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The Question about Humanitarian Intervention in
Darfur

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Abstract

The question about humanitarian intervention in Darfur poses many great obstacles. The essay explores the various factors, such as the legal, moral and political aspects of humanitarian intervention. The main purpose of the study is not to understand the current conflict in Darfur but to explain and comprehend why no state action has been taken towards the government of Sudan to stop a humanitarian crises that combines the worst of everything and most likely a case of genocide. The most complex issue in this essay is the fact that states most often do states have the opportunity to reduce the massive suffering among foreigners at comparatively low cost to their own citizens but most often they fail to do so, mainly often due to their lack of interest in a certain conflict. Therefore I will also examine a variety of political and legal theories and furthermore analyse various Security Council Resolutions and verbatim records thereby creating an in-depth and clear understanding of the complexity of the subject.

Keywords: UN Humanitarian Intervention; Security Council; Darfur; Human Rights; Legality; Political Will; Realpolitik.

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1.0 Introduction

The international system known today is built up on the shattered ruins of millions of innocent victims that were killed by their own governments or in war. In the twentieth century were approximately 40 million people killed in regular wars while, approximately 170 million were killed by their own governments.¹ Today in the light of the Holocaust, Rwanda and other genocides, another crises is taking place, referring to the situation in Darfur. A crises that combines the worst of everything, armed conflict, war crimes, crimes against humanity, extreme violence, sexual assaults, desperate refugees, hunger, disease and most likely genocide. The ethics of the Holocaust and the phrase of *never again* entail not what we must do but what we must never again permit to be done. States do most often have the opportunity to reduce the massive suffering among people abroad at comparatively low cost to their own citizens, but most often they fail to do so and do to some degree try to ignore the most genuine human rights crises.

Humanitarian intervention is a concept that provokes many diverse feelings and questions. The idea to use force to stop crimes against humanity may seem as an attractive idea from moral perspectives but what makes the debate so difficult to understand and comprehend is that it involves so many complex aspects, thereby included the three most essential organizational systems of human social life, law, morality and Realpolitik. These three aspects involves many obstacles and challenges in this context and some of them implicate that scenarios like the situation in Darfur, will not be dealt with in a serious and appropriate manner seen from a humanitarian perspective.

1.1 Aim of study

The purpose of the study is mainly to explore why neither the UN or any state has taken any action against the government of Sudan in regard to the mass atrocities it has been carrying out during the last couple of years. The main purpose of the study is not to explain or understand the situation in Sudan but rather try to comprehend and understand why no enforcement, whether legitimate or illegitimate, has taken place.

¹ Williams & Bellamy. 2006: 144

1.2 Research Question

The legal, moral and political aspects involve many obstacles and challenges. Some of these aspects lead to a situation where the humanitarian framework is disregarded. This lead to the following question:

- Which factors regarding politics, legality and morality determine whether a humanitarian intervention should be carried out in Sudan?

1.3 Hypothesis

There are many complicated factors in carrying out a humanitarian intervention as a military enforcement. These factors do to a large degree cohere with Realpolitik, which is politics based on practical rather than moral or ideological considerations, and other factors that are emphasized in the fact that most nation states only are willing to carry out a humanitarian intervention if such an intervention would benefit their national interests. China is the only major state actor that has any economic or political interests in Sudan, and since China is not well known for human rights protection for its own citizens, they are not willing to sacrifice and / or take the necessary steps to resolve the conflict. Furthermore I will also argue that for people with a commonsense morality it is not the issue of Realpolitik that is the issue but rather the question of political philosophy and / or the principle of non-intervention or other humanitarian concerns.

1.4 Definition of Humanitarian Intervention

There are no clear-cut definition of the term humanitarian intervention, even though there have been many attempts to form the most precise and comprehensive one. It should also be noted that the definitions used here derives from ethical perceptions and is thereby not a legal binding definition. The reason for why it is important to make a clear definition of the subject is of course to get the most precise understanding of what humanitarian intervention comprise. The most useful

definitions in this context is made by the visiting research scholar and lecturer at the department Political Science of Duke University, J.L. Holzgrefe.

“ ...the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals others than its own citizens, without the permission of the state within whose territory force is applied.”²

Holzgrefe’s definition involves four important elements such as, 1) the threat and use of force, thereby excluding non-forcible actions; 2) the aim is to prevent vicious and systematic human rights violations; 3) the intervention does not involve the security of the intervening states own citizens; and finally 4) the intervention is carried out without the consent of the abusing state.

1.5 Methodology

I have primarily been working from a deductive method³ where I have used the various theories but mainly the realistic approach as the starting point while using the empirical data to support or refute the various theories. The thesis is based on a study of the empirical data of the factors that determines whether a humanitarian intervention should be implemented in Sudan. Furthermore have I used a qualitative research method where I through an analysis of collections of textual data will attempt to make an interpretative understanding of the complexity of the subject.⁴

1.5.1 Material discussion

The material I have decided to use reflects to some degree the variety of different materials that can be used to create a comprehensive understanding of humanitarian intervention. This material is to a large degree based on academic writings in books and articles. Most of books used are anthologies, and are thereby a collection of articles from various different writers. The articles I have used do mostly derive from

² Holzgrefe. 2003: 18

³ Rienecker & Jørgensen. 2004: 211

⁴ Ibid. 220

a through-going search in article databases respectively from ELIN from Lunds Universitets Bibliotek and REX from the Royal Danish Library. I have also used various other kinds of materials such as various reports being state-sponsored and NGO-sponsored to get a broad variety of different important aspects of the subject but also various Security Council Resolutions. In addition to this I will also use various kinds of basic documents such as various and declarations that might be useful and contribute to this context.

I have attempted to study both the primary and secondary literature with a critical perception. The primary literature is the material in which I will find my empirical evidence, such as report and resolutions etc. and the secondary literature are the basic books and articles I have used to get the basic knowledge about the subject. I have attempted to be even more critical to the primary literature than the secondary. The reason for this is that reports, resolutions and various other kind of material of that sort tend to be very political influenced, even though most of the work is done by independent NGOs.

1.5.2 Previous work

The study of humanitarian intervention is comprehensive and the amount of literature has expanded during the last couple of years in books and various academic articles. The reason for this is naturally that it is a widely debated subject with many different aspects and perceptions but also because of the recent events such as Rwanda, Kosovo and September 11th and naturally the situation in Sudan that has opened the debate and given it even further considerations. In addition the exhaustiveness is a result of the complexity of the subject that involves law, ethics, politics and other fields of study.

Most of the literature I have found is based mainly on articles and books that cover various different aspects of humanitarian intervention.⁵ This does also mean that in every article and book there is a clear effort to present humanitarian intervention from different conflicting views. So even though it is hard to find recent

⁵ Holzgrefe & Keohane. 2003:

literature that rejects humanitarian intervention completely there are still some places in the literature where it is possible to gain the right understanding of a rejectionistic approach. Most of the literature does support the concept of humanitarian intervention in extreme cases of mass atrocities,⁶ while others such as Wheeler in *Saving Strangers*, is examining the impact of Realpolitik in showing that most humanitarian interventions are carried out by states that have mixed motives in their determination to act.⁷

1.5.3 Demarcations

Due to the enormous amount of subjects and the complexity and quantity of the selected subject is it unfortunately necessary to limit the scope of the essay. This does, however, not imply that the topics I have deselected are not relevant or important elements of comprehending and understanding the issue of humanitarian intervention, rather some of the topics can be just as relevant as the subjects I have chosen to use in the essay. Even though I write that these below-mentioned subjects will be deselected it will happen that some of the subjects will be mentioned if they might be relevant for the discussion, but none of them will be dealt with as isolated subjects. The subjects that I will include in the essay are the historical background for humanitarian intervention included the traditional just war theory. Furthermore I will not be dealing with such subjects as, humanitarian intervention as an oxymoron with human rights, sanctions, consequences on a broader scale in regard to non-authorized and / or unilateral interventions. Finally it should be noted that the subject will not be dealt with from the perspective of other international or regional instances such as the African Union.

1.5.4 Disposition

I have divided the essay into five parts. In the first part I will examine three political philosophical theories about humanitarian intervention. The second part will explore whether a humanitarian intervention ever can be legitimate according to international law examined from two conflicting theories, and I will look at some of the more

⁶ Teson, 2003:

⁷ Wheeler, 2000:

humanitarian approaches towards a humanitarian intervention. In the fourth part I will explore the empirical example of the situation in Darfur and furthermore take a look at how the Security Council have argued in the debates regarding humanitarian intervention in Darfur and explore the various political national interests in Sudan. In the fifth and final part, I will carry out an analysis of all the examined parts and furthermore discuss these elements in the lights of the historical developments after September 11th 2001, before the conclusion.

2.0 Theory

This chapter focuses on the legitimacy and furthermore the objections towards humanitarian intervention. The chapter will comprise of three particular theories that have been highly critically selected among various other theories that could have been just as relevant. The theories chosen derive largely from the political philosophical framework and show the problem of humanitarian intervention in Realpolitik. The three selected theories are all adaptations to the aspect of humanitarian intervention and have furthermore various other counterparts of the certain theories that could be just as significant as the chosen ones.

2.1 Liberal Cosmopolitanism

The liberal theory is based on the idea that all men are equal and individuals have abilities to make them self-sufficient and the society need to allow them to develop and utilize their abilities to a good outcome.⁸ Individuals are right holders, which imply that actions committed by an individual can have normative consequences for others. This leads to a theory wherein, 1) there is an obligation to respect those rights; 2) an obligation to promote rights for others and; 3) an under appropriate circumstances have an obligation to rescue victims of tyranny or anarchy.⁹

Liberal cosmopolitanists argue that the main goal of their foreign policy is to liberalize the world and to impose their values upon non-liberal and non-democratic states.¹⁰ According to Professor of Law at Florida State University, Fernando R. Teson, there are two important aspects of liberalism in coherence with humanitarian intervention. The first is that state tyranny and extreme anarchy are serious violations of the liberal doctrine, secondly; external intervention is morally permissible to end any kind of injustice towards individuals.¹¹ While the first argument is obvious from a liberal perspective the second is more controversial. Teson bases his argumentation on the Kantian approach towards the state, wherein the states are justified as long as they are created by autonomous agents, where the government is consistent with the

⁸ Onuf. 2003: 33

⁹ Teson. 2003: 94

¹⁰ Janse. 2006: 685-686

¹¹ Teson. 2003: 94

rights of the individual. If governments on the other hand are inconsistent with the rights of the individuals they are no longer legitimate and humanitarian intervention can thereby be seen as an instrument to promote the state from the anarchical or tyrannical conditions towards a more disciplined society without any governmental suppression.¹² The concept of sovereignty should thereby be understood as an instrument to promote the welfare of its citizens and when the state fails this obligation, it loses its rights of sovereignty.¹³ However, the obligation of humanitarian intervention is not absolute. The decision to intervene should be taken in coherence with Realpolitik and other political and ethical considerations.¹⁴ Liberal cosmopolitanism proposes that a humanitarian intervention is justified only in cases of egregious violations of basic human rights,¹⁵ and in such situations other states do have a *duty* to intervene if it can be done at a reasonable cost to themselves.¹⁶

2.2 Communitarianism

Communitarianism, argues that norms are morally binding if they match the cultural beliefs and customs of particular communities.¹⁷ Nations have an intrinsic value and enjoy a common background and should thereby be free to determine the political direction of the state or community. The theory is thereby shifting the interest towards the community and society and away from the individual. According to Michael Walzer does communitarians argue that in most cases of humanitarian intervention do the victims not want to be rescued, rather they would like to be controlled by tyrants than to see their homeland be invaded by an foreign army.¹⁸ A communitarian approach depends upon the consent of its members and the moral position of a state depends on the shared life and liberty of its members. If no such common life exists or if the state does not protect the rights of the citizens the state has thereby no moral justification but it is only members of the regime that can declare it illegitimate and

¹² Ibid. 97-99

¹³ Williams & Bellamy. 2006: 148

¹⁴ Teson. 2003:127

¹⁵ Janse. 2006: 687

¹⁶ Teson. 2003: 97

¹⁷ Holzgrefe. 2003: 33

¹⁸ Walzer. 2006: 60

change or reform the community from the inside and to choose their own government.¹⁹

2.3 Realism

According to the realist theory states are based on rational egoism that acts in accordance with their national political interests, whether financially, materially or militarily. When they do not follow this approach a special explanation is required and such an explanation is very seldom because it needs to be motivated by altruism, which is not a part of the realists approach.²⁰ Furthermore, political realism does refute the concept of international law because the interest of the state always should be the dominant consideration.²¹ Realism furthermore dismisses the idea of global justice and considers it to be myth,²² and argue that even though moral norms can be relevant to foreign politics the conditions of the contemporary policies are based on lack of security and therefore must the self-interests override the moral norms.²³

Wheeler argues that the realist objection towards humanitarian intervention can be grounded on a few but highly significant principles of rules. 1) Humanitarian intervention is always based on the national interests of states and if intervention would be legalized states would neglect the structure of the world order. 2) Since states are always motivated by their own national self-interests they would never intervene primarily for humanitarian reasons. States would in some cases be willing to intervene but only where the certain states have a national self-interest and where part of the motivation could be justified on humanitarian reasons. 3) Due to the fact that states always apply the principles of humanitarian intervention on a basis of selectively they are only willing to intervene because of self-interests and not because one situation is worse than the other. 4) States are not willing to risk their soldiers life to save stranger only on the grounds of humanitarian reasons where there is no state-interests present.²⁴

¹⁹ Ibid. 53-54

²⁰ Brown. 2002: 154

²¹ Nardin. 2006: 450

²² Ibid. 453

²³ Dower. 2002: 78

²⁴ Wheeler. 2000: 29-32

2.4 Summary

The three political philosophical frameworks, does show some of the various approaches towards humanitarian intervention. 1) The liberal cosmopolitanism framework argue that liberal states have an obligation to rescue victim under appropriate circumstances and a duty to intervene in another states affairs. 2) Communitarianism dispute this approach arguing that nations have an intrinsic value and thereby do they should they be free to determine the political direction of the state by themselves without any intervention from outside states. Only the members of the state can change the state and thereby choosing their own direction and government. 3) The realist theory is based on rational egoism that only acts in accordance with the interest of the state. According to this theory would a state never intervene primarily for humanitarian reasons, rather they would only intervene in a conflict where the state does have any national political interests.

These three frameworks show the various approaches, most notably and important regarding humanitarian intervention is the realist approach. The next chapter is about the legal aspects of international law from the perspective from two various frameworks, legal realism and classicism.

3.0 Legal aspects of Humanitarian Intervention and Human Rights in International Law

The question about the legality of humanitarian intervention is determined by the norms of international law, which comprises of treaty and customary law. This chapter will focus upon some of the most important aspects of international law in relation to the legality of humanitarian intervention from the perspectives of legal realism and classicism.

The two most common frameworks are most often known as classicists and legal realists. The classicists framework is based on a conservative approach arguing that the treaties are based on a textual structure that means the texts must be read after their original intensions where the sentences only have simple meanings. Furthermore they also argue that the principles of rule of law are legally binding as long as the treaty is maintained.²⁵ They claim that the international law is the best approach to avoid powerful states to misuse their influence and thereby create a new world order that is not based on the international law.²⁶

Legal realism on the other hand believes that single words can be changed to adapt to circumstances of present time, the law is subject to many imperfections that can and must be changed to the varying circumstances. The changing of a word may not make the text obsolete and the purpose is that states may not be constrained by custom to compromise their interests.²⁷ Furthermore legal realists argue that the international law does not follow the realities of contemporary time and thereby the international law is on the risk of becoming irrelevant for the international society.²⁸

These two approaches play a relevant part of understanding the complexity of the legality of humanitarian intervention and their approaches towards relevant principles regarding humanitarian intervention will be examined and discussed in this chapter.

²⁵ Farer. 2003: 61

²⁶ Holzgrefe. 2003: 50

²⁷ Farer. 2003: 62-63

²⁸ Holzgrefe. 2003: 50

3.1 Principle of Non-Intervention

Humanitarian intervention is always debated, as an exception on the principle of non-intervention. States are always forbidding authorising their use force within the jurisdiction of other states. The principle of non-intervention is based on the norm that the state has a fundamental principle in defending its domestic jurisdiction and where the sovereignty of the state should be unchallenged. The norm has a long-standing history drawn from the Treaty of Westphalia in 1648²⁹ and has since then been reaffirmed on a numerous occasions and in various treaties, especially in the UN Charter article 2 (7).

The principle of non-intervention is one of the most fundamental pillars of the international society but even though is it still disputed on how it should be interpreted. Even though the principle seems to rule out intervention for human rights is it still disputed if human rights can be considered matters “within the domestic jurisdiction of any state”³⁰ or should be considered as an universal jurisdiction due to various treaties and the Charter that support human rights.³¹ A way to address to complexity between the non-intervention principle and the human rights dogma can be seen from the approach of legal realism. They claim that there is an agreement in the international society where cases of genocide, mass killing and ethnic cleansing constitute grave human rights violations and can thereby authorise an intervention.³²

Whether there is a customary law on the principle of non-intervention is another debated issue. According to Chris Brown, Professor of International Relations at the London School of Economics, the principle of non-intervention is not grounded in the customary law. Rather he argues that principle of Westphalia were divided into a norm a non-intervention with states that were deemed members of the international society and thereby did such a norm not apply for non-European states.³³ So the principle of non-intervention as a universal norm is thereby a re-emergence

²⁹ Brown. 2002: 153

³⁰ United Nations, 1945: art. 2 (7)

³¹ Stein. 2004: 17

³² Williams & Bellamy. 2006: 147

³³ Brown. 2002: 157-8

because it now applies to all members of the of international society and thereby all states on equally basis.³⁴

3.2 The Prohibition of the Use of Force and Authorization Intervention

When a state joins the UN, it agrees to “settle their international dispute by peaceful means and furthermore shall all members refrain...from the threat or use of force...in any manner inconsistent with the Purpose of the United Nations.”³⁵ The only exceptions to this article is; 1) the use of force in self-defence against armed attacks,³⁶ 2) the use of force within the authorization of the Security Council.³⁷ Under these terms of traditional norms a humanitarian intervention is only legal if the situation poses an international threat to peace and security or as an act of self-defence. All other reasons for intervention are thereby unauthorized and thereby not legally permitted. The reason for these strict rules was certainly to make war more difficult.³⁸

The dispute between classicists and legal realists over the legality of humanitarian intervention derives basically from the question of the prohibition of the use of force. The classicists argue that the ban of force on “territorial integrity” and “political independence”³⁹ prohibits humanitarian intervention. On the other hand does the legal realists focus on the legal obligation of promoting human rights and is thereby permitting humanitarian interventions under certain circumstances.⁴⁰ Furthermore does the legal realists argue that when the Security Council fails to intervene then a state does have a right to take unilateral humanitarian action.⁴¹

3.3 Unauthorised Intervention

If the Security Council cannot empower a humanitarian intervention, most often due to a veto from one of the five permanent members, an unauthorized intervention can

³⁴ Ibid. 161

³⁵ United Nations. 1945: art. 2 (3,4).

³⁶ Ibid. art. 51

³⁷ Ibid. art. 39 in accordance with article 41-42.

³⁸ Udombana. 2005: 1155

³⁹ United Nations. 1945: art. 2 (4)

⁴⁰ Wheeler, 2000. 41-44

⁴¹ Williams & Bellamy. 2006: 147

under exceptional circumstances be justified from political or ethical reasons.⁴² Even though such an intervention will be considered illegal it can still be defined as legitimate out of a moral point of view. The most recent unauthorized military intervention were the intervention taken by NATO in Kosovo. This intervention was highly debated and criticised due to the lack of an accepted *opinio juris*, and even the states that legitimised the intervention were afterwards inconsistent in their decision about the legality and they also seem more aware of the importance of a Security Council mandate to intervene on humanitarian grounds.⁴³

According to Simon Chesterman is it possible that a new norm of customary international law has developed because of the decision to intervene in Kosovo and other authorized and unauthorized interventions that have taken place in the last couple of decades. The reason for this is that customary law is build up around the evolutions of coherent and widespread state practice and when accompanied with the right *opinio juris*.⁴⁴ This argument is widely debated, and is very questionable because just a few states have invoked humanitarian considerations in defence of intervention. Other legal commentators argue that an non-authorized humanitarian intervention is legal due to the practice in the 19th and 20th century, and this right remains protected even after the creation of the UN. Classicists argue that the pre-UN interventions are insufficient to establish a customary right of intervention and furthermore they argue that if a customary exist it would not have survived the establishment of the UN. Another approach to reject the legality of unauthorized intervention is the long list of General Assembly resolutions strongly rejecting this approach,⁴⁵ especially because most members of Western Europe and Others Group (regional group at the UN) states that actually participated in the intervention in Kosovo considered the intervention to be illegal.⁴⁶ If one accepts the classicist view is the illegality of an unauthorized intervention obvious while the legal realism depends on the contemporary approach of the international community and has thereby to be looked upon in each situation.⁴⁷

⁴² Danish Institute of International Affairs. 2005: 127

⁴³ Molier. 2006: 42-44

⁴⁴ Chesterman. 2003: 49

⁴⁵ Holzgrefe. 2003: 45-47

⁴⁶ Molier. 2006. 43

⁴⁷ Holzgrefe. 2003: 39-40

3.4 Human Rights

The concept of human rights in legal terms does mainly derive from the Universal Declaration of Human Rights and the Charter but it is also expressed throughout various other treaties such as The International Covenant on Civil and Political Rights and Convention on the Elimination of All Forms off Discrimination against Women, which most members of the UN have ratified. The Charter does emphasize the protection of human rights as one of its aims⁴⁸ but there is also a customary law wherein states are obligated to respect, fulfil and protect human rights under their jurisdiction.⁴⁹ Due to the fact that there is no consequences when states are violating and disrespecting human rights, many states tend to ratify the treaties to show that they accept the universality of the system, even though they never intend to keep the human rights law.⁵⁰ This gap between the entitlements to human rights and its mechanisms is without doubt one of the most fundamental weaknesses for the human rights regime.

The only obligation states have for protecting human rights of citizens of other nationalities can be found in the Convention on the Prevention and Punishment of the Crime of Genocide. According to this Convention signatories do have a legal obligation to prevent and furthermore punish for the crime of genocide. This indicates that the ratifying states must do whatever in their power to prevent genocides with whatever means. That commitment requires no further endorsement from any international agency or the Security Council.⁵¹

3.4.1 Humanitarian Approaches

Many people argue from a commonsense morality and consider humanitarian intervention as an oxymoron to human rights. A military intervention can from this point of view never be seen as humanitarian and can never be based on ethical considerations, even though it might be the last resort possible after all other possibilities has been exhausted.

⁴⁸ United Nations. 1945: art. 1

⁴⁹ Nowak. 2002: 48

⁵⁰ Ibid. 35

⁵¹ Clark. 2002: 115

One of the biggest problems and most common humanitarian critiques are the uncertain facets, which might occur in humanitarian interventions. One of these uncertainties is the escalation of a war and according to Walzer are there so many uncertain facets so it is not possible to estimate the outcome of and the consequences of the certain war.⁵² These consequences can in the end lead to a situation that is even worse than when the interveners entered, even though they entered the conflict with good intentions.

Another humanitarian critique is what the New York Times writer, Thomas L. Friedman, has defined as the “Pottery Barn Rule”, which states: “you brake it, you own it.”⁵³ This implies that a conflict is not resolved until the interveners have created a humanitarian effort that can sustain the balance after the fighting has ended. Most often is it seldom that interveners are willing to stay put after they have resolved the first part of the conflict,⁵⁴ and helping to create a new nation-building, due to the fact that previous humanitarian interventions have failed to address the root-causes of the conflict and have thereby provided an escalation of the conflict.⁵⁵

3.4.2 The Responsibility to Protect

Due to the failures of the human rights system and malfunction of humanitarian interventions in Rwanda, Kosovo, Bosnia and Somalia in the 1990’s, the Canadian Foreign Ministry grasped the consequences of the debate and set up the International Commission on Intervention and State Sovereignty, which should develop a report on how to approach human rights violations and the case of humanitarian intervention in the 21st century. It moves the discourse from a right of the state to intervene towards an obligation and The Responsibility to Protect of whoever is capable of taking the responsible to intervene. According to the report the Security Council is the only appropriate body to intervene but if they cannot reach a consensus then the authorization will be transferred to either the General Assembly or any relevant regional actor after all non-military criteria have been explored before any military

⁵² Walzer. 2006: 24

⁵³ Etzioni. 2005: 479

⁵⁴ Dallaire. 1998: 86

⁵⁵ Kernot. 2006: 42

intervention can be authorized.⁵⁶ The report looks upon the issues of people in need and acknowledges that the state wherein the violations are taking place has the primary responsibility for its citizens. By defining sovereignty as responsibility it implies two essential elements; Firstly, the state authorities are responsible for the functioning of the state and the protection of its citizens; secondly, states are responsible for their actions and are thereby legally accountable for the consequences of their acts.⁵⁷ The report furthermore contains a “responsibility to rebuild”, which among other things signify a responsibility from the intervening states to rebuild the state after the real conflict has ended. This rebuilding includes reconstruction and rehabilitation among other important subjects.⁵⁸

3.5 Summary

There are many complicated factors when dealing the various factors of international law. The dispute between legal realists and classicists is a great example on how the international law can be interpreted in various ways. Classicists argue from a conservative framework where the treaties must be read after their original intentions and where sentences only have simple meanings. This leads to a rejectionists approach of humanitarian intervention. Legal realists on the other hand argue that the law is subject to many imperfections and the international law does not follow the realities of contemporary time. This framework leads to a more positive approach towards intervention.

Another important factor is the international law regarding human rights and the problem of carrying out humanitarian interventions from a humanitarian perspective. The humanitarian approach is in general very critical towards intervention but the new approach stated in The Responsibility to Protect presents the states with a duty to intervene whenever they can. The next chapter will look at the empirical example dealing with the situation in Darfur and furthermore the debate about intervention in the Security Council and the political and financial interest of various states in Sudan.

⁵⁶ International Commission on Intervention and State Sovereignty. 2001: XII-XIII

⁵⁷ Ibid. 13

⁵⁸ Ibid. 39

4.0 Empirical example: Darfur

The situation in Darfur is characterized by gross and systematic violations of human rights, breaches of international humanitarian law. War crimes and crimes against humanity are daily occurrences in the region. According to a report from the Human Rights Council published in March 2007 there were at least 200.000 Sudanese refugees that had fled to neighbouring Chad and 1,6 million were displaced within Darfur in 2004,⁵⁹ a number that most probably has increased since then. The report does not give an account of the exact numbers of mortalities mainly because of the lack of cooperation between the government of Sudan, the UN and other humanitarian agencies.⁶⁰ The Humanitarian organization, Save Darfur, rely on data that reckon that the numbers of mortalities in is around 400.000.⁶¹This number includes victims that suffer from starvation and deceases, transpired due to the conflict.

4.1 Situation in Darfur

The historical background of the conflict in Sudan is complex. Since Sudan gained its independence from Great Britain in 1956 various tribal has groups been in conflict over land, water and livestock.⁶² The country has since then been extensively damaged by a range of military conflicts in an endeavour to develop a hegemonic Sudanese state formation. In this process there has been a strong marginalisation of the perceived black Africans and a clear preferential treatment of the Arab population by the government of Sudan.⁶³

The present conflict in Darfur erupted in 2003 when the Sudan Liberation Movement/Army and later on the Justice and Equality Movement attacked government forces in Northern Sudan after decades of frustration after political marginalization and economic neglect. The government of Sudan seemed to be surprised by the attack but responded immediately by deploying armed troops, and furthermore armed and funded the Janjaweed militia, a group of fighters hired by the

⁵⁹ United Nations. 2007 (a): 13

⁶⁰ Ibid. 14

⁶¹ Save Darfur. 2007:

⁶² United Nations. 2007 (a): 13

⁶³ Jok. 2007: 9

government of Sudan because of lack of military in Darfur, that consequently engaged in killings, abductions expulsions, systematic sexual violence, destruction of crops and destroyed important cultural and religious sites. After many attempts to negotiate a ceasefire in 2003 the Sudanese government initiated a military offensive in January 2004 and shortly afterwards President Bashir declared that the order had been restored in Darfur, even though this was not the case and the hostilities continued.⁶⁴ Since then has the cycle of violence continued unabated. The violence from the Janjaweed continues even though numerous other peace agreements has been negotiated and even signed but there have not been any significant progress.⁶⁵

A UN Darfur Commission Report published in January 2005 stated among other things that the Sudanese government and the Janjaweed militias are responsible for serious violations of international human rights and humanitarian law. The commission particularly found that the government of Sudan and the militias were responsible for indiscriminate attacks, killing of civilians, torture, disappearances, rape, sexual violence, pillaging and forced displacement, destruction of villages, land and crops.⁶⁶ Even though the government of Sudan numerous times has disclaimed the responsibility for the atrocities mainly committed by the Janjaweed,⁶⁷ Human Rights Watch has shown such a clear connection. It states the government of Sudan is without a doubt responsible for the human rights atrocities in Darfur, and that the furthermore are responsible for protecting the victims of the conflict, as they are obliged to.⁶⁸ This report clearly shows the unwillingness to cooperate with the government is one of main problems and contributions to the prolonging of the conflict.

4.1.1 Genocide?

Whether or not genocide is taking place in Darfur, such as Save Darfur⁶⁹ and the US Congress and Administration has claimed,⁷⁰ is hard to determine. There is a clear-cut

⁶⁴ Williams & Bellamy. 2005: 30

⁶⁵ Gardell. 2005: 28

⁶⁶ United Nations. 2005 (a): 3

⁶⁷ Udombana. 2005: 1155

⁶⁸ Human Rights Watch. 2004: 43-50

⁶⁹ Save Darfur, 2007:

⁷⁰ VandeHei. 2005: A19

and legally binding definition of genocide. This definition is stated in the Convention on the Prevention and Punishment of the Crime of Genocide where it determines that there must be intent to destroy certain groups.⁷¹ This however, means that in cases where there is no intentional evidence of destroying a group, genocide can thereby not be determined. According to the report of the International Commission of Inquiry on Darfur from 2005, there seems here to lack the crucial factor of intent when determining genocide but even though they do argue that there has been carried out some genocidal tendencies, even though that no genocidal policy has been pursued, neither implemented.⁷²

The reference to the situation in Darfur as genocide clearly leads the thoughts back to the Rwandan genocide and thereby tries to compare the two situations with one another. Especially in regard towards the international community and the avoidance of the international response, that was lacking in Rwanda and is lacking in the contemporary situation in Darfur. Today it is hard to determine whether genocide is taking place or not, even though there are many signs that seems to indicate it.

4.2 Debating Darfur and political obstacles in the Security Council

Between June 2004-June 2007 there has been adopted eighteen Security Council Resolutions about Darfur. Most of these resolutions does not determine anything particular but rather reaffirm already made decisions. All of these resolutions reaffirm the already proposed peace agreements, and gives solutions to further steps towards a peaceful solution, condemn all acts of violence and urge the various parties to strengthen and use all their efforts to further the steps towards peace. Resolution 1547 in June 2004, established the Advanced Mission to Sudan that was given the task to prepare a “full-fledged UN peace support mission” that was supposed to be positioned in a short-term period leading up to the Comprehensive Peace Agreement.⁷³

⁷¹ United Nations. 1948: art. 2

⁷² United Nations. 2005 (a): 3

⁷³ United Nations. 2004 (a):

In 2005 after the signing of the Comprehensive Peace Agreement did the mandate of Advanced Mission to Sudan transform into the mandate of the Mission to Sudan that was established in Resolution 1590 and establish a much wider mandate. The mandate was originally set for six months⁷⁴ and has since then been prolonged on several occasions and has most recently been reaffirmed in Resolution 1755, where the mandate has been prolonged until October 31st 2007.⁷⁵ The mandate of the Mission the Sudan has been extended to include a peacekeeping mission to Darfur in cooperation with the African Union.⁷⁶ Even though the Security Council has adopted eighteen resolutions as a response to the situation in Darfur it seems that the government of Sudan has not been willing to comply with their obligations towards the international society.

The most important resolution so far has been Security Council Resolution 1556 that was passed under Chapter VII of the Charter stating that the “situation in Darfur constitutes a threat to international peace and security and to stability in the region.”⁷⁷ It reaffirms the sovereignty of Sudan but demands that the Sudanese government disarms the Janjaweed and endorses the deployment of international monitors including protection forces envisioned by the African Union and finally it has placed the responsibility for the atrocities in the hands of the government of Sudan.⁷⁸ This resolution is by far the most extensive to date and its reaffirms all the former obligations from both the Security Council and the government of Sudan.

What is interesting in regards to this resolution are actually not what is determined in the resolutions but rather all the underlying elements that are not mentioned and the whole process of decision making which shows the real political obstacles and also gives a sense of the Realpolitik in these kind of situations. The reason for this is notoriously because of the different political conceptions and antagonisms that can be found in the political world. The elements that show the different political conceptions on the situation in Darfur can be found in what is know as the Verbatim Records of almost every meeting held in the Security Council. What

⁷⁴ United Nations. 2005 (b):

⁷⁵ United Nations. 2007 (b):

⁷⁶ United Nations. 2006:

⁷⁷ United Nations. 2004 (b):

⁷⁸ Ibid.

these records mainly shows is that there is a broad political consensus that something must be done as a response to the mass-atrocities but it varies thereon how any solution should be implemented and furthermore carried out.

The US argumentation derives basically from the idea that if the government of Sudan does not shown any improvements of the situation and that international sanctions could be a possibility, if the government continues to refuse any cooperation, while at the same time arguing that without international pressure the current situation would continue. Even though the US does not mention any possibility of a humanitarian intervention it argues that many people would want the Security Council to refer to the situation as genocide, and thereby shows that it is essential that the Security Council act quickly, decisively and in unity.⁷⁹ United Kingdom agrees to a large degree but it also argues that the international community wants to cooperate with the government of Sudan and there should be a clear message that if the commitments and obligations are not met then they will be considering measures such as an humanitarian intervention provided in the Charter art. 41.⁸⁰

Unlike these two conceptions China and Pakistan argue that even though that the government of Sudan bears the primarily responsibility for the atrocities then the international community should do whatever in their power to assist the government. Furthermore they argue that a solution must be found within the sovereignty, unity and territorial integrity of Sudan.⁸¹ Sudan did unsurprisingly not reject the resolution with the reasoning that it was “an unfair and unjust policy of double standards that was the result of a domineering, colonial mindset.”⁸² All these above-mentioned factors do lead to a situation where there cannot be gained any essential consensus which is needed to implement sanctions, or to contemplate an humanitarian intervention.

⁷⁹ United Nations, 2004 (c): 2-3

⁸⁰ Ibid. 5

⁸¹ Ibid. 2-3

⁸² Ibid. 14

4.3 State Interests in Sudan

Since 1998 there has been a huge amount of oil-revenues in Sudan, which the government of Sudan has highly profited from. The oil industry of Sudan was anticipated to bring in huge amounts of money which could have benefited the economy of the country on a larger scale but instead the oil exploration and the huge amount of income has been used as internal political tool which has led to devastating atrocities and furthermore as a political weapon in where quite a few states, were accused of putting their financial interest before human security of the Sudanese people.⁸³ Due to pressure from primarily the US almost every state, excluding China did end all their oil-interests in Sudan. This meant that China was the biggest partner in the Sudan oil business, and as a state known for its scant human rights protection of its own citizens the question of intervention seems quite pertinent, since they would most probably use their veto power in the Security Council against any international action involving Sudan.

The interest of the US in Sudan on the other hand, does not play a big significance but another important problem occurred in the aftermath of 9/11. The events of September 11th 2001, the terrorist attacks and the following US-led interventions in Afghanistan and Iraq have shown to pose some great and complicated obstacles towards the debate of humanitarian intervention. The main obstacles have to be from a political perspective and the increased suspicion that the West's humanitarian justifications try to cover some of their neo-imperial aspirations. Thereby many people are starting to have second thoughts about the importance of intervention and furthermore they fear for their own risk in interfering in other states and their internal affairs. Another factor just equally important is that the US-led War on Terrorism is significantly more important to the interests of Western states than an intervention based on humanitarian considerations, and just as important is the fact that the war on terrorism consumes a large number of the military resources that it might have been used to other kind of interventions.⁸⁴ An additional factor in this context is that Sudan is a Muslim country and that a Western intervention could and most probably would lead to an increased conflict between the West and some

⁸³ Jok. 2007: 16-17

⁸⁴ Macfarlane, Thielking & Weiss. 2004: 977

Muslim states. Another important factor is that the US to some degree abused the humanitarian justification in Iraq, when they recognized that it was the only way to gain a broad support for the war.⁸⁵

4.4 Summary

The humanitarian crises in Darfur pose many great obstacles. The government of Sudan has not taken any responsibility for their atrocities and continuously denies the allegations from the Security Council. Even though the Security Council has adopted numerous resolutions about Sudan it is not willing to carry out a humanitarian intervention and the two states that actually could carry out an intervention or pressure Sudan, China and the US, are not willing to compromise its own interest and carry out intervention. The following chapter analyses and discuss the various political theories, the legal frameworks and the humanitarian approaches regarding humanitarian intervention in the context of the situation regarding humanitarian intervention in Darfur.

⁸⁵ Williams & Bellamy. 2005: 36

5.0 Analysis and Discussion

There are many important aspects why humanitarian interventions are so seldom carried out but there is one aspect that seems to override all other aspects and that is the willingness of the state and / or the interest of the state. This fact that states are not willing to intervene or very rarely intervene solely because of humanitarian reasons, means that a clear-cut defined humanitarian intervention are very rare due to the fact that if states are willing to intervene on the ground of a humanitarian motives it is just one among several components. This shows the ambiguity between the protection of human rights and the altruistic approaches of the states and this component can also be found in the situation in Sudan.

The only major state that really has any political and economical interests in Sudan is China. China has always have been very reluctant towards humanitarian interventions and define such interventions from an communitarian approach, where all states should define themselves and thereby also solve their own internal problems within their own national jurisdiction and in this regard they actually try to define humanitarian intervention as “a white man’s burden.”⁸⁶ Another obstacle in regard to China, is their view of human rights, in which they are not known as being the most supportive defenders, and do generally have a very restrictive view upon the human rights discourse.⁸⁷

The US, on the other hand, focuses largely of the promotion of human rights (at least abroad) and their cosmopolitan approach towards democratization of non-democratic states but even though they argue from that perspective they do not seem willingly to interfere in the conflict in Sudan. This is especially in regard to the consequences of 9/11, where the primary international goal (and most other Western liberal states) has been only to intervene in situations in which human rights atrocities and state-sponsored terrorism concur.⁸⁸ They thereby are neglecting other conflicts in which interference is much more needed. This realistic approach has also to be seen in

⁸⁶ Macfarlane, Thielking & Weiss. 2004: 979

⁸⁷ Ignatieff. 2001: 23-24

⁸⁸ Molier, 2006: 39

the light that even though that the Western states are build upon a liberal ideology the interests of the state override all, other ideologies.

Another aspect of the US approach is that the administration officially has announced that the mass-murder in Sudan should be defined as genocide. When defining a situation as genocide they must do whatever in their power, according to international law, to stop the ongoing atrocities. The US has even though continuously refused to enforce a humanitarian intervention without a consensus in the Security Council. What is highly interesting in this context is that the US does not seem willingly upon enforcing an unauthorized intervention, probably due to the history of the last couple of years but also because of internal American politics in which it probably would not be supported, due to the intervention in Iraq and the lack of resources of manpower and financial grounds and the upcoming elections.

The second major obstacle is regarding the ambiguity of the international law and the various ways of interpreting the law and thereby applying the international norm on the situation in Sudan. There are two main frameworks in which the norms of international law can be interpreted. These two frameworks, classicist and legal realism, even though I have only shown them from their conflicting viewpoints, just show how differently the same elements can be interpreted in international law.

The various different principles, such as non-intervention and the non-use of force are invaluable and essential mechanisms in the dominating world order, but on the other hand they do also create some great obstacles towards a humanitarian intervention and for the struggle for human rights, which also are invaluable elements in the purpose of the UN. There is an oxymoron and a lack of consensus in the international world order, towards which principles that override the others. To the Western liberal states the concern for human rights are sometimes more important than the principle of non-intervention and sovereignty but in the case of Sudan it does not have an important function. One essential aspect of this discussion is the fact that the international law does not seem to play the big importance in dealing with humanitarian intervention. China and other countries that are against intervention often do argue from a classicist viewpoint. For the US on the other had, does the international law not play a major significance, whether or not a humanitarian

intervention can be authorized or not.⁸⁹ This means that it is not because of the international law and norms that a humanitarian intervention has yet not been enforced in Sudan, but rather because of political interests.

The third and final main obstacle is the oxymoron between humanitarian interventions for protection human rights. This approach has two different variations. The first focuses on the atrocities committed by the government of Sudan and to some degree incorporates the visions of The Responsibility to Protect, while the second focuses on the suffering of innocent people that might not have been involved in the conflict, but may be involved if an intervention is implemented.

All these obstacles pose some great challenges towards the future debate about humanitarian intervention. What is needed in international relations, both in terms of political and legal aspects is a paradigm shift that should be moving away from the sovereignty and the interests of the state towards a more humanitarian approach in which saving strangers should be the primarily responsibility of any state. The paradigm shift laid out in The Responsibility to Protect should be accepted, mostly by Western states (and hopefully by all others as well) but such a paradigm shift of international norms and relations do seem as an illusion and looks as an remarkable concept in theory but unfortunately not in reality.

5.1 Summary

This analysis and discussion shows three various obstacles towards intervention but it also shows that one component is more crucial than the others. This is the aspect of political realism and the interest of the state. This does also imply that the norms of international law do not play a big significance when it comes to the question of humanitarian intervention. Even though the international law is very important it does not seem to play a big significance when carrying out humanitarian intervention, rather it is primarily the political interest of the US and China that determines if an intervention should be carried out. The third aspect is the factor of human rights and the humanitarian approach, which also clarify that this approach unfortunately is the

⁸⁹ This fact can be seen in regards to the NATO intervention in Kososo 1999 and the US-led intervention in Iraq in 2003.

least relevant compared the legal and political aspects. This shows that the Realpolitik overrides all other factors of humanitarian intervention.

6.0 Conclusion

The discussion about humanitarian intervention does not exist in isolation but have to be taken in coherence with broad and multiple aspects regarding international norms, practice, ethics, and various other important components, that all are equally important to gain the appropriate understanding of the subject. This study shows that one component is more crucial than the others, that is the willingness of the states and without willingness can humanitarian intervention never be implemented.

The question regarding the various factors of politics, legality and morality determining whether a humanitarian intervention should be carried out in Sudan is primarily decided by Realpolitik. I have throughout the paper tried to illustrate the various components such as the legality of intervention and the humanitarian concerns. The legality of intervention is widely debated and the two approaches, legal realism and classicism, clearly shows the various approaches towards the question of intervention and the complexity in determining whether humanitarian intervention ever can be legal. The humanitarian approach poses some great obstacles due to the question if an intervention ever can be humanitarian but according to The Responsibility to Protect report does any state have a responsibility and a duty to intervene in some conflicts where it might be needed.

In relation to the three theories outlined in the beginning of this paper is it clear that there remains a solid support for both the realist theory but also the one of communitarianism in the Security Council. After analysing Security Council Resolutions and Verbatim Record of the 5015th meeting it seems that China refuses to acknowledge the idea that human rights should trump the idea of sovereignty. The US on the other hand acknowledges the notion of human rights and supports the idea of a humanitarian intervention in the Security Council but is not willing to compromise their other political interests for intervening in Sudan. Furthermore they demand a political consensus in the Security Council, a consensus that seems unlikely due to the Chinese rejectionist approach of intervention. In addition does the US not have any political interest in Sudan and are thereby not willing to intervene, rather they are compromising their ideals of liberal cosmopolitanism due to the approach of political realism and the Realpolitik.

In the outline of this study and as a consequence of the recent events regarding Sudan in the Security Council, a selection of possible questions for further research has emerged. For example: Which recent events and political factors have made it possible to implement a peacekeeping force in Sudan? Will it ever be possible to carry out a humanitarian intervention based solely on humanitarian grounds? Does the notion of sovereignty always trump the considerations for human rights? Would clear-cut cases of genocide elicit a consensus from the Security Council?

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