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Humanitarian intervention— by the sovereignty and for the sovereignty

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Summary

The Article 2(1) of the Charter of the United Nations has clearly articulated the sovereign equality for all its Members, while the Article 2(7) states that the United Nations will not intervene in matters which are essentially within the domestic jurisdiction of any state unless the matters involve in the international peace and security. It seems that once the matters, which are essentially within the domestic jurisdiction of any state, involve in the international peace and security, the United Nations will intervene in this matters and do not have to consider the sovereign equality of the concerning state. Here the problem is come up: how to balance the international intervention and state's sovereignty? To be exact, the problem can be: how to balance the international humanitarian intervention and state's sovereignty?

The thesis will firstly discuss the sovereignty, try to find the connection between sovereignty and human rights as well as constitutional law; and then comes to the humanitarian intervention, try to find the connections between humanitarian intervention and human rights as well as constitutional law. Since both sovereignty and humanitarian intervention have the similarities in terms of human rights and constitutional law, it will be easy to connect the humanitarian intervention and the state's sovereignty. Finally, based on all of the analysis, the conclusion will be: humanitarian intervention is caused by the sovereignty and aimed for the sovereignty.

Preface

The idea of the thesis is coming from the reality. When the French troops has been sent to Mali and CAR, when the Syria civil war kills a large number of civilian and there is nothing effective measures from the UN, I begin to think about the humanitarian intervention and state's sovereignty. I understand that the humanitarian intervention is aimed to restore the peace and security as well as human rights protection in the concerning state, but why some interventions are successful while others are failed? Following this question, I realized that the peace and security as well as human rights protection are all based on state's sovereignty. Without the full sovereignty, state cannot provide peace and security and human rights protection for its people. In the end, I connected the humanitarian intervention and state's sovereignty and conclude that the humanitarian intervention is caused by the state's sovereignty and aimed for the state's sovereignty.

Abbreviations

AFISMA	African-led International Support Mission in Mali
AU	African Union
CAR	Central African Republic
EU	European Union
ICJ	International Court of Justice
ICRC	International Committee of Red Cross
IFRC	International Federation of the Red Cross and Red Crescent Societies
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MISCA	African-led International Support Mission in the Central African Republic
NATO	North Atlantic Treaty Organization
RUF	Revolutionary United Front
SAA	Syria Accountability and Lebanese Sovereignty Restoration Act
UDHR	Universal Declaration of Human Right
UK	United Kingdom
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNSC	United Nations Security Council
US,USA	United States of America

1. Introduction:

The end of the Cold War in the 1990s defused the danger of the World War. However, it did not end armed conflicts as well as humanitarian catastrophes in this world. In 1991 the former Yugoslavia civil war and the Sierra Leone Civil War broke out. In 1998 the Kosovo war started. The Rwanda crisis in 1994, and the ongoing civil war in Central African Republic as well as the Syria, all these civil wars brought large numbers of civilian casualties and created humanitarian catastrophe.

The problem that the international community has to confront now is how to deal with such humanitarian crisis properly. It is easy to say that the humanitarian intervention is an attempt to end humanitarian crisis and protect human rights, restore peace and security. However, it is still not clear what is the legitimacy to initiate a humanitarian intervention and the ultimate goal of the humanitarian intervention. To be exact, the international community has to figure out how to initiate the effective humanitarian intervention in line with international law.

Among the humanitarian interventions, there are successful examples and failed examples. The United Nation Mission in Sierra Leone has been considered a successful prototype among the humanitarian interventions.¹ The controversial example is the NATO's (North Atlantic Treaty Organization) military actions in Kosovo, which are a prominent example of unauthorized (by the United Nation Security Council) humanitarian intervention.² How to examine the humanitarian intervention in the scope of international law? What is the core task in humanitarian intervention? In this thesis, I will try to illustrate some examples in order to find out the relationship between the humanitarian intervention and the sovereignty, and to conclude that the successful humanitarian intervention has to be established on the respect of the sovereignty while the failed humanitarian intervention does not.

¹ See the reports on the United Nations website, http://www.un.org/en/peacekeeping/publications/yir/2005/sierra_leone.htm, accessed 20 May 2014. All subsequent internet sources in this paper were accessed on the same date

² J. L. Holzgrefe & Robert O. Keohane (ed.), *Humanitarian Intervention—Ethical, Legal, and Political Dilemmas*, 1st ed, Cambridge University Press 2001, p.1

The thesis will first try to examine the State's sovereignty and to elaborate the relationship between State's sovereignty and its human rights as well as its Constitution. Moreover, I will try to classify two different statuses of sovereignty when humanitarian crisis happen in certain State. One is sovereignty flaw, which means that demonstration or unrest happens in the State and unrest spreads in most parts of the State but the constitutional law is still effective in the whole State. The other is sovereignty crisis, which means the civil war or massacre breaks out and the constitutional law fails in most parts of the States. After the discussion of the State's sovereignty, I will turn to the humanitarian intervention to find out the relationship between humanitarian intervention and human rights as well as the State's Constitution. I will delimitate the humanitarian intervention in a broad way including economic, political, military intervention as well as humanitarian aid. At last, I will connect the humanitarian intervention and the sovereignty so as to explain that the legitimate and effective humanitarian intervention is caused by the sovereignty and for the sovereignty.

2. Brief Study on Sovereignty.

The respect of the State sovereignty seems to be the fundamental principle in international law. "According to the then prevailing conception, the main purpose of international law was to govern the relations between equal sovereign States and to prohibit the abusive intervention by a State in the domestic affairs of another State."³ In response to a request from the International Law Commission in 1970, the Secretary General of the United Nations in a Study on International Law expressed:

"[t]he doctrines of the sovereignty and equality of States have provided the basis of international law since the emergence of a society of independently governed States. These elements have formed the starting point for the development of various fundamental principles of

³ Stefania Baldini & Guido Ravasi (ed.), *Humanitarian Action and State Sovereignty—Refugees: A Continuing Challenge*, Edizioni Nagard press, 2003, p.23

international law relating to the conduct of States. The basic rights and duties of States derived from these principles may thus be said to consist, in essence, in the exercise of sovereignty by individual States and the respect that these States owe in turn to the exercise of sovereignty by others, within an international community governed by international law.”⁴

It must be emphasized that since the State sovereignty plays a fundamental role in international law as well as international relations, as a result, the humanitarian intervention, which is a tough issue in the international law and international relations, will inevitably involve in the State sovereignty. In this part, I will elaborate the sovereignty step by step so as to find out the relationship between humanitarian crisis and State sovereignty.

2.1. What is the Sovereignty?

“Sovereignty means State’s complete authority over its own territory and independence in international relations. Accordingly that principle obliges a State to respect the full authority of any other State over its own territory and its independence from other States constituting sovereign entities that are juridical equal.”⁵ Sovereignty provides the basis in international law for claims for State actions, and its violation is routinely invoked as a justification for the use of force in international relations.⁶

“One principle upon which there seems to be universal agreement is that sovereignty is an attribute of Statehood, and that only States can be sovereign. The classic definition of a ‘State’ is found in the 1933 Montevideo Convention on Rights and Duties of States, article I of which provides:

⁴ *Yearbook of the International Law Commission 1971*, A/CN.4/SERJV/1971/Add. 1 (Part 2), vol. II, part 2, “Documents of the twenty-third session :Survey of International Law and other documents”, p.9

⁵ G .I. Tunkin(ed.), *International Law*, Moscow Progress Publishers, 1986, p.137

⁶ Thomas J. Biersteker, Cynthia Weber, “The Social Construction of the State Sovereignty”, in the *State Sovereignty as Social Construct*, Thomas J. Biersteker, Cynthia Weber(ed.) ,Cambridge University Press 1996, pp. 1–21,1

“[t]he States as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.”⁷

The definition of the State by this Convention has actually touched upon the sovereignty. In the book of the *State Sovereignty as Social Construct*, the author enumerated the elements of the Sovereignty: “[w]e agree with other scholars interested in sovereignty, that territory, population, and authority - in addition to recognition - are important aspects of State sovereignty.”⁸

Now it may be clear that the State’s sovereignty has four critical elements: territory, population, authority and recognition. Comparatively, the most active element in the sovereignty is authority, so any change in the authority may cause a change in the sovereignty. To be concise, this thesis will focus only on the authority and try to find out the relations between the authority and the sovereignty.

2.2. Sovereignty and human rights.

Since the authority is one of the critical elements in the Sovereignty, the relations between Sovereignty and human rights can be reflected in the relations between authority and human rights.

“According to Locke, society and the State existed to preserve individual rights, including the right to property.....the State was an instrument for protecting the ‘life, liberty and estate of its citizens’”.⁹ Locke’s statement has actually expressed the idea that the State has obligations to protect the human rights of its citizens, and this judgment has articulated the relations between authority and human rights as the authority is the legitimate power of the State.

⁷ Hust Hannum, *Autonomy, Sovereignty, and Self-Determination-The Accommodation of Conflicting Rights*, University of Pennsylvania Press, 1996,pp.15-16

⁸ Thomas J. Biersteker, Cynthia Weber, “The Social Construction of the State Sovereignty”, in the *State Sovereignty as Social Construct*, Thomas J. Biersteker, Cynthia Weber(ed.) ,Cambridge University Press 1996, p.3

⁹ Joseph A. Camilleri & Jim Falk, *The End of Sovereignty?—The Politics of a Shrinking and Fragmenting World*, Edward Elgar Published, 1992, p.20

Nowadays, more and more people accept that the State sovereignty is used to protect or serve its people. “The contemporary interpretations of sovereignty display pragmatic attempts at reconciling ‘State sovereignty’ with ‘responsibility’.”¹⁰ The UN Secretary- General Kofi Annan recognized this development of sovereignty in an article in *The Economist* in 1999 when stating that “[s]tate sovereignty, in its most basic sense, is being redefined not least by the forces of globalization and international co-operation. States are now widely understood to be instruments at the service of their people, and not vice versa.”¹¹ The Statements above gives a clear explanation on the function of State sovereignty——human right protection. In other words, the State sovereignty has a responsibility to protect its people.

As Benjamin Franklin wrote, “[i]n free governments the rulers are the servants and the people their superiors and sovereigns.”¹² The ultimate powers in a society, therefore, rest in the people themselves, and they should exercise those powers, either directly or via representatives, in every way they are competent and that is practicable. This idea has already been enshrined in the Universal Declaration of Human Rights (UDHR) Article 21(3):

“[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

Needless to say, the will of the people to protect their human rights as well as all other benefits they have, is the foundation of the authority. To some extent, protecting the sovereignty is protecting the human rights.

“Protection of sovereignty involves protection of human rights in at least two ways.

¹⁰ Francis M. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa*, The Brookings Institution, 1996, p.2

¹¹ Kofi Annan, “Two concepts of sovereignty”, *The Economist*, 18 September 1999.

¹² Ralph Ketchum ed., *The Political Thought of Benjamin Franklin*, 1965, reprinted 2003 by Hackett Publishing Company, p.398

First, to the extent that sovereignty eliminates, or at least reduces, the ‘scourge of war’ and the human rights abuses that occur, of necessity, during war, it protects human rights. Second, protection of sovereignty protects peoples’ right to self-determination, a human right in and of itself and a mechanism for the realization of many other important human rights”.¹³

To sum up, the power of the authority comes from the will of its people and aims at protecting its people. Now, we can say the authority is undertaking the responsibility to protect its people’s human rights. Therefore, the human rights protection is the key element of the State authority and the State sovereignty. A diagram will make the relations between sovereignty and human rights more understandable:



2.3 Sovereignty and Constitutional law

In addition to the relations between sovereignty and human rights, there is still another question: in what means does the sovereignty protect the human rights? In the

¹³ Justin Conlon, “Sovereignty vs. human rights or sovereignty and human rights? ”, in *Race Class* , July 2004 vol. 46 no. 1, p. 86

modern democratic State, I think the answer is the rule of law. Here it is necessary to discuss the relations between the sovereignty and the State fundamental law.

“Many writers essentially equate sovereignty with independence, the fundamental authority of a State to exercise its powers without being subservient to any outside authority.¹⁴ Allan James refers to this criterion as “constitutional independence”,¹⁵ which he views as the essential determinant of whether or not a State is sovereign. In his book, Allan further explains that “[f]or a constitutionally independent State can have any kind of political complexion, with the most authoritarian of constitutional schemes existing as independently as the most democratic.....All that constitutional independence means is that a States’ constitution is not part of a larger constitutional arrangement. If that is so, one important consequence is that, in accord with current international practice, the State concerned is deemed to be sovereign and therefore eligible to participate fully and regularly in international relations.”¹⁶

As we know, in a democratic State, the Constitutional law (whether written or unwritten) will be the determinant in the State structure. “In a legal sense, sovereignty refers to the ultimate authority within a legal order. Parliaments are sometimes sovereign in this sense. The study of constitutions shows that sovereignty is used in a second and wider sense to indicate the entity which makes or authorizes the making of the constitution and the conferring of authority on legislative, executive, and judicial bodies.”¹⁷

“Take the United States for example, sovereignty in the United States is uniquely intertwined with its founding document. An important part of the Constitution is the definition and protection of individual rights, which is a sign of the government’s authority and responsibility for the nation’s people”.¹⁸ “A more important aspect of

¹⁴ Hust Hannum, *Autonomy, Sovereignty, and Self-Determination-The Accommodation of Conflicting Rights*, University of Pennsylvania Press, 1996, p.15

¹⁵ Alan James, *Sovereign Statehood-The Basis of International Society*, London: Allen & Unwin, 1986,p.25

¹⁶ Alan James, *Sovereign Statehood-The Basis of International Society*, London: Allen & Unwin, 1986,p.25

¹⁷ Denis J. Galligan, “The Sovereignty Deficit of Modern Constitutions”, in *Oxford Journal of Legal Studies*, Vol. 33, No. 4 (2013), p. 705

¹⁸ Julian Ku & John Yoo, “Constitutional Sovereignty & The Politics of Presidential Powers: Globalization and

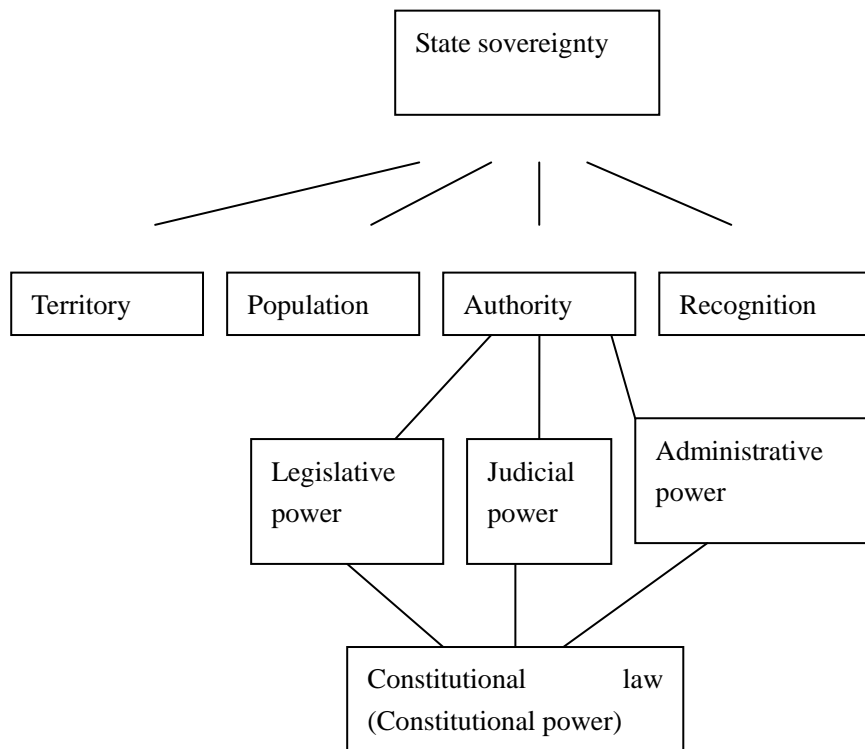
sovereignty, however, rests in the Constitution's creation of the national government, the definition of its powers, and the limits thereon. The Constitution channels the national government's sovereignty through two structures: the separation of powers, which organizes authority within the national government; and federalism, which distributes power between the national government and the States".¹⁹

In light of the analysis above, the Constitutional law determines the State's structure and legitimatizes authority to serve and protect its people. As a result, the Constitutional law crystalizes the sovereignty and acts as the legal sense of the sovereignty.

All in all, a well operating Constitutional law (Constitutional power) is the guarantee of the State sovereignty. Without the Constitutional law, according to the modern democratic state system, the State's sovereignty is vague because the authority, population, territory and recognition these four critical elements are all dependent on the Constitutional law. Therefore, the situation of the Constitutional law could be the key factor of the sovereignty; in other words, the change of the Constitutional law will be a great change of the sovereignty. The following diagram may be helpful to show the relationship between the Constitutional law and the Sovereignty:

Structure", in *Julian William & Mary Law Review* , 01 November 2011, Vol: 53, p.432

¹⁹ Julian Ku & John Yoo, "Constitutional Sovereignty & The Politics of Presidential Powers: Globalization and Structure", in *Julian William & Mary Law Review* , 01 November 2011, Vol: 53, p.432



2.4. The status of Sovereignty

I have already analyzed that the Constitutional law (Constitutional power) is crystalized the State sovereignty, as a result, the status of sovereignty will be influenced by the status of the Constitutional law. If the Constitutional system does not operate well or cannot be enforced in certain areas of the State, it shows that the State's sovereignty is flawed. Additionally, if the Constitutional system totally fails in operating or enforcing in most areas of the State, it will result in the crisis on the State sovereignty. Here, I will discuss two different statuses of sovereignty during humanitarian crisis.

2.4.1 The sovereignty flaw

The sovereignty flaw means the Constitutional power cannot protect its people sometimes in a limited area, but it is still operating in the whole State. Let's take Egypt as an example. On November 22 of 2012, tens of thousands of protesters demonstrated against president Mohamed Morsi, and the demonstrations resulted in

violent clashes between Morsi-supporters and the anti-Morsi protesters, with dozens of deaths and injuries,²⁰ but the Constitutional power of the Egypt at that time failed to protect its people from death and injuries. On the night of 3 July, the Egyptian Armed Forces came out with a Statement announcing the end of Mohammed Morsi's presidency and the Constitution was suspended. Because of this military coup, the Constitutional power was largely injured but not failed in the whole State; the interim government is still operating (Adly Mansour, head of the country's Supreme Constitutional Court, will replace Morsy as Egypt's interim president).²¹ After the military coup of 30 June 2013, the Egyptian army cracked down on public media and shut down several news outlets that it deemed pro-Morsi, including Al-Jazeera.²² It is said that scores of pro-Morsi demonstrators were killed in army crackdowns and attacks on pro-Morsi demonstrations.²³

Although in Egypt the situation has been really terrible since 2012 and the Constitutional power failed sometimes in Cairo as the people were killed or injured by the authority, it is still operating in the rest of Egypt and the whole country does not slip into chaos but is still under control. As a result, I will mark sovereignty flaw on the Egypt crisis.

Accordingly, the sovereignty flaw is an attempt to depict a situation in which the Constitutional Power is not working well in a limited area but still operating in the whole State.

2.4.2 Sovereignty crisis

Unlike the sovereignty flaw, sovereignty crisis is the reflection of more serious situation, to be exact, the civil war or massacre. During the civil war, the civilians

²⁰ See the news "UPDATE 3: Death toll rises to 3 at '100 days' pro-Morsi protests" in Ahram Online website: <http://english.ahram.org.eg/NewsContent/1/64/87217/Egypt/Politics-/UPDATE--Death-toll-rises-to--at--days-pro-Morsi-pro.aspx>

²¹ See the news "Coup topples Egypt's Morsy; deposed president under 'house arrest'" in CNN website: http://edition.cnn.com/2013/07/03/world/meast/egypt-protests/index.html?hpt=hp_t1

²² See the news "Egypt's military shuts down news channels" in Al Jazeera website: <http://www.aljazeera.com/news/middleeast/2013/07/2013740531685326.html>

²³ See the news "Scores killed in clashes at pro-Morsi rally" in Al Jazeera website: <http://www.aljazeera.com/news/middleeast/2013/07/201372774215454742.html>

have to be evacuated and their life and property will not be guaranteed or protected by the Constitutional law. In other words, the Constitutional power is invalid in most areas or even in the whole State.

It seems that the Syria crisis is a good example of the sovereignty crisis. The crisis in Syria was prompted by protests in mid-March 2011 calling for the release of political prisoners. “National security forces responded to widespread, initially peaceful demonstrations with brutal violence. In August 2011, the FSA (Free Syria Army) began attacking Syrian soldiers with force, marking the first time that the opposition resorted to violence to overthrow the regime and end the government’s widespread attacks on civilians”.²⁴ Not surprisingly, the Syria crisis escalated into a civil war and soon swept across the whole State. “Armed civilians organized into rebel groups. The army deployed across the country, shelling and bombing whole neighborhoods and towns”.²⁵

It is necessary to know that when the civil war breaks out, the State is not in a lawless situation. Instead of the Constitutional power, which is failed in most part of the State, the international humanitarian law (customary international law) like Geneva Convention (II) common article 3 will apply to the State during the civil war:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any

²⁴ See the report “The Crisis in Syria” on the website:
<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-syria>

²⁵ See the news “Syria: What you need to know” on the website:
<http://www.smh.com.au/world/syria-what-you-need-to-know-20130903-2t20m.html>

other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

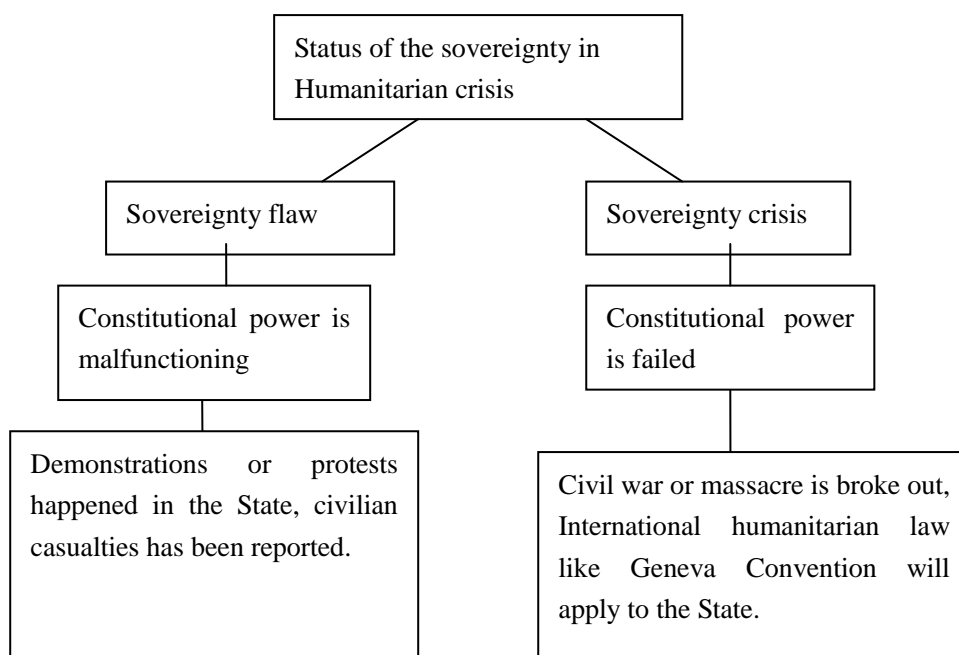
The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

Needless to say, Article 3 is actually taking the place of domestic Constitutional power to regulate all sides during the civil war and protect human rights during the sovereignty crisis.

From the Syria case we can see that the civil war is a great attack on the State sovereignty, accordingly, the sovereignty crisis will be used to mark the situation of the State when the civil war breaks out. In addition, the massacre will be also a reflection of the failure of the Constitutional law as the people have no protection

during the massacre. Maybe the Rwandan Genocide is a good example to show the failure of the Constitutional law. “During the April 7, 1994 to mid-July, a close to a million Tutsi ethnic minorities and some moderate Hutus were hacked to death in a killing spree that lasted for about 100 days”²⁶ Probably no one will accept that during the Genocide, the Rwandan sovereignty which is based on the human rights protection and depends on the Constitutional power, was still well operating over the country.

In according to the analysis above, the status of sovereignty is largely dependent on the situation of the Constitutional power, which is the reflection of the human rights protection and social stability. At last, two statuses of the sovereignty in humanitarian crisis can be distinguished from the real cases that happen in this world, the status of the sovereignty will be the significant basis of the humanitarian intervention. The following diagram will be useful to understand the status of the sovereignty:



²⁶ See the report on the UN website : <http://www.un.org/africarenewal/web-features/rwanda-genocide-survivors-struggle-rebuild-their-lives>

3. The brief study on humanitarian intervention.

Humanitarian intervention activities cover a wide range from the United Nations peacekeeping mission, humanitarian aids, refugee settlement, to weapon embargo....., and all of these fall within the humanitarian intervention. However, it is not easy to understand why the humanitarian interventions are there and what kind of functions they have.

Study should be started from the research on the definition of humanitarian intervention. Even though, nowadays, there is no standard definition of humanitarian intervention in the international law, several references about the meaning of the humanitarian intervention can be found in academic books and the United Nations documents. I will first illustrate three definitions of humanitarian intervention and try to find out their defects, and then put up my own definition of humanitarian intervention.

3.1. The present definition of humanitarian intervention

It will be easy to understand the narrow definition of the humanitarian intervention as it only focuses on the use of force. J. L. Holzgrefe gives a narrow definition in his book but also show a broad one:

“.....it is the threat or use of force across State borders by a State (or group of States) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the State within whose territory force is applied. In defining humanitarian intervention in this way, I deliberately exclude two types of behavior occasionally associated with the term. They are: non-forcible interventions such as the threat or use of economic, diplomatic, or other sanctions; and forcible interventions

*aimed at protecting or rescuing the intervening State's own nationals.*²⁷

Obviously, this definition does not touch upon the sovereignty or Constitution issue but only highlights the point of human rights violation. Comparatively, John M. Kabia gives a more comprehensive definition:

*"[t]his book defines humanitarian intervention as forcible or non-forcible actions taken by States, group of States, regional organizations or the UN, in situations of massive human suffering caused by repressive regimes or complex political emergencies, where the State has collapsed and law and order has degenerated into mass murder and anarchy. This intervention should seek to protect human rights and alleviate the suffering of victims in the short term; and address the underlying causes of the conflict by facilitating conflict resolution and peace building in the medium to long term."*²⁸

Clearly, the definition of the humanitarian intervention by John M. Kabia has considered the human rights issue, the law and order issue as well as the regimes issue. It even tries to address the causes of conflicts. However, this definition still fails to dig out the sovereignty issue in the humanitarian intervention.

In the United Nations, the former Secretary-General Kofi Annan in his annual report to the General Assembly prefers the broad definition:

"..... it is important to define intervention as broadly as possible, to include actions along a wide continuum from the most pacific to the most coercive. A tragic irony of many of the crises that continue to go unnoticed and unchallenged today is that they could be dealt with by far less perilous acts of intervention than the one we witnessed recently in

²⁷ J. L. Holzgrefe & Robert O. Keohane (ed.), *Humanitarian Intervention—Ethical, Legal, and Political Dilemmas*, 1st ed, Cambridge University Press 2001, p.18

²⁸ John M. Kabia, *Humanitarian intervention and conflict resolution in West Africa: from ECOMOG to ECOMIL*, published by Ashgate publishing limited, 2009, p.3

Yugoslavia. And yet, the commitment of the international community to peacekeeping, to humanitarian assistance, to rehabilitation and reconstruction varies greatly from region to region, and crisis to crisis.”²⁹

The definition has neither mentioned the sovereignty or Constitution, nor referred to the human rights violation, and it only emphasized the non-forcible humanitarian intervention which is treated as less perilous acts.

All three definitions above recognize that the humanitarian intervention contains forcible and non-forcible actions. Yet sometimes people want to narrow the definitions into only forcible actions. When it comes to the purpose of the humanitarian intervention, the three definitions show discrepancy. The first definition inclines to define the purpose of the humanitarian intervention as “aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals”, while the second definition tries to apply the humanitarian intervention “in situations of massive human suffering caused by repressive regimes or complex political emergencies, where the State has collapsed and law and order has degenerated into mass murder and anarchy;” and the last definition stresses that the humanitarian intervention should be “peacekeeping, the humanitarian assistance, the rehabilitation and reconstruction varies greatly from region to region, and crisis to crisis.”

Overall, these three definitions focus on the purposes of humanitarian intervention in the following aspects: human rights, law and order, peacekeeping and humanitarian assistance. The problem of these three purposes is obvious. First, sometimes it is not necessary to initiate humanitarian intervention if one State is responsible for massive human rights violations. For example, in Saudi Arabia female have no professional or vocational training, are not allowed to pay visits to the doctor and file lawsuits

²⁹ United Nations, *Secretary-General presents his annual report to General Assembly*, 20 Sep 1999, SG/SM/7136/GA/9596, <http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html>

without male.³⁰ In spite of that, I do not think that it is necessary to start the humanitarian intervention in Saudi Arabia. Second, when the law and order has failed in a short period, it is also not necessary to consider the humanitarian intervention. For example, in 2006 there was a coup d'état in Thailand which damaged the law and order in a short period before the order was restored, however, the humanitarian intervention is still not suitable for Thailand. Third, humanitarian assistance and other non-forcible humanitarian intervention are not enough for humanitarian intervention if the civil war occurs in certain state.

In fact, each definition focuses on only part of the humanitarian intervention, so it is necessary to find out a comprehensive explanation for the humanitarian intervention to improve the definition. In the following parts, I will examine the relations between humanitarian intervention and human rights, the relations between humanitarian intervention and Constitutional law and the types of humanitarian intervention before conclude a new definition of Humanitarian Intervention.

3.2. Humanitarian Intervention and human rights.

There is no doubt that humanitarian intervention has close tie with human rights. According to the present definition, humanitarian intervention is aimed at preventing and ending the grave human rights violations that happen in another State. That is to say, humanitarian intervention is caused by human rights problems and for the human rights protection.

However, there is a point that humanitarian intervention is a measure that one State or international organization imposes on another State. More clearly, humanitarian intervention is about the foreign State or international organizations who try to protect human rights in another State. So what is the legal basis for the foreign State or international organizations to protect the human rights in another State?

³⁰ See the news "*Women in Saudi Arabia are caught in a system of gender apartheid*" in Deutsche Welle (DW) website: <http://www.dw.de/women-in-saudi-arabia-are-caught-in-a-system-of-gender-apartheid/a-17330976>

In the UN Charter, Article 55 states:

“[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

.....c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

This Article actually imposes a responsibility to the Member States to respect the human rights and fundamental freedoms of its people, but what will be the consequence if the State fails to do that? The answer can be found in Article 56, which articulates:

“[a]ll Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.”

Now it will be clearer that the Members have responsibility not only to respect human rights and fundamental freedom of its people, but also to take joint and separate action in co-operation with the UN to achieve the universal respect for the human rights and fundamental freedom. In other words, each Member has a responsibility to cooperate with the UN in guaranteeing the human rights in other Member States. As a result, if there is a grave human rights violation in certain Member State, other Members of the UN have the right to take joint and separate actions, to cooperate with the UN, and to intervene in the concerning Member State according to Article 56.

Needless to say, Article 55 and Article 56 can be the legal basis for the foreign State or international organizations to protect human rights in another State — the humanitarian intervention. It must be emphasized that the Article 56 will be limited in

the economic and social scope³¹, therefore, the relevant humanitarian intervention will exclude any forcible activity.

Another possible legal basis for the humanitarian intervention could be the Chapter VII of the UN Charter, specially the Article 41 and Article 42, which has been used by the UN to maintain or restore international peace and security.

Article 41: [t]he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42:[s]hould the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Apparently, the Article 41 and Article 42 are measures on maintaining the peace and security, and have not mentioned the human rights protection. However, the UN Security Council (UNSC) has never been away from human rights issue. “The common understanding that ‘human rights violations are often a cause of conflict and addressing them is a pre-condition for peace led to the assignment of various human rights functions to second-generation peacekeeping operations and other types of human rights operation.”³² Probably the critical normative UN humanitarian intervention for human rights purposes is kept in the UNSC Resolution 940 (1994), in

³¹ Article 55 and Article 56 are fall within the Chapter IX—International Economic and Social Co-operation

³² Boris Kondoch (ed.), *International Peacekeeping*, published by Ashgate, 2007, p. XXII

which the Security Council states:

“The Security Council,

.....

Gravely concerned by the significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties, the desperate plight of Haitian refugees and the recent expulsion of the staff of the International Civilian Mission (MICIVIH), which was condemned in its Presidential statement of 12 July 1994 (S/PRST/1994/32)

.....

Determining that the situation in Haiti continues to constitute a threat to peace and security in the region,

.....

4. Acting under Chapter VII of the Charter of the United Nations, authorizes Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island Agreement, on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States.....”³³

In this Resolution, the UNSC determined that the humanitarian crisis in Haiti was caused by systematic violations of civil liberties, and this crisis had posed a threat to

³³ UNSC Resolution, S/RES/940 (1994), 31 July 1994, pp. 1-2

peace and security in the region. As a result, the UNSC decided to use force to restore peace and security. Moreover, in response to the rapidly deteriorating security and humanitarian crisis in South Sudan resulting from the political dispute and subsequent violence caused by the country's political leaders, the UNSC issued a Resolution which expressly mentions the human rights protection:

“The Security Council,

.....

Acting under Chapter VII of the Charter of the United Nations,

.....

*3. Endorses the recommendation made by the Secretary-General to temporarily increase the overall force levels of UNMISS to support its protection of civilians and provision of humanitarian assistance”.*³⁴

It is noteworthy that these two Resolutions are all involved in the use of force to restore the peace and security, which fall within Article 42. Will the UNSC use Article 41 to protect human rights and to restore peace and security? The answer can be recognized in the Resolution 1593 (2005), which states:

“The Security Council,

Taking note of the report of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur (S/2005/60),”

.....

Determining that the situation in Sudan continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

*1. Decides to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court;.....”*³⁵

³⁴ UNSC Resolution, S /RES/2132 (2013), 24 December 2013, p. 2

³⁵ UNSC Resolution, S/RES/1593(2005), 31 March 2005, p.1

Obviously, these two Articles, even the whole Chapter VII, legalize the economic, political and military humanitarian intervention by the UN to its Members where the grave human rights violations have caused great threats to the international peace and security.

Accordingly, the legal bases for the humanitarian intervention to another State on the human rights issues are: 1. Article 55 and Article 56 empower the Members of the UN to intervene another State by economic and social measures. 2. Article 41 and Article 42 or even the whole Chapter VII empowers the UN to intervene the Member State in all kinds of effective measures.

3.3 Humanitarian Intervention and State Constitutional law

Humanitarian intervention, as I have already analyzed in the above, is triggered by the grave human rights violations in certain State and it aims to restore the peace and security therein. So the intervening measures from international community will be imposed on the authority of the concerning State and to force or help the authority to improve the human rights situation. In a word, the humanitarian intervention is actually targeting the State's authority which is supposed to be operated to protect human rights in line with the State Constitutional law.

There will be two consequences on the authority by the successful humanitarian intervention: 1. if the problem is caused by the administrative power, which is the executive organ of the authority, then it has to be changed in order to prevent or end the grave human rights violations. As a result, the Constitutional law system will be implemented well. 2. If the problem is caused by the Constitutional law, in order to prevent or end the grave human rights violations, the Constitutional law shall be amended or reformulated.

In 1993, the UNSC Resolution 841 (1993) articulated the humanitarian intervention measures in Haiti, which include the idea to change the authority. It states:

“The Security Council,

.....

Acting, therefore, under Chapter VII of the Charter of the United Nations,

.....

16. Expresses its readiness to review all the measures in the present resolution with a view to lifting them if, after the provisions set forth in paragraphs 5 to 14 have come into force, the Secretary-General, having regard to the views of the Secretary-General of the Organization of American States, reports to the Council that the de facto authorities in Haiti have signed and have begun implementing in good faith an agreement to reinstate the legitimate Government of President Jean-Bertrand Aristide;.....”³⁶

Clearly, the Resolution 841 (1993) has realized that the *de facto* authorities in Haiti is the culprit of the humanitarian crisis, therefore, the UN try to reinstate the legitimate Government so as to end the crisis and restore the peace and security. Moreover, the UN has explicitly touched upon the State Constitution during its humanitarian intervention. In the Resolution 2140 (2014), the UN Security Council expresses:

“The Security Council,

.....

Determining that the situation in Yemen constitutes a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

.....

Implementation of Political Transition

2. Welcomes the recent progress made in the political transition of Yemen and expresses strong support for completing the next steps of the transition, in line with the Implementation Mechanism, including:

³⁶ UNSC Resolution 841 (1993), 16 June 1993, p. 4

- (a) drafting a new constitution in Yemen;*
- (b) electoral reform including the drafting and adoption of a new electoral law consistent with the new Constitution;*
- (c) the holding of a referendum on the draft constitution, including suitable outreach;*
- (d) state structure reform to prepare Yemen for the transition from a unitary to a federal state; and*
- (e) timely general elections, after which the current term of President Hadi would end following the inauguration of the President elected under the new Constitution; ”³⁷*

Undoubtedly, the Resolution mentioned above has lodged a wide-range political transition reform in Yemen, especially the constitutional and electoral reform, in order to resolve the crisis there and restore peace and security in the region. Another Resolution shows that the UN is getting to pay more and more attention on connecting humanitarian intervention with state rebuilding. In the Resolution 2093(2013), it states:

The Security Council,

.....

Acting under Chapter VII of the charter of the United Nations,

.....

22. Requests the Secretary-General to conduct a Technical Assessment Mission on the implementation of the new United Nations mission, in full cooperation with the Federal Government of Somalia, AU, regional bodies and Member States, on the basis of the guiding principles as set out below:

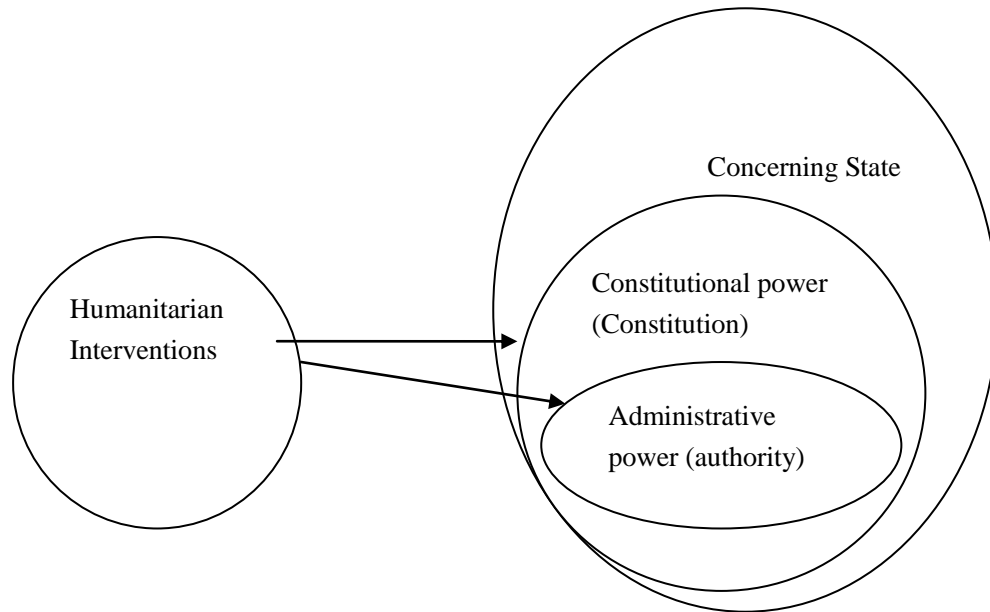
- (a) Empowering Somali ownership of the statebuilding and peacebuilding agenda;*

³⁷ UNSC Resolution 2140 (2014), S/RES/2140 (2014), 26 February 2014, p. 3

- (b) Providing the traditional United Nations good offices function and support to the government, including on reconciliation, elections and the effective implementation of a federal system;*
- (c) Providing strategic and policy advice on security, stabilisation, peacebuilding and state-building, including through the mission having a substantially strengthened security and rule of law capacity;*
- (d) Monitoring, reporting and helping build capacity on human rights, including on sexual, gender-based and conflict-related violence and on violations against children — supporting the implementation of the two action plans on children and armed conflict signed by the Federal Government of Somalia;*
- (e) Supporting the Federal Government of Somalia's efforts to manage and specifically coordinate international assistance, particularly on security sector reform;*
- (f) Providing integrated policy advice and support to the Federal Government of Somalia, in cooperation with the United Nations Country Team, and in accordance with the arrangements set out in paragraph 21;.....”³⁸*

In summary, the humanitarian intervention is inevitably touching upon the Constitutional law system of the concerning State, and it will entail two changes on the Constitutional law system: one will be the change of authority and the other will be the change of the Constitution. The following diagram will be useful to show the relations between Humanitarian intervention and the Constitutional power:

³⁸ UNSC Resolution 2093 (2013), S/RES/2093 (2013), 6 March 2013, p.6



3.4. The types of the Humanitarian Intervention.

In the light of the present definition aforementioned in 3.1, the Humanitarian Intervention basically has two main types: the forcible and non-forcible. Generally, the type of humanitarian crisis determines the type of humanitarian interventions to be used.

3.4.1 The forcible humanitarian intervention.

Forcible humanitarian intervention means, according to J. L. Holzgrefe, “.....it is the threat or use of force across State borders by a State (or group of States) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the State within whose territory force is applied.”³⁹ This definition actually accepts that the State has the right, without authorization from the UNSC, to threaten or use force to initiate the humanitarian intervention.

Another definition is from John M. Kabia, who says: “[t]his book defines humanitarian intervention as forcible or non-forcible actions taken by States, group of

³⁹ J. L. Holzgrefe & Robert O. Keohane (ed.), *Humanitarian Intervention—Ethical, Legal, and Political Dilemmas*, 1th ed, Cambridge University Press 2001, p.18

States, regional organizations or the UN, in situations of massive human suffering caused by repressive regimes or complex political emergencies, where the State has collapsed and law and order has degenerated into mass murder and anarchy. This intervention should seek to protect human rights and alleviate the suffering of victims in the short term; and address the underlying causes of the conflict by facilitating conflict resolution and peace building in the medium to long term.”⁴⁰ By this definition, the author implies that the States has the right to initiate the forcible humanitarian intervention.

As we all know that the international law prohibits the threat or use of force against another state. This principle has been articulated in the Charter of United Nation, article 2(4):

“[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”

The article prohibits States’ recourse to force to act against only territorial integrity or political independence of another State, so whether this article allow the Member State to use force against another Member State not in terms of territorial integrity or political independence is not clear. Fortunately, the International Court of Justice (ICJ) has confirmed the definition of prohibited intervention:

“A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines,

⁴⁰ John M. Kabia, *Humanitarian intervention and conflict resolution in West Africa: from ECOMOG to ECOMIL*, published by Ashgate publishing limited, 2009, p.3

and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State.”⁴¹

It seems that the ICJ does not accept wrongful intervention which uses coercive methods to a sovereign State, as it deprives the State’s independence in political, economic, social and cultural system. Moreover, the International Court of Justice in the case of the *Armed Activities on the Territory of Congo* proclaimed that Article 2(4) is a cornerstone of the UN Charter.⁴² Regarding to the Article 2(4), “[s]tates and commentators generally agree that the prohibition is not only a treaty obligation but also customary law and even *ius cogens*, but there is no comparable agreement on the exact scope of the prohibition.”⁴³

Even though the Article 2(4) does not clearly prohibit States from forcible humanitarian intervention, it will be easy to understand that any forcible humanitarian intervention by the States shall be prohibited as long as it has violated the territorial integrity or political independence of the targeting state. Nevertheless, the forcible humanitarian intervention—caused by the humanitarian crisis in which the concerned government is deeply involved—will inevitably touch upon the political independence of the targeting state. As a result, the Article 2(4) is actually prohibiting the Member States from forcible humanitarian intervention.

Probably no one denies that the UN has the right to initiate the forcible humanitarian intervention.

⁴¹ Case of *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.)*, Merits, Judgment of June 27,1986, 1986 I.C.J. Rep. 14, p. 108 (para. 205)

⁴² Case of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, para. 148

⁴³ Christine Gray, *International Law and the Use of Force*, 3rd edition, Oxford University press, 2008, p.30

3.4.1.1. Forcible humanitarian intervention from United Nations

Though Article 2(4) of the UN Charter prohibits States from forcible humanitarian intervention, Article 2(7) empowers the United Nations to launch the forcible intervention if necessary:

“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

In the light of this Article, the UN has the right to intervene even if the matters are essentially within the domestic jurisdiction of any State. In connect with Article 2(7), the Article 42 enumerates the measures that the UN can resort to in the forcible intervention:

“Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”

As a result, the United Nations is the legitimate body of the international law to start the forcible humanitarian intervention. Moreover, the forcible humanitarian intervention from the UN is mainly for the serious crisis like civil war or massacre which has already threatened the international peace and security. In the UNSC Resolution 794 (1992), it states:

“[t]he Security Council,

.....

[d]etermining that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security,

.....

7. *Endorses the recommendation by the Secretary-General in his letter of 29 November 1992 (S/24868) that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible;*
8. *Welcomes the offer by a Member State described in the Secretary-General's letter to the Council of 29 November 1992 (S/24868) concerning the establishment of an operation to create such a secure environment;*
9. *Welcomes also offers by other Member States to participate in that operation;*
10. *Acting under Chapter VII of the Charter of the United Nations, authorizes the Secretary-General and Member States cooperating to implement the offer referred to in paragraph 8 above to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia;”⁴⁴*

Besides, the UN has also the right to mandate the States or International Organizations to unfold the forcible humanitarian intervention in the concerning State. A recent example is the United National Security Council Resolution 2127(2013), which mandates:

“[t]he Security Council,

⁴⁴ UNSC Resolution 794 (1992), S/RES/794 (1992), 3 December, 1992, p.3

.....
Acting under Chapter VII of the charter of the United Nations,
.....

28. Authorizes the deployment of MISCA (African-led International Support Mission in the CAR) for a period of twelve months after the adoption of this resolution, to be reviewed six months after the adoption of this resolution, which shall take all necessary measures, consistent with the concept of operations adopted on 19 July 2013 and reviewed on 10 October 2013, to contribute to:

- (i) the protection of civilians and the restoration of security and public order, through the use of appropriate measures;*
- (ii) the stabilization the country and the restoration of State authority over the whole territory of the country;*
- (iii) the creation of conditions conducive to the provision of humanitarian assistance to populations in need; ;*

.....
50. Authorizes the French forces in the CAR, within the limits of their capacities and areas of deployment, and for a temporary period, to take all necessary measures to support MISCA in the discharge of its mandate as provided by paragraph 28 above; requests France to report to the Council on the implementation of this mandate in the CAR and to coordinate its reporting with the reporting by the African Union referred to in paragraph 32 above and decides to review this mandate within six months after its commencement and calls upon the Transitional Authorities to cooperate fully with the deployment and operations of French forces, in particular by ensuring its safety, security and freedom of movement with unhindered and immediate access throughout the territory of CAR and further calls upon neighboring countries of CAR to

*take appropriate measures to support the action of French forces;*⁴⁵

The United Nations has also mandated the European Union to deploy an operation in the CAR (Central African Republic).⁴⁶

Now in the international community, there is a trend to legitimize the forcible humanitarian intervention initiated by the States. Here I will discuss whether this unilateral humanitarian intervention is acceptable in the context of international law.

3.4.1.2 Unilateral forcible humanitarian intervention.

Unilateral forcible humanitarian intervention means States or international organizations try to use force to intervene another State without the UN authorization. “A final example of purposive interpretation involves the attempt, by a few US authors and the Belgian Government, to argue that unilateral humanitarian intervention does not contravene Article 2(4) of the UN Charter because it is not directed against the ‘territorial integrity or political independence of any State’”⁴⁷ However, this interpretation is not tenable. The unilateral humanitarian intervention, aimed at ending massive human suffering and protecting human rights, is actually touching upon the political independence in the concerning State. As we know, when the humanitarian crisis happened, the government either failed to solve the crisis or exacerbated the crisis. As the result, the unilateral forcible intervention to this crisis from the international community cannot bypass the government and resolve the problem.

In other words, the unilateral humanitarian intervention may not directly act against the territorial integrity but will definitely influence the political independence of the targeting State.

⁴⁵ UNSC Res 2127(5 December 2013),pp.7—9

⁴⁶ UNSC Res 2134(28 January 2014),p.43

⁴⁷ J. L. Holzgrefe & Robert O. Keohane (ed.), *Humanitarian Intervention—Ethical, Legal, and Political Dilemmas*, 1th ed, Cambridge University Press 2001, p.186

In the Nicaragua case, the ICJ reinforced the view that the unilaterally forcible humanitarian intervention, if it supports an opposition within the targeted State, does not conform to international law:

*“[t]he Court therefore finds that no such general right of intervention, in support of an opposition within another State, exists in contemporary international law. The Court concludes that acts constituting a breach of the customary principle of non-intervention will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations.”*⁴⁸

In addition, the unilateral forcible humanitarian intervention may worsen the human rights and jeopardize the sovereignty in the concerning state, and this view has already been proved by the UN. In the UNSC Resolution 1425(2002), it states:

[t]he Security Council,

.....

*Reiterating its call on all States and other actors to comply scrupulously with the arms embargo, and its insistence that all States, in particular those of the region, should not interfere in the internal affairs of Somalia. Such interference only further destabilizes Somalia, contributes to a climate of fear and impacts adversely on human rights, and could jeopardize the sovereignty, territorial integrity, political independence and unity of Somalia ”*⁴⁹

Probably the strongest argument on holding the unilateral humanitarian intervention is within the scope of self-defense, which concerns the right of States to use force to protect their nationals abroad during the crisis, as we know the “Right to Protect”.

This right has been asserted by some developed States such as the USA, UK, and

⁴⁸ Case of *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.)*, Merits, Judgment of June 27, 1986, 1986 I.C.J. Rep. 14, p. 109 (para. 209)

⁴⁹ UNSC Resolution 1425, S/RES/1425 (2002), 22 July, 2002, p. 1

Israel under Article 51 of the UN Charter, and it has been exercised in practice by the USA in Grenada (1983), and Panama (1989), by the UK in Suez (1956) and by Israel in Entebbe (1976). Most recently it has been invoked by Russia to justify its use of force against Georgia (2008). Developing States are more doubtful about the existence of this right. Where the host State consents or acquiesces or where there is no effective government, there is not usually a hostile response by other States if the forcible action is limited to the evacuation of nationals and not a pretext for more far reaching intervention.⁵⁰

One of the doubts about the legality of the Right to Protect is that the use of force goes beyond what is necessary and proportionate. “More often than not, the protection of nationals is a mere pretext to mask the real intent of protecting or overthrowing the government. For example, France’s intervention in Chad in 1992 was similarly claimed to be limited to the protection of nationals, although in fact it seems to have gone beyond this to protect the government of President Deby”.⁵¹ The latest example is Russia’s military operation against Georgia in 2008. “When Russia invoked the protection of nationals to justify its use of force against Georgia, western States did not oppose this doctrine as a matter of principle. Instead they challenged Russia’s motives and the proportionality of its action.”⁵²

Accordingly, the unilateral forcible humanitarian intervention is not compatible with the UN Charter and rejected by the International Court of Justice. Nevertheless, the Right to Protect is accepted if it fulfills the following conditions: a. the aim is protecting the national abroad; b. the host State consents or acquiesces; c. the use of force is necessary and proportionate.

3.4.2. Non-forcible humanitarian intervention.

The non-forcible humanitarian intervention, literally, means the humanitarian

⁵⁰ Malcolm D. Evans(ed.), *International Law*, Oxford University Press, 3rd edition, 2010,p.627

⁵¹ Christine Gray, *International Law and the Use of Force*, 3rd edition, Oxford University press, 2008, p.89

⁵² Malcolm D. Evans(ed.), *International Law*, Oxford University Press, 3rd edition, 2010,p.627

intervention will not involve in the use of force. It will be easy to find the non-forcible humanitarian intervention in the UN Charter Article 41, which enumerates the methods of this intervention:

“[t]he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”.

Obviously, the Article 41 divides the non-forcible intervention into economic and political measures. This article actually empowers the UN to initiate non-forcible intervention by itself or mandate the non-forcible intervention to its Member States.

Actually, the non-forcible intervention can be initiated by Member States unilaterally or without authorization from the UN. As we have known that Article 2(4) of the UN Charter has prohibited the Members from the threat or use of the force to any States, while it has not prohibited the Members from non-forcible measures to other States. In other words, it is legitimate for the Members to intervene other States in economic and political ways. Consequently, the non-forcible humanitarian intervention can be resorted by any State unilaterally or international organization as well as the UN.

The latest case is the Syria civil war. When the Syria crisis happened, the international community showed great concern on this issue. The United States has actually unilaterally imposed sanctions on Syria since 2004, “there are currently three types of sanctions that the U.S. government has imposed against Syria. The most comprehensive sanction, called the Syria Accountability Act (SAA) of 2004, prohibits the export of most goods containing more than 10% U.S. manufactured component parts to Syria. Another sanction, resulting from the USA Patriot Act, was levied

specifically against the Commercial Bank of Syria in 2006. The third type of sanction contains many Executive Orders from the President that specifically deny certain Syrian citizens and entities access to the U.S. financial system due to their participation in proliferation of weapons of mass destruction, association with Al Qaida, the Taliban or Osama bin Laden; or destabilizing activities in Iraq and Lebanon.⁵³

In addition to the US, the international organizations have imposed their non-forcible sanctions on Syria as well. The European Union adopted economic sanctions on Syria for 12 months from 31 May 2013 to 1 June 2014;⁵⁴ the sanction not only target at the Syria government but also persons associated with the violent repression in Syria as well as the entities linked to the repressive policies, including the Central Bank of Syria.⁵⁵

Needless to say, the United Nations is the most powerful entity to impose sanctions on its members; in 1991 the UN adopted an arm embargo on the former Yugoslavia in order to restore peace and security there.⁵⁶

Altogether, it is only the UN who has the legitimate power to adopt forcible humanitarian intervention according to the international law, while the non-forcible humanitarian intervention is available to all States and international organizations.

3.5. The definition of the humanitarian intervention.

Based on the analysis above, once there is a humanitarian crisis, the grave human rights violations or the anarchy will indicate that the State Constitutional power has failed to protect its people, since the Constitutional power is the most important for the state sovereignty, therefore, the humanitarian crisis reflects the deficit of the

⁵³ See the information “U.S. Trade and Financial Sanctions Against Syria” on the website of the US embassy in Syria, <http://damascus.usembassy.gov/mobile/sanctions-syr.html>

⁵⁴ Council of the European Union, *Council declaration on Syria*, 3241st Foreign Affairs Council meeting Brussels, 27 May 2013

⁵⁵ Council of the European Union, *Syria: EU economic sanctions to apply until 1 June 2014*, 10306/13, Brussels, 31 May 2013

⁵⁶ United Nations Security Council Resolution, S/RES/713, 25 September 1991

sovereignty.

It is obvious that the humanitarian crisis will hurt the integrity of the State sovereignty and weaken the application of sovereignty equality principle, so the humanitarian crisis will be the threshold for the international community to initiate intervention. In other words, only when the sovereignty is in crisis can the humanitarian intervention be initiated according to the sovereignty equality principle.

To sum up, I would like to delimitate the humanitarian intervention as: the humanitarian intervention is the forcible or non-forcible actions taken by States, group of States, regional organizations or the UN in situations when the concerning State suffers grave human rights violations which weaken its Sovereignty, and it aims at restoring the Sovereignty so as to end the humanitarian crisis and restore peace and security. It must be emphasized that the only legitimate body to initiate forcible humanitarian intervention is the UN.

4. The relationship between humanitarian intervention and Sovereignty.

As I mentioned before, the Sovereign equality is the fundamental principle in the international law, and it has already been embraced in the Charter of the United Nations:

*“Article 2: The organization and its Members, in pursuit of the Purposes Stated in Article 1, shall act in accordance with the following Principles.
(1) The Organization is based on the principle of the sovereign equality of all its Members.....”*

Afterwards, the United Nations makes a clear explanation on this principle:

“[t]he principle of Sovereign equality of States: 1. States are sovereign and as such are equal among themselves, as subjects of international law they have equal rights and duties, and reasons restrict the capacity of a State to act or assume obligations as an equal member of the international community.4. The sovereignty of a State is based on the inalienable rights of every nation to determine freely its own destiny and its social, economic and political system, and to dispose freely of its national wealth and natural resources..... ”⁵⁷

Following the United Nations, the sovereign equality empowers the State to determine its own destiny freely, as a result, no other States has the right to intervene into the State according to this principle.

As we all know the sovereign equality principle is based on the State sovereignty. But the question is what if the State sovereignty deteriorates or is not intact, will the sovereign equality still be there? To what extent the sovereign equality is there?

I have discussed the relations between sovereignty and human rights as well as the constitutional law in part 2, which is followed by the discussion about the relations between humanitarian intervention and human rights as well as the constitutional power. It is obvious that there are interconnection and interplay between the humanitarian intervention and sovereignty. To be exact, the humanitarian intervention is because of the sovereignty and for the sovereignty.

Next, I will discuss why the humanitarian intervention is caused by the sovereignty and for the sovereignty.

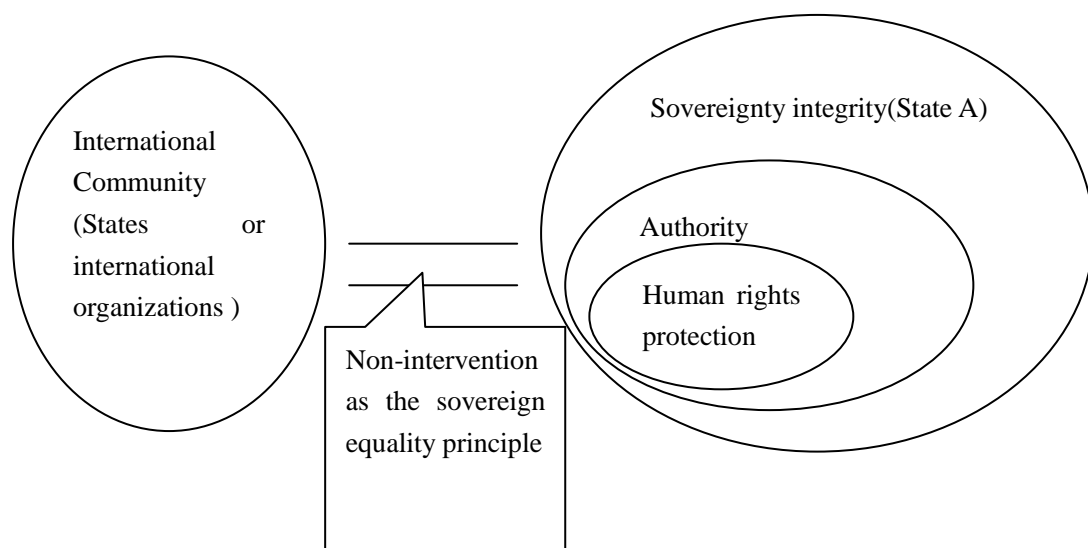
4.1. The legitimate Humanitarian Intervention is caused by the problem of sovereignty.

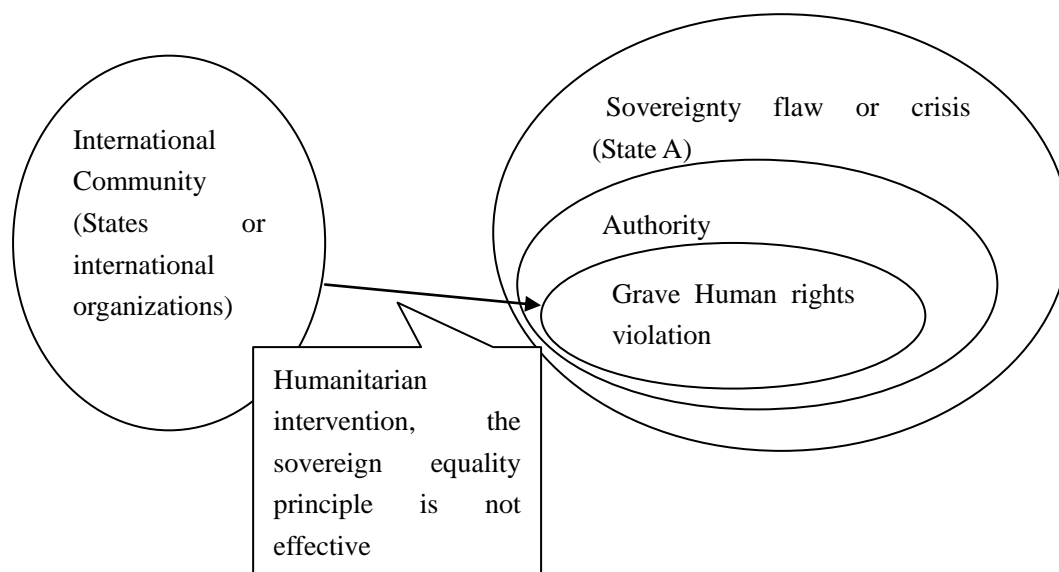
There is no denying that the grave human rights violations is the immediate cause for

⁵⁷ United Nations: *Consensus on Principle of Sovereign Equality of States Reached by Special Committee on Principles of International Law Concerning Friendly Relations of States*, International Legal Materials, volume 4,1965, p.28

the international community to initiate humanitarian interventions, in spite of that the human rights is the issue that falls within the State sovereignty. Grave human rights violations will destabilize the peace and security within the concerning state as well as the surrounding region. In addition, grave human rights violations will weaken the concerning State's sovereignty and lead it to sovereignty flaw or sovereignty crisis. When the State's sovereignty becomes flaw or crisis, it will not be equal with other State's sovereignty. Accordingly, the sovereign equality principle will not be effective when the sovereignty is in flaw or crisis.

In other words, only the sovereignty flaw or sovereignty crisis can legitimize the humanitarian intervention from the international community according to the sovereign equality principle. As a result, the sovereignty flaw and sovereignty crisis are the legitimate reasons for the humanitarian intervention. The diagram below will be helpful to understand why the legitimate humanitarian intervention is caused by the problem of sovereignty:





The legitimate time to initiate humanitarian intervention will depend on the time of the sovereignty flaw or crisis. For example, when there is a nation-wide demonstration in certain State, with chaos resulting in casualties of civilian in several cities, and the Constitutional power is malfunctioning and the sovereignty is flaw. It is the time to initiate the non-forcible humanitarian intervention to this State when the casualties of the civilian are reported. Once the State sovereignty has been restored, the non-forcible humanitarian intervention must be ended in order to abide by the sovereignty equality principle.

However, there is another consequence: the non-forcible humanitarian intervention fails and the chaos in the State escalates into civil war. Then it is time to consider the forcible humanitarian intervention as the State Constitutional power has failed and the sovereignty is in crisis.

In summary, the humanitarian intervention is caused by the concerning State's sovereignty. The sovereignty flaw or crisis legitimizes the humanitarian intervention from the international community according to the sovereign equality principle.

4.2. Humanitarian intervention is for the Sovereignty

In this part, I will discuss the legitimate body to initiate humanitarian intervention and the ultimate aim of the humanitarian intervention. The legitimate entities to initiate non-forcible humanitarian intervention, as I discussed in part 3, are States as well as international organizations. When it comes to the forcible humanitarian intervention, the only legitimate body will be the United Nations. All the humanitarian interventions are trying to end the humanitarian crisis and restore the peace and security. However, it is impossible to end humanitarian crisis if the sovereignty of the concerning State is not rehabilitated or rebuilt.

4.2.1. Humanitarian intervention by the States is for the Sovereignty.

All States have the right to choose the measures to deal with their international relations except for the threat or use of force, which has been enshrined in the UN Charter as well as the international law. Accordingly, the States is not the legitimate entity to initiate forcible humanitarian intervention.

Normally, States initiate non-forcible humanitarian intervention to help the rehabilitation of the sovereignty in the concerning State. Again, let's take the U.S. as an example, it initiated the *Syria Accountability and Lebanese Sovereignty Restoration Act* (SAA) in 2004, and this Act states its purpose as:

*“[t]o halt Syrian support for terrorism, end its occupation of Lebanon, and stop its development of weapons of mass destruction, and by so doing hold Syria accountable for the serious international security problems it has caused in the Middle East, and for other purposes.”*⁵⁸

Clearly, this Act is trying to invoke the non-forcible humanitarian intervention, impose comprehensive sanctions on Syria and restore sovereignty for Lebanon.

While there is one special situation that one State, in the emergency situation, has

⁵⁸ *Syria Accountability and Lebanese Sovereignty Restoration Act of 2003*, Public Law 108–175—DEC. 12, 2003, 22 USC 2151, p. 2

unilaterally launched a military intervention to the concerning State, at the same time the State tries to ask the United Nations for the mandate so as to legalize its intervention. Needless to say, this unilaterally military intervention is more risky if the United Nations fails to mandate it.

Here is a good example in Mali crisis. In January 2012 an armed conflict broke out between a Tuareg rebel movement and Malian government forces.⁵⁹ The government of Mali requested foreign assistance to re-take the north and France answered the call. France restored Mali's government back to power.⁶⁰ On 11 January 2013, the French military began operations against the Islamists.⁶¹ This unilaterally military intervention acquired the United Nations' mandate afterwards.⁶²

The purpose of this unilateral humanitarian intervention was expressed by UNSC in the Resolution 2100(2013):

“The Security Council

.....

Welcoming the swift action by the French forces, at the request of the transitional authorities of Mali, to stop the offensive of terrorist, extremist and armed groups towards the south of Mali and commending the efforts to restore the territorial integrity of Mali by the Malian Defence and Security Forces, with the support of French forces and the troops of the African-led International Support Mission in Mali (AFISMA),.....”

Obviously, the UN has recognized that the French forces were trying to stop offensive

⁵⁹ See the report in the UNHCR website: <http://www.unhcr.org/pages/4f79a77e6.html>

⁶⁰ See the research “As War Lingers in Mali, Western Powers Target its Natural Resources” in the website: <http://www.globalresearch.ca/as-war-lingers-in-mali-western-powers-target-its-natural-resources/5364079>

⁶¹ See the news “France launches Mali military intervention” in the Al-Jazeera website: <http://www.aljazeera.com/news/africa/2013/01/2013111135659836345.html>

⁶² United Nations Security Council Resolution 2100(2013), 25 April, 2013, p. 9, it states: “.....18. Authorizes French troops, within the limits of their capacities and areas of deployment, to use all necessary means, from the commencement of the activities of MINUSMA until the end of MINUSMA's mandate as authorized in this resolution, to intervene in support of elements of MINUSMA when under imminent and serious threat upon request of the Secretary-General,.....”

of terrorist, extremist and armed groups towards the south of Mali and help the Mali to restore the territorial integrity. As we know, peace and security as well as human rights protection, and territorial integrity are all the elements within the sovereignty. Therefore, this humanitarian intervention by French forces actually made a contribution to the restoration of sovereignty in Mali.

One question here is that if a State gets the request from another State, will the unilaterally military intervention be justified? It is not clear now. “The basic principle of the right of a government to invite a third state to use force and the absence of any such right for an opposition may be accepted in theory, but its application in practice has not been simple.”⁶³

In the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, it states:

“..... 3.The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

1) No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.”⁶⁴

It seems that this provision does not recognize the unilateral armed intervention for any reason, the duty of non-intervention and the inalienable right of every State to choose its political, economic, social, and cultural systems have brought with them

⁶³ Christine Gray, *International Law and the Use of Force*, 3rd edition, Oxford University press, 2008, p.81

⁶⁴ UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV), available at: <http://www.refworld.org/docid/3dda1f104.html>

the duty not to intervene to help a government in a civil war.⁶⁵ However, in the UNSC Resolution 2100(2013), the UN accepted the French unilateral military intervention in Mali, it States:

*“.....Welcoming the swift action by the French forces, at the request of the transitional authorities of Mali, to stop the offensive of terrorist, extremist and armed groups towards the south of Mali.....”*⁶⁶

This Resolution implies that the UNSC has right to evaluate or even legalize the unilaterally military intervention. Regarding this issue, I believe there will be a clear international law to regulate all types of unilateral military interventions in the near future. In short, the legitimate humanitarian interventions by the States are all for the restoration of the sovereignty in the concerning State.

4.2.2. Humanitarian intervention by the International Organizations is for the Sovereignty.

The most powerful international organization is the United Nations. According to the UN Charter article 41 and article 42, the United Nations have the right to decide any measures to restore international peace and security. As a result, the UN is the legitimate entity to initiate both non-forcible intervention and forcible intervention in all States concerned.

Apparently, the primary aim of the humanitarian intervention is to end the humanitarian crisis and restore peace and security in the target State. However, its ultimate aim will also be the restoration of the sovereignty in the target State.

Usually, the significance of the sovereignty is easily ignored during the humanitarian intervention. Fortunately, the UN is paying more and more attention to the restoration of sovereignty during the humanitarian intervention. In the UNSC Resolution 2100

⁶⁵ United Nations Security Council Resolution 2100(2013), 25 April, 2013, p. 1

⁶⁶ United Nations Security Council Resolution 2100(2013), 25 April, 2013

(2013), it states:

The Security Council,

.....

Taking note of the letter, dated 25 March 2013, addressed to the Secretary-General by the transitional authorities of Mali, which requests the deployment of a United Nations operation to stabilize and restore the authority and the sovereignty of the Malian State throughout its national territory,.....

.....

Acting under Chapter VII of the Charter of the United Nations,

.....

16. Decides that the mandate of MINUSMA shall be the following:

(a) Stabilization of key population centres and support for the reestablishment of State authority throughout the country

(i) In support of the transitional authorities of Mali, to stabilize the key population centres, especially in the north of Mali and, in this context, to deter threats and take active steps to prevent the return of armed elements to those areas;

(ii) To support the transitional authorities of Mali to extend and re-establish State administration throughout the country.....;”⁶⁷

In this Resolution, the UN decides to establish the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), and mandate the MINUSMA a comprehensive power to restore the sovereignty in Mali.⁶⁸ Additionally, the UN has accepted the plan for restoring sovereignty in Afghanistan in the Resolution 2120 (2013), in which it states:

“The Security Council,

⁶⁷ UNSC Resolution, 2100(2013), S/RES/2100 (2013), 25 April, 2013, p. 3

⁶⁸ UNSC Resolution, 2100(2013), S/RES/2100 (2013), 25 April, 2013, pp. 7—9

.....

Welcoming the conclusions of the International Conference on Afghanistan in Bonn (S/2011/762) which declared that the Process of Transition, to be completed by the end of 2014, should be followed by a Transformation Decade (2015-2024) in which Afghanistan consolidates its sovereignty through strengthening a fully functioning, sustainable state in the service of its people, ”⁶⁹

In light of the elaboration above, one of the ultimate aims of the UN humanitarian intervention is the restoration of the State sovereignty. When the State has full sovereignty, the humanitarian intervention shall be refrained based on the sovereign equality principle.

ICRC (International Committee of Red Cross) initiates non-forcible humanitarian intervention

The work of the ICRC is based on the Geneva Conventions of 1949, their Additional Protocols, its Statutes – and those of the International Red Cross and Red Crescent Movement – and the resolutions of the International Conferences of the Red Cross and Red Crescent. The ICRC is an independent, neutral organization ensuring humanitarian protection and assistance for victims of armed conflicts and other situations of violence. It takes action in response to emergencies and at the same time promotes respect for international humanitarian law and its implementation in national law.⁷⁰

The ICRC is actually an organization to offer humanitarian aids to the victims in the armed conflicts. However, the Geneva Convention, which is developed by the ICRC, is also involved in the sovereignty issue. In the Geneva Convention (IV) on Civilians, article 47 “*Inviolability of rights*” states:

⁶⁹ UNSC Resolution, 2120(2013), S/RES/2120 (2013), 24 July, 2013, p.1

⁷⁰ See the ICRC’s mandate and mission on website :
<http://www.icrc.org/eng/who-we-are/mandate/overview-icrc-mandate-mission.htm>

“[p]rotected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

Regarding to this article, the ICRC made the commentary:

“2. Changes in the institutions or the government of the occupied territory.

During the Second World War Occupying Powers intervened in the occupied countries on numerous occasions and in a great variety of ways, depending on the political aim pursued; examples are changes in constitutional forms or in the form of government, the establishment of new military or political organizations, the dissolution of the State, or the formation of new political entities. International law prohibits such actions, which are based solely on the military strength of the Occupying Power and not on a sovereign decision by the occupied State.”⁷¹

Clearly, the ICRC indicates that the sovereignty of the occupied State cannot be deprived by the occupying powers according to international law. The sovereign decision, which is inviolability of rights, will always belong to the people in the occupied State. Lately, the ICRC implies that the occupation in wartime is temporary and the sovereignty will not be changed during occupation:

“[a]s was emphasized in the commentary on Article 4, the occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty;

⁷¹ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Commentary, Geneva ICRC 1958, printed in Switzerland, p. 273

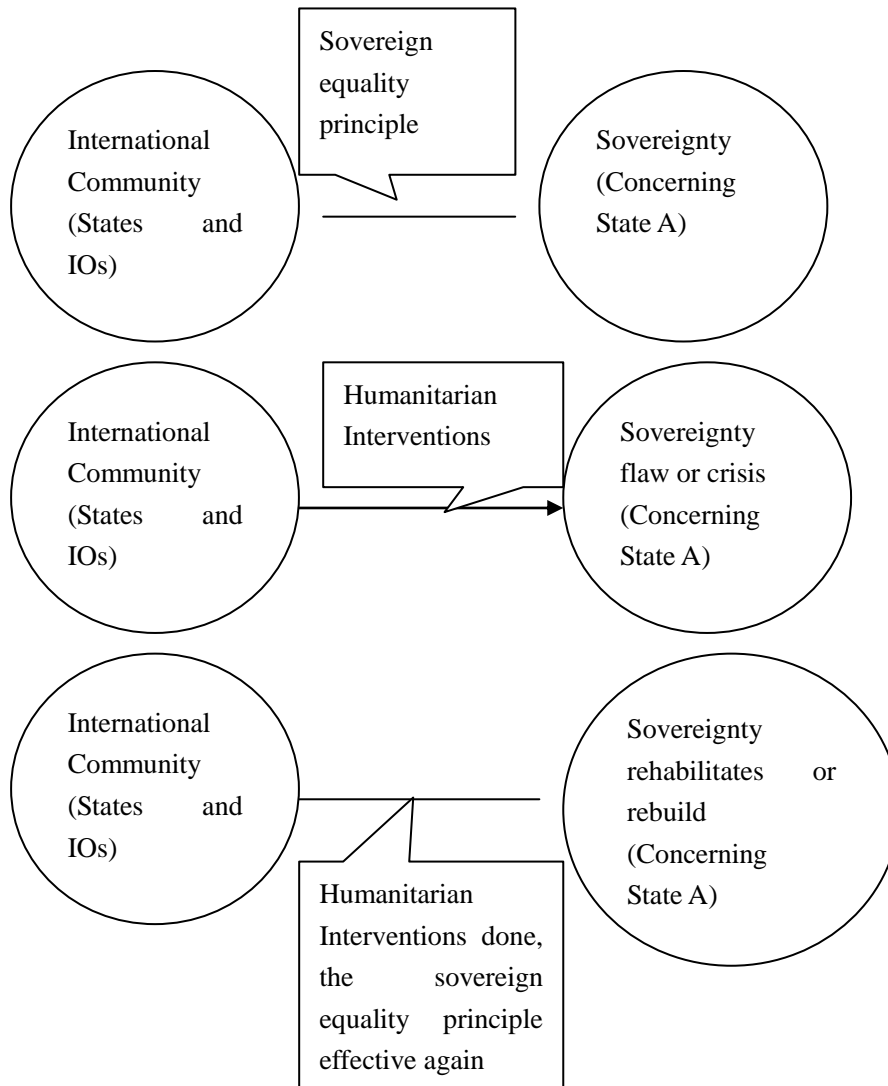
it merely interferes with its power to exercise its rights..... ”⁷²

Without any doubt, the ICRC is not only offering humanitarian aid during the humanitarian crisis, but also protecting the sovereignty of the occupied State during the war. Unlike the UN, who directly protects the sovereignty during the humanitarian intervention, the ICRC tries to protect the *Inviolability Rights* of the people in the occupied State so as to protect the sovereignty therein.

The international organizations have wide choices in humanitarian interventions. All of these interventions will be involved in restoring peace and security in the concerning State, in other words, restoring State sovereignty.

To sum up, the humanitarian interventions depend on the situation of the sovereignty, while the effective humanitarian intervention invoked by the international community is not to destroy or hurt the concerning State’s sovereignty but to rehabilitate or rebuild the sovereignty for the concerning State. Only when the sovereignty has been restored can the humanitarian crisis be stopped. The diagram below will be helpful to understand the relations between the humanitarian intervention and the sovereignty:

⁷² Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Commentary, Geneva ICRC 1958, printed in Switzerland, p. 275



5. Case study.

In this part, I will show a case in order to further explain why the successful humanitarian intervention is by the sovereignty and for the sovereignty in the State concerned.

5.1. The Syria Case

The Syria crisis began on 15 March 2011, with popular protests that grew nationwide by April 2011. Civilian casualties have been reported,⁷³ and Syrian sovereignty was

⁷³ See the report "Syria: Security Forces Kill Dozens of Protesters" in Human Rights Watch website,

in flaw since the country at that time was still under control by the authority. Because of the civilian casualties caused by the authority and the flaw sovereignty, the international community intervened into the Syria by wide-ranged sanctions and embargo⁷⁴. All the non-forcible humanitarian interventions complied with the international law. However, these non-forcible humanitarian interventions were not effective in helping Syria to rehabilitate its sovereignty.

In April 2011, Syria army was deployed to quell the uprising and soldiers fired on demonstrators across the country.⁷⁵ The Syria civil war began with clashes taking place in many towns and cities across the country.⁷⁶ Since the civil war in Syria had cracked the sovereignty in crisis, it was time to intervene in Syria in forcible measures. However, due to the great divergence among the UNSC, the resolution that demanded Syria immediately cease all violence and protect its population was vetoed by Russia and China.⁷⁷ Explaining his negative vote, the representative of the Russian Federation said that the draft resolution sought to send an “unbalanced” message to Syria. Moreover, no proposal had been made to end attacks by armed groups, or their association with extremists.⁷⁸

Even worse was that the Syrian government was further upheld by military support from Russia and Iran,⁷⁹ while Qatar, Saudi Arabia and United States transferred weapons to the rebels.⁸⁰ Regarding to the Syria crisis, it seems that the international community failed to find the right way to initiate humanitarian intervention. Instead of rebuilding the sovereignty in Syria, both United States and the Russia focused on the regime. As a result, the Syria sovereignty was still in crisis and the civil war

<http://www.hrw.org/news/2011/03/24/syria-security-forces-kill-dozens-protesters>

⁷⁴ See the news “Q&A: Syria sanctions” on BBC website: <http://www.bbc.com/news/world-middle-east-15753975>

⁷⁵ See the report “We’ve Never Seen Such Horror” in Human Rights Watch website: <http://www.hrw.org/node/99345/section/5>

⁷⁶ See the news “Syria: What you need to know” in Sydney Morning Herald website: <http://www.smh.com.au/world/syria-what-you-need-to-know-20130903-2t20m.html>

⁷⁷ Security Council, SC/10536, 4 February, 2012, also see the document in UN website : <https://www.un.org/News/Press/docs/2012/sc10536.doc.htm>

⁷⁸ Security Council, SC/10536, 4 February, 2012, also see the document in UN website : <https://www.un.org/News/Press/docs/2012/sc10536.doc.htm>

⁷⁹ See the news “Exclusive: Russia steps up military lifeline to Syria’s Assad - sources” in Reuters website: <http://www.reuters.com/article/2014/01/17/us-syria-russia-arms-idUSBREA0G0MN20140117>

⁸⁰ See the news “In Turnabout, Syria Rebels Get Libyan Weapons” in New York Times website: http://www.nytimes.com/2013/06/22/world/africa/in-a-turnabout-syria-rebels-get-libyan-weapons.html?_r=0

deprived more people of lives, which could have been avoided.

The Syria crisis is a negative example for the UN humanitarian intervention. The mistake that the permanent members of the Security Council made in the Syria crisis is that they put the Syria regime rather than the Syria sovereignty in priority. Should the Syria sovereignty be on the top during the humanitarian intervention, the UN would firstly take impartial measures to cease fire in Syria and then start negotiation between Syria government and the rebels. As long as armed conflicts were stopped, the lives and basic human rights of Syria people would be guaranteed. This is the only effective way for the UN to initiate the humanitarian intervention in Syria, which aims to rebuild Syria sovereignty so as to resolve the Syria crisis.

5.2. The UN peacekeeping mission in Sierra Leone.

The civil war in Sierra Leone dates from March 1991 when fighters of the Revolutionary United Front (RUF) launched a war to overthrow the government. Though the government has been changed several times, the war badly damaged the sovereignty. On June 1998, the Security Council intervened in Sierra Leone by established the United Nations Observer Mission in Sierra Leone (UNOMSIL) for an initial period of six months. The mission monitored and advised efforts to disarm combatants and restructure the nation's security forces. With the impartial humanitarian aids from the UN, negotiations between the Government and the rebels began in May 1999 and all parties to the conflict signed an agreement in Lome to end hostilities and form a government of national unity on July.⁸¹

In October 1999, the Security Council, with the Resolution 1270 (1999), authorized the establishment of the United Nations Mission in Sierra Leone (UNAMSIL), a new and much larger mission with a maximum of 6,000 military personnel. By early 2002, UNAMSIL had disarmed and demobilized more than 75000 fighters, including child soldiers.⁸² Besides, the Mission helped Sierra Leone to organize the first free and fair

⁸¹ See the report in the UN website, <http://www.un.org/en/peacekeeping/missions/past/unamsil/background.html>

⁸² See the report in the UN website, <http://www.un.org/en/peacekeeping/missions/past/unamsil/background.html>

presidential and parliamentary elections as well as local government elections, and these measures will be the best to rebuild the sovereignty. With the sovereignty rebuilt in Sierra Leone, the crisis was finally resolved.

Altogether, the successful humanitarian intervention must be comprehensive measures which focus on the rehabilitation or rebuilding of sovereignty. The Syria crisis will be the negative example to show that there is no way to solve this crisis if the State sovereignty is not the top issue on the table.

6. Conclusion

Since the establishment of the United Nations after the Second World War, the world has been paying much more attention to the international peace and security. Though the humanitarian crisis has never been eliminated, the international law has been improved and prescribed for the world the way to maintain peace and security. We have to face a world where the humanitarian crisis will continue to be the big issue in the international community and the international law is the only legitimate way to solve the crisis. Accordingly, the way that the international community intervenes the humanitarian crisis has to conform to international law.

Needless to say, the State sovereignty is the crucial element in the humanitarian intervention. The humanitarian intervention, according to the sovereign equality principle of the international law, cannot be invoked unless the State sovereignty is in flaw or crisis. Once the humanitarian crisis breaks out, the sovereignty there is in damaging. This will be the legitimate condition for the international community to initiate their humanitarian intervention.

Undoubtedly, the UN has to be the main body to intervene the humanitarian crisis in this world. It is not only because the UN has legitimate power to initiate forcible humanitarian intervention, but also because it has abundant resources to do the non-forcible humanitarian intervention. Forcible and non-forcible humanitarian

interventions are the effective methods for the UN to cope with humanitarian crisis in this world. Nowadays, some States may argue for the unilateral forcible humanitarian intervention in order to end the humanitarian crisis more efficiently, however, the unilateral use of force to intervene in another State may not solve the crisis but create more. “The International Federation of the Red Cross and Red Crescent Societies (IFRC) argues in the World Disasters Report 1997 that humanitarian action is controlled by the principles of neutrality, impartiality, and independence. Humanitarian action is apolitical and, by definition, excludes the use of military force. The military, claims the report, cannot qualify as humanitarian because every soldier, whether backed by a nation, regional organization or the UN, comes connected to political governance.”⁸³

Obviously, the IFRC is quite against the use of force in humanitarian intervention, however, it cannot deny the contribution of the UN peacekeeping in humanitarian crisis. “Since 1948, the UN has helped end conflicts and foster reconciliation by conducting successful peacekeeping operations in dozens of countries, including Cambodia, El Salvador, Guatemala, Mozambique, Namibia and Tajikistan. UN peacekeeping has also made a real difference in other places with recently completed or on-going operations such as Sierra Leone, Burundi, Côte d’Ivoire, Timor-Leste, Liberia, Haiti and Kosovo. By providing basic security guarantees and responding to crises, these UN operations have supported political transitions and helped buttress fragile new state institutions.”⁸⁴

By examining the relationship between humanitarian crisis and sovereignty, it will be easy to conclude that the humanitarian intervention is triggered by the State sovereignty which is damaged in the humanitarian crisis, and the humanitarian intervention should not merely focus on the human rights protection or peace and security, but has to focus deeply on rehabilitating or rebuilding the State sovereignty.

⁸³ International Federation of Red Cross and Red Crescent Societies, “Can Military Intervention and Humanitarian Action Coexist?”, in World Disasters Report 1997, Section 1, Chapter2, see also John Janzekovic, *The Use of Force in Humanitarian Intervention: Morality and Practicalities*, Ashgate Publishing Limited, 2006, p.130

⁸⁴ See the report of “Success in peacekeeping” at the UN website:
<http://www.un.org/en/peacekeeping/operations/success.shtml>

Without a full sovereignty, the human rights protection as well as peace and security will not be fully realized. Once the State sovereignty is restored, the humanitarian intervention has to be ended, or the sovereign equality principle, and the human rights protection as well as the peace and security will be revived again.

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