the will or the consent of those he governs, and finally that the sovereign is authorized only to protect the interests of the governed by maintaining civil peace and security.[71] However a certain distinction of, at the very least, four types of sovereignty can be seen.

[68] See Daiva Stasiulis & Darryl Ross, *Security, Flexible Sovereignty, and the Perils of Multiple Citizenship*, Citizenship Studies, Vol. 10 , Iss. 3,2006 (2006). Available at <http://dx.doi.org/10.1080/13621020600772107> (2006)

[69] Patrick Macklem. *The Sovereignty of Human Rights*. (Oxford University Press, 2015). p. 31 <https://books.google.lt/books?id=9QgWCgAAQBAJ&printsec=frontcover&hl=lt&source=gbs_atb#v=onepage&q&f=false> [2017-02-11]

[70] Antony Anghie. *Imperialism, Sovereignty and the Making of International Law*. (Cambridge University Press, 2014). p. 134 Available at <https://kingdomofhawaii.files.wordpress.com/2011/04/anghie-imperialism-sovereignty-and-the-making-of-international-law.pdf> [2017-03-25]

[71] Thomas Hobbes, and J. C. A. Gaskin. *Leviathan*. (Oxford: Oxford University Press). Accessed on <https://www.gutenberg.org/files/3207/3207-h/3207-h.htm> [2017-03-25]

2.1.1. Typology of states sovereignty

At the very least, four types of sovereignty are commonly pointed out, by a few of the legal scholars, but Stephen D. Krasner laid the foundation for a good number of them by labelling types of sovereignty as[72]:

- International legal sovereignty, which can be described as practices primarily associated with the mutual recognition and formal equality of States[73].
- "Westphalian" sovereignty, which is the most explored type and it means a State's capacity to exclude external actors from exercising legal authority on its territory and over its population. Because as Sens and Stoett explain, state sovereignty came largely as a result of the Peace of Westphalia, and prior to this peace treaty it was common practise for religious groups to intervene in the internal affairs of other states[74]. It can even be considered as first formal recognition of states sovereignty in a Treaty.[75]
- Domestic sovereignty, which can be describes as an internal structure of State` power and the capacity of the State to exercise effective control within its territory. This is the type of sovereignty that all independent states have, and if they do not abuse this sovereignty they are safe from any interventions done by other independent sovereign states.
- The last of this hierarchy is the interdependence sovereignty – the State's capacity to regulate movements of people, ideas, goods, capital, and the like across borders. This definition clearly can be ascribes to EU members, because upon getting in EU they forfeit right to regulate free movement of goods, people and capital. However, EU member states protect their sovereignty, and even if EU, could be considered as example of "diminished sovereignty" or "partial sovereignty" as it is sometimes regarded, it is its consistent states that determine its activities and competences within and among the constituent states and en bloc"[76].

However, different States can manifest different variations of sovereignty, for example, Taiwan has "Westphalian, domestic, interdependence sovereignty, but not international legal

[72] Luc Sindjoun. "Transformation of International Relations—between Change and Continuity: Introduction." International political science review 22.3 (2001). p. 229-251. Accessed on <http://www.maihold.org/mediapool/113/1132142/data/Krasner.pdf> [2017-03-31]

[73] Sovereignty and Structure. Last modified on 03 Apr, 2016. Accessed on <http://lawexplores.com/sovereignty-and-structure/#law-9780190267315-chapter-2-note-75> [2017-04-01]

[74] Allen Sens and Peter Stoett. *Global Politics: Origins, Currents, Directions*, 3rd ed. (Toronto: Nelson, 2005), p.48. Quoted in Brad Ledgerwood, "The Antagonistic Relationship between Sovereignty and Human Rights" accessed on <https://atlismta.org/online-journals/human-security/the-antagonistic-relationship-between-sovereignty-and-human-rights/#_ftn3> [2017-03-27]

[75] Ibid.

[76] Phil C.W. Chan. *China, State Sovereignty and International Legal Order*. (Hotei Publishing, 2015), p. 96 Accessed on <https://books.google.lt/books?id=0z-2CAAAQBAJ&printsec=frontcover&hl=lt&source=gbs_atb#v=onepage&q&f=false> [2017-03-01]

sovereignty."[77] Hence, in international law, sovereignty means more than "international legal sovereignty" and includes what international law recognizes as the legal power of a State to rule people and territory. Therefore, these four forms are clear and their mixture can created even more forms of sovereignty. Nevertheless, this non-static feature of sovereignty makes it harder to pin point one universal meaning of what sovereignty is.

2.2.Definition of sovereignty of the state in international law

This concept of sovereignty has been doubted in many ways, especially in the context of States right to exercise power regarding its territory and citizens, but it still gathers supporters who maintain realistic views or who wish to prevent interventions into internal dealings of the state. Westphalian sovereignty is a traditional way of referring to sovereignty and its following characteristics are: "(1) supreme political authority and monopoly over the legitimate use of force within its territory, (2) able of regulating movements within its borders, (3) free foreign policy choices, (4) known by other governments as an independent unit entitled to freedom from any external intervention."[78] However, the "[W]ord is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used.[79] This quote shows exactly the difficulty we encountered while trying to define sovereignty. The original meaning behind the idea of sovereignty is supremacy, as Alan James suggests viewing sovereignty as 'constitutional independence'.[80] International law uses, basically, the same approach meaning that a sovereign state is not under any obligation to abide governmental, executive, legislative, or judicial jurisdiction of a foreign State or to foreign law, other than public international law, within its territorial jurisdiction."[81]

[77] Stephen D. Krasner. *Problematic Sovereignty– Contested Rules and Political Possibilities.* (Columbia University Press, 2012). Accessed on <https://books.google.lt/books?id=tPngD78_p3cC&printsec=frontcover&hl=lt&source=gbs_atb#v=onepage&q&f=false> [2016-12-21]

[78] Wang Gungwu, Zheng Yongnian. *China and the New International Order*. (Routledge, 2008). p. 54, Accessed on <https://books.google.lt/books?id=qL9UlfrvnAAC&printsec=frontcover&hl=lt&source=gbs_atb#v=onepage&q&f=false> [2017-03-25]

[79] United States Supreme Court case TOWNE v. EISNER, 245 U.S. 418 (1918) Accessed on <http://caselaw.findlaw.com/us-supreme-court/245/418.html> [2017-02-17]

[80] Walter Carlsnaes, et al., eds. *Handbook of International Relations*. (SAGE, 2012). p. 252 Accessed on https://books.google.lt/books?id=a0uVHo4ZLc4C&printsec=frontcover&hl=lt#v=onepage&q&f=false [2017-12-11]

[81] „All that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty" SS 'Lotus' (France v Turkey) (1927) PCIJ Ser A, No 10, p.19. Quoted in Alex Mills, "Rethinking Jurisdiction in International Law" British Yearbook of International Law (2014) 84 (1): 187-239. Accessed on <https://academic.oup.com/bybil/article/84/1/187/2262836/Rethinking-Jurisdiction-in-International-Law> [2017-03-25]

Thus, one of the definitions for sovereignty is that "[s]overeignty means that each State is free to determine its own destiny and its relations within the community of States."[82] However, some scholars have taken a position that sovereignty allows authorities to violate human rights and disregard international law. Nevertheless, this view ignores one basic fact that, the state remains the ultimate irreplaceable arbiter and protector of rights and freedoms of its people.[83] Other definitions of sovereignty used in the past are: "the common power of the state, it is the will of the nation organised in the state, it is right to give unconditional orders to all individuals in the territory of state" [84] or "Sovereignty is the daily operative power of framing and giving efficacy to the laws."[85]

2.2.1. Short review of the evolution of sovereignty from an evolving human right prism

For decades, the evolving human rights laws were seen as means to end the abuse of sovereign authority because, human rights limit the way states can treat its nationals. Furthermore, even longer the notions of 'sovereignty' and 'human rights' were considered as contradicting one another, the principle of sovereignty being the stronger one, while human rights, were considered as weaker. This belief was based on the idea that the principle of non-intervention in the internal affairs of states is the best policy to promote or maintain international peace.[86] However now, many western states and scholars argue that it is the opposite, as human rights take priority over states sovereignty. Thus justifying humanitarian interventions in cases of human rights violations, particularly, but not necessarily, if the "target state" voluntarily gives up its sovereignty by ratifying a treaty governing human right protection, or actively participating in international organization and abiding its rules, and internationalizing a subject that should be regulated by international law.[87]

It is important to note that state sovereignty is directly connected with State's territory and a State is obliged to respect the sovereignty of foreign States within its own territory and cannot subject another State to its own domestic judicial system regarding the conduct of another states actions[88]. In addition, state cannot maltreat its own citizens, and in this regard, the freedom of States

[82]Natalino Ronzitti, "Respect for Sovereignty, Use of Force and the Principle of Non-intervention in the Internal Affairs of Other States" (2015), p.1 Accessed on < http://www.europeanleadershipnetwork.org/medialibrary/2016/04/05/90287197/ELN%20Narratives%20Conference%20-%20Ronzitti.pdf> [2017-03-24]

[83] Phil C.W. Chan. Supra note 76. p. 166.

[84] Urmila Sharma and Sudesh Kumar Sharma. *Principles And Theory In Political Science* Volume 1. (Atlantic Publishers & Dist, 2000). p.146. Available at <https://books.google.lt/books?id=HP5Plpe5bZMC&printsec=frontcover&hl=lt#v=onepage&q&f=false> [2017-03-25]

[85] Ibid.

[86] Brad Ledgerwood, Supra note 74.

[87]Oona A. Hathaway "T*he Cost of Commitment"John. (*M. Olin Center for Studies in Law, Economics, and Public Policy Working Papers, 2003). p. 7. Accessed on <https://www.law.berkeley.edu/files/hathawaycostofcommitment.pdf> [2017-03-01]

[88] Natalino Ronzitti. Supra note 82. p.1.

is limited by the two UN 1966 Covenants (Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights). Furthermore, the European States are all members of the Council of Europe,[89] thus they respect the European Convention on Human Rights which sets out that individual claims may be brought against a State party to the European Court on Human Rights, while others may go to International Court of Justice.

Nevertheless, adoption of the UN Charter, UDHR and its two Covenants showed the importance of human rights, because now no state can question whether human rights should be respected, as most of the countries worldwide have already signed UN charted, human rights declaration or other treaties that have human right protection as one of its purposes. All documents relating to human rights have basic framework: UN Charter gave basic principles for the protection of human rights; the Universal Declaration protects rights raging from economical to cultural. This has so much importance, that it is now generally agreed that many of provisions in declarations gained so much force, that now it can be considered as part of customary international law, which, as we know it, cannot be broken.[90] Both covenants and the optional protocol on communication or petitions defines and sets out more detailed variety of rights already mentioned in universal declaration. However, covenants and protocol impose immediate duty on each of the state's parties to "respect and to ensure to all individuals within territory and subject to its jurisdiction the rights recognized in the … covenant without distinction of any kind."[91]

2.3.Sovereignty in international legal documents

Sovereignty is independent from any membership of any international union or organization, seeing as without sovereignty there could be no memberships, no Unions and no international organizations in the first place. It is neither the moral nor a political principle and neither states nor scholars can sway it. It is a fundamental legal principle of international order that is enshrined in the UN Charter and customary international law. Apart from the UN Charter, universal declaration on human rights or both international covenants there are other treaties and conventions dealing with human rights, however, there are regional human right systems as well, these include the European convention on human rights, the American convention on human rights and the African Charter on human rights.

[89] With the exception of Belarus and leaving aside those Central Asia Republics that are only OSCE members.

[90] Hannum, Hurst. "The status of the Universal Declaration of Human Rights in national and international law." Ga. J. Int'l & Comp. L. 25 (1995). p. 289. Available at < http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1396&context=gjicl> [2017-04-22]

[91] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [2017-02-11]

The four Westphalian elements defining sovereignty are more than just that, they are parts of the principle of "sovereign equality" as established in the Charter of the UN Charter [92] Art. 2(7), as well as in the UNGA Resolution on Friendly Relations and in the CSCE Helsinki Final Act of 1975. States sovereignty allows for principle of sovereign equality to take place, as *Pars in parem imperium non-habet*, which in turn means that legally, all independent states are equal and must respect the sovereignty of other states, because states territorial integrity and political independency are untouchable by foreign actors.

2.3.1. GA Resolution on Friendly Relations and CSCE Helsinki Final Act

The FR Resolution establishes that "[a]ll States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature."[93] The FR Resolution gives certain aspects to states equality in a list, which is not exhaustive and includes the protection of the territorial integrity and political independence of States. With the HFA human rights were made an "essential element of CSCE's political negotiations process between west and east."[94] In this document, sovereignty is considered as "the right of every State to juridical equality, to territorial integrity and to freedom and political independence."[95] Furthermore, following rights can labelled as elements of sovereignty:

1. The right to choose whether to belong or not to belong to international organizations;[96]
2. The right to choose whether be or not to be a party to international treaties and treaties of alliance; [97]
3. The right to neutrality.[98]

Nevertheless, the FR Resolution and the HFA principles are not binding because being documents of soft law they are not per se obligatory, unlike treaties and the international customs. However as they are, at least partially declaratory of customary international law, for that reason they should be observed by States.

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[92] UN Charter supra note 19.

[93] UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV), available at: <http://www.refworld.org/docid/3dda1f104.html> [2017-04-12]

[94] Manfred Nowak. Supra note 1. p. 33

[95] Organization for Security and Co-operation in Europe (OSCE), *Conference on Security and Co-operation in Europe (CSCE) : Final Act of Helsinki*, 1 August 1975, p.7 available at: <http://www.refworld.org/docid/3dde4f9b4.html> [2017-03-28]

[96] Natalino Ronzitti, supra note 82 p. 2

[97] Natalino Ronzitti, supra note 82 p. 2

[98] Ibid. supra note 82 p. 2

2.3.2. International customary law

Talking of international customs it is worth noting, that sovereignty is important in cases of universal jurisdiction as is in cases of huge human rights violations or crimes done in the states territory (as the general principle of international law suggests), and when states exercise jurisdiction over persons, property and acts within its territory. Nonetheless, there are crimes committed outside state's territory, but still having harmful effects for the state. For example, the dispute of Singapore's Transboundary Haze Pollution Act, which essentially "makes it an offence for any entity to engage in conduct, or to condone conduct, causing or contributing to haze pollution in Singapore. Apart from criminal liability, the Act also creates statutory duties and civil liabilities."[99] UN International Law Commission 2006 Report stated that "[T]oday, the exercise of extraterritorial jurisdiction by a state with respect to persons, property or acts outside its territory has become an increasingly common phenomenon,"[100] this act does not really violate Indonesia's sovereignty. Seeing as otherwise, it would mean that states are powerless to do anything against individuals, corporations etc., if their actions harm the State or its citizens.

International Customary law was formed in another example of a case of Prosecutor v. Tadic the ECJ held that a State-sovereignty-oriented approach has been supplanted by a human-being-oriented approach in its ruling claiming that *"international law, while, of course, duly safeguarding the legitimate interests of states, must gradually turn to the protection of human beings."* [101]

2.3.3. UN Charter

Another legal document that is incredibly important while dealing with states sovereignty is the UN Charter and more specifically its paragraph 1 of Art. 2, which state: "the organization is based on the principle of sovereign equality of all its members."[102] Even though the concept of sovereign equality has long history it did not appear in legal documents before the UN Charter, but it was accepted by international law, as shows the Norwegian Shipowners case, in which the Permeant Court of Arbitration stated that both, international law and justice, are based upon the

[99] "Sovereignty, jurisdiction and international law" Opinion given by Professor S. Jayakumar and Professor Koh. Published JUN 25, 2016. Accessed on <https://www.mfa.gov.sg/content/mfa/overseasmission/geneva/press_statements_speeches/2016/201606/press_20160625 0.html> [2017-01-17]

[100] Ibid.

[101] Prosecutor v Tadic, Decision on the Defence Motion for Interlocutory Motion for Appeal on Jurisdiction, 2 October 1995, IT-94-1-AR72. Quoted in Mashood A. Baderin and Manisuli Ssenyonjo. Supra note 64. p. 548.

[102] UN Charter Supra note 19.

principle of sovereign equality.[103] This concept was later confirmed in Moscow Declaration of 1943, in which World War II allies stated that they recognize the necessity of international organization based upon principle of sovereign equality.[104]

After the end of cold war, the UN at the Second World Conference on Human Rights endorsed international protection of human rights as its legitimate concern.[105] Since then it was commonly agreed to not apply art. 2(7) of the UN Charter, to human rights matters.[106] A rule was set that from then on, if serious and grave case of human right violations appear, the UNSC can intervene by itself, and later decide on any binding measures in accordance to chapter VII of UN Charter.[107] As examples, cases of South Africa, Iraq, Haiti, Somalia, former Yugoslavia and east Timor can be mentioned. Therefore, since its creations, the UN, via its Charter, express support for human right protection, as it is one of organizations mayor goals. Moreover, it still has article 2(7), which forbids intervention in domestic affairs of sovereign states and the fundamental statement prohibiting the use of force is found in Article 2(4).

The adoption of the UN Charter placed human rights, which were later set out in the UDHR, the ICCPR and its Protocols, as well as in the ICESCR – the International Bill of Rights as some call it – at the centre of international relations in the new world order.[108] With passing time, human rights became less constrained by state sovereignty, because states cannot rely on this doctrine to fend off international inquiries in the face of serious violations of human rights occurring within their jurisdictions. By accepting that all human beings have human rights not depending on the state or region from which they are from or in, the basis for the international protection of human rights ceased to rest on the nationality of the individual. [109]

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[103] (Norway v. United States) (1921) 1 R.I.A.A. 307. p. 338. Accessed on <http://legal.un.org/riaa/cases/vol_I/307-346.pdf> [2017-03-27]

[104] Steven R. Ratner, *The Thin Justice of International Law– A Moral Reckoning of the Law of Nations, (*OUP Oxford, 2015). accessed on <https://books.google.lt/books?id=DhUoBgAAQBAJ&printsec=frontcover&hl=lt&source=gbs_atb#v=onepage&q&f=false> [2017-03-25]

[105]See Matheus De Carvalho Hernandez, "The rise of human rights issue in the post-cold war world: the vienna conference (1993)" The Age of Human Rights Journal, 2 (June 2014) p. 86-108 accessed on <http://webcache.googleusercontent.com/search?q=cache:U-2bXn0rUs0J:revistaselectronicas.ujaen.es/index.php/TAHRJ/article/download/1405/1193+&cd=5&hl=lt&ct=clnk&gl=lt> [2017-03-22]

[106] Manfred Nowak. Supra note 1 p. 34

[107] UN Charter Supra note 19.

[108] A. Baderin Mashood and Manisuli Ssenyonjo. Supra note 64. p. 399.

[109] Ibid.

2.3.4. Declaration on human rights

Over the past decades, the UDHR has become "a common standard of achievement for all peoples and all nations"[110] an international standard for legitimacy. However, usually sovereignty took priority over human rights, and only the crimes against humanity, made the international community adopt a bit different legal framework and now human rights violations may even trump sovereignty (e.g. East Timor and Kosovo).

However, before the UDHR was adopted, the doctrine of state sovereignty served more as a shield to protect states from any international meddling in matters concerning the internal policy for protection of human rights. As then issues regarding human rights inside the states fell within the boundaries of state sovereignty, and by the equality of all states, as closely related doctrine, no state had a right to question the status of human rights in another state. Furthermore, any incursion into the sovereignty of another state was allowed only if the purpose of such incursion was to protect human rights of its nationals, if it were threatened or violated in that other state. Although at the time there was no international standard for the treatment of citizens, its basic idea was that foreigners were entitled to be treated equally to nationals, of the state they were at the time, or at the very least in accordance to the minimum international standards of justice. [111]

2.3.5. Convention for the Prevention and Punishment of the Crime of Genocide

Since 1948, when Genocide Convention was adopted it set a benchmark for human rights protection by codifying the right to life and the protection of ethnic, religious, racial and national minorities.[112]The convention tried to implement the responsibility for genocide. However, it mostly paid attention not to the responsibility of states, but more on the responsibility of individuals. This closed minded attention on individual shows that at the time and since then, the sates are still not willing to take the responsibility for crimes against humanity out of fear that one day it might be used against them. Because, "as state sovereignty remains the framework for interpretation of other norms of the international community, doctrines for external humanitarian intervention are doomed to disappoint"[113].

[110] UDHR Supra note 38.

[111] Mashood A. Baderin and Manisuli Ssenyonjo Supra note 64. p.398.

[112] David Chuter.War Crimes: Confronting Atrocity in the Modern World. Lynne Rienner Publishers, (2003). p. 82-84. Accessed on <https://books.google.lt/books?id=u-6KMAI0xhMC&printsec=frontcover&hl=lt#v=onepage&q&f=false> [2017-03-15]

[113] Fleur Verbiest, "The 1948 Genocide Convention as an 'Increasingly Meaningless Document'*?"* published on JUN 5 2014, accessed on <http://www.e-ir.info/2014/06/05/the-1948-genocide-convention-as-an-increasingly-meaningless-document/> [2017-02-28]

2.3.6. The ASEAN Human Rights Declaration and other treaties

Sovereignty and non-interference principles are trademarks of the ASEAN regional approach. Starting from 1993, ASEAN has been developing a human rights system and finally in 2013 this process reached its apex when the ASEAN Human Rights Declaration was formally launched. Following this it is worth mentioning that sovereignty in Asia is a little bit different from its western ideology, as ASEAN sovereignty is representative of a political culture descendant from the mandala, and tributary systems in pre-colonial and pre-modern SEA[114]. "The mandala system was characterized by overlapping claims of sovereignty when power was strongest at the centre, and waned in the periphery. Sovereignty was concentrated upon the ruler and not territory of the state. In addition, the tributary system was one of suzerainty vis-à-vis the emperor in Beijing."[115] This is clearly understood when looking into different 'sovereigns' of Southeast Asia and ASEAN member states: in Thailand sovereignty is bestowed upon the king, in Vietnam the communist party, in Myanmar the military, in Brunei the Sultan. In Philippines, sovereignty may be articulated as popular as its constitution has a reference to a nation of Philippines.[116]

As everything about sovereignty and human rights, this approach garnered certain critique as some of Southeast Asian leaders were accused of misusing the argument of cultural differences and sovereignty to hide rights-violating behaviour. Such accusations, and the fact that until few years ago only five out of ten ASEAN member states had ratified both ICCPR and ICESCR, lead observers to doubt the seriousness of Southeast Asian governments' commitment to human rights in any form.[117]

In total, it could be said that the principle of sovereignty can be viewed as the protector small or weak states from larger and stronger ones, while the doctrine of human rights could be labelled as the protector of individuals and vulnerable groups from the unbounded execution of state power.

[114] Gisle Kvanvig Supra note 65. p.5
[115] Ibíd.
[116] Ibid. p. 19
[117] Simone Eysink , "Human rights between Europe and Southeast Asia", IIAS Newsletter, 41, 2006 accessed on <https://www.clingendael.nl/publication/human-rights-between-europe-and-southeast-asia> [2017-03-25]

3. HUMANITARIAN INTERVENTION AND STATES SOVEREIGNTY: THE DOCTRINE OF R2P

The R2P doctrine was introduced as a compromise between the concepts of state sovereignty and humanitarian intervention by describing the "primary responsibility" of the states as protection of its people, and directly linking sovereignty to this responsibility.[118] In addition, R2P implies that international law protects citizens rather than the state, as an entity, thus making states liable to interventions if they fail to protect its people.[119]However, it remains not codified in any treaty;[120] thus making the Commission's report the leading document regarding the R2P. Nevertheless, the R2P does not introduce a new legal doctrine,[121]yet it explains legal criteria used when humanitarian crisis appears and diplomatic means seem to do no good.[122]

The ICISS report presented the responsibility to prevent as the most important aspect of the R2P norm addressing direct causes of conflict that may harm human security.[123] The second element of R2P – the responsibility to react points out a wide list of measures,[124] and military intervention being the last resort as other coercive measures are allowed when other preventative action were exhausted.[125] Last resort rule why R2P has six principles governing military intervention in sovereign states. In addition, as these principles are part of the Just War theory, they are guidelines for the legal use of force.[126] Nevertheless, the UN Charter, from its establishment was mostly focused on protecting states sovereignty, as can be seen from Art. 2(7) of the Charter, while

[118] James Turner Johnson, "Humanitarian Intervention, the Responsibility to Protect, and Sovereignty: Historical and Moral Reflections." Mich. St. Int'l L. Rev. 23 (2014): p. 628. Accessed on <http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1174&context=ilr> [2017-04-24]

[119] Alyse Prawde, The Contribution of Brazil's 'Responsibility while Protecting' Proposal to the 'Responsibility to Protect' Doctrine, 29 Md. J. Int'l L. 184 (2014). p. 194. Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol29/iss1/9> [2017-04-24]

[120] Christine Longo, "R2P: An Efficient Means for Intervention in Humanitarian Crises-A Case Study of ISIL in Iraq and Syria." *Geo. Wash. Int'l L. Rev.* 48 (2015): p. 6. Accessed on <http://www.gwilr.org/wordpress/wp-content/uploads/2017/02/ILR-Vol-48.4_Christine-Longo.pdf> [2017-04-22]

[121] "Responsibility to Protect: Implementing a Global Norm towards Peace and Security An Interview with Dr Simon Adams" Merkourios, Utrecht Journal of International and European Law 2012-2013. Volume 29/Issue 76, Interview, p. 109-112. Accessed on <http://www.utrechtjournal.org/articles/abstract/10.5334/ujiel.br/ > [2017-04-22]

[122] See Intervention et al., *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*. 1-85. Accessed on <http://web.isanet.org/Web/Conferences/GSCIS%20Singapore%202015/Archive/131df1f7-58f0-411f-8091-80a1f4ae8ba8.pdf> [2017-04-12]

[123] "RtoP and rebuilding: the role of the Peacebuilding Commission" Accessed on <http://www.responsibilitytoprotect.org/index.php/about-rtop/related-themes/2417-pbc-and-rtop> [2017-04-22]

[124] Including economic, political and diplomatic tools.

[125] Christine Longo. Supra note 120 p. 22.

[126] William R Blackford, "The Responsibility to Protect and International Law: Moral, Legal and Practical Perspectives on Kosovo, Libya, and Syria" (2014). Dissertations and Theses. Paper 2532. p. 18 Accessed on <http://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3537&context=open_access_etds> [2017-04-12]

R2P is promoting its main ideas by redefining the established sovereignty norms in relation with human right protection.[127]This chapter will provide a brief overview to the ICISS report and the framework of the R2P that the International Commission has offered.

3.1.The High and Low Points of R2P

As we mentioned in the beginning of this work, the sovereignty of the state is the main protector of human rights. The Commission's report on R2P, as the lead document on the doctrine, stipulates principles that states should abide by while carrying out humanitarian intervention. While humanitarian intervention is generally allowed under the UN Charter, it is the R2P thay gives clear principles to carry it out.

- The first criteria of just cause mainly speaks of two situations: a large-scale loss of life, or a large-scale 'ethnic cleansing.'[128] Thus, making R2P directly applicable in cases of human rights abuse, which are covered by the existing treaties,[129] but unclear cases of significant, but no enormous number of victims, remain up to the debate.
- The second criteria of right intention point to the only possible legally backed motivation - to prevent human suffering. To make this intention more legally secure the ICISS report states, that humanitarian intervention should "[…] always take place on a collective or multilateral rather than single country basis."[130]Another security measure regarding the intention behind the intervention is the consent to the intervention of the nation of targeted state, clearly stating to what extent they agree to humanitarian intervention. Lastly, the report prescribes to look to the opinion of other countries in the region.[131]
- Third criteria in the Report is that humanitarian intervention should be a last resort. This means that the use of military force in intervention "can only be justified when the responsibility to prevent has been fully discharged."[132]
- Fourth criteria means that intervention has to "commensurate with the ends, and [be] in line with the magnitude of the original provocation."[133] Thus, to prevent unnecessary

[127] Ibid.p. 36
[128] Ibid p.32
[129] Like the Convention on Prevention and Punishment of the Crime of Genocide
[130] See Intervention et al., The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty. p. 36. Accessed on <http://web.isanet.org/Web/Conferences/GSCIS%20Singapore%202015/Archive/131df1f7-58f0-411f-8091-80a1f4ae8ba8.pdf> [2017-04-12]
[131] Ibid.
[132] Sandra Fabijanić Gagro. "The Responsibility to Protect (R2P) Doctrine." International Journal of Social Sciences 3.1 (2014). p. 70 <http://www.iises.net/download/Soubory/soubory-puvodni/pp061-077_ijoss_2014v3n1.pdf> [2017-04-22]

regime changes, the effect on the political system of the country targeted should be limited to what is strictly necessary.

- Fifth criteria stipulates that military intervention is not justified if actual protection of human beings and their basic rights cannot be achieved, or if the consequences of intervention are likely to worsen the conflict.
- The last of the six criteria is the criteria of the right authority; the Report states that UNSC, as the primary caretaker of the maintenance of international peace and security,[134] should be addressed when seeking to legally intervene in sovereign states territory.

To sum up, the principles for humanitarian intervention provided by R2P doctrine and the first stage of the doctrine itself- the responsibility to prevent humanitarian crisis, allows us to draw the conclusion that R2P reinforces states sovereignty. However, in R2P's evolution from the ICISS Report in 2001 to the World Summit in 2005, some of the novelty was lost.[135] ICISS report sought to acknowledge both internal and external parts of states sovereignty by moving "from a 'right to intervene' to a 'responsibility to protect'."[136]

3.1.1. Main issues with R2P

While R2P gives a more detailed approach to the principles of humanitarian intervention, it still has some major issues to cope with. Starting with the criteria of 'just cause', which uses the terms of 'large scale loss of life' and 'large scale ethnic cleansing' without clearly defining what these vague terms mean. Moreover, when these notions are compared, despite the jus cogens status of prohibitions against slavery and rape, and the previous episodes of sexual violence in Rwanda and Kosovo[137], the UN "has not adopted a legal framework by which member states can appropriately intervene in distressed nations […] to prevent systemic child sex trafficking."[138]

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[133] See Intervention et al., The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty. p. 53. Accessed on <http://web.isanet.org/Web/Conferences/GSCIS%20Singapore%202015/Archive/131df1f7-58f0-411f-8091-80a1f4ae8ba8.pdf> [2017-04-12]

[134] Resolution, General Assembly. "World Summit Outcome." *A/Res/60/1* 24 (2005). p. 20 accessed on <https://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf> [2017-04-11]

[135] See James Turner Johnson, Supra note 118. p. 631

[136] Monique Law, "R2P: Activating the International Community's Responsibility to Protect by Shifting Focus Away from Collective Action by the Security Council towards Early Warning and Prevention." King's Student L. Rev. 8 (2017). p. 92. Accessed on <http://blogs.kcl.ac.uk/kslr/wp-content/blogs.dir/86/files/2017/01/8.1.6-Monique-Law-88-107.pdf> [2017-04-22]

[137] See Annette Lyth, "The development of the legal protection against sexual violence in armed conflicts-advantages and disadvantages." *Online: Kvinna till Kvinna Foundation (December2001)* <http://old.kvinnatillkvinna.se/sites/default/files/The%20development%20of%20legal%20protection%20by%20Annette%20Lyth_0.pdf> [2017-04-26]

[138] Monique Law, Supra note 136. p. 70.

Moreover, crimes as 'mass sexual violence' endangers the population of some countries, on the other hand, the intervention under the R2P doctrine would be fitting only under the UNSC Resolution 1820,[139] which "excluded child sexual exploitation and trafficking, such as *bacha bazi*, from triggering international intervention."[140] Thus the problem of uncertain terms and rules, "has generated debates about when and how force should be resorted to […] and raised concerns among some Member States about the misuse of the principle"[141] regarding not only Libya but Syria too.

Another problem, in a way related to the uncertainty regarding certain terms in international law, is unilateral humanitarian intervention. The ICISS report on R2P the commissions says that "unilateral intervention is seen as illegitimate because self-interested."[142] The situation is not helped by the fact that since the 2005 World Summit Outcome Document, no mention on legality of the unilateral humanitarian intervention was made. Furthermore, adding to the confusion, the Outcome Document requires that "any coercive action should be undertaken through the Security Council, whereas the ICISS report considered intervention without Security Council approval to be permissible in extreme cases"[143]. However, there is a ruling of the Independent International Commission on Kosovo where the phrase "illegal but legitimate" was introduced while dealing with the unsanctioned NATOs intervention in Yugoslavia.[144] This ruling showed that even though NATO actions were illegal, they were legitimate because they were justified due to all other measures being exhausted without positive outcome, and the intervention liberated Kosovo from Serbian rule.[145]

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[139] Samuel V. Jones,. "Ending bacha bazi: boy sex slavery and the responsibility to protect doctrine." Ind. Int'l & Comp. L. Rev. 25 (2015).p.77. Accessed on <https://mckinneylaw.iu.edu/iiclr/pdf/vol25p63.pdf> [2017-04-24]

[140] Ibid.p.74.

[141] UN Secretary-General (UNSG), *A vital and enduring commitment: implementing the responsibility to protect: Report of the Secretary-General*, 13 July 2015, A/69/981–S/2015/500, p. 5 available at: <http://www.refworld.org/docid/55cb3cd44.html> [2017-04-22]

[142] Intervention et al. Supra note 129. p. 48.

[143] Brent J. Steele; Eric A. Heinze, Norms of Intervention, R2P and Libya; Suggestions from Generational Analysis, 6 Global Resp. Protect 88, [ii] (2014) p.103. Available at <http://s3.amazonaws.com/academia.edu.documents/40184336/Steele_Heinze_offprint.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1493996791&Signature=3t0rg10oomAzOJ45PViIkgULTA8%3D&response-content-disposition=inline%3B%20filename%3DNorms_of_Intervention_R2P_and_Libya_Sugg.pdf> [2017-04-22]

[144] Independent International Commission on Kosovo,. *The Kosovo Report: Conflict, International Response, Lessons Learned*. : Oxford University Press, (2000). p. 4. Accessed on <http://www.oxfordscholarship.com/view/10.1093/0199243093.001.0001/acprof-9780199243099> [2017-04-20]

[145] "It was illegal because it did not receive approval from the UN Security Council but it was legitimate because all diplomatic avenues had been exhausted and there was no other way to stop the killings and atrocities in Kosovo." Independent International Commission on Kosovo,. *The Kosovo Report: Conflict, International Response, Lessons Lessons Learned*. : Oxford University Press, (2000). p. 4. Accessed on <http://www.oxfordscholarship.com/view/10.1093/0199243093.001.0001/acprof-9780199243099> [2017-04-20]

Another problem is the decision making at the UN level, because the R2P neither alters the structure of the UNSC nor places new binding rules on the UNSC decision-making[146]. Thus, the P5 veto power, created an issue thus making R2P dependent on the collective interest of the P5.[147] Art. 27 of the UN Charter states that each member of UNSC has a vote and all procedural matters need nine affirmative votes. In addition to that, nine votes must include "[t]he concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."[148] However, when the SC cannot reach a unanimous vote due to a veto, situation cannot move forward. The best example, for these type of situations is the case of Syria. Considering that China, together with Russia, has vetoed UNSC resolutions regarding Syria's case of humanitarian crisis, it resulted in the UNSC's inability to act.

3.1.2. The aftermath of Libya: failures of the R2P

The Libya intervention is a prime example of the R2P doctrine. With Resolution 1973/2011 the UNSC authorised the use of 'all necessary measures' to protect civilians and 'civilian populated areas' from the governments regime.[149] This resolution alongside later imposed 'no-fly' zone were the first active applications of the R2P.[150] However, this intervention was critiqued due to self-interests of the NATO countries. Moreover, when NATO intervened Qaddafi's forces had already re-claimed control of most of Libya, and the conflict was about to end, with about 1,000 dead, but intervention prolonged the war and caused at least 7,000 more deaths.[151] Following the regime change, the Human Rights Watch in 2012 reported that human right abuses were extensive and systematic and might amount to crimes against humanity.[152] Thus, perhaps no intervention was needed.

Another point is that as in Libya the Syrian crisis, in the beginning, could have been stopped by invoking the R2P. Hitherto, the UNSC did not invoke the R2P, and the doctrine "has

[146] U.N. SCOR, 69th Sess., 7180th mtg. at 4, U.N. Doc. S/PV.7180 (May 22, 2014). Draft Security Council Resolution Referring Syrian Conflict to the International Criminal Court Vetoed by Russia and China (13 in Favor, 2 Against)." Review, H. L. (2015). Harvard Law Review: Volume 128, Number 3 - January 2015, Quid Pro, LLC. Accessed on <https://harvardlawreview.org/2015/01/u-n-scor-69th-sess-7180th-mtg-at-4-u-n-doc-spv-7180-may-22-2014/> [2017-04-24]

[147] Ibid.

[148] "UN Charter" Supra note 19.

[149] Elizabeth O'Shea, "Responsibility to Protect (R2P) in Libya: Ghosts of the Past Haunting the Future", 1 Int'l Hum. Rts. L. Rev. 173, 190 (2012). p.173. Available at <http://booksandjournals.brillonline.com/content/journals/10.1163/22131035-00101010> [2017-05-01]

[150] Ibid p.178.

[151] Alan Kuperman. „Lessons from Libya: How Not to Intervene", Belfer Center for Science and International Affairs, Harvard Kennedy School Quarterly Journal: International Security. (Sep, 2013) .Available at < http://www.belfercenter.org/publication/lessons-libya-how-not-intervene> [2017-05-05]

[152] Ibid.

failed to transform the power to intervene from a right into a responsibility."[153] This is mayor failure of the R2P because this transformation was advertised as a main achievement of the R2P. In addition, both before and after the adoption of R2P, the power to intervene is to be exercised through the UNSC (mostly with the approval of the P5), but the UNSC, as an institution designed to promote international peace and security has fallen into the role of "authorising, even encouraging, the use of force through mechanisms such as R2P. It does so at the behest of superpowers, which are the only countries with sufficient military might to apply it."[154]Thus, instead of transforming sovereignty to responsibilities as was originally though out, R2P in reality "extends the sovereignty of powerful intervening states."[155]

While it is impossible to predict what might have happened if the intervention in Libya was not carried out. The current conflict in Syria shows that perhaps if he was allowed to do what he wanted, Gaddafi might have worsened the situation in Libya to the level of massacre as happened in Rwanda. However, Libya differs from the Rwanda and that is enough to suggest this outcome was not likely.[156] Nonmatter the outcome of the intervention, it does not change the legality of the intervention itself; it just questions the legitimacy of the R2P as a doctrine which was used to justify humanitarian intervention in a sovereign state.

3.2.Brief review of recent propositions concerning the humanitarian intervention and R2P

Due to the wariness surrounding humanitarian intervention and R2P in 2011 Brazil proposed a new concept, Responsibility while Protecting (RwP) [157] as "the first major re-examination of R2P since its conception."[158] RwP stipulates that higher standard of responsibility should be applied to the international community when it uses R2P.[159] Thus, RwP provides a list of

[153] Elizabeth O'Shea, Supra note 149. p.185.

[154] Ibid. p. 186.

[155] Hugh Breakey "Review and Analysis: The Responsibility to Protect and the Protection of Civilians in Armed Conflict" Working Paper developed from Responsibility to Protect and theProtection of Civilians in Armed Conflicts Academic-Practitioner International Workshop, Sydney, Australia. Nov. 17-18, 2010. p. 60 available at < https://www.academia.edu/1213148/Review_and_Analysis_2012_Responsibility_to_Protect_and_the_Protection_of_Civilians_in_Armed_Conflict > [2017-05-03]

[156] Elizabeth O'Shea, Supra note 149. p. 183.

[157] Alyse Prawde, The Contribution of Brazil's 'Responsibility while Protecting' Proposal to the 'Responsibility to Protect' Doctrine, 29 Md. J. Int'l L. 184 (2014). Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol29/iss1/9> p. 200 [2017-04-24]

[158] Responsibility While Protecting - The Impact of a New Initiative on RtoP, INT'L COALITION FOR THE RESP. TO PROTECT (Sept. 14, 2012). Quoted in Alyse Prawde, Supra note 157. p. 200

[159] Alyse Prawde, Supra note 157. p. 200

principles, from which both R2P and RwP can evolve,[160] emphasising the need for the UNSC to ensure the accountability of the states which carry out interventions.[161] RwP is vital development for the R2P, because it may become a norm of international law, and after cases of Libya and Syria, R2P without incorporating elements of RwP is unlikely to take this step.[162] However, there was only one discussion on the RwP in the UN on February 21, 2012, where it was agreed that RwP was to be accepted as "a means of enhancing R2P's implementation, but R2P's framework, as set out in the World Summit Outcome Document, was not to be renegotiated."[163]

Additionally, France recently once more offered a way (responsibility not to veto – RN2V) to make decisions in the UNSC via "*a P5 agreement to voluntarily refrain from vetoing resolutions relating to mass atrocities. Under the proposal, if the Secretary General decides that a situation qualifies as a mass atrocity, the agreement suspends the right of veto for any resolutions addressing it."*[164] The idea could be implemented through mutual commitments thus not requiring the amendment of the Charter.[165] However, the proposal has deficiencies[166], which show that it "could only be an initial step toward a framework to regulate the veto",[167] but additional means need to be taken too.

Overall, this chapter shows that the R2P is a theoretical doctrine, and there are no legal repercussions if the international community fails to act. However, protection of international common good, and basic human rights is defined "as a core responsibility of the governments of states today."[168] In short, while the R2P gives legal formulation, whether it is the best that can be reached still remains to be seen. Perhaps the addition of RwP and RN2V could give it further enhancement. While considering if there could be a more adequate one, "the implications of the

[160] Ambassador Maria Luiza Ribeiro Viotti, Letter dated Nov. 9, 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, PP 10-11, U.N. Doc. A/66/551-S/2011/701 available at <http://www.globalr2p.org/media/files/concept-paper-_rwp.pdf> [2017-04-23]

[161] Ibid.

[162] Gareth Evans, Co-Chair, Global Ctr. for the Resp. to Protect, R2P and RWP After Libya and Syria (Aug. 23, 2012) (transcript available at <http:// www.gevans.org/speeches/speech485.html>. Mentioned in Alyse Prawde, Supra note 157. p. 205

[163] Ibid. p.205.

[164] "U.N. SCOR, 69th Sess., Supra note 146.

[165] A. Far, Responsibility Too. " The Oxford Handbook of the Responsibility to Protect (2016): 227.online on: <https://books.google.lt/books?id=McaSDAAAQBAJ&printsec=frontcover&hl=lt#v=onepage&q&f=false> [2017-04-27]

[166] See Global Centre for the Responsibility to Protect "The responsibility not to veto"The Responsibility Not to Veto. <http://www.globalr2p.org/media/files/2015-january-adams-veto-restraint-remarks.pdf> [2017-04-27] and Powers, Far, A. Responsibility Too. "The Responsibility Not to Veto." The Oxford Handbook of the Responsibility to Protect (2016): 227. online on: <https://books.google.lt/books?id=McaSDAAAQBAJ&printsec=frontcover&hl=lt#v=onepage&q&f=false> [2017-04-27]

[167] "U.N. SCOR, 69th Session. Supra note 146.

[168] James Turner Johnson. Supra note 118. p.634

pre-modern idea of sovereignty as responsibility for the common good provide important perspective that is lacking in the conception of sovereignty now generally accepted."[169]

[169] Ibid. P.634.

CONCLUSIONS and RECOMMENDATIONS

This research, though limited in scope, revealed that the hypothesis that humanitarian intervention violates states sovereignty is partially confirmed.

1. The research revealed that, when government either created or allowed for humanitarian crisis to rise, the intervention is a necessary both morally and legally, even if UNSC seems unable to respond in a time. Thus, sometimes "illegal but legitimate" approach is needed, especially as states sovereignty cannot be considered as being more important of the relationship between sovereignty and human rights protections when faced with grave human rights violations and crimes against humanity. Therefore, humanitarian intervention can be viewed as a safeguard people could ask for if their own governments fail them. Moreover, this research concluded that RwP could provide the missing clarity on legal rules for the R2P. Especially, as R2P is still a developing doctrine and not a legal norm carrying the weight of jus cogens.
    a. Following these findings, we recommend that while R2P is still developing and since regional communities have provisions for the protection of peace allowing and providing for interventions, they need to take on more of the responsibility to protect peoples within their own borders, but in their respectable regions too. For this purpose, strict monitoring procedure should be established for the parties involved in intervention to prevent any further violations of human rights. The rules for such monitoring could be drawn from the RwP doctrine, because intervention should not cause more harm to the people living in the target state.
2. The research also revealed that the problem of veto right needs to be solved either by diminishing its importance or by removing it altogether. UNSC reform is likely to give space to more political and regional power play than before, and this too would further decrease the capacity of the UNSC to invoke R2P and potentially impede its development and crystallization as a legal norm.
    a. Following this conclusion we recommend that if the later way of removal were chosen then it would require the UN Charter to be amended by removing the veto right from the document, and if it were the former, RN2V could be used, as it does not need amendment of the UN Charter and does not remove the veto, merely restricting its use from cases of humanitarian crisis. However the clear way to implement it and its possible effectiveness requite more in-depth research.

b. Another way to make veto less significant is to give the UNGA additional right to authorise humanitarian interventions in special emergency cessions. UNGA could use Uniting for Peace resolution, with which it could delegate the intervention to individual states, which would carry it out with regards to R2P and RwP. Clearly defined mechanism for this requires a more detailed analysis and separate research.

3. This research also pointed out that both terms of 'humanitarian intervention' and 'state sovereignty' are still problematic, due to a fact, that they do not have one clear definition codified in a treaty. Thus, they are interpreted based on different treaties, ICJ practise, opinions of various scholars and even historical events. Similar situation is with the uncertain terms regarding the 'large scale' crimes. While they tend to lead as towards crimes like genocide and ethnic cleansing other crimes like 'sexual violence' remains outside the scope of R2P and in turn at least partially from humanitarian intervention. Thus, cases like boy sexual slavery in Afghanistan is uncontrolled and international community cannot intervene without any additional arguments and human rights violations.
    a. After these conclusions, we recommend that these definitions were codified in respectable treaties and conventions, thus giving international community certainty while using them and deciding whether one case or another could be considered as applicable to humanitarian intervention.

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