MIĘDZYNARODOWE PRAWO HUMANITARNE

Tom IX

Ius ad bellum versus ius in bello

…łączyć teorię z praktyką,
by służyć człowiekowi na wojnie…

INTERNATIONAL HUMANITARIAN LAW

Vol. IX

Ius ad bellum versus ius in bello

…to combine theory and practice
to serve people in war…

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HUMANITARIAN INTERVENTION AS A QUESTION OF SOVEREIGNTY VS. RESPONSIBILITY TO PROTECT

Summary

Humanitarian intervention as a form of using military force against a sovereign state because of a violation of human rights in that state causes numerous legal dilemmas and controversies that, among other things, make it an extremely significant topic in international relations, and quite controversial from the aspect of international law. Humanitarian intervention is an equally sensitive topic not only in situations when it is undertaken as such, especially without the Security Council's decision, but also in situations where it is needed but there is no intervention as well as in cases when humanitarian intervention is undertaken with a delay, after a huge number of human casualties.

The essential dilemmas that come to surface in the debate on humanitarian intervention are related to its legality and legitimacy and are mainly focused on the following questions: Whether the use of military force for the protection of human rights has a legal basis? Should the international community act with military force in cases of a violation of the International Human Rights Law or should that issue be treated as an internal affair of that state? What should the intensity of human rights violation be to allow for the derogation of state sovereignty? Which entity should decide whether to intervene in a particular case?

This paper is not intended to clarify all issues related to humanitarian intervention. However, with this paper, we make an effort to clarify certain dilemmas in order to contribute to the debate on the topic. We will try to identify the conditions that should be fulfilled before undertaking a humanitarian intervention, but we will also point out the issues that are still open.

keywords: Humanitarian intervention, human rights, non-intervention, UN, Responsibility to Protect

1. Introduction

Humanitarian interventions are not an entirely new phenomenon, and as such are found throughout the history of international relations. They are related to Hugo Grotius' theory of just war, according to which, just as individuals have the responsibility to help each other, there is an analogue re-

sponsibility of subjects in the international community (states and international organizations) to help and defend each other. However, the concern that states will use humanity to justify military aggression, in the past as well as today, still dominates academic debates.

By the formation of the United Nations (UN) after the end of World War II, it was expected that war would give way to peace, especially after such traumatic war experiences. The basic principles underlying the international order, established by the UN Charter and elaborated in the 1970 Declaration of Friendship, are: the sovereign equality of all UN members; solving international disputes with peaceful means; refraining from threatening force or using force against territorial integrity or political independence; *etc.* As the main objective of the UN, the Charter has established the maintenance of international peace and security. In the realization of this objective, the UN can take effective collective measures with peaceful means in accordance with the principles of justice and international law. In accordance with the Charter, the UN is not authorized to interfere with issues that are essentially within the internal competencies of each state. On the other hand, this does not limit the application of the compulsory measures provided in Chapter VII of the Charter, which actually regulates the actions that the Security Council can take in the event of threats to peace, peace breaches and acts of aggression. These may include complete or partial interruption of economic relations and of railway, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations (Article 41). Should the Security Council consider that measures provided for in Article 41 are inadequate or prove to be inadequate, it may take such actions by air, sea, or land forces as these may be necessary to maintain or restore international peace and security. Such actions may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations (Article 42). According to Article 51 of the UN Charter, nothing in the Charter 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. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council.

This actually means that the use of military force at the international level is regulated by the principle of general prohibition and exceptions to the general prohibition on the use of force. However, in contrast to the general prohibition, military interventions against sovereign states, with or without the authorization of the Security Council, are continuously present on the in-

ternational scene. This continuity can lead us to the conclusion that only the methods of legitimizing war have been changed, and that war has unfortunately remained a form of settling disputes in international relations.

2. Legal dilemmas related to the use of military force for human rights protection

According to some authors, the legal status of humanitarian intervention is a major challenge for the future of the global order. Furthermore, some of them believe that the central question is easy to formulate but notoriously difficult to answer: Should international law permit states to militarily intervene to stop a genocide or a comparable atrocity without Council Security authorization?[1]

Formally, in international documents, there is no written norm that permits the use of military force for the violations of human rights. A strict interpretation of the UN Charter means that the use of military force is only permitted in the case of self-defence (Article 51), and in cases when the Security Council assesses that there are conditions for endangering peace and therefore makes a decision for the use of military force (Article 42). This actually means that no state, for any other reasons, can arbitrarily use military force against another state, unless it comes to self-defence or unless there is a decision by the UN Security Council.

On an expert level, apart from individuals who consider that the use of military force for the violation of human rights has no legal basis and especially if it is taken without a decision of the UN Security Council, there is also a group of experts who identify the legality of humanitarian intervention in the existing standards and principles of international law, especially those relating to respecting and protecting human rights. For these authors, the principle of non-intervention should give way to humanism as a universal standard. According to these authors, humanitarian intervention is a necessity as a form of protection in situations of mass and systematic violations of human rights. Promoters of humanitarian intervention have applied one possible interpretation of the UN Charter in section 2 (4) which emphasizes three pillars: the absence of an absolute ban on intervention beyond the listed cases in Article 2 (4); treating the Charter as a whole and highlighting its core values of human rights and their protection; and the effectiveness of the UN action to prevent breaching and violating its core values.[2] This interpret-

[1] R. Goodman, *Humanitarian intervention and pretexts for war*, "The American Journal of International Law" 2006, Vol. 100:107, p. 107–141.

[2] L.J. Frckoski, S. Georgievski, T. Petrusevska, *International Public Law*, MAGOR, Skopje, 2012, p. 648.

ation is also supported by the fact that this type of intervention does not disrupt the territorial integrity and political arrangement of the state where intervention is undertaken, and military force is used solely to protect fundamentally important values such as human rights. However, these arguments are actually opposed by the perspective of the authors who consider that the very idea of intervention by military means is contrary to the concept of sovereignty, according to which each state is free to act within its borders and its internal affairs. Some of these authors are decisive that the doctrine of humanitarian armed intervention is without any legal basis if it is not included in cases where the UN Charter allows the use of force.[3] Talking about the legal dimension concerned with invoking and establishing precedents and making legal arguments about the rules and standards in support of or in opposition to a particular interventional undertaking, Richard Falk, apostrophes the ambiguous role of the UN as a whole, and from one case to another case, considers it to be especially confusing the uncertainty about whether "a Security Council decision involves a genuinely collective and community interventional judgment guided mainly by considerations of public good."[4] Other authors consider that abiding by the International Humanitarian Law (IHL) and the International Human Rights Law (IHRL) is not an exceptionally internal issue of the state. But, the fact that this issue is a legitimate obligation and concern of the international community, as well "is not in itself a sufficient legally valid ground for armed intervention in a state, solely because that right is violated in a state."[5] In addition, some judgments of the International Court of Justice confirm the prohibition on intervention in international law, and in the case of the use of military force in Nicaragua, there is an explicit ban on the use of force for the protection of human rights.[6] Hence, this group of authors finds that humanitarian intervention as such marginalizes international law based on the principles of sovereignty and non-intervention. Therefore, it is considered that when this principle is undermined, the result is chaos in international affairs and a steady rise in the dominance of strong nations over the weak.[7] Or, to put it differently, in-

[3] N.S. Rodley, *Human rights and Humanitarian Intervention: The Case Law of the World Court*, ICLQ 1989, Vol. 38, Issue 2, pp. 321–332, quoted in V. Vasilevski, *International Humanitarian Law*, Skopje, 2002, p. 359.

[4] R. Falk, *The Complexities of Humanitarian Intervention: A New World Order Challenge*, "Michigan Journal of International Law" 1996, Vol. 17, Issue 2, pp. 492–493.

[5] V. Vasilevski, *op. cit.*, p. 359.

[6] International Court of Justice, Military and Paramilitary Activities in and against Nicaragua (Judgment), 27th June 1986.

[7] J. Merriam, *Kosovo and the Law of Humanitarian Intervention*, "Case Western Reserve Journal of International Law" 2001, Vol. 33, Issue I, p. 116.

tervention is seen as a way of legitimizing war and its glorification, bringing the world back to the 19th century when each state could intervene with military force in another state.

From the mentioned above, it is evident that the use of military force for the protection of human rights is not yet clearly defined. The largest number of experts in this field as well as the majority of the states, including those which have participated in humanitarian intervention, are still refraining from recognizing the legal status of humanitarian intervention. The reason for this is the fear of it could be abused as a pretext for beginning a war. Although in the period after the Cold War, a practice began in which intervention with humanitarian motives seemed as if it would be institutionalized as a norm, the events in Syria; statements by the Trump administration; or that of Macron along with the strengthening of Russia and China globally, seem to have brought back the issue of humanitarian intervention in the Cold War period.[8] A consensus may exist only with regard to the fact that this type of intervention must be formally endorsed by the UN Security Council which, in the event of mass and systematic human rights violations, will find that those circumstances constitute a threat to international peace and security.

3. Modification of the Principle of Non-intervention

By its very nature, humanitarian intervention is undoubtedly an incursion into the sovereignty of the state in which the intervention takes place and a violation of the principle of non-intervention. Hence, humanitarian intervention causes tension between sovereignty and non-intervention as the basic principles of international law, on the one hand, and the protection of human rights as an important component of international law, on the other. In spite of the legal dilemmas, UN member states are generally faced with a challenge that is imposed by the fact that they are required to refrain from using military force, but at the same time, they are obliged to respect human rights standards. Faced with this impasse, some states have opted to use force as a means of last resort to prevent humanitarian tragedy, while at the same time seeking to establish a self-defence argument in order to avoid UN sanction.[9] On the other hand, advocates of humanitarian intervention are confronted with the reactions that under the guise of humanism, sometimes political or geo-strategic interests of powerful states are hidden. According to Ryan Goodman, for example, "one of the principal obstacles to an interna-

[8] M. Hadzi Janev, *A critical review of the attitude of the Ministry of Interior, Article 1*, Institute for Global Policies and Law 2018.

[9] J. Merriam, *op. cit.*, p. 114.

tionally recognized right to humanitarian intervention is the concern that aggressive states would use the pretext of humanitarianism to launch wars for ulterior motives."[10]

In such a constellation of relations on the international scene, the rule that the UN can take measures only in the event of threats to peace undergoes a modification in its interpretation. The necessary exit beyond the otherwise narrow legal definition of the legitimate use of force has driven the political elites to begin with a creative interpretation and to restore the theory of just war. In one or another way it is present in the explanation of the justification of any modern form of use in effect.[11] Namely, the principle of non-intervention is opposed by the right of each state to raise the question of the treatment of citizens in another state according to the IHL and the IHRL. In addition to this interpretation, the undeniable fact remains that the massive and systematic violations of IHL and IHRL cause international repercussions and produce a flood of refugees, leaving the frame of exclusively internal affairs of a state.

Under the influence of this modified interpretation of the principle of non-intervention, at the end of the last century, a doctrine began to develop according to which a state or an alliance of states should take responsibility including the means of military operations to prevent massive violations of human rights or the rules on IHL. The modern version of this type of protection of IHL and ILHR has been developed in a concept called "Responsibility to Protect" (R2P). According to Professor Vankovska, humanitarian intervention and the doctrine of responsibility to protect "brought a great deal of moralizing and legitimizing the use of force that is not used for self-defence, but for the protection of others from massive violations of human rights."[12] However, it is worth emphasizing that the situations in Rwanda, Somalia and former Yugoslavia (particularly in Bosnia and Herzegovina and Kosovo), as well as in Uganda in 1979 or in East Pakistan in 1971, had a corresponding impact on the development of the R2P doctrine. Inhuman treatment and enormous suffering, human sacrifice, mass graves, persecution of the population, *etc.* are facts that the international community simply cannot ignore.

"Responsibility to Protect" is actually an attempt for balancing conflicting views regarding the legitimacy of the use of military force for the violation of human rights. This concept is based on the idea that there is shared re-

[10] R. Goodman, *op. cit.*, p. 141.

[11] B. Vankovska, *Modern forms of legitimation of war*, "Security Dialogues Online", http://sd.fzf.ukim.edu.mk/no-1/arer (accessed 3.11.2018), p. 15.

[12] *Ibidem*.

sponsibility between states and the international community. The "Responsibility to protect" concept is inspired by Francis Deng's idea of "state sovereignty as a responsibility" and reaffirms the idea that sovereignty is not only protection from external interference but is a matter of states that have positive responsibilities for the well-being of their population and giving help to each other.[13] The obligation to comply with the generally accepted standards and principles comes from sovereignty. Fundamental human rights are among those accepted standards and principles and every sovereign state has a primary responsibility to protect the human rights of its own citizens. However, if a state does not want to ensure compliance with IHL and IHRL or cannot prevent their gross violation, then according to this doctrine, the international community could intervene in that state in order to prevent violations of human rights and humanitarian catastrophe. In particular, this would mean that if the state violates these standards and principles, the principle of non-intervention can be violated. R2P covers three specific responsibilities: the responsibility to prevent; the responsibility to react; and the responsibility to rebuild. Humanitarian intervention should be undertaken only as an exceptional and extraordinary measure and can be justified only when all other non-military options have been exhausted. The primary goal of the intervention is to stop or prevent human suffering resulting from genocidal intentions, ethnic cleansing, the inability of the state to act in such circumstances, *etc.* Its duration and intensity must be minimal, with a reasonable chance of success and with consequences that will not be worse than the consequences in the case of non-intervention.[14] In this context, it is important to emphasize that the "Responsibility to protect" concept does not create new legal grounds for the use of military force, but requires every use of military force to be approved by the UN Security Council.

These principles and elements of the R2P concept, as well as its idea in general, can be seen as positive from the aspect of moral justification and the human dimension that is at the heart of this concept, although many states express concern about the effects of such wide delegation of powers to third countries and the militarization of international relations that could arise thereafter. However, dilemmas about the legal basis of the use of military force in the form of humanitarian intervention remain. Even if we leave the legal dilemmas aside, the UN which supports the R2P concept is criticized about powerlessness and ineffectiveness in protecting human rights in cases

[13] http://www.un.org/en/genocideprevention/about-responsibility-to-protect.html (accessed 3.11.2018).
[14] See: http://responsibilitytoprotect.org/ICISS%20Report.pdf (accessed 3.11.2018).

of flagrant and massive violations. Namely, the UN has proved to be helpless in front of countries that put their geopolitical or other interests in the foreground, even in the conditions when deciding on the application of military force in the form of humanitarian intervention. It is actually about fearing possible misuse of this concept and acting in favour of achieving political or other geostrategic interests under the guise of R2P. Hence, it seems justified to believe that the only way to induce action in support of such humanitarian claims is to generate enough countervailing power to overcome geopolitical inhibitions and that "the challenge now is to rededicate our energies to increase the prospect of humanitarian interventions serving humanitarian goals."[15]

4. Responsibility to protect through the prism of realized humanitarian interventions

If we analyse humanitarian interventions, we can identify different reasons that have been key to intervening in each particular case. We can partly agree with the views of the authors who believe that with the end of the Cold War there has been an obvious shift of intervening diplomacy from pure geopolitical interventionism in the direction of humanitarian purposes with the goal of preventing suffering and humanitarian catastrophes. However, it is evident that the protection of human rights has not always been the main reason for the interventions so far. This fact additionally introduces confusion in the treatment of the legitimacy and the justification of humanitarian intervention. Moreover, some authors argue that "humanitarian factors are rarely, if ever, decisive in shaping an interventionary decision of any magnitude, although governments will often rely in public on an essentially humanitarian rationale for intervention."[16]

The intervention in Haiti, for example, is a case when the overthrowing of a regime of a president who, by a military coup, took power from the previously legally elected president, was the reason for military intervention formally treated as a humanitarian intervention. Tanzania's military intervention on Uganda is also an example of military intervention, not because of the evident terror carried out by the then President of Uganda, but because of Uganda's growing territorial claims against Tanzania and the provocations at the border area between these two countries. However, in most of the other cases of humanitarian interventions, the issue of flagrant viola-

[15] R. Falk, *op. cit.*, p. 513.
[16] *Ibidem*.

tion of human rights, even where it is not a direct and main reason for intervention, is still in the background of the interventions. India intervened in East Pakistan (now Bangladesh) in 1971 without a formal decision by the UN Security Council, and due to humanitarian implications caused by the flood of a large number of refugees from East Pakistan as a result of terror against the population of that part of Pakistan.

At the beginning of the 90s, a series of humanitarian interventions in different parts of the world took place. Some of them, controversial in nature, provoked controversies that are still present in debates on the subject. The violation of human rights, and ethnic cleansing, was undoubtedly the main causes of interventions in Rwanda and the territory of the former Yugoslavia.[17]

The humanitarian intervention in Rwanda was conducted with a delay, which is certainly one of the basic remarks regarding this intervention, especially given the vast number of human casualties as a result of the ethnic cleansing carried out in this country during 1992.

On the other hand, two separate humanitarian interventions were carried out on the territory of the former Yugoslavia. The first in Bosnia and Herzegovina in 1992, when armed conflicts were assessed as a threat to international peace in that region. UN Resolution 770 (1992) called member states and NATO to take all necessary measures in order to provide humanitarian aid to Bosnia and Herzegovina. On the basis of this resolution, attacks were launched in the coming period against respective military targets of Bosnian Serbs. The second humanitarian intervention was in Kosovo and Serbia in 1999 by the NATO Alliance. This intervention was related to allegedly gross violations of human rights on the territory of Kosovo. This intervention was preceded by several attempts to overcome the situation through other respective mechanisms. However, this intervention was a precedent, compared to the humanitarian interventions carried out so far as well as the interventions that were performed later. For the first time, humanitarian intervention was carried out by an international organization. Then, this intervention was carried out without a decision of the UN Security Council.[18] Those who seek to justify this intervention point out that this intervention was illegal but legitimate. Finally, there was a lot of criticism of the way in which the intervention was carried out in terms of mistakes made

[17] It is no coincidence that specifically in connection with these events, two separate ad hoc courts were instituted for war crimes trials separately for both countries.

[18] In fact, the issue of the use of military force in Kosovo was not even considered by the Security Council, as it was expected that at least one, and possibly two permanent Security Council members, would use the right to veto of the decision on military intervention.

during the air strikes, followed by civilian casualties and huge material damage to civilian buildings.

Humanitarian intervention in Iraq was carried out on two occasions. The first in 1991 because of the invasion of Kuwait by Iraq. The purpose of the intervention was the expulsion of Iraqi forces from Kuwait. Shortly thereafter, the second intervention was officially carried out because of the terror on the members of the Shiite and Kurdish population by the then Iraqi authorities.

In Somalia, a humanitarian intervention was undertaken in 1992, which was probably necessary if we have in mind the suffering of the population, the terror, the collapse of the economy and the inability of the governmental system to operate, as a result of the opposing factions that paralysed the functioning of the state and brought it to the brink of collapse.

In recent years, the expansion of the civil war in Syria and the increase of the number of civilian casualties have sparked a new debate over the responsibility of the international community for the application of humanitarian intervention. But those efforts were overshadowed by the Libyan experience when, in 2011, the UN Security Council recalled the "Responsibility to Protect" doctrine and, by Resolution 1973, approved a non-abolished flight zone over Libya, authorizing member states to take all necessary measures in order to protect civilians from the regime of Gaddafi. The air strikes have removed Gaddafi from power but provoked criticism by the members of the Security Council, especially Russia, that the R2P doctrine has been used as a strategy for regime change in Libya.

On April 14, 2018, the United States, the United Kingdom and France launched air strikes in Syria without a decision of the UN Security Council. According to the statements of the leaders of these three countries, the attack was necessary to enforce the ban on the use of chemical weapons. The specific reason for the attacks was, in fact, an earlier chemical weapons attack in Douma allegedly supported by the Syrian government. Out of these three countries that participated in the intervention, only the UK Government in its official position tried to explain the legal basis for this intervention.[19] According to the Government's position, the UK is permitted under international law, on an exceptional basis, to take measures in order to alleviate overwhelming humanitarian suffering. The UK Government considers that legal basis for the use of force is humanitarian intervention, which requires three conditions to be met: there is convincing evidence, widely accepted by

[19] https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position (accessed 3.11.2018).

the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief; it is objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and the proposed use of force is necessary and proportionate to the objective of relief of humanitarian suffering and is strictly limited in time and scope to this goal (*i.e.*, the minimum necessary to achieve that end and for no other purpose). However, in this context, it should be noted that the Convention on the Prohibition of the development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, does not provide unilateral use of force in the situation of non-compliance with the Convention. In implementing its provisions, this Convention also provides some mechanisms, such as an investigation by UN experts on chemical weapons, and in difficult situations, a question could be posed to the General Assembly and to the Security Council.

These events in the last few years have probably contributed to the alienation of states and have indefinitely hampered the process of reaching a consensus or building a common position regarding humanitarian interventions. All these developments undoubtedly contributed to the disruption of the reputation of the UN in terms of its willingness to provide lasting peace and security. Considering the above mentioned cases, two viable conclusions can be differentiated:

In some cases, the international community has delayed action (in conditions when the population was exposed to terror and persecution followed by a huge number of human casualties), in contrast to other cases in which the international community reacted hastily (without giving the chance for other methods and means of resolving the conflict), and in some of these cases even used disproportionate force (thereby exposing the population to additional unnecessary suffering);

In some cases, the use of military force has been tolerated under the cover of IHL and IHRL, sometimes even without the authorization of the Security Council. In the course of some of the actions, it is possible to recognize political or some other interest of the states or that some states allegedly act in human rights protection, which is certainly very dangerous if it continues to be tolerated as an established practice.

5. Conclusion

Humanitarian intervention is a matter that puts in conflict the concept of sovereignty against the concept of respect for human rights. It is clear that after failing to prevent the tragic events of the 1990s in the Balkans and in

Rwanda as well as the criticism of the military intervention in Kosovo as a violation of the ban on the use of force, the international community opened a serious debate demanding the most appropriate way for reaction in case of harsh and systematic violations of human rights. It is a complex and delicate issue and therefore the position of opponents or opportunists of humanitarian intervention cannot be firmly defended, while not taking into account the wider context of international relations. It is true that formally military intervention for the protection of human rights has no legal basis in the UN Charter which established a general ban on the use of force with only two specific exceptions. However, pacifism must sometimes be balanced with the needs imposed by the reality that can be cruel for unprotected citizens exposed to terror and persecution. Some examples show that in certain situations only military intervention could have prevented the escalation of the conflict and a humanitarian catastrophe of a larger scale. On the other hand, it is a matter of fact that the UN often remains ineffective, and the decision of the Security Council is paralysed by the veto power of the permanent members. In such situations of a blockade of collective security mechanisms against the evident danger of a humanitarian catastrophe, the responsibility to protect the suffering population comes to the surface. For these reasons, there is some agreement that humanitarian intervention should be undertaken in the event of a massive and systematic violation of human rights. Nevertheless, there is no agreement on whether the intervention can be undertaken only after human rights violation has occurred, or the threat of human rights violation is sufficient.

Hence, it is clear that the use of military force in the event of a violation of human rights, in terms of its legality and legitimacy, is an issue that is still based on interpretations referring to arguments "in favour" and "against" humanitarian intervention. Humanitarian intervention exists as a political principle, but not as a legal norm. After the end of the Cold War, there really was a tendency to regulate this issue with an appropriate norm, but in the context of current developments on the international scene, it seems that states are now again far from consensus. It will be long before humanitarian intervention is perceived beyond the prism of those who have the power and capacity to intervene. Therefore, we believe that despite the contested legality of humanitarian intervention, it will continue to apply.

Given the above, certain questions still remain open, and therefore further debates on this topic should be directed towards the pursuit of answers to the following questions: What should be the intensity of the violations of human rights, in order to allow the derogation of sovereignty? How to make

an estimate of the number of victims before a humanitarian intervention is undertaken? Which obligations and responsibilities will the international community have in relation to the state in which humanitarian intervention is carried out?

Therefore, in the absence of a consensus on the creation of binding legal norms, the responses to humanitarian intervention should be sought somewhere between pacifism and reality. It is beneficial for UN members to accept certain conditions that must be taken into account before any use of military force in a sovereign state regarding violations of human rights of its citizens. Namely, it is crucial that the reality is assessed correctly, objectively and timely, with a serious assessment of all the circumstances that are in favour of the use of military force as well as those that do not justify the use of military force in a particular case. The use of military force must be applied as a last resort, only if the other mechanisms do not provide an appropriate result. Finally, humanitarian intervention should be authorized by the UN, because beyond the mandate of the UN, the intervention may sometimes be used as a screen for the realization of other interests not related to humanity. UN authorization will help to avoid the possibility of abuse of this institution by the strong against the weaker states. If, due to the veto of its permanent members, the Security Council is prevented from making a decision, in accordance with the United Nations Peace Council Resolution of 1950, the question may also be raised before the General Assembly, which has been authorized to make recommendations for undertaking collective action, including the use of military force in cases of threats or disturbances of peace or in cases of aggression.

Biljana Karovska-Andonovska

PROBLEM INTERWENCJI HUMANITARNEJ W ŚWIETLE SUWERENNOŚCI I ODPOWIEDZIALNOŚCI ZA OCHRONĘ

Streszczenie

Interwencja humanitarna jest jednym z przykładów użycia siły przeciwko suwerennemu państwu w związku z naruszeniem praw człowieka i jednocześnie wiąże się z licznymi wątpliwościami z perspektywy prawa międzynarodowego i stosunków

międzynarodowych. Interwencja humanitarna jest również dyskusyjna nie tylko w sytuacji, w której jest podjęta, szczególnie bez autoryzacji Rady Bezpieczeństwa, ale także gdy jest oczekiwana przez społeczność międzynarodową, ale nie podejmowana lub realizowana z opóźnieniem, nie zapobiegając rosnącej liczbie ofiar.

Podstawowe wątpliwości związane z humanitarną interwencją odnoszą się do jej legalności i legitymizacji. Można je sformułować w postaci następujących pytań. Po pierwsze, czy użycie siły uzasadnione obroną praw człowieka ma podstawy prawne? Czy społeczność międzynarodowa powinna używać siły w przypadkach naruszenia międzynarodowego prawa ochrony praw człowieka, czy też takie przypadki pozostają wewnętrzną sprawą państwa? Jaka powinna być skala naruszeń praw człowieka, by uzasadniała siłową ingerencję w sferę suwerenności państwa? Wreszcie, kto powinien decydować o użyciu siły w poszczególnych przypadkach?

Nie jest celem artykułu wyjaśnienie wszystkich wątpliwości związanych z interwencją humanitarną. W artykule podjęto jedynie próbę identyfikacji przesłanek prawnych użycia siły w ramach interwencji humanitarnej oraz wskazania zagadnień, które wymagają dalszej dyskusji i poszukiwania rozwiązań.

słowa kluczowe: interwencja humanitarna, prawa człowieka, ONZ, odpowiedzialność za ochronę