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Humanitarian Intervention in History

- *An Analysis of the Historical Evolution of the Doctrine*

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1. Summary

The prohibition against the use of force as described in article 2.4. of the UN- Charter is one of the most important rules in international law, only two exceptions exist. There is however an ongoing discussion regarding if humanitarian intervention should be considered a legal exception to the prohibition against the use of force. The consensus within the international community however, is that humanitarian intervention is illegal.

The purpose of this thesis is to describe how the doctrine of humanitarian intervention has evolved throughout history. Furthermore, the aim is to determine whether humanitarian intervention was a legal justification for war in the pre- Charter era as well as to evaluate the reasoning as to why humanitarian intervention was not included as a third exception to the prohibition against the use of force in the UN- Charter.

The ancestral ideas of the doctrine of humanitarian intervention were most likely formed as part of the “just war” tradition. The tradition was developed as a system that scholars used to evaluate the just causes of war. Different societal aspects influenced the just war doctrine during different periods throughout history. It was amongst other things influenced by religion, by different ideologies such as naturalism and positivism as well as by the development of the principles of non- intervention and state sovereignty.

The term “humanitarian intervention” was first used in the nineteenth century after several wars had taken place with the justification that they were waged for humanitarian purposes. The same was true for several wars that occurred during the first half of the twentieth century. The wars mentioned, together with some other aspects, are an indication that humanitarian intervention might have been legal in the pre- Charter era.

After the First World War, attempts were made through the creation of the League of Nations and its Covenant to prevent something similar from happening ever again. Unfortunately, the attempts failed. World War II, which ended in 1945, was even more devastating than its predecessor. To prevent a similar war from occurring again, the victors drafted the UN- Charter and with it the prohibition against the use of force. A suggestion was made to incorporate humanitarian intervention into the Charter as a legal exception during the discussions, but the suggestion was rejected because it was considered much too vague and uncertain.

2. Sammanfattning

Våldsförbudet i artikel 2.4 i FN- stadgan är en av de viktigaste reglerna inom internationell rätt, det finns bara två undantag till regeln. Det pågår dock en diskussion gällande ifall humanitär intervention ska anses som ytterligare ett legalt undantag till våldsförbudet. Konsensus inom den internationella rätten verkar dock vara att humanitär intervention är olagligt.

Syftet med denna kandidatuppsats är att beskriva hur humanitär intervention har utvecklats som koncept genom historien. Vidare så är målet med uppsatsen att upplysa om ifall humanitär intervention var lagligt innan FN- stadgan antogs samt att analysera varför humanitär intervention inte inkluderades som undantag till våldsförbudet i FN- stadgan.

De tankar som senare utvecklades till vad som idag kallas för humanitär intervention har troligtvis sitt ursprung i traditionen om ”rättvisa krig”. Traditionen utvecklades som ett system som användes av vetenskapsmän och filosofer för att utvärdera ifall ett krig kunde anses rättvist. Olika samhällsliga aspekter har påverkat traditionen under olika tidsperioder i historien. Bland annat har religion, ideologier som rättspositivism och naturrätt samt principerna om interventionsförbudet och statssuveränitet influerat traditionen.

Termen ”humanitär intervention” användes för första gången under artonhundratalet efter att ett flertal krig motiverats på humanitära grunder. Likaväl pågick olika krig i början på nittonhundratalet som förklarades vara humanitära interventioner. De krig som utspelades under arton- och nittonhundratalet och som motiverades på humanitära grunder är mycket troligt en indikation på att humanitär intervention var lagligt innan FN- stadgan antogs.

Efter första världskriget gjordes försök, genom skapandet av Nationernas Förbund att förhindra ett liknande krig från att hända någonsin igen. Tyvärr lyckades inte dessa försök och andra världskriget som tog slut år 1945 hade ännu mer förödande konsekvenser än sin föregångare. För att förhindra att någonting liknande skulle hända någonsin igen så antogs FN- stadgan och genom stadgan även våldsförbudet. Ett förslag gällande att inkludera humanitär intervention som ett undantag till våldsförbudet gjordes under förhandlingarna, men förslaget avslogs då det ansågs vara för vagt och osäkert.

3. Introduction

In international law as it is today, the prohibition against the use of force in article 2.4 of the UN- Charter is considered to be one of the most important principles. The article was drafted in response to the harrowing experience of WWII and the destruction that came with the war.¹ The article entails an absolute prohibition against the use of force between states², however there exists two exceptions to the rule. According to article 51 of the UN- Charter, a state has the right to act in self- defense when it has been the target of an armed attack by another state. This right however, only exists as long as the UN- Security Council has not made the decision to act against the offending state.³ The other exception to the rule, is that military force is allowed to be used by one state against another in situations where the UN- Security Council has given its authorization in accordance with article 42 of the UN- Charter.⁴

Since the Charter entered into force in 1945, the prohibition against the use of force has evolved and developed through a number of resolutions passed by the UN General Assembly, these were adopted with the purpose of broadening the understanding of the UN- Charter. Through the resolutions the principles of state sovereignty and of non-intervention have been firmly established.⁵ One such Resolution is the General Assembly Resolution 2625 of 1970, more commonly known as *The Friendly Relations Declaration* which explains that states have a duty to refrain from interfering in the internal affairs of other countries.⁶

The prohibition against the use of force does not only apply to states party to the UN- Charter, since the drafting in 1945 the prohibition has developed into a general rule of international law.⁷ This transformation was demonstrated in the ICJ ruling in *Nicaragua* in 1986, where the court confirmed that the prohibition against the use of force exists in international customary law as well.⁸ The prohibition against the use of force is thereby universal and applicable to all interstate interactions.

¹ Gray, 2018, p. 75.

² Art. 2.4, UN- Charter.

³ Art 51, UN- Charter.

⁴ Art. 42, UN- Charter.

⁵ Gray, 2018, p.75.

⁶ UNGA Res. 2625.

⁷ Cassese, 2005, p. 56.

⁸ Gray, 2018, p. 75.

During the last decades of the twentieth century, after the end of the Cold War and the fall of the Soviet Union a discussion was initiated regarding the potential legality of humanitarian intervention as an exception to the prohibition against the use of force. The idea of such an exception meant a departure from the principle of inviolable state sovereignty that had ruled during the Cold War era.⁹ The intensity of the debate grew during the 1990s and culminated in the non-sanctioned intervention in Kosovo by NATO in 1999. Some scholars have argued that the intervention is proof of the legality of humanitarian intervention, and arguments which were used to justify the NATO's actions have since been reused by other states which have attempted to justify other seemingly illegal interventions into the internal affairs of sovereign states such as the US-led invasion of Iraq in 2003.¹⁰

In discussions regarding the legality of humanitarian intervention, parties on different sides of the debate often disagree on some very fundamental aspects within international law, such as how international law adapts with changing times, what state-compliance with international law entails and how treaties and resolutions should be interpreted by state parties.¹¹

The question of humanitarian intervention is still very much debated to this day. The civil war in Syria and the terrible human rights violations perpetrated against the civilian population by the Assad-led regime have contributed to intense discussions regarding the legality of humanitarian interventions once again. The consensus in the international community however, is that humanitarian interventions are illegal. A lack of state practice and *opinio juris* seem to confirm this as a fact.¹²

To better understand the current international debate regarding humanitarian intervention as well as the legal climate surrounding it, I believe that it is important to understand how the idea of humanitarian intervention has been viewed and developed throughout history.

3.1. Subject Matter

The purpose of this thesis is to describe the legal evolution of humanitarian intervention through history, and to highlight how historical events contributed to the exclusion of humanitarian intervention from the UN-Charter.

⁹ Newman, 2009, p.1.

¹⁰ Burke, 2013, p. 7-8.

¹¹ Hurd, 2011, p. 297.

¹² Henriksen, 2017, p. 208.

3.2. Questions

In what way was the concept of humanitarian intervention developed through the Just War tradition?

Was humanitarian intervention legal in the pre- Charter era?

Why was humanitarian intervention not incorporated into the UN- Charter as a legal exception to the prohibition against the use of force?

3.3. Perspective

To fulfill the purpose of this thesis, I have made use of a legal historical perspective. It is my opinion that using such a perspective contributes to a deeper level of understanding of the debate currently taking place within the international community regarding the legality of humanitarian interventions.

3.4. Method and Material

In order to provide answers to the questions posed I seek to present a historical analysis of the development of humanitarian intervention in the pre- Charter era, starting with the earliest documented ideas that are traceable to the formation of the doctrine. The focus of the thesis is then centered on historical events as well as teachings that have contributed to the development of the doctrine. Furthermore an evaluation of the discourse during the UN- Charter negotiations is described.

I have sought to outline humanitarian intervention in the pre- Charter era in relation to international customary law which according to article 38 of the ICJ- Statute is a legitimate source of international law.¹³ The material I have used when describing and analyzing historical events as well as customary international law is mainly doctrine, as well as journal articles written by established scholars. Articles from the UN- Charter as well as a UN General Assembly Resolution has been used to describe the current state of the prohibition of the use of force in international law.

¹³ Art. 38 ICJ- Statute.

3.5. Limitations

The focus of this paper is on the historical evolution of international humanitarian intervention, I have therefore chosen not to describe the current debate and its different standpoints but have solely confirmed that the consensus in the international community is that humanitarian intervention is illegal. I have furthermore chosen not to speculate on the future of humanitarian intervention in international law.

The focus of this thesis is solely centered on the history and evolution of humanitarian intervention in Western society. Furthermore I have chosen not to describe how humanitarian intervention was used as a justification for the colonization of countries in Africa, the thesis does however touch on the Spanish inquisition in the Americas.

3.5.1. Definition

Humanitarian intervention is a term often used in international law. However, it is not defined in any of the main international treaties, and the boundaries of the term are a bit unclear.¹⁴

Many authors have, despite this, tried to define the meaning of the term and most of the definitions are quite similar. The meaning of humanitarian intervention that will be applied in this thesis has been developed by Ciarán Burke, whose definition is based in the meaning described by JL Holzgrefe and Robert O'Keohare and is as follows:

“(1) the threat or use of force; (2) across State borders; (3) by a State or group of States; (4) aimed at preventing or ending gross human rights violations; (5) where such violations are being committed by the violating State against individuals other than the citizens of the intervening State(s) (6) without the permission of the State within the territory of which force is applied.”¹⁵

4. Humanitarian Intervention through History

¹⁴ Lowe & Tzanakopoulos, Max Planck Encyclopedia of Public International Law: *Humanitarian Intervention*, 2011, <http://opil.ouplaw.com.ludwig.lub.lu.se/view/10.1093/law:epil/9780199231690/law9780199231690e306?rskey=xodnWD&result=664&prd=EPIL> (accessed May 3, 2018).

¹⁵ Burke, 2013, p. 7.

Just as there is a discussion regarding if humanitarian intervention exists as a legal exception to the prohibition against the use of force in today's society, there is currently a parallel debate happening regarding if humanitarian intervention existed as a legal justification for warfare in the pre- Charter era. Some scholars argue that it was acceptable for foreign military to intervene in the internal affairs of sovereign states before the UN- charter was adopted, if the motivation behind the use of force was a will to prevent the slaughter of innocents.¹⁶ Meanwhile other scholars are of the opinion that humanitarian intervention was illegal in the pre- Charter era as well.¹⁷

4.1. Just War

The term humanitarian intervention was first coined in the nineteenth century.¹⁸ However, it is argued that the ancestral ideas of the doctrine were formed many years earlier as part of the "just war" tradition which can be traced all the way back to several hundred years B.C.¹⁹

The just war- tradition was developed as a way of evaluating the grounds for war. The idea was that a war was acceptably waged if the cause was just and if the warfare was proportionate as well as ordered by the correct authority. The doctrine was used to analyze if warfare was justifiable in certain situations.²⁰

There have been different versions of the just war doctrine throughout history, however all of the versions have had certain aspects in common. The supporters of the different versions have shared the opinion that war should be waged restrictively. Furthermore, the versions of the doctrine have been influenced by philosophical and theological ideas. Lastly, the scholars who have contributed to developing the tradition have been proponents of creating laws which would govern both the decision to enter into war, as well as the actual waging of the war.²¹

4.1.1. The Origins of the Just War Doctrine

The origins of the just war tradition can be traced all the way back to ancient Greece , where there existed a network of loosely put together rules which regulated the entering into wars

¹⁶Bass, 2008, p. 13.

¹⁷ Chesterman, 2001, p 35.

¹⁸ Ibid. p. 7.

¹⁹ Hehir, 2013, p. 188.

²⁰ Ibid. p. 28.

²¹ Bellamy, 2006, p.4.

between its city states in the years 700-450 B.C.²² Eventually, ideas were developed regarding justifiable and humanitarian warfare. One of the earliest thinkers who spoke of such ideas was the Greek historian Thucydides (460-400 B.C.), he was distraught by the violence and bloodlust of the wars of his time, and he expressed hope that those who suffered through terrible wars would be saved.²³ Plato (c. 429-347 B.C.) and Aristotle (384-322 B.C.) also contributed to developing ideas of humanity and justice in warfare. Plato advocated, for a more humanitarian waging of wars where innocents would be spared whilst Aristotle spoke of justice and legitimate causes of warfare.²⁴ About two centuries later, in Rome, Cicero (106-43 B.C.) was a proponent of the idea that a war could only be justifiable if it was fought for the purpose of achieving peace. Furthermore he was an advocate for sparing innocents when war was waged.²⁵

Though the seeds of the ideas that would become the just war tradition can be traced as far back as to Thucydides, one cannot claim that the doctrine truly began its development until circa 400 A.D with the teachings of St. Augustine.²⁶ Prior to that time, after Christianity had been established and the Church had become powerful, violence was strongly condemned and therefore, so was war. In fact, up until circa 170 A.D. Christians were forbidden from enlisting in the Roman army.²⁷ There were however still those who advocated for the righteousness of just war, St. Ambrose (c. 339-397) was one such scholar. Ambrose argued that passages in the Old Testament supported the idea that violence was just in situations where the purpose of said violence was to protect others from harm. He later went even further and argued that violence in certain situations was necessary when the cause was just.²⁸

With the division of the Roman Empire, the teachings of the church shifted. The Western Empire was under constant threat of invasion and was losing more and more of its land area. During this time St. Augustine (354-430) of Hippo started developing ideas regarding a type of justified warfare in perilous situations.²⁹ Augustine was deeply influenced by the teachings of Cicero and Ambrose. Due to the looming threat of invasion of his home by the Visigoths, he started philosophizing over if killing ever could be justified, his belief was that individuals

²² Bellamy, 2006, p. 16.

²³ Bass, 2008, p. 14.

²⁴ Bellamy, 2006, p 18.

²⁵ Boucher, 1998, p.180-181.

²⁶ Hehir, 2013 p. 31.

²⁷ Brownlie, 1963, p. 5.

²⁸ Chesterman, 2001, p. 13-14.

²⁹ Hehir, 2013, p. 31-32.

who acted violently with the purpose of defending others and with a goal to restore order to the public, were not committing sinful acts.³⁰ Augustine analyzed parts of the Bible and teachings by Jesus and interpreted them in such a way to mean that force, in certain situations could be considered acceptable and justifiable. Hence, Augustine found that violence only constituted a sinful act if the motivations behind the use of force were sinful.³¹

4.1.2. The Just War Doctrine in the Middle Ages

Augustine's ideas mark the true beginning of the link between religion and the just war doctrine. Many violent wars that have been considered justifiable due to religious motivations have been waged since then. The Holy Wars waged by the Church during the Middle Ages are examples of such battles. The violence of the crusades was considered justifiable by the Church simply because the wars were waged in the name of Christianity, even though the warfare was extremely violent and though many innocents lost their lives.³² When Jerusalem was conquered in 1099 and hundreds of thousands of Muslims were murdered, the justification was that the purpose of the war was to protect the Christian population in that area from death at the hands of the Muslims.³³

The Holy Wars continued in a similar fashion for many years thereafter, drawing on the ideas of Augustine to justify the slaughter of non-Christians. About a century later, the naturalist St. Thomas Aquinas (1225-1274), rejected the idea of the crusades.³⁴ During this time, the tradition of just war as described by Augustine had been well established within the Christian doctrine. Drawing on Augustine's ideas, Aquinas further developed the tradition. He believed that a war only could be considered acceptable if it was declared by the right authority, if the state being attacked had done something wrong, and if the intentions of the attacking state were pure and not "wicked".³⁵ Aquinas further expressed that a sovereign entity had the right to intervene in the dealings of another sovereign state if the latter treated its citizens poorly.³⁶ St. Thomas Aquinas was the most influential developer of the just war tradition in the thirteenth century, although several other scholars contributed to the doctrine as well.³⁷

³⁰ Bellamy, 2006, p. 26.

³¹ Hehir, 2013, p. 32.

³² Ibid. p. 33.

³³ Bellamy, 2006, p. 44-46.

³⁴ Hehir, 2013, p. 33.

³⁵ Boucher, 1998, p. 197-198.

³⁶ Engdahl & Hellman, 2007, p. 186.

³⁷ Brownlie, 1963, p. 6.

The just war tradition was developed further during the fourteenth, fifteenth and sixteenth centuries by scholars in mainly Italy and Spain. During the fourteenth century the actual legality of warfare was put into question for the first time by Giovanni de Legano (c. 1320-1383) who was a professor at Bologna University. He wrote about the legality and potential illegality of warfare in his teachings in the year 1350, though they were not published until 1477. Legano viewed warfare as inevitable in certain situations, though he believed that a war was not legal unless it was ordered by the correct authority as well as was just. Leganos teachings were very influential and they triggered conversations amongst scholars about the legality of warfare.³⁸

During the fifteenth century and the beginning of the sixteenth century it was well established that the Church had the right to wage war against infidels and to lay claim to their lands. These ideas were used as justification for the Spanish wars against the Indians in the Americas during the first half of the sixteenth century.³⁹ Francisco de Vitoria (ca. 1483- 1546) who was a scholar and a Dominican monk teaching at the University of Salamanca during the Spanish inquisition,⁴⁰ defended the Indians in his teachings and rejected the notion that a just war could be waged against a people solely based on the fact that they refused to convert to Christianity.⁴¹ However, when observing the cannibalism allegedly carried out by the aboriginals he noted that such actions completely went against natural law and therefore he was of the opinion that a war waged with the purpose of stopping such acts was permissible and in fact just. Hence, according to Vitoria, there existed situations where intervention of a humanitarian character was morally justifiable.⁴²

The teachings of Vitoria and other scholars and the critique the Church was a recipient of during the beginning of the sixteenth century should be seen as a representation of the changes that were happening within Europe at that time.⁴³ Subsequent to the protestant reformation during sixteenth century, the Catholic Church was weakened and lost much of its power and influence, altering the political and economic structures in Western Europe.⁴⁴

³⁸ Brownlie, 1963, p.7.

³⁹ Manga, 2008, p. 311.

⁴⁰ Ibid. p. 313.

⁴¹ Ibid. p. 317.

⁴² Hehir, 2013, p. 35.

⁴³ Brownlie, 1963, p. 10.

⁴⁴ Becker & Pfaff & Rubin, 2016, p. 1.

4.1.3. The Just War Doctrine in Early Modern Times

The just war tradition was developed further in the sixteenth century through the teachings of Hugo Grotius (1583-1645). Grotius was a naturalist, and his teachings centered on the fact that international law had its base in the principles of nature and natural law. Grotius wrote of the just war tradition in a way that has heavily influenced the humanitarian intervention doctrine of today. He raised the question if war waged on behalf of others against the “wicked” could be considered just. Furthermore he, like Vitoria, believed that a war was not justifiable if it was waged against a group of people solely because they would not accept Christianity.⁴⁵ Grotius claimed in his teachings that there existed a right for sovereigns to enact punishment for injuries caused against any group of people if the ones causing injury were violating principles rooted in nature, he thereby drew the conclusion that a sovereign state had the right to intervene on behalf of subjects of another state if the subjects in question lacked capability to protect their own natural rights.⁴⁶

Parallel and subsequent to the development of Grotius teachings, during the sixteenth and seventeenth centuries, large and devastating religious wars were occurring within Europe between Protestants and Catholics.⁴⁷ The most intense period of fighting happened during the thirty year war between 1618 and 1648 and which ended with the Peace of Westphalia. The peace awarded each sovereign the right to decide which religion was to be practiced within his state⁴⁸ the purpose of this being an aspiration to eradicate wars waged on religious grounds.⁴⁹ The Westphalian Peace treaties were in part based on the idea of inviolable sovereignty which had been established by the Peace of Augsburg in 1555.⁵⁰

The Peace of Westphalia marks a new era in the evolution of the international community, through the peace treaties that were drafted, all states were awarded equal status.⁵¹ The Peace also marked the establishment of internal and external (dual) sovereignty, which entailed an acknowledgement of the right of all states to govern within their own borders as well as the right of every state to independence and non- interference from other sovereign

⁴⁵ Chesterman, 2001, p. 9-11.

⁴⁶ Ibid. p. 14- 15.

⁴⁷ Häthén, 2014, p. 55.

⁴⁸ Ibid. p. 58.

⁴⁹ Chesterman, 2001, p. 12.

⁵⁰ Hehir, 2013, p. 50.

⁵¹ Cassese, 2005, p. 24.

entities.⁵² The Peace marked the beginning of the positivist idea that states were protected by their sovereignty and thereby did not need to be held accountable for their actions. Thomas Hobbes (1588- 1679), arguably the most famous positivist of this time expressed that a sovereign state could not do harm to its subjects. It is argued that these ideas led to the exclusion of theology and ethics from the international laws of that time.⁵³

In the aftermath of the Westphalian Peace the Church was further weakened and lost more of its power which led to a stark decrease in wars waged on behalf of religious beliefs.⁵⁴ Natural law as had been taught by Aquinas and later Grotius became a substitute for divine commands directly after the Peace but came to be less important soon thereafter since naturalism was unable to provide adequate reasoning for why warfare should be curbed. During the eighteenth century, the law of nations, which earlier had been equated with natural law found its basis in the will of each nation. Emmerich de Vattel (1714-1767) was a proponent of the idea that the laws regulating relations between nations should be voluntary.⁵⁵ Vattel, was a critic of Grotius in the sense that he did not agree that a state may use force against another sovereign entity solely because the latter had committed a transgression against natural law. He believed that a state only had the right to use force against another if the attacking state was acting to protect itself and its subjects. However, Vattels teachings included an exception to this rule, he believed that if the subjects of a sovereign state had the right to rebel against said sovereign, foreign powers had the right to intervene on behalf of the revolting subjects if they were unable to preserve their right to revolution.⁵⁶

The parallel development of Grotius teachings regarding the right to intervention on behalf of the oppressed as a justifiable cause for war, and the rise of positivism and the principle of external sovereignty and thereby also the principle of non-interference, was problematic. However, after the Peace of Westphalia, states continued to conduct themselves in ways not in conformity with the principle of non- intervention. The decrease in the amount of European states through forcible absorption by larger states after 1648 is proof of this. According to Hehir, the interests of the larger countries in Europe was what guided international relations after the Peace of Westphalia.⁵⁷

⁵² Bull, 2012, p. 8.

⁵³ Chesterman, 2001, p. 16-17.

⁵⁴ Brownlie, 1963, p. 14.

⁵⁵ Bellamy, 2006, p. 86.

⁵⁶ Chesterman, 2001, p. 18.

⁵⁷ Hehir, 2013, p. 51.

4.1.4. The French Revolution and the Development of the Doctrine of Humanitarian Intervention

The French Revolution, and the subsequent Napoleonic wars which ended in 1815 shook the European continent and its monarchies. Alliances were formed directly thereafter with the purpose of creating stability within Europe. An example of one such pact was the Quadruple Alliance between Russia, Prussia, Great Britain and Austria. The parties agreed to act on behalf of each other in case of revolution with the purpose of preserving European peace and tranquility.⁵⁸

During the beginning of the nineteenth century the focus of the just War tradition, which earlier had been placed on just causes for entering into war, shifted towards the just waging of war. The reasoning behind this shift was that scholars believed that it was impossible to become enlightened regarding the true motivations behind a decision to enter into war.⁵⁹ Furthermore the viewpoint on wars had changed and the consensus was that war was appropriately waged by any state acting in defense of its own interests, rendering the concept of jus ad bellum as unimportant and the concept of illegal reasons for entering into war as moot. Simply put, there were no rules regulating the entering into wars and all sovereign states had the correct authority to do so.⁶⁰

In the years 1815 to 1914 there basically existed an unrestricted right for states to use force in their interstate relations.⁶¹ States committing acts of aggression during the nineteenth century and the first half of the twentieth century did however try to justify their actions anyways.⁶² The term humanitarian intervention was first used in an official capacity during the nineteenth century.⁶³

During the nineteenth and first half of the twentieth century there occurred several wars which were justified as humanitarian interventions, although it is argued that most of them were not “genuine”. Such wars included the French, British and Russian war with the Ottoman Empire in 1827. The official reason for the war was to help Greek revolutionaries. Hehir argues that the real reason for the contribution to the war by France and Great Britain however was to

⁵⁸ Chesterman, 2001, p. 22.

⁵⁹ Bellamy, 2006, p. 87.

⁶⁰ Rengger, 2002, p. 359.

⁶¹ Brownlie, 1963, p. 19.

⁶² Hehir, 2013, p. 189.

⁶³ Chesterman, 2001, p. 23-24.

prevent Russia from amassing more power within the region. Another such “intervention” occurred in 1877 when Russia once again attacked the Ottoman Empire, the official reasoning for the war was that Russia was seeking to protect Christians within the Empire. However, Hehir argues that the true motivation behind the Russian act of aggression was a will to acquire land within the Balkans. In the year 1900 Great Britain and the US decided to intervene in China for humanitarian purposes during the Boxer Rebellion with the goal to protect Chinese citizens. The real reason for the intervention was, according to Hehir, that the countries sought to maintain their trade relations with China. There was however one war towards the end of the nineteenth century that truly was of a humanitarian character, it was the US interference in the year 1898 in the Cuban war with Spain, after about 200,000 Cubans had lost their lives in Spanish concentration camps with the purpose of preventing further atrocities.⁶⁴

4.2. Humanitarian Intervention in the Twentieth Century

At the beginning of the twentieth century, the status of the legality of humanitarian intervention was vague and unclear.⁶⁵ The use of force was not prohibited and the right to wage war was considered to be an integral part of sovereignty.⁶⁶ However, as mentioned earlier, the principles of non- intervention and internal- and external sovereignty had been established and were considered important. Furthermore, several wars that had been justified due to their classification as humanitarian interventions had been waged during the previous century.

4.2.1. World War I and the League of Nations

The First World War took place between 1914 and 1918, and though it was fought mainly on the European continent, it involved other parts of the world as well. It was the first international conflict to reach a magnitude of such a large scale and it proved that wars could affect the international community as a whole.⁶⁷ The system of alliances, which had started to form after the Napoleonic Wars with the purpose to preserve the peace in Europe,⁶⁸ had failed

⁶⁴ Hehir, 2013, p. 189.

⁶⁵ Chesterman, 2001, p. 35.

⁶⁶ Brownlie, 1963, p. 41.

⁶⁷ Cassese, 2005, p. 34.

⁶⁸ See chapter 4.1.4.

and the consequences of the war were large and tragic. After the war and during the discussions to reach a peace settlement in 1919 through 1920 a change in the consensus regarding the use of force by sovereign states became evident. During the discussions it was brought up on several occasions whether states should bear responsibility for partaking in wars of aggression. These ideas laid the groundwork for the estimation of the reparation the guilty parties were forced to pay once the settlement was signed.⁶⁹

During peace discussions, the League of Nations was formed by the victors of the war. The purpose of the organization, was to prevent further wars of such a large scale and to restore European stability and peace. However the organization proved to be less than successful at its task. The system was flawed, the Covenant of the League of Nations did not ban the use of force as long as the resort to force stopped short of full out war. A consequence of this was that states resorted to force, yet claimed that they had not gone to war and instead had only used coercion. Furthermore, war was not prohibited in its entirety, instead the Covenant prescribed a mandatory period of three months after the decision to enter into war had been made, before the states intending to go to war could resort to force. Another problem that the League of Nations faced was that it had no way to punish states which had broken the rules. If a State waged war against another and thus acted contrary to the Covenant, the other member States had a duty to “protect” the attacked state, but only if they themselves believed that the attacking state in fact was breaking the Covenants rules. However the member states did not live up to this duty, an example of this failure being when Japan attacked China in 1932 and the League of Nations failed to act. Another contributing factor to the failure of the League of Nations was that the Covenant only applied to its member states. The rules did not exist in international customary law and therefore the rules regulating warfare between states not party to the Covenant remained unchanged.⁷⁰ In regards to the legality of humanitarian intervention, the Covenant did not prohibit such force, nor did it allow it⁷¹ and in 1939 Czechoslovakia was invaded by Hitler who justified the invasion by explaining that the purpose of it was to protect marginalized Germans living in Czechoslovakia through a humanitarian intervention.⁷²

⁶⁹ Brownlie, 1963, p. 51-52.

⁷⁰ Cassese, 2005, p. 36-38.

⁷¹ Chesterman, 2001, p. 43.

⁷² Hehir, 2013, p. 189.

4.2.2. World War II and the UN- Charter

The League of Nations ultimately failed to prevent another World War, and with the invasion of Poland in the fall of 1939 by Germany, the Second World War began. The war spanned six years and six continents and was catastrophic. When the war ended, an estimated amount of sixty million people had died and many more had been wounded. Cities all over the world had been destroyed by bombs and shelling and the economic losses were devastating.⁷³

At the end of the war a change occurred within the international community, the League of Nations was replaced by the United Nations and a process of drafting international laws with the purpose of constraining the use of force between states began. This process resulted in the UN- Charter, which apart from prohibiting the use of force, classified states as equal to each other as well as sovereign.⁷⁴ During this time the focus of the international community largely shifted to human rights and the protection of individuals and the victors aimed to develop a framework of general principles of human rights that would be applicable in all member States.⁷⁵

Despite the focus on human rights subsequent to the war, humanitarian intervention was not included in the UN- Charter. During the negotiations, three distinct groups within the member States were formed. The first group included a large amount of states in Latin America, as well as some Western countries such as Norway and New Zealand. These countries wanted to incorporate laws into to Charter which would obligate the member states to respect human rights. The second group of states included the US and several other powerful Western countries. This group was positively inclined to the advancement of human rights but hesitant to decide definitive requirements which would force the member states to honor such rights. Furthermore, the group wanted to restrict the UNs ability to interfere in the internal affairs of states. The third group of states consisted of mainly socialist countries, they were like the second group skeptical of incorporating an obligation to respect human rights into the Charter. Furthermore they wanted to restrict the powers of the UN as well and were adamant to highlight the importance of state sovereignty and the principle of non- interference during the discussions leading up to the drafting of the Charter.

⁷³ Weinberg, 2013, p. 999-1000.

⁷⁴ Hehir, 2013, p. 97.

⁷⁵ Cassese, 2005, p. 377.

The final result of the discussions was a compromise between the aspirations of group two and three. The states did not incorporate a specific duty to advance and preserve human rights in the Charter. Furthermore, the General Assembly was afforded a very limited amount of power and was only given the right to make recommendations. Lastly, a guiding rule of self-determination was written into the Charter.⁷⁶

During the negotiations, it was considered extremely important to make sure that another world war would not happen again and therefore the prohibition against the use of force was incorporated into the Charter. In 1945 however, France suggested adding a third exception to the prohibition against the use of force by legalizing humanitarian intervention. France suggested that states should have the ability to use force, without the authorization of the UN-Security Council with the purpose of preventing human rights violations. France's proposition was however not accepted by the other member states, the suggestion was considered unclear and lacking in guidelines. Therefore, no such exception was incorporated into the Charter.⁷⁷

5. Analysis

5.1. Humanitarian intervention as a concept developed from the Just war tradition

The doctrine of humanitarian intervention has its roots in the just war tradition which in turn can be traced back to ancient Greece. The just war tradition was developed by scholars throughout history as a method to evaluate if war in a specific situation could be considered justifiable or not.

Throughout history different causes for war have been considered justifiable and it is interesting to observe how society has affected the just war doctrine at different times. A large part of the doctrine was developed through the Church. In the very beginning of Christianity, war amongst Christians was considered unjustifiable. This was undoubtedly due to the fact that the Church at this time was extremely pacifistic.

When the Roman Empire was in the midst of collapsing around 400 A.D. Christian scholars started advocating that violence at times was justifiable and even necessary when used in self-

⁷⁶ Cassese, 2005, p. 378- 370.

⁷⁷ Franck, 2003, p. 207.

defense and in defense of others. The fact that violence used in protection of others was considered a justifiable cause for war is an early indication of the doctrine of humanitarian intervention of today.

The teachings of the Church became more violent during the following years. The crusades led to the murder of hundreds of thousands of non- Christians, yet the killings were considered justifiable since they were carried out in the name of God.

Towards the end of the crusades in the thirteenth century, the concept of waging wars solely to promote Christianity became less acceptable. It is unclear what caused this shift in attitude, but I believe that the growing importance of naturalism and thereby the idea that all humans are born with a set of morals contributed to the shift. Instead the just war theory evolved and wars were thereafter considered just if they were waged to prevent actions that went against the principles of nature.

After the reformation, wars waged on religious grounds became more frequent between Protestants and Catholics. However, after the peace of Westphalia and the development of the principles of sovereignty and non- intervention as well as the right of each sovereign to decide the religion within his state, wars on religious grounds were no longer considered just and therefore they occurred less frequently thereafter.

Within the tradition there occurred a counter reaction at this time to the principle of non- intervention. Scholars began advocating for a right to intervention in states where the subjects were treated inhumanely and had a right to revolt against the tyrannical sovereign, but were unable to do so. This is in my view the true beginning of the doctrine of humanitarian intervention. This way of thinking is in its core the same thinking that the doctrine of humanitarian intervention rests on today.

5.2. The Legality of Humanitarian Intervention in the Pre- Charter Era

The question of the eventual legality of humanitarian intervention in the pre- Charter era is quite complicated. Before the World Wars took place there did not exist any type of framework that regulated the interstate relations between nations in the intricate way that the UN- Charter does. Apart from a few treaties, the laws of conduct between states were basically solely customary and therefore difficult to define. The existence of humanitarian intervention in the international customs before the drafting of the Charter is unclear.

Whilst attempting to reach an answer, it is important to understand that there did not exist a prohibition against the use of force in international relations before the UN-Charter was drafted. There did not exist tools to punish states that had waged war on unjust grounds, the only thing preventing wars in some cases was interstate alliances. Furthermore there did not exist a prohibition against war, yet non- interference and sovereignty were established principles, which in my opinion is a paradox because when one state used force against another it was breaking the principles and yet the actual use of force was not illegal.

Before the First World War, several wars classified as humanitarian interventions took place, even though the consensus today is that most of them were actually waged for other non-humanitarian reasons. The fact that the attacking states justified the wars by claiming that they were humanitarian interventions, is in my opinion an indication that waging war for humanitarian reasons was considered more justifiable than warfare waged for the personal gain of the attacking state. This is an indication that humanitarian intervention in fact did exist as a legal reason for declaring war in customary law in the pre- Charter era, why would the states use humanitarian intervention as a justification for warfare if it was illegal?

I believe that humanitarian intervention was legal in the pre- Charter era, however I find it difficult to draw a conclusion regarding if other types of warfare, mainly wars fought with the purpose of personal gain were legal or not. It could be that the wars that were not true humanitarian interventions were legal as well, and that states used humanitarian intervention as a cover because it was considered more acceptable within the international community.

5.3. The Failure to Incorporate Humanitarian Intervention into the UN- Charter

Focus largely shifted within the international community towards the importance of human rights after the Second World War. Despite this no obligation to advance or preserve human rights was incorporated into the UN- Charter and furthermore the proposition that was put forward during the discussions, regarding the inclusion of humanitarian intervention as a third exception to the prohibition against the use of force, was rejected by the other parties.

The reasoning behind the rejection was, as mentioned before, that the suggestion was considered too vague and unclear. This was undoubtedly a good point, it is my understanding that it would be extremely difficult to create a system in which the situations that merit a humanitarian intervention could be defined. Which types of human rights violations would need to take place to merit a humanitarian intervention? What amount of evidence of such

violations would be satisfactory? In what way could a system be put into place to make sure that the right to humanitarian intervention was not abused by states with something to gain by interfering in the internal affairs of other states? As mentioned earlier, several “fake” humanitarian interventions occurred prior to the drafting of the UN- Charter. Nazi Germany for example, invaded Czechoslovakia under the guise of a humanitarian intervention in 1939 shortly before the beginning of the Second World War. The memory of these interventions must have played a part in the rejection of the proposition.

I believe that the exclusion of humanitarian intervention from the UN- Charter in many ways represents a prioritization of peace and stability over the individual rights of citizens, a concept that in many ways to this day plays an integral part in international law. The devastation that came with the Second World War was, as mentioned before, up until that point completely unheard of, and even though Nazi Germany had committed extreme human rights violations inside its borders, the death and destruction that the actual fighting brought about was much larger. The need to prevent such a war from happening ever again was considered extremely important for obvious reasons, it must have been thought to be much too risky to include an exception to the prohibition against the use of force which would allow member states to wage war without authorization.

6. Conclusion

In conclusion, humanitarian intervention is a by- product of the just war tradition. After the Westphalian Peace, when religion no longer was accepted as a just reason for war and when non- interference was accepted as a universal principal within international law, the idea of humanitarian intervention as a just cause for warfare was established. However parts of the doctrine can be traced back even further.

Humanitarian intervention was most likely legal in the pre- Charter era. It is however a bit unclear if it was legal whilst other types of warfare was not, or if simply all types of warfare was legal. Meaning that humanitarian intervention was legal simply because warfare was not illegal.

The reason why humanitarian intervention was not incorporated into the UN- Charter is most likely because such an exception was viewed as too much of a risk. The potential of another world war occurring must have been considered too great. Through excluding humanitarian

intervention, the drafters of the Charter signaled a willingness to sacrifice the human rights of individuals in favor of peace and stability in the international community as a whole.

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