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THE ISSUE OF THE LEGALITY OF HUMANITARIAN INTERVENTION

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From the very beginning of the emergence of international law as a study and in the works of many modern scholar, the point of view about the legality of humanitarian intervention is widespread.

Interference in the internal affairs of other States on the grounds of humanity was recognized as legitimate by the majority of international law scholars both in the 18 century and in the 19 century. During this period, the great powers of the "European concern" actively tried to protect the Christian citizens of the Ottoman Empire from persecution and extortion by the Porte – Ottoman government (thus, as a result of the protection provided by France to Lebanese Christians, Lebanon gained its independence in 1861). The legality of the right to intervene was confirmed in many international treaties and agreements of this period of history (for example, the Treaty of Berlin of 1878) [1]. The concept of humanitarian intervention was widely used in the practice of international relations to protect national and religious minorities until the XX century. However, the well-known international lawyers Brownlie and Humphrey concluded that "in reality, all interventions of that time took place for political purposes, far from the ideas of humanism" [2]. Since the World War II and the formation of The United Nations, the right to use force in international relations has been severely restricted. The UN Charter completely prohibits States from using armed force first unilaterally. Nevertheless, many statesmen and scholars still argue about the legality of humanitarian intervention, which has been repeatedly used by individual States as a pretext for the use of armed force. There is an opinion that all the controversy about the role and place of humanitarian intervention in the maintenance of international peace and security can be reduced to a discussion of the semantic content of this formula.

In the concept of "humanitarian intervention" there is an internal contradiction, which the English Professor Lawrence Friedman called the simultaneous presence of two meanings. The first determines the nature of the action taken in the name of maintaining peace and stability. The second is a gross violation of the state's sovereignty [3]. One of the most comprehensive definitions of humanitarian intervention was given in a joint report by two Dutch non-governmental organizations – the Advisory Committee on human rights and foreign policy and the Advisory Committee on public international law. The report defines humanitarian intervention as "the threat or use of force by one or more States within the territory of another State for the sole purpose of stopping or

preventing large-scale, serious violations of fundamental human rights that are occurring or are likely to occur in the near future, regardless of nationality, and such rights include in particular the right of individuals to life, in cases where the threat or use of force is carried out either without prior authorization from the competent UN bodies, or without the permission of the legitimate government of the country on whose territory the intervention took place" [4]. Almost all international scholars understand humanitarian intervention as the use of armed force. This is "a military intervention in a country, carried out regardless of the consent of its government, aimed at preventing widespread suffering and death of the population" [5].

On April 9, 1949, in response to the claim that the doctrine of humanitarian intervention could be used, the International Court of Justice of the United Nations stated the following in its decision: "the alleged right of intervention can only be considered by the Court as a manifestation of a policy of force, one that in the past led to the most serious abuses and which cannot, whatever the defects in the organization of international communication, find a place in international law...Intervention is perhaps even less permissible if it is carried out by powerful powers, since it may lead to a perversion of the entire system of international justice" [6].

However, the practice of international relations provides many examples of acts of interference in the internal affairs of States under the pretext of humanitarian motives. The controversy over the legality of humanitarian intervention became particularly acute and tense after the North Atlantic Treaty Organization (NATO) military actions in Yugoslavia, which began in March 1999. Accusing the leadership of Yugoslavia of committing genocide against the Albanian population of the province of Kosovo and referring to the prevention of a humanitarian disaster, NATO military forces began to launch air-bombing attacks on the territory of the Federal Republic of Yugoslavia [7]. Describing the consequences of the "humanitarian intervention" of NATO in Yugoslavia, Prof. G.M. Melkov writes: "Over the 79-day air war against Yugoslavia the US and NATO destroyed the objects protected by applicable norms of international law: hydroelectric power plant, chemical enterprises and factories, oil refineries, sewerage system and drinking water, creating the risk of a massive epidemic among the civilian population. Civilian homes and objects, columns of refugees were destroyed. The flow of refugees (Serbs and Kosovo Albanians) was approaching a million people, creating a real humanitarian disaster for the neighboring small countries of Europe. In 79 days, the USA and NATO almost destroyed the economy of the whole country, without entering into the combat contact with the forces of Yugoslavia, without loss from themselves, in the absence of Yugoslavia's modern and effective air defense systems, and also in the lack of missile weapons, which would allow the country to retaliate a missile attack on U.S. cities and NATO countries in the exercise of its right to self-defense against aggression under article 51 of the UN Charter" [8]. Thousands of Yugoslavia's civilians (including those living in Kosovo) lost their right to life not because of the Miloshević regime, but as a result of the intervention. Washington and Brussels could not help but realize that the destruction of the socio-economic infrastructure would condemn the entire Yugoslav people to deprivation and suffering.

The environmental consequences of the bombing were also appalling. It is appropriate to ask the question: Did the US and NATO humanitarian intervention in Yugoslavia prevent a humanitarian disaster in Kosovo? Absolutely no. By acting as defenders of the Kosovo Albanians, the United States and NATO have achieved that the Serbs are practically squeezed out of Kosovo. "The United States and NATO laid a time bomb in Kosovo and created a smoldering hotbed of hatred between Orthodox Serbs and Muslim Albanians for many years to come" [9].

The triumph of force over law was repeated in the spring of 2003 in Iraq. NATO justified its invasion of Iraq without UN authorization by the need to rid the Iraq's people of the dictatorial regime of Saddam Hussein, again invoking the right of humanitarian intervention. The government of Iraq was charged with violations of humanitarian law and crimes against Kurdish rebels, as well as preparing for combat using weapons of mass destruction allegedly available in the country. On March 20, 2003, despite the absence of UN sanctions, a coalition of the United States, Britain, and Australia launched an invasion of Iraq. The intervention was carried out with the active use of rocket and bomb attacks and the introduction of a land group of about 150 thousand people into the

country. On April 9, 2003, Baghdad fell, and with it the regime of Saddam Hussein. At the same time, the CIA Commission was not able to find traces of weapons of mass destruction production in Iraq [10]. And the violation of international humanitarian law by the interventionists themselves during the military operation almost had more serious consequences for the population of Iraq than the harsh policy of Saddam, whose most egregious repressions remained in the late 90s. While proclaiming the protection of human rights as a motive for intervention, the United States and the United Kingdom failed to ensure that the intervention itself complied with international human rights and humanitarian law. In addition, the overthrow of Saddam's government led to mass unrest in the country, and the coalition forces were unable to ensure public order in the country.

Thus, based on the experience of interventionist actions in both Iraq and former Yugoslavia it can be claimed that humanitarian interventions often create humanitarian disasters themselves. This means that not only the legal, but even the moral aspect of the use of force against a sovereign state does not stand up to the test of "strength". In order for NATO's military intervention to be legitimate, that is, justified from a moral point of view, it must, of course, have the impartiality of an "international arbiter" to the conflicting parties and an objective assessment of the situation, and there can be no mistakes in the choice of means to eliminate injustice. In no case should a "judge", for the sake of restoring violated rights and justice, cause arbitrariness himself, or inflict greater damage than what he prevents [11]. In fact, the principle of impartiality was initially violated. In the course of the same NATO military action in former Yugoslavia an injustice was committed on an even greater scale than the hypothetical reprisals against the Yugoslav Albanians. Achieving the declarative goal set by NATO strategists – the elimination of injustice – was carried out on the principle of "the end justifies the means". It is also clear that the North Atlantic Alliance's position on respect for individual and collective rights is devoid of principle and selective [12]. It is significant that the issue of human rights is raised seriously only in relation to those States that pursue policies that are contrary to the interests of the transatlantic community. All this indicates a lack of legitimacy in the actions of humanitarian interventionists.

Therefore based on situations of former Yugoslavia and Iraq in the modern world there is a real danger of using such a sensitive matter as human rights protection as a cover for violent actions against sovereign States. The global system of international security must be built on a solid foundation of legitimacy. The response to humanitarian crises and the suppression of violations of human rights and freedoms must be carried out in accordance with the UN Charter. The use of force bypassing the UN mechanism should be completely excluded. The legitimacy of humanitarian interventions does not stand up to criticism either from the view of legality, compliance with the norms and principles of customary and conventional international law, or from the view of legitimacy, justification and adequacy, since, as practice shows, political motives in interstate relations always prevail over humane ones.

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