

Searching for a Legal International Framework for Humanitarian Intervention

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During most parts of the 20th century and, more alarmingly, during the beginning of the new century, multiple signs of massive breaches to human rights, along with repeated cases of genocide and ethnic cleansing have marked the international scenery and have preoccupied human rights organizations, policy makers, the media and public opinion in general. In most cases, sanguinary rulers, uncontrolled subversive groups or invading powers have unlawfully applied their almighty extermination capabilities against defenseless minority groups. What is more alarmingly shameful is that, in most of them, little has been done by the international community to avoid the massive massacres that have later been reported. The cases of Armenia (1917), Biafra (1968), Cambodia (1979), Liberia (1993), Rwanda (1994), Somalia (1994), Bosnia (1995) and Kosovo (1998) are just a few among dozens more. Presently, the situation in Darfur has been reaching a peak of alarming dimensions, while the diversified forms of oppression imposed upon the Palestinians in the occupied territories and the massive bombings of civilians in southern Lebanon are just other facets of the contemporary humanitarian injustices characterizing the Middle East area. All over the globe, and more sensitively in the MENA region, humanitarian catastrophes have been and will still prevail if nothing is done to stop the bloodshed, reduce the tensions and eradicate the other multiple means of potential massive extermination! Yet, these are not the only causes of present day humanitarian preoccupation. Multiple other kinds of human oppression, along with the effects of natural or technological catastrophes also represent evident sources of concern linked with the need for humanitarian intervention. Globally, this may vary from mere channeling of humanitarian assistance to needy civilian populations to their effective protection from oppressive forces. A wide variety of situations do effectively arise; diversified solutions have thus been sought pending on whether the irregularities do take place in time of peace or in time of war.

However, the fridity of the international community has been remarkably prevailing in most situations when humanitarian needs would have normally dictated an imperative and nonetheless urgent intervention. Tentative solutions have been sought through the available international instruments, which have mostly proven their evident inefficiencies in tackling this growingly alarming issue. Limited efficiency has characterized some of the most known initiatives of the international community such as ‘Operations Restore Hope and United Shield’ in Somalia, the NATO aerial bombing of Serbia, the sending of ECOMOG forces to Liberia by CEDEAO countries or the outcomes of the Dayton Agreements concerning Bosnia. None of these actions has managed to avoid massive massacres of innocent civilians. And, yet suspicious attitudes of indigenous populations towards them have frequently been registered. Refusal and rejection of foreign intervention is generally justified by critics for pure considerations of ‘national sovereignty’. The constant reference to the “theory of state sovereignty” thus tends to hinder the growing will of the international community to develop legitimate interventionist mechanisms. The question is however still pending on what legitimacy

can be attached to an intervention inside the borders of a sovereign state whatever may be the justification be! The Iraq war, rightly qualified as an aggression, is still feeding the legal debate on this issue. Where do pure humanitarian concerns stop and where do planned invasions start? As Professor Robert Kolbe put it, “there is a growing contamination of humanitarian aid by foreign policy and mostly by armed forces of interested states”.^[1] Target populations tend to become suspicious as soon as the incoming aid appears to be channeled through government agencies who thus give the evident impression of foreign interference into domestic affairs of the beneficiary territory.

International law is thus going through an evident reshuffling in which the notion of ‘humanitarian intervention’ is seeking a right position. Will thus need to be explored, clarified and further confronted, within the present paper, in relationship with this issue, the notions of:

- ‘Public International Law’ as it applies to governing the relationships within the international community;
- ‘State Sovereignty’ with its conflicting effect on the growing will to intervene within boundaries of existing states;
- Intervention as dictated by ‘Humanitarian Considerations’ and as a growingly determining notion in interstate relations;
- ‘Future Visions of Humanitarian Issues’, though the prism of new interstate equilibriums.

1. Public International Law :

‘Public International Law’ consists of rules and principles of general application dealing with the conduct of states and of international organizations and with their relations *inter se*, as well as with some of their relations with persons. It reflects the rules governing the international order since their appearance at the end of the middle ages and their later specification in the Treaty of Westphalia in the middle of the 17th century. Since its foundation, public international law has been fundamentally built on the notion of sovereign equality of states called upon to entertain inter-state relations; these are political entities which define themselves as sovereign within their territorial boundaries. Legal pluralism was then prevailing from the outset and implied the acceptance by a given state of the right of other states to be governed by their own legislation within their boundaries. Thus, relations were more based on necessary coordination within the rules of the ‘jus cogens’. Furthermore, «Public International Law» has been defined as the law of the political system of nation-states. “It is a distinct and self-contained system of law, independent of the national systems with which it interacts”.^[2] International law thus concerns the structure and conduct of states and international organizations. It essentially consists of rules and principles which govern the relations and dealings of nations/states with each other, while also covering rules that govern the relations between states and other subjects of international law.

International Law is rooted in acceptance by the nation states which constitute the international system. Customary law and conventional law are primary sources of international law. Customary international law results when states follow certain practices generally and consistently out of a sense of legal obligation. Conventional international law derives from international agreements and may take any form that the contracting parties agree upon. Agreements may be made in respect to any matter except to the extent that the agreement conflicts with the rules of international law, incorporating basic standards of international

conduct, or the obligations of a member state under the Charter of the United Nations. International agreements create law for the parties of the agreement. They may also lead to the creation of customary international law when they are intended for adherence generally and are in fact widely accepted. Customary law and law made by international agreements have equal authority as sources of international law.

General principles common to systems of national law is a secondary source of international law. There are situations where neither conventional nor customary international law can be applicable. In this case a general principle may be invoked as a rule of international law because it is a general principle common to the major legal systems of the world.

Jurisprudence, i.e. judicial decisions rendered by international courts and tribunals, also represents an important referential source of international precedents. Although its binding effect is extremely limited, given the importance of the notion of sovereignty in international contexts, it nevertheless constitutes an important source of knowledge for the progress of international law.

International law imposes upon the nations certain duties with respect to individuals. It is a violation of international law to treat an alien in a manner which does not satisfy the international standard of justice. However, it is only the state of which he is a national that can complain of such a violation before an international tribunal. The state of nationality usually is not obligated to exercise this right and can decide whether to enforce it or not. The international order being mainly an order governing the relationships between states and/or states and international organizations, the concern for the status of individuals or for groups of individuals has actually been timidly growing, if not adamantly lacking.

International organizations also play an increasingly important role in the relationships between nations. An international organization is one that is created by an international agreement or which has membership consisting primarily of nations. The United Nations is the most influential among international organizations; it was created on June 26, 1945. Its declared purposes are to maintain peace and security, to develop friendly relations among nations, to achieve international cooperation in solving international problems and to be a center for harmonizing the actions of the nations in attaining their common ends. The Charter of the United Nations has been adhered to by virtually all states. Other international and regional organizations also cover a vast era of fields of intervention.

Within the U.N. Charter, multiple stipulations offer potential backing for international humanitarian intervention. These are mostly related with the 'respect for human rights', the 'dignity of the human person' (contained in the preamble) and the 'preservation of international peace and security' (contained in numerous chapters of the charter). It is thus stipulated in chapter I that the organization may "take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means ...adjustment or settlement of international disputes or situations which might lead to a breach of the peace". Within this system, the member states are required to « ... settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered »; they shall «...refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any

state » (Chapter I). These are, thus, clear invitations, within the UN system, so long as the notion of sovereignty [an other basic component of the system] does not hinder potential interventions, that the international community (189 sovereign member states of the organization) has acquiesced to its obligation to intervene. Other chapters of the charter have further stressed this trend of thought of the San Francisco drafters of the initial document. Although they remain timidly formulated with respect (again) to the notion of sovereignty, they have been clearly worded and voluntarily entered into by the concert of nations; these are, for example, the stipulations contained in:

- **Article 41** : « The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations ».
- **Article 42**: « Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations ».

Furthermore, the use of armed forces to deter beaches to peace and security or to reestablish them in areas of tension has also been stipulated for. Member states are also invited to contribute effectively if called upon to do so in such situations. These provisions are contained mainly in articles 43 and 45 of the UN Charter:

- **Article 43** : « All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security... »
- **Article 45**: « In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action... »

Provisions for the creation of regional institutions for the achievement of such purposes as the undertaking of collective action for the maintenance of international peace and security are also stipulated for within the framework of the UN system. Articles 48, 52 and 53 of the UN Charter are clear about it:

- **Article 48**: « The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.... Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members »
- **Article 52**: « Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations. ...The Members of the United Nations entering into such arrangements or constituting

such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies... »

- Article 53 : «The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority »

Furthermore, and regarding the position of the international community on the particular issue of combating ‘genocide’ and ‘crimes against humanity’, the UN system has adopted clear positions: the 1948 ‘Convention on the Prevention and Punishment of the Crime of Genocide’, adopted by the UN General Assembly in its ‘Resolution # 260 (III), has defined ‘genocide’ as an “act committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group [killing members of the groups, causing serious harm, bodily or mental, to members of the group, deliberately inflicting conditions calculated to bring about the group’s destruction, imposing measures to prevent births within the group and forcibly transferring children of the group to another group]”. It has also imparted upon member states who have signed the convention, the obligation to “enact legislation necessary to give effect to” the stipulations contained in the convention and “to provide effective penalties for persons guilty of genocide”. The ‘Geneva Conventions’ of 1949 and their ‘Additional Protocols’ of 1977 and 2005, and most particularly their stipulations referring to the protection of civilians in times of war, further define the nature of the violations that are likely to be considered as corresponding to war crimes: these are ‘intentional homicide’, ‘torture’, ‘inhuman treatment’, ‘deportations’, ‘illegal transfers’, ‘illegal detention’, ‘destruction of property’, etc... For the enforcement of repressive measures against such acts, the international community has established temporary tribunals before finally settling on a permanent penal judiciary institution; these are: “The International Military Tribunal of Nuremberg” {1945}, “The International Military Tribunal for the Far East” (also called ‘The Tokyo Tribunal’) {1946}, “The International Penal Tribunal for Former Yugoslavia” {1993}, “The International Penal Tribunal for Rwanda” {1994} and “The Special Tribunal for Sierra Leone” {2002}. Finally, and upon recommendations of the UN ‘Commission on International Law’ in 1994, the preliminary actions for the creation of a permanent ‘International Criminal Court’ were undertaken within the UN General Assembly. They led to the establishment, in 1995, of a preparatory committee (*Prep Com*) which drafted the “Statute of Rome” (signed in July 1998), defining the organization and competencies of the new “Penal” tribunal (Criminal Court) which was due to be established in The Hague. The statute entered into effect in 2002. According to the stipulations of article 5 of the Rome Statute “the Court has jurisdiction with respect to the crimes of genocide, the crimes against humanity, war crimes and the crimes of aggression”. In its definition of ‘genocide’, article 6 of the ‘Statute’ has reproduced the same wording as that contained in the above mentioned UN General Assembly Resolution # 260 (III). Precise definitions of the other elements of the tribunal’s competencies have also been set forth by articles 7 and 8 of the Statute. An apparent will to organize intervention against illegal behaviors and to further apply sanctions against the authors of illegal humanitarian behaviors is thus clearly stemming from recent decisions and initiatives of the international community.

Can all these stipulations be interpreted as an open invitation to intervene? Would it be then as easy to reconcile, within this context, the seemingly irreconcilable notions of intervention and state sovereignty? It would then be very easy and simple to conclude that states can take coercive – and in particular military – action, against other states for the purpose of protecting people at risk in these other states. The question then arises to delimit the exact

meaning of the notion of 'sovereignty' that has firmly represented a constant limit to outside intervention.

2. *Apprehending the Notion of 'Sovereignty':*

This notion is inspired from the Latin medieval notion of '*Superanus*', which itself derives from the classical Latin notion of '*Superus*' [superior] and from the Greek notion of '*Basileus*'. It implies the exclusive exercise of political authority on a geographic area or on a specific people or group of peoples. In politics, it has grown to mean the independent character of a state which is not bound by any other outside authority, be it another state or an international institution, unless it has freely accepted so. Yet, 'sovereignty' remains essentially a legal notion, which content is defined and impact drawn by Public International Law. Louis LeFur has defined the notion of sovereignty as « *the quality for a state not to be bound except by its own will, within the limits of the superior principle of law and according to the collective objectives that it is called upon to achieve* »^[3]. Formulated at the end of the 19th century in the context of domestic law, this definition is also applicable to the state as a subject of international law. It highlights two basic ideas closely linked with the notion of sovereignty: that the sovereign state is only activated by its own will and that this will can only be exercised within the rule of law. Nowadays, may be added the fact that state sovereignty is also limited by the activities of international organizations. Each autonomous state enjoys its '*summa potestas*' [implying that it exercises on its territory the supreme jurisdiction and that it owns the monopoly of force]. Its competency may be discretionary; and its authority is immediate and effective. As an independent entity, the state benefits from '*plenitudo potestatis*' [It entertains direct relations with other states and deals with them on the bases of equality].

Historically, the concept of sovereignty has emerged within the evolution of political theory at a specific moment of the evolution of modern states. It has been defined by Jean Bodin (1530-1596) in his treaty "*The Six Books of the Republic*" as an essential attribute of the state: "*Sovereignty is the absolute and perpetual power of a Republic*". Within this initial conception of the notion, no other power can be superior to the sovereign authority. Alike the notion of sovereignty, the above mentioned notion of equality between states is also a legal notion: it is a result of political theories based on equality between human beings. This vision of equality has been constantly reproduced in state and diplomatic behaviors. Article 2 of the UN Charter clearly stipulates that "*the Organization is based on the principle of the sovereign equality of all its Members*". Basically, and in accordance with the stipulations of # 4 of the same article, "*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state* ». Furthermore, the UN has adopted in 1966 a charter of sovereign equality between states, implying that: "*all states enjoy equal sovereignty, that they have equal rights and obligations, that they are all members of the international community, regardless of their economic, social and political differences*". This Charter further states that "*all states are legally equal, that they all enjoy the rights linked with this sovereignty, that every state has the duty to respect the personality of other states, that territorial integrity and political independence of the state are non violable and that each state has the right to freely chose its political, social, economic and cultural system*". Thus, basically, each sovereign state owns the full capacity to enjoy and exercise the following four international attributes of its sovereignty: the '*jus tractatum*' [right to conclude treaties], the '*jus legationis*' [right to accredit diplomats], the '*jus belli*' [right to declare war] and the right to be party to legal proceedings or to have direct access to international instances, and most particularly to the international Court of Justice.

For centuries, international law has thus been based on the notion of sovereignty of the state. As a result, a state is only bound by a legal obligation to which it has acquiesced. In the present context of this paper, the state's obligation to protect human rights may be opposable only if that state has agreed to it by ratifying a treaty or by adhering to an existing customary rule. Sovereignty also means, under presently applicable international law, that a country which has violated human rights cannot be prosecuted unless it accepts or has accepted the authority of a court. It has thus been so far very hard to get a government convicted of human rights violations by an international court. And even if a conviction is obtained, there is no way of guaranteeing that the sentence will be carried out. Sovereignty has then proved to be incompatible with the existence of a kind of worldwide "international police force" and has represented a major obstacle to new interventionist policies built on humanitarian considerations.

Thus, the doctrine of "the right to intervene" represents an attempt to challenge this traditional legal structure by calling into question the very concept of sovereignty it is based on. Within its innovative demands, lay the fact that the power of the state must yield to a "principle of extreme urgency" and to the need for a minimum protection of human rights. Humanitarian aid must therefore be delivered without regard to national frontiers, or whether or not a country has pledged to respect a rule, the jurisdiction of a court or the powers of an international police force. For its tenants, it is no longer tenable to bow to legal formalism.

This represents quite a challenge to long time established practices of the international order! Since the signature on August 27, 1928 of the Briand-Kellog Pact ^[4] by the representatives of 15 nations (the final number of its signatories has reached 60), interdiction of recourse to force for the solution of conflicts was born: war has been officially declared illegal. Article I of the Pact has clearly condemned « the recourse to war for the solution of international disagreements » and has established a declared « renunciation to the use of war as an instrument of national politics ». Article II further stressed the need to « call upon pacific means for the solution of all conflicts that might arise between the contracting parties ». Attributes of sovereignty were then bound for long lasting respect, weren't it the second world war which re-questioned all these newly established values. Yet, the trend of confirmation of this position was to firmly resist in the aftermaths of the war.

Under the jurisdiction of the UN system, during the cold war period, the International Court of Justice in The Hague has had the opportunity to issue judgments and consultative opinions on various questions related to the issue of sovereignty as it relates to foreign intervention within territorial boundaries. In the case of the *Corfu Strait*, opposing Albania to Great Britain, which decision was rendered on April 9th 1949, the 'Court' has stated that 'respect for national sovereignty is one of the essential bases of international relations'. It has further noted that the action of the British navy within the Albanian territorial sea has violated Albanian sovereignty. Another very firm attitude on the question has characterized the decision rendered by the 'Court' in June 1986: this was the case of a judgment concerning '*Military and Paramilitary Activities in and against Nicaragua*' opposing the government of this sovereign Latin American state to the government of the United States of America. In this case, the issue was about a dispute between the two governments on the grounds that the government of Nicaragua was contending that the US military and paramilitary was conducting subversive activities in the waters off its coast. In the course of the written proceedings, the Government of Nicaragua requested the 'Court' to adjudge that, by "... directing military and paramilitary actions in and against

Nicaragua, the United States has violated its express charter and treaty obligations, and in particular under article 2 of the United Nations Charter". On this basis, the Government of Nicaragua further stated that the US "*has violated the sovereignty of Nicaragua*" and "*in breach of its obligations under general and customary international law, has intervened in the internal affairs of Nicaragua*". The decision of the 'Court' finally caught the US Government at fault when it concluded that "*the United States of America has acted against the Republic of Nicaragua, in breach of its obligation under international law not to intervene in the affairs of another state (...) not to use force against another state (...) and not to violate the sovereignty of another state*". It finally condemned it to "*immediately cease and refrain from all such acts as may constitute breaches of the foregoing legal obligations (...) and to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law*". Going beyond the borders of a sovereign state without being invited to do so by the established authorities in such a state has clearly then been confirmed as an act of aggression. Yet, recent history has shown multiple hesitations both regarding lack of intervention when it is most needed and regarding border violations and armed aggression without any legitimate justifications to do so. The international community seems to have been applying a double scale measurement attitude pending on the weight of the actors in the international arena. Even the judicial instrument of the UN order seems to have been taking part in the ongoing attitude of justice denial. In this context, a remarkably strange attitude of the International Court of Justice regarding instances introduced before it by the former Republic of **Yugoslavia** against ten NATO countries which participated in bombing its territory in 1999 is worth underlining. No less striking is also the attitude of the same court in front of the actions introduced the same year by the **Democratic Republic of Congo** against Rwanda, Uganda and Burundi. In these contexts, the 'Court' was called upon to examine in July 2001 about 16 cases related to questions linked with the use of armed force. Yet, in most of them, its attitude remained strangely similar: "incompetence". A similar attitude may also be observed regarding its position expressed in its decision rendered in June 2000 in the **aerial conflict between India and Pakistan** in which the latter had requested the condemnation of the former for having "*violated its sovereignty and destroyed one of its planes*". Sound legal arguments have been set forth in each case. But the question still remains of whether the International Court of Justice is not gently avoiding to venture into slippery fields with which the political organs of the UN system, namely the Security Council and the General Assembly, are still wrestling.

The parallel may also be made between the two presently existing entities in The Hague: an "International Court of Justice" and an "International Criminal Court". While the former (created in 1945 as a UN organ) settles legal disputes submitted to it by states and gives advisory opinions on legal questions submitted to it by duly authorized international organs and agencies, the latter (established in 2002) functions as a permanent tribunal in charge of prosecuting individuals for genocide, crimes against humanity, apartheid and war crimes. The former is composed of 15 permanent judges elected by the UN General Assembly and the UN Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration (an other institution established in The Hague since 1899). The latter court consists of 18 judges, all of whom are nationals of States Parties to the Rome Statute, elected by these states parties for a term of up to nine years.

It seems then as if the international community is progressively moving towards means of prosecution of responsible individuals per se through the ICC, given the fact that state prosecution is clearly out of the reach of competency of the ICJ. There also seems to be a shift in attitude dictated by the resistance in international behavior of the principle of non-

intervention, which is itself based on the above mentioned sovereign equality of states. A move is progressively being made from an impossible prosecution of sovereign states to a more acceptable form of ‘humanitarian’ intervention justified on the grounds of direct protection of individuals. Furthermore, repetitive initiatives of the leading powers within the international community also indicate a clear will to act and intervene while violations are being committed. How much of it is dictated by humanitarian concerns and how much is justified by anti-terror initiatives will remain pending for the non initiated observer.

The importance of the actors and the sensitivity of the issues thus make of the equation of ‘sovereignty vs. humanitarian intervention’ a field of substantial present and future reshuffling. The issues at stake are certainly far beyond the simple humanitarian considerations!

3. Delimiting the Scope of « Humanitarian Intervention »:

Humanitarian intervention is one of the most controversial concepts in world politics. Commonly understood, it stands for the use of external military force against a sovereign state to stop its government from mistreating its own citizens. It also implies the use of force to halt violations of human rights by a determined entity against a minority or another ethnic group. It appears to be as a kind of “just war”. Yet, individual definitions of the words humanitarian and intervention vary widely. There is no definition universally accepted by all international actors. Various definitions have been ventured by different sources. Let’s explore a few of them.

About a decade ago, Brian D. Lepard defined this notion as “*the use of military force to protect the victims of human rights violations*”^[5]. Sean Murphy also defined it in 1996 as the “*threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights*”^[6]. A few years later, the Danish Institute of International Affairs defined it as “*coercive action by States involving the use of armed force in another State without the consent of its Government, with or without authorization from the UN Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law*”.^[7] For his part, Francis Kofi Abiew considers the ‘theory of intervention on humanitarian grounds’ as a theory that “*recognizes the right of one State to exercise international control over the acts of another in regard to its internal sovereignty when contrary to the laws of humanity*”.^[8] More recently, J.L. Holzgrefe and Robert O. Keohane^[9] have defined ‘Humanitarian Intervention’ as “*the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied*”.

But the notion remains however quite recent, although breaches to human rights have been quite commonly spread during the last century. Published literature on humanitarian intervention has therefore been of relatively recent vintage. As recently as 1995-1996, dictionaries in the fields of international relations and organizations, and even in multinational peacekeeping instances, did not include entries on humanitarian intervention as such. It has been only more recently that the phrase has become widely recognized and frequently included in the titles of scholarly studies. Yet, ‘humanitarian intervention’ has been quite commonly used in the past to designate assistance operations and interventions in domestic affairs of another state. It was mainly used in the 19th century to refer to the protection by a state of its own citizens within the territorial boundaries of another state. It has also been used in cases of choking behaviors of a

determined state against its own citizens. But it is only more recently that the notion has gained in vigor. The question may thus arise to determine the person who originated the humanitarian intervention phrase in its current meaning? Some sources give credit to Professor Mario Bettati of the University of Paris, along with French politician Bernard Kouchner, one of the founders of 'Médecins sans Frontières'; they are said to have enunciated the concept in the late 1980's. Professor Fernando Tesón ^[10] may also be credited for publishing his « *Humanitarian Intervention: an Inquiry into Law and Morality* » in 1988. The need to help peoples in distress quickly grew then to mean that everyone had a "duty to assist a people in danger".

Beyond the rulings of 'International Humanitarian Law' which are more specifically seeking to limit the effects of armed conflicts and to protect persons who are not or are no longer participating in hostilities, the notion of 'humanitarian intervention' sets forth a practice of right to humanitarian assistance first contained in the resolution of the UN general Assembly # 43/131 adopted on December 8th, 1988: « *Resolution on Humanitarian assistance to victims of natural disasters and similar emergency situations* ». It tends to further enforce the inputs of such other growing notions as 'the right to intervene' (which implies the potential recognition for a state or for a group of states of the right to "legitimately" violate the sovereignty of an other state) and 'the obligation to intervene' (implying the duty for a state to offer assistance upon the request of supra-national entities, i.e. the UN or other international or regional instances). The will of a sovereign entity to give in to such circumstances thus remains of utmost importance in these contexts.

Humanitarian intervention has constantly been brought to exposure and has gone through recurring phases of study. It was quite fashionable after the secessionist Biafra war in the late sixties as well as with the Indian intervention in Pakistan in 1971; but it fell into obscurity during the 1980s and became a popular topic again in the 1990s, peaking with the intervention in Kosovo and the no less faulty lack of intervention in Rwanda. No doubt, the cases of Afghanistan and Iraq on one side, and the more recent humanitarian catastrophe in southern Lebanon, along with the Darfur Crisis are making it current again. As long as there are despots willing to torture and murder their own citizens, and as there are "outlaw" behaviours stemming from sovereign states, these issues in international law will remain relevant.

The report of the International Commission on Intervention and State Sovereignty, presented in December 2001 by a 'Committee' co-chaired by Gareth Evans and Mohamed Sahnoun ^[10] takes a clear stand regarding the definition of this concept. « *The kind of intervention with which we are concerned is action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective. By far the most controversial form of such intervention is military. But we are also very much concerned with alternatives to military action, including all forms of preventive measures, and coercive intervention measures – sanctions and criminal prosecutions – falling short of military intervention* ». The clearly established objective for such an endeavor being « the protection and assistance of people at risk » for merely stated 'human protection purposes' through « military intervention », the 'Commission' has been very careful in its adoption of a determined terminology. The idea underlying such interventionist attitudes can be easily phrased by reference to one of the foremost theorists on the issue of 'humanitarian intervention', Fernando Tesón: "*a major purpose of states and governments is to guarantee human rights; governments that violate human rights should not be protected by international law*". ^[11]

Many legal experts have strongly criticized the view of traditional international law held by non supporters of the right to intervene. First, under no circumstances can a government claim it is “lawful” to massacre its own population on the grounds that everything that goes on inside the country is an “internal matter”. All states have formally agreed that they should respect fundamental rights, such as the right to life and respect for the physical person, and that genocide is unlawful as far as their own people are concerned. They decided in “a sovereign manner” to accept these principles, so they must respect them in a sovereign manner too. Where a massive violation occurs, retaliatory measures and reprisals can be taken in political, diplomatic, economic and financial ways. An embargo, even without United Nations intervention, could be envisaged against a state or a group which is violating a people’s most basic rights. Such a measure, quite a formidable one, has been used against certain states, including Argentina at the time of the Falklands war, the Soviet Union after its military intervention in Afghanistan and more recently against Haiti and Burundi in response to coups d’état in those countries. The United Nations Security Council can also declare that massive violations of human rights are a threat to “international peace and security” and duly authorize military intervention (article 42 of the United Nations Charter). It has done this on several occasions. So on closer inspection, most of the operations presented as arising from “the right of humanitarian intervention” are actually applications of existing legal mechanisms. It may be relatively wrong to say that traditional international law is incompatible with effective protection of human rights. In fact the problem is usually more political than legal, in the sense that what is needed is not new rules but the better use of existing ones.

Here then emerges a major concern of how much credit may be given to the seemingly humanitarian intentions of nations/states historically known for their proven breaches to human rights. « *The United States is not significantly different from others in its history of violence and lawlessness* » underlines Noam Chomsky ^[12] before stressing that « *states are no moral agents* » and that « *they commonly act in the interests of domestic power* ». These 13 years old assertions are regretfully comforted by present day observations of Guantanamo style behavioral patterns worldwide. We are thus far from any altruist humanitarian considerations that might dictate or try to legitimate military (or non military) intervention in regions that happen to all be part of the third world, and that are strangely enough, at present times, located in Arab or Islamic neighborhoods ! Using the UN system for such purposes can also be easily challenged, since these promoters of the idea are these same ones who have been undermining its efficiency in recent decades: Washington is far in the lead in vetoing Security Council resolutions since the early sixties, followed by Britain, with France a distant third; the record in the General Assembly is similar on a wide range of issues concerning human rights, observance of international law, aggression, disarmament, and so on... One might then wonder of where do ‘humanitarian considerations’ start and where national strategic interests stop? The massive exterminations of Native American Indians in the 19th century may well tarnish the humanitarian record of US led initiatives. Furthermore, « *when the U.S. invaded Haiti [during the second decade of the 20th century] and the Dominican Republic [much later], the Washington administration murdered and destroyed, reinstated virtual slavery, dismantled the constitutional system because the backward Haitians could not see the merits of turning their country into a US plantation, and established the National Guards that ran the countries by violence and terror after the Marines finally left* ». ^[13] Danger to Americans was one of the original justifications for the American intervention in civil strife in the Dominican Republic in 1965, though the United States early on in that intervention began to ground its action on its desire to prevent a leftist victory in the Dominican Republic. Again, the United States attempted to characterize its intervention in Grenada in 1983 as aimed at rescuing American citizens resident on that island at the time of a violent coup, though at the time of the

intervention it was unclear that Americans in Grenada were in any danger, and there is considerable reason to believe that the leftist orientation of the government installed by the coup was in fact the main reason for the American action. This conclusion is strengthened by the fact that the operation was clearly aimed at and succeeded in subjugating the island, a step not required if the only American objective was a rescue and contrary to the then-understood limits on the objectives legally permissible in a case of humanitarian intervention. In this case, it should be noted, President Reagan justified the actions of the United States not only by reference to the dangers to American citizens posed by the new government, but also to the dangers that government posed to its own citizens.

Other leading nations of this humanitarian interventionist trend cannot but be equally gratified by the similar records of human right breaches in the establishment of their respective political systems! Isn't all this enough to introduce serious doubt about the humanitarian justifications of this initiative in the minds of MENA region observers at a time where countries like Iraq, Iran, Sudan, Somalia, Syria (and until recently Libya) all happen to be on the U.S. policy collimator and at a time of a growing cultural and civilization ditch between the western world and Islam?

4. Exploring the Future

What are then the perspectives of humanitarian cooperation within the turmoil and uncertainties that characterize the beginning of the 21st century? Beyond the mere humanitarian concerns, the question of 'legitimate intervention' within the domestic boundaries of sovereign states remains of capital importance. The teachings of recent historical developments in Kosovo, Iraq and Afghanistan seem to be paving the way for a new set of still to be determined rules that represent a clear rupture with the traditional teachings of the 'jus cogens'. Legal justifications to breaches to national sovereignty are being openly sought. Despite their attractive appeal, 'humanitarian' justifications are just another aspect of the evolving search for new legal international equilibriums. Let's tentatively explore a few prospects of potential evolution of the issue of 'humanitarian intervention' through the multifaceted prism of contemporary forms of international confrontation.

'Public International Law' has forged multiple instruments for the purpose of answering humanitarian emergencies, starting with the 1948 'Universal Declaration of Human Rights' proclaimed by the UN General Assembly at the "Palais de Chaillot" in Paris [*Resolution 217 A (III)*]. Each state is therefore bound to enact and enforce legislation for the achievement of the purposes sought by such binding international instruments. But despite the existence of sanction mechanisms, international law has not established any supranational entity for the enforcement of these rules in case they are violated. The UN Security Council is the only organ habilitated to confer legitimacy to a coercive intervention through an international force for the purpose of reestablishing "international peace and security". It is within this context that the 2001 "Evans/Sahnoun Report" on the 'Responsibility to protect' seeks to find a way for implementation: *'the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the purpose of protecting people at risk in that other state'*. It is also within the specific context of a unipolar universe placed under the sole leadership of all mighty US forces, mainly defied by ethno cultural confrontations and terror threats, that the global reform of international institutions is presently launched. The concern about humanitarian issues is just a small part of the global universal imbroglio. And in all similar cases pertaining to

political issues, there is no single magic legal recipe: future evolution is pending on the still developing political equilibriums. The sought legal framework for humanitarian intervention will need to result from the ongoing declared and/or latent global confrontations in which emerging Islamic forces will undeniably have a say. The superstructure of the UN system will just have to align the functioning of its institutions to the increasingly growing world reality. Containment theories are simply fruitless instruments of the past. Let's just urge all actors of the world community to settle for a New Deal aiming at the establishment of a just and more equitable international order, built on reciprocal respect.

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[1] – Robert Kolb, Professor of International Law at the Universities of Neuchâtel, Berne & Geneva (Centre universitaire de droit international humanitaire), in « *De l'assistance humanitaire : la résolution sur l'assistance humanitaire adoptée par l'Institut de droit international à sa session de Bruges en 2003* » Revue internationale de la Croix-Rouge, Vol. 85, N° 849, 2003, pp.119ss;

[2] – Columbia Law School, Arthur W. Diamond Law Library, Researching Public International Law, definitions, [http://www.law.columbia.edu/library/Research_Guides/internat_law/pubint#Definition of International Law]

[3] – Louis LeFur, « *État fédéral et Confédération d'États* », Paris, 1896, p. 443

[4] – Named after two of its prominent signatories: Aristide Briand, French Minister of Foreign Affairs and Frank B. Kellogg, US Secretary of State.

[5] – Brian D. Lepard, “*Rethinking Humanitarian intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International law and World Religions*”, Pennsylvania State University Press, 1995, 496 p.

[6] – Murphy, Sean D., « *Humanitarian Intervention: The United Nations in an Evolving World Order* », University of Pennsylvania Press, Philadelphia, 1996.

[7] – Hans Corell [Under Secretary General for Legal Affairs], « *To Intervene or Not: The Dilemma That Will Not Go Away* », Keynote Address at the Conference on « *The Future of Humanitarian Intervention* », sponsored by the Duke University Law School's Center on Law, Ethics and National Security, Durham, North Carolina, April 19, 2001. ; Quotation drawn from « *Humanitarian Intervention, Legal and Political Aspects* », Danish Institute of International Affairs, 1999, p. 11.

[8] – Francis Kofi Abiew, [doctoral student in Political Science at the University of Alberta in Edmonton, Canada] « *The Evolution o the Doctrine and Practice of Humanitarian Intervention* », Kluwer Law International, 1999.

[9] – J.L. Holzgrefe and Robert O. Keohane “*Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*”, Cambridge University Press, 2003. 350pp.

[10] – Gareth Evans & Mohamed Sahnoun, “*The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*”, Document of the Canadian Ministry of Foreign Affairs, established as a response to Secretary-General Kofi Annan's challenge to the international community to endeavor to build a new international consensus on how to respond in the face of massive violations of human rights and humanitarian law, December 2001.

[11] – Tesón, Fernando R. 1997, “*Humanitarian Intervention: an Inquiry into Law and Morality*” (2nd ed.). Dobbs Ferry: Transnational Publishers & Tesón, Fernando, “*The Liberal Case for Humanitarian Intervention*”, in “*Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*”, edited by J.L. Holzgrefe and Robert O. Keohane, Cambridge University Press, 2003. 350pp.

[12] – Noam Chomsky, “*Humanitarian Intervention*”, Boston Review, Dec. 1993 – Jan. 1994 [<http://www.chomsky.info/articles/199401--02.html>]

[13] – Noam Chomsky, op. cit.