

HUMANITARIAN INTERVENTION AND TERRITORIAL SOVEREIGNTY: TWO INCOMPATIBLE PRINCIPLES IN INTERNATIONAL LAW*

Abstract

Humanitarian intervention and territorial sovereignty are separate and invaluable principles in international law. There are the unrepentant apostles of both principles on both sides. Some said that nations are supreme within their boundaries; while humanitarian interventionists strongly believe that humanitarian intervention is permissible on good ground, where such violates territorial sovereignty to curb human rights abuses. There are some crossroads inherent in the applicability of both principles. Accordingly, this paper examines the nature of the principles of territorial sovereignty and humanitarian intervention, evaluates instances there have been humanitarian intervention in territorial sovereignty, as well as the crossroad usually experienced when both principles intermix with one another. It was the findings of this paper amongst others that some nations only carry out humanitarian intervention activities based on their self interest. While others fan domestic /crises, as well as support autocratic governments/warring groups for their hidden agenda, illicit arms trade, foreign investment protection etc within the targeted nations. That humanitarian intervention in territorial sovereignty is legally justifiable in certain circumstances. It was recommended amongst others that the United Nations should put in motion measures to tackle the challenges associated with humanitarian intervention. Good governance should be encouraged in nations of the world. Various governments should administer their nations, well and not create problems that will necessitate the international community from infringing on their territorial sovereignty under the disguise of humanitarian intervention.

Keywords: Humanitarian Intervention, Territorial Sovereignty, International Law, Incompatibility

1. Introduction

The issue of territorial sovereignty can be traced back to the Westphalia Treaty of 1648. The treaty was utilized to stop the 30 years (Thirty years) of war in the Roman Empire. There was relative peace and security, until the advent of the 1st world war, which culminated in the formation of the League of Nations. The birth of the United Nations in 1945 represents a major step in fostering world peace and security All over the world, whenever there are breaches of international peace and security, which are likely to endanger world peace, it becomes expedient for one or more nations to intervene in a humane form solely to ameliorate the deplorable and inhuman plights of the citizens and foreign nationals in such a nation. This is despite of the strongly held principle of territorial sovereignty. Humanitarian intervention is therefore a ‘child’ of necessity unknown to international law, but actively accepted for the common good, having been occasioned by conflicts and wars.¹ The humanitarian interventionists strongly believe that infringing on a nation’s territorial sovereignty, to curb human rights abuses, is violation on justifiable and reasonable good cause. The proponent of territorial sovereignty strongly believes that interference in a nation’s territorial sovereignty, so as to abate human rights violations is not excusable and justifiable for any reasons whatsoever.

Territorial sovereignty and humanitarian intervention; are jointly advocated and promoted as indispensable principles of international law. But, humanitarian intervention cannot be carried out without defiling and hurting territorial sovereignty particularly as humanitarian intervention infringes on the principle of non interference on member nations affairs.² The obvious and manifest consequence is that both incompatible principles will certainly continue to struggle for supremacy over the other the above lies the inherent cross roads when the free flowing water of both streams of rivers intermingle and runs into each other. This paper is relevant to jurisprudence and international law to the extent that conflicts, crises, tensions, wars, violence, hunger, poverty and other forms of insecurity threatening the contemporary world in some nations, could have been averted and properly handled promptly with humanitarian intervention. These excesses occasioned by bad governance and misguided leadership in these nations escalate due to the lame excuse of non-interference in the territorial sovereignty of nations. Besides, conflicts, wars and insecurity in one nation can potentially spread to other neighboring nations with

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¹ M. Halpan, ‘The Morality and Politics of Intervention: in R.A. Falk (ed) *The Vietnam war and international law* (New York Spartan books, 1969) p. 20

² E.N. Luttwak, ‘Give war a chance’ 1999, 78 *Foreign Affairs Press London* July – August, p. 36 – 37.

attendant dire consequences and unpleasant humanitarian challenges to the international community.³ For instance, in 2011, the UN Security Council invoked the responsibility to protect doctrine and adopted Resolution 1973 endorsing a no-fly zone over Libya and authorizing member nations to take all required steps to protect civilians under attack from Muammar al-Guaddafi's government. Syria's increasing civil war and recurrent toil on civilians, political crisis in Egypt, Sudan, and presently Russia and Ukraine war other troubled nations have raised new debate about the international community's responsibility to mount a humanitarian intervention by outside forces under the United Nations there.⁴ Although, this principle is still extensively upheld to with the approval of countries; it has been affected by multinational inter-relationship, interdependency and globalization. One sphere that has adversely affected the principle of territorial sovereignty is intra conflict which is caused by abuse of human rights, which in turns breeds agitations by rival armed groups etc. The result is that nations cannot certainly be entrusted with human rights protection. The emerging questions that then arise are what happen when the national resources of nations are being intentionally used by despotic leaders for their selfish ends?. While there are gross human rights violations, as the oppressed fight for their rights, and equal distribution of resources. These leaders hide under the spirit of the principle of non-intervention to perpetuate dominance in their nations. By way of consensus, there is therefore, the need for a charitable nation or cluster of philanthropic nations to intervene? Given the above conditions, this paper shall discuss the legitimacy involved in the existence of both principles.

2. Theoretical Analysis

Territorial sovereignty vis a vis humanitarian intervention, but this paper settles for 'systems theory'. It was Hugo Grotius, who first responded to the problem of defining the rights and responsibilities of countries in international law. For Grotius, there is a natural law that ought to regulate the affairs of nations, just as there is a natural law that ought to limit the power of government over its citizens. The essential principles of natural law and natural rights are vital to any attempt to check arbitrary authority in the regulation of human affairs, thereby putting international peace and domestic tranquility in the place of war and domestic strife. Aristotle and Edmund Burke (1729 – 1797) were great exponents of the natural theory. A similar approach can be found on the theory on intervention in failed states, which is of more widespread relevance. The disputed question is that of intervening in the regulation of another country's internal concerns. The questions whether a nation is justified in taking part, on either side, in the civil wars or party contests of another; and chiefly whether it justifiable? Or whether intervention is necessary, if the people of another country are struggling for liberties? The answer is that it is best to impose on a country any particular government or institutions that either seems best for the country itself, or as necessary for the security of its neighbours. A modern post World War II example of humanitarian intervention appeared during the Biafran war in Nigeria (1967 – 1970). The conflict led to a famine which caused great suffering, widely covered in western press, but completely ignored by government leaders in the name of neutrality and non-intervention. The idea is that certain public health and security situation might justify the extraordinary action of calling into question the sovereignty of nations. The concept was developed theoretically at the end of the 1980; notably by Professor Mario Bettati and French politician Bernard Kouchner.⁵

An alternative approach to humanitarian intervention known as responsibility to protect has emerged since 2001 in Canada. This is by the International Commission on Intervention and State Sovereignty (ICISS), in response to the history of unsatisfactory humanitarian intervention. It involves three (3) stages: to prevent conflicts, to react to conflict situations and to rebuild after conflict arises. Defenders of humanitarian intervention justified it, based on the Universal Declaration of Human Rights by the United Nations in 1948.⁶ The right to interfere propounded by the philosopher Jean Francois Revel in 1979, represents the recognition of the right of one or more nations to violate the natural sovereignty of another nation when a mandate has been granted by a supranational authority e.g. UN, ECOWAS, EC, or NATO. The duty to interfere makes its obligatory for all nations to provide assistance at the request of the supranational authority, to the extent possible. This notion is certainly the nearest and proximate to the original concept of humanitarian intervention.⁷ Notwithstanding, this paper settles for the 'systems theory' as the most appropriate theory relevant to it. According to McClellan, a leading exponent of this theory, stages in the global scene are conceived to be in contact and association of relationship, which is formed through the process of interactions. Though all nations can independently protect its citizens from internal and

³ S.A. Garrette, *Doing good and doing well: An examination of humanitarian intervention* (London: Prueger books 1991). P. 20.

⁴ Alston, P. and Macdonald, E. (edited) *Human Rights, Intervention and the Use of Force*, Oxford, Oxford University Press, 2008 p. 135 – 136.

⁵ C.A. McClellan, *Theory and the international system* (New York: Macmillan (2006) p. 90.

⁶ International Commission on Intervention and State Sovereignty, the Responsibility to Protect 1-2 (2001) [hereinafter ICISS REPORT], available at <http://responsibilitytoprotect.org/ICISS%20Report.pdf>. 69.

⁷ *Humanitarian intervention*, available on the internet at free wikipedia, the free encyclopedia at <http://wikipedia.org> 2013 p. 801 – 7 – 2013 at 5.01 pm.

external attack, but the action of one nation positively or adversely affect the entire system. Since the world is now inter-related, interdependent and globalize, the affected persons/refugees also become a burden and security threat to its neighbours. In the application of this approach, one finds that the international community under the supervision of the UN intervened in Sudan (especially in the Darfur region's crisis), and Libya on humanitarian grounds, while undermining its territorial sovereignty. Humanitarian intervention appears to negate the United Nations Charter, but developments in state practice since World War II might have made it legal under certain circumstances. Since the end of the Cold War, international law has come to recognize that humanitarian intervention is permissible in situations other than in response to a nation's external acts of aggression. This development has centered essentially on the violation of basic human rights norms as a basis for humanitarian intervention... Since then, the current consensus indicates that a country's violation of its citizens' most human rights may allow humanitarian intervention into its affairs⁸ Current consensus suggests that a state's violation of its citizens' basic human rights may justify intervention into its affairs. Contemporary international law recognizes, as a matter of practice, the legality of collective forcible humanitarian intervention that is, approved by the Security Council.⁹

3. Definition of Terms

Territorial Sovereignty

The principle of territorial sovereignty means that no nation has the sovereign right, to intervene in the internal affairs of another sovereign nation. The principle of territorial sovereignty is a consequence of the absolute sovereignty principle. It means that all nations are independent within its boundaries and supreme.¹⁰ I hereby adopt the above definition of territorial sovereignty as mine for the purposes of this paper.

Humanitarian Intervention

Humanitarian intervention is the threat or use of force by a nation/ group of nations or international organization primarily for the purpose of protecting the nationals of the targeted nation from widespread deprivations of internationally recognized human rights, whether or not the intervention is authorized by the targeted nation or the international community. Humanitarian intervention arises when the armed forces of different nation/nations as a collective security enters a troubled country as a collective security outfit to foster peace and stability in that warring country. Humanitarian intervention is the threat or use of force across a nation's borders by a nation or group of nations aimed at preventing or ending widespread violations of the fundamental human rights of individuals other than its own citizens, without the permission of the nation within whose territory force is applied.

4. An Examination of the Nature and Reasons for Humanitarian Intervention in Territorial Sovereignty

There is a nexus between territorial sovereignty national security and humanitarian intervention, to the extent that lack of adequate national security in a nation's territory breeds breakdown of law and order, which invariably leads to conflicts, and ultimately humanitarian challenges. That may necessitate humanitarian intervention in that initial nation. National security is the use of military resources, economic, socio-political and psychological resources to protect a nation from internal and external threats. Most nations tend to over concentrate on military security at the expense of social economic and political aspects of security. The results are poor standard of living, hardship, poverty, oppression and high handedness as well as gross human rights violations. These conflicts and wars affects those nations, other neighboring nations as well as other foreign nationals in that nation, which if not checked by genuine humanitarian interventionist measures can result in global insecurity. To that extent territorial sovereignty, national security and humanitarian intervention are inter-related and conjoin triplets. Territorial sovereignty is predicated on the notion that all nations, notwithstanding their size, weaknesses and extent are equal, and independent within their respective territories. This obligation is pursuant to the general duty of all nations, to prevent direct or indirect act of aggression against the territory of another independent and sovereign nation. The United Nations Charter imposes a duty on all countries to develop friendly relations among nations centered on the observation and adherence to the principle of equal right and self determination of its citizens/nationals relying on Article 1(2) of the United Nations Charter. Ordinarily, in consonance with the above, the United Nations cannot even intervene in matters which are basically the internal affairs of any nation. Article 2 (7) of the United Nations Charter provides thus: 'Nothing contained in the present charter shall authorize the

⁸ Sammons A (2003). The 'Under- Theorization' of Universal Jurisdiction: Implications for Legitimacy on Trials of War Criminals by National Courts. *Berkeley J. of Intl. Law* 21: 111-143

⁹Maogoto J N (2008). Westphalia Sovereignty in the Shadow of International Justice? A Fresh Coat of Paint for a Tainted Concept in Jacobsen T, Sampford C, Thakur R (eds). *Re-envisioning Sovereignty: The End of Westphalia?* Aldershot, Ashgate Publishing. 61- 62

¹⁰ Jean Bodin, *De la Republique* 1577 in Bodin on Sovereignty (Cambridge University Press, 1992). He was the first political philosopher to develop a comprehensive theory of sovereignty.

United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state'. Nations are enjoined to resolve their international disputes by peaceful mechanism, in such a way, that international peace, security and justice are not jeopardized. See Article 2 (3) of the United Nations Charter

Consequently, all nations must in their international dealings refrain from the use of threat, or force against the territorial integrity and political autonomy of any nations. Hence all nations must not act in any form contrary to the purpose for which the United Nations was established. That is promoting and ensuring peace worldwide. The principle of territorial sovereignty postulates that all nations enjoy equal status, and sovereignty. And that the territorial integrity as well as the independence of all nations is inviolable. All countries possess the right to freely choose and develop their social, political, cultural and economic systems. Based on Article 2 (4) (d) and (e) of the United Nations Charter. Independent nations must mutually respect the territorial sovereignty of other autonomous nations, as it is the essential bedrock of international politics, and international law. Humanitarian intervention rests on the premises, that there are exceptions to the prohibition on the use of force against the territorial integrity of a sovereign nation. It is legally justifiable, where as a collective measure by the United Nations under the United Nations Charter, or in individual or collective self defense, a Nations territorial sovereignty is violated and thrown to the winds.¹¹ The question that has always arisen is if a given intervention comes under the excusable limit, as no nation is disposed to consenting to a rule that will permit territorial violation. Internationally, the nation is now obligated to protect its nationals, as evidenced by the plethora of international human rights statutes such as: Convention on the elimination of all forms of discrimination against women; Convention on the Rights of the Child; Convention against torture and other cruel or degrading treatment or punishment; Genocide Convention ; International Covenant on Civil and Political Rights; European convention on Human Rights and Fundamental Freedoms; African Charter on Human and Peoples Rights; and American convention on Human Rights, inter alia now in existence.¹²

Nations are no longer the sole determinant of human rights as there are now in existence numerous international human rights instruments, irrespective of nationality Nations are under obligations to uphold the rights created therein, pertaining to their citizens and other people resident therein. This is where the talk about intervention, in the domestic matters of other nations comes into the fore. Intervention can be for several reasons, such as to set free the citizens of a targeted nation from extreme human rights violations. Humanitarian intervention includes armed responses to certain actions, whether done by compatriots or outsiders which shock the moral conscience of mankind. Such reasons that will obviously warrant and justify humanitarian interventions include: (i) War crimes, and other crimes against humanity; (ii) Genocide, and ethnic cleansing, e.g Burundi; (iii) Loss of lives on a massive scale and other atrocious/outrageous misconducts e.g. Rwanda; (iv) The collapse of civil order, resulting in substantial loss of life in the context, that is now difficult to identify any authority capable of granting consent to international involvement to help restore order, as was the case of Liberia and Sudan (Darfur region); and (v) Interference with the delivery of humanitarian relief materials to civilian populations, whose safety are endangered.¹³ Humanitarian interventions are justifiable to save humanity before conflicts spills to the rest of the world.¹⁴

5. Assessment of the Advantages and Instances of Humanitarian Intervention

The advantages of humanitarian intervention include Restoration of peace and ceasefire; Resettlement and provision of food and relief materials to refugees and displaced persons; Fostering and enforcement of existing agreements and sealing of new peace deals; Promotion of good governance and installation of democracy; Resettlement of combatants and the civilian populace; Provision of health care services and housing facilities, as well as promotion of general development, re-building, reconstruction and rehabilitation; Restoration of human dignity, protection of vulnerable people such as women, children, the aged and the physically challenged; facilitating and monitoring elections; and separating warring parties apart, creating buffer zones, creating disarmament, and arms reduction. These benefits are not without losses and sacrifices, as the interventionists always suffer huge financial costs, loss of lives, because of the difficult and unfamiliar terrains as well as materials/equipment liabilities.

These are more instances of unilateral intervention by a nation or a group of nations by themselves under the umbrella of regional organization. A few instances will suffice here: ECOMOG intervention in Liberia, Sierra Leone and other West African countries under the auspices of Economic Community of West African States (ECOWAS). In 1971, India intervened in Bangladesh based on the contention that Pakistan violated specific

¹¹ J. Day, *Border and territorial disputes*, 2nd edition, London 1987 p.226.

¹² J. Donnelly, 'Human Rights, Human Crisis, and Humanitarian intervention' *48 International Journal* (1993) 63 West View Press Boulder, Pp 57 – 93.

¹³ C.R. Beitz: *Political theory and international Relations* (Princeton University Press, 1979) pp. 71 – 83.

¹⁴ *E.L Salvador v Honduras, Nicaragua Intervening* ICJ Rep. 1992, 355 ICJ

minimum standards of human rights in East Bengal, imprisoning large numbers of people and erupting into mass flight of refugees to India. India utilized military forces in Pakistan to free the political prisoners/other refugees.¹⁵ The United Nations, through the Security Council noted the circumstances in Kosovo (Yugoslavia) in 1998. It invoked its powers and took a number of measures to facilitate a peaceful resolution of the conflict. Such as approving arms embargo on both Yugoslavia and Kosovo. Ceasefire, negotiations and rehabilitation of the refugees/other displaced persons was also affected by the Security Council. In spite of the unwillingness of the United Nations to ask for humanitarian intervention, the North Atlantic Treaty Organization (NATO) deployed military forces to Yugoslavia.¹⁶

As for collective intervention, given the powers of the United Nations, it is the only body that can intervene in the internal matters of a nation, so as to apply and enforce measures in relation to threats to peace, breaches of peace and acts of aggression. Such interventions are to curb excessive abuses of human rights in contravention of a ceasefire order, initially ordered by the United Nations, or other actions occasioning breach of the peace, threat to peace and acts of aggression. Only the Security Council is mandated to maintain or restore international peace and security relying on Article 39 of the United Nations.

Until the Security Council agrees that the human rights violations in a nation are of such magnitude, that would threaten the peace, cause breaches of the peace or result in acts of aggression, it cannot ordinarily intervene in a nation. Therefore, there is a duty bestowed on the United Nations to resist every temptation to intervene in the internal affairs of a nation, even in the face of human rights abuses, except the intervention is warranted by monumental dimension of human rights challenges.¹⁷ In 1991, when Siad Barre was forcefully removed from power, Somalia erupted into a civil war, which culminated in several human rights violations, hunger and deaths. The United Nations, having considered the situation in Somalia, deployed humanitarian assistance with the agreement of the two notable factional leaders, to wit Mohamed Farah Aidid and Ali mahdi Mohammed. By 1992, an estimated 300,000 Somalis had died with about 4.5 million of the populace threatened by diseases and malnutrition, many millions of Somalis were said to be living in grave fear and risk and thousands of the Somali refugees escaped to Kenya. The then Bush administration in United States (US) which had been indifferent to the malnutrition problem in 1992 led a multinational intervention with other sixty-eight (68) nations in Somalia with the authorization of the United Nations Security Council. The ECOMOG forces under the auspices of Economic Community of West Africa States (ECOWAS) and the United Nations Forces also intervened on purely humanitarian grounds in Liberia at various times. Though, some of the interventions so far experienced come under the classification of unilateral intervention, the legality and justification of such intervention has been controversial. When a nation or group of nations acting on their own initiative, outside the approval of the United Nations, there is no basis to anchor their actions bothering on humanitarian intervention.. As for regional bodies/organizations such as ECOWAS, SADC African Union (AU) and European Union (EU), they are empowered to handle such matters. They must relate to the maintenance of international peace and security, provided their activities are not disapproved by their secretariat, and are consistent with the objectives of the United Nations.¹⁸

There is no gainsaying, that it is manifestly clear that the regional bodies are to act in consonance with the United Nations upon authorization from the Security Council. This is because it is the Security Council that has the basic responsibility to maintain international peace and security. Hence the treaties of regional agencies always affirm the supremacy of the United Nations Charter over theirs.¹⁹ In Africa, people see one another as neighbours and therefore cannot remain passive and indifferent, when their neighbours and other people are suffering, without rendering a helping hand and some assistance. This is because African are their brothers keepers, therefore it is wrong on grounds of morality and good conscience to see people dying, suffering, fighting and killing themselves for whatever reasons and African/ people will refuse to intervene to separate the combatants and alleviate their sufferings simply on the feeble excuse of such actions being the domestic and internal matters of those troubled nations.²⁰ Whatever statutes or exceptional circumstances one can rely on, permitting humanitarian intervention, in the territorial sovereignty of a country or in contrast to the discretionary powers of the United Nations to act

¹⁵ J. Levitt, 'Humanitarian intervention by Regional Actors in international conflicts: The cases of ECOWAS in Liberia and Sierra Leone' *12 Temple international and comparative law journal* (1998). 333 – 375.

¹⁶ J.K. Holzgrefe and Robert C. Keohane, *Humanitarian intervention, ethical, legal and political Dilemmas*, (Cambridge University Press, Cambridge, United Kingdom, 2003, available on <http://www.cambridge.org> 2001 p. 20 – 25, 29 – 7 – 2013 at 8.22pm.

¹⁷ D. Kritsiotis, 'Reappraising policy objections to human intervention' *19 Michigan Journal of international law* (1998) p. 1021.

¹⁸ See Article 52 of the United Nations

¹⁹ *Cameroon v Nigeria* ICJ Report (2002) para 22.44.

²⁰ *Frontier Dispute Case (Burkina Faso v Republic of Mali)* (ICJ Rep. 1986, 554).

through the relevant organ (Security Council), it is a license to vigilantes, opportunists, private military companies/outfits and mercenaries to resort to all sort of intervention which will be most likely to result in abusive use of force.²¹ Other strategic instances of humanitarian intervention applicability, in spite of territorial sovereignty principle are: US invasion of Iraq to punish Al Qaeda and its co-terrorist; America's military action in Afghanistan, Iran, and Pakistan; Soviet Union in Hungary in 1956; United States intervention in Cuba in 1961; U.S. Intervention in Dominican Republic in 1965; Tanzania intervention in Uganda in 1979; US in Grenada in 1983; Britain, France and US intervention in Iraq since 1991; ECOWAS in Liberia in 1992; United States intervention in Bosnia in 1995; ECOWAS intervention in Sierra Leone in 1998; UN and French forces in Cote D' Ivoire in 2010; United States intervention in Panama to remove former President Noreiga, as well as United States invasion of Nicaragua;²² UN intervention in Libya in 2011,²³ etc.

6. The Problems Encountered when Humanitarian Intervention Clashes with Territorial Sovereignty

The choice between absolute territorial sovereignty and humanitarian intervention cannot be effectively carried out without sacrificing the other. Each of the principles has in it, certain unseen and unpleasant harm. A nation can hide under the absolute territorial sovereignty principle to perpetuate mayhem and evil on its citizens in gross contraventions of treaties, obligations or laws. Similarly, humanitarian intervention can be canopy for powerful nation to change the political structure and international leanings of weaker nations.²⁴ Expectedly the choice is not dependant on sentiments, but on the basis of law, politics and good conscience (Morality). If it could be made based on sentiments, the natural choice would be to lean on the side of humanity. As for the principle of territorial sovereignty, its existence as an established principle of law is not in doubt.

Humanitarian intervention and customary international law: The poser pertaining to the existence of humanitarian intervention as a principle of customary international law has attracted diverse views among eminent scholars and statesmen. Customary international law is unwritten and comes from the real practices of countries over time.

Humanitarian intervention and international convention: International conventions/treaties are established practices expressly recognized by the contracting nations. They are international agreement concluded between nations in written form and governed by international law. They are clear agreement serving as alternative legislation by nations. They are binding, enforceable themselves, but depicting the qualities of the global world.

Humanitarian intervention and practices of nations: History is replete with some instances, where a nation or group of nations had intervened in the domestic affairs of another nation. Between 1827 and 1830, France and Russia intervened in Greece to abate the massacre in Greece. From 1860 to 1861, France intervened in Syria to combat the massacre in that nation; Russia intervened in Bosnia– Herzegovina and Bulgaria in 1876 to 1878; and Greece, Serbia and Bulgaria intervened in Macedonia from 1912 to 1913; etc. Despite different reasons being responsible for humanitarian intervention, and their mode of operations, one thing is clear that the principle is widely accepted as an unwritten valuable aspect of international law and politics³³. In the *Nicaragua case*³⁴ the International Court of Justice also noted that the Charter does not cover the whole area of the regulation of the use of force in international law. The court greatly emphasized the separate existence of customary international law and treaty law, noting that a rule of customary international law is not repealed or subsumed by the existence of a treaty on the same subject matter. Thus, given the practice of nations and the opinion of notable scholars on international law, it can be submitted that the right of humanitarian intervention had been strongly established under customary international law before the emergence of the United Nations Charter. After 1945, the right still survived as a rule of customary international law existing side by side with the UN Charter. Besides, nations have continued to exercise this right even after 1945 and up till date.

Humanitarian intervention and legal obligations/conducts: Humanitarian intervention flows from such practices by nations. But such must be legally imposed conducts/obligation. The decision to intervene in a given nation, and not to in another, buttresses the material self benefit and motivation for humanitarian intervention.

The United Nations Charter: There appears to be consensus position that the United Nations Charters did not allow humanitarian intervention. This is because the Charter is filled with provisions prohibiting the use of force in the internal affairs of nations.²⁵

²¹ Bright Bazuaye&OsaigbovoEnabulele 'International Law (2006) Ambik Press, Benin City p.108

²² W. Michael Reisman, 'Sovereignty and Human Rights in contemporary International Law', *The American Journal of International Law*, Vol. 84 (1990), 872

²³ A. Hehir, *Humanitarian intervention: An introduction* (Palgrave: Macmillan London, 2010) p. 37.

²⁴ H. Peter, 'Humanitarian intervention: is There a need for a legal Reappraisal?' *European Journal of International Law*, 12 (2002) pp. 437 – 467.

²⁵ The UN Charter available at <http://www.un.org/aboutun/charter/chapter1.htm>

From the above, it is doubtful if all instances of intervention are justified on humanitarian grounds. The series of condemnation that normally follow the invasion of the territorial sovereignty of another nation and the different motives for such intervention have depicted the practice as very distasteful and controversial.²⁶ The very act of intervening in the domestic affairs of a targeted nation without its approval makes the intervention unacceptable on the targeted nation and other sovereign (nations) who are the allies of the targeted nation. Where a country belongs to an international organization such as the African Union (AU), United Nations etc by subscribing to its membership, that nation must accept everything done by that international body, and cannot be heard to complain afterwards, that it did not authorize that act or actions.²⁷ So if the United Nations (UN) intervenes in a targeted country on humanitarian ground e.g. violation of human rights no member nation of the African Union/United Nation can disagree with such humanitarian intervention as that country is barred from complaining that it did not authorize such intervention. Acts of inhumanity however blameworthy, which do not affect the rights of other powers, or their citizens, remain the sole affairs of the citizens of the nations where they are perpetuated. This is because those humanitarian ends are almost always mixed with other less laudable motives for intervening.

All instances of humanitarian intervention being portrayed are all acts of trespasses on the territorial sovereignty of the targeted nation, which were attemptedly justified on humanitarian grounds. For example, the United States intervention in Panama was covered by humanitarian reasons, whereas the real motive, as later declared by President George Bush Snr, was essentially to help restore democracy to Panama and bring Noriega to justice for drug trafficking offences leveled against him by the United States. In Libya, the UN intervened because western powers, especially the United States wanted to punish Gaddafi. The unwholesome result of humanitarian intervention is that only minimal cases are really done on compassionate grounds. No wonder nations pick and choose the humanitarian violations that they would wish to intervene in. This best explains why there were interventions in Bosnia and Darfur, and not in Rwanda, where 800,000 (eight hundred thousand civilians) were slaughtered. And US forces pulled out in Somalia, while the United States persisted in Vietnam, Afghanistan and Iraq. The decision to intervene in one nation and not the other reveals the material self interest motivation for humanitarian intervention.²⁸ This can also explain why, there was no humanitarian intervention, when the world superpowers partitioned Africa. There cannot be greater threat to international peace, security and human rights abuses, than when there was French policy of assimilation and the British divide and rule policy, as well as South African apartheid regimes. Though these repressions of the weak by the mighty spanned several decades, no one intervened to stop them.²⁹

Unfortunately, the nations that perpetuated these outrageous atrocities are now the custodian of human rights and champions of humanitarian intervention.³⁰ This is because some nations and human beings are more superior to other nations and human beings. This brings us to the crossroads that is the choices opened to be made. Should there be another exception to the territorial sovereignty principle in favour of humanitarian intervention? People primary loyalty is to self preservation, particularly in an interrelated and interdependent world, where internal crises in distant places produce undesirable results economically, socially, politically and health wise. These occurrences show the inevitable crossroads between morality and law in a topic of this nature. The choice now is between legality and morality...There is no express provision in the United Nations Charter under which the Security Council may authorize humanitarian intervention. However, it can be said that the Security Council can authorize humanitarian intervention in cases where the humanitarian crisis really threatens international peace and security. Here, the Security Council would be acting in accordance with its powers under chapter seven of the United Nations Charter.³¹ A fall out of the foregoing consideration is that although there is a right of humanitarian intervention in international law, nations practices are divergent and there is no agreement as to the principles guiding such interventions. Can intervention be conducted by a single state acting alone and unilaterally or must it be by a group of countries? Must intervention be based on ending tyranny and grave human rights violations only or can it be extended to include the restoration of democracy? Is the authorization of the United Nations

²⁶ N.J. Wheeler, *Saving strangers: Humanitarian intervention in international society* (Oxford University Press, Oxford 2002). 35.

²⁷ J. Bordat, 'Globalization and war, the historical and current controversy on humanitarian intervention' in *International Journal of Social Inquiry* 2 (2009) 1, pp. 59 – 72.

²⁸ L.S. Sunga. 'Is Humanitarian Intervention Legal?' in the *e-International Relations* website: <http://www.e.ir.info/?P=573> available on internet on 20/7/2010 at 7.00pm.

²⁹ In the legal status of Eastern Greenland (*Norway v Denmark*) PCIJ Rev. Sev. A (1993) No.53

³⁰ B.S. Brown, 'Humanitarian intervention at a Crossroads' (London: Mary L. Rev. Publishers, 2000) p. 27.

³¹ A.O. Enabulele 'Humanitarian intervention and territorial Sovereignty: the dilemma of two strange bed fellows', available on <http://Wikipedia/org> 2013 P.527 30-7-2013, at 7.30

Security Council or a regional body a sine qua non or is it enough that the intervening nation or nations enjoy popular support of the international community?³²

7. Conclusion and Recommendations

This paper rests on the position that a nation or group of nations intervening using force to end atrocities, when it is evidently expedient that there are humanitarian challenges are likely to have their action pardoned. Territorial sovereignty and humanitarian intervention are useful and strategic principles in international law, yet they are incompatible with each other. They are two strange partners, for they are always at crossroads with each other. Humanitarian intervention and territorial sovereignty are products of politics, international law and ethics. It is law to the extent that no country can live in isolation of other countries, and the relationship existing between countries is essentially regulated by international law. Both principles are ethical, as they bothers on morality of what is good or bad. Humanitarian intervention and territorial sovereignty are ‘children’ of politics, as they relates to governance, negotiation, decision making etc. Humanitarian intervention is more of politics and material self interest than of law and humanity. One of the greatest challenges at the international scene presently, is how to deal squarely with other nations who, due to their self interest fan the embers of domestic conflicts and support dictatorial governments, or warring groups for their selfish motives such as illicit arms deals, foreign investment protection or other interest within the targeted nation. With the end of the cold war and resultant end in the material self interest of the United States, the United States support for non-communists government in various parts of the world abruptly declined. It is doubtful, if the United States today, would most likely ignore the atrocities of any nation which religiously follows her concept of the fight against global terrorism. Similarly, the neglect by the United Nations to expeditiously respond, in a bold and sufficient way, to issues threatening global peace and gross human rights abuses can be primarily attributed to material self interest. For example, China and Russia are the main obstacles to a stronger international action against Sudan by the Security Council, in spite of unabated and unmitigated atrocities in the Darfur region of Sudan. It is allegedly contended that China owns a forty (40) percent share in Sudan’s oil production, and Russia is seen as the dominant arms supplier to the Sudanese Government. Similarly, the United Nations is yet to successfully intervene in Syria because Russia and China are strong allies of Syria. Instead of forcefully confronting territorial sovereignty, what is to be effectively tackled is the reason for the monumental failure of the preventive and corrective steps initiated by the Security Council. Humanitarian interventionist measures are desirable and appropriate, as no nation is an Island and can conveniently solve all its problems. This paper contends that humanitarian intervention and territorial sovereignty, though divergent principles can be greatly strengthened to transform their potentials towards achieving a new world order where peace, justice, and development reigns supreme.

The following suggestions may be apt. The power to act where there is a breach of the peace should be removed from the Security Council and given to the UN General Assembly, subject to the vote of two-third majority of the General Assembly members. Where the power must remain in the Security Council, it must only be in operation provided two-third majority approves it. The veto power of the Security Council should be nullified or removed or enlarge to accommodate more nations drawn from all the continents of the world. The world should be willing and ready to treat any nation that ignores the embargoes and other consequential measures of the Security Council as an enemy and aggressor and accordingly be so treated through punitive sanctions. Nations and people must also deliberately refrain from promoting conflict over peace. Dialogue, negotiations, arbitration, appeasement, mediation and other peaceful methods of conflict resolution at the international scene, should be greatly encouraged and utilized. The United Nations and the international community must always act timeously to amicably resolve conflicts, as peace slowly degenerates into violence and conflicts. People in government should govern, lead and serve their country well. They should strive at all times for the common good of their nations and their citizens, instead of self, inordinate desires and material benefits. This will drastically eliminate discord promote a just and peaceful world. Humanitarian intervention should be based purely on genuine interest and not centered on selfish interest. The relevant United Nations Statutes should be amended to clearly give them the requisite legal frame work expressly empowering humanitarian interventions in all countries of the world, once the stipulated criteria, procedures and modalities are meant.

³² L.S. Sunga. ‘The Role of Humanitarian intervention in *International Peace and Security: Guarantee or Threat? The use of force in international Relations: challenges to collective security, International progress organization and google Books* (2006) pp. 41 – 79.