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Humanitarian intervention – Should it be legal under contemporary international law?

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Summary

Humanitarian interventions is a well debated subject within international law. When it comes to the legality of humanitarian interventions the international community is divided and a lot of material regarding such interventions can be found. Unfortunately, the discussion rarely turns to the more important question: Should humanitarian interventions be legal under contemporary international law? That is the question that this thesis intend to answer. This will be done by studying two cases: The genocide in Rwanda 1994 and the NATO intervention in Kosovo 1999.

Humanitarian interventions can be defined in different ways depending on which factors one choose to apply. I have chosen to identify humanitarian interventions as interventions done with the use of force against another sovereign state. There are of course other ways to intervene but intervening with the use of force stands in direct conflict with a jus cogens norm, the prohibition on the use of force found in article 2(4) UNCh. To be classified as a humanitarian intervention, the intervention has to be taken for humanitarian reasons. To count as humanitarian reasons there has to be a potential violation or a violation of fundamental human rights within the target state. The prohibition of torture, slavery and genocide is such fundamental human rights. Those human rights that if they are lost keeps an individual from enjoying all other rights is also fundamental human rights. For example the right to life would be a fundamental human right, on the other hand political and social human rights would not count as fundamental human rights in this regard. My definition of humanitarian interventions is as follows:

The use of force by a state (or group of states) against another state with the motive of preventing or ending widespread violations of fundamental human rights by the target state

towards its nationals, without the consent of the target state or authorization by the UNSC.

The defined humanitarian interventions are illegal under contemporary international law because they are in breach of the prohibition on the use of force in article 2(4) UNCh. Neither the exception found in article 42 UNCh (The authorization of the UNSC) nor article 51 UNCh (The use of force in self-defense) is applicable to the defined humanitarian interventions. Such interventions do not fall under the concept of R2P either, since interventions under the concept of R2P has to have the pre-existing authorization by the UNSC.

In Rwanda 1994 the military and extremist civilians initiated a genocide of the minority population of Tutsis. In total around 800 000 individuals were killed in a brutal ethnic cleansing directed towards unarmed innocent civilians. At the same time the international community didn't think that any intervention was needed and the UNSC was unable and unwilling to act with promptitude to prevent or stop the genocide. Kosovo in 1999, repression and massacres of Kosovar Albanians were being committed by Serbian nationals and the Serbian nationalistic leader Milosevic. NATO is determined that intervention is needed. Yet, such a decision can not be taken in the UNSC due to the right to veto that the five permanent members of the council enjoys. Therefore, NATO decided to intervene with force, justifying the intervention on humanitarian grounds, without the pre-existing authorization by the UNSC or the target state, making the intervention illegal under contemporary international law.

Through the study of this two cases several risks and benefits with humanitarian interventions can be identified. There is a risk of abuse of the concept of humanitarian interventions in the form of interventions publically justified with humanitarian purposes but privately done for other reasons. This is shown through NATO's speedy intervention in Kosovo, a region where the political interest was huge, as well as through the non-intervention

by the international community in Rwanda, despite the fact that the genocide in Rwanda was of much greater extent than the crisis in Kosovo. With humanitarian interventions there is also a risk of making the situation worse than it already is. Both through the fact that there is a risk of greater aggression from both sides of the conflict and through the fact that armed conflicts creates extreme migration flows that has a negative impact on neighboring countries. Humanitarian interventions are, as well, criticized by many for being inhumane in nature. Humanitarian interventions can save lives, but it also take lives. Inevitably, intervention with force kills not only soldiers but also innocent civilians caught in the crossfire. Humanitarian interventions, as defined here, also causes an infringement on state sovereignty. It makes the sovereignty of states conditional because it depends on it being in line with what other states think is morally right. To give the legitimate authority to states to decide when humanitarian interventions (and the use of force) should be initiated leads to an unequal sovereignty. There is, however, benefits with humanitarian interventions as well. Among other things it can circumvent the problem with the right to veto in the UNSC and enable states to act on their own when the UNSC can not or will not act. Apart from this the most important benefit is, of course, that a humanitarian intervention can save innocent lives in a large scale.

If we make humanitarian interventions legal the risk with such interventions exceeds the benefits. Within the international community the use of force always has to be the last resort and be used for the absolute right reasons. To preserve equal sovereignty between states and the general legitimate authority of the UNSC, the UNSC has to be the only legitimate authority. My conclusion is therefore that one should not change contemporary international law to make humanitarian interventions legal.

Sammanfattning

Humanitära interventioner är ett väl debatterat ämne inom internationell rätt. Det är ett ämne som väcker stora känslor och diskussioner bland jurister samt inom och emellan stater världen över. När det gäller legaliteten av humanitära interventioner finns det mycket material att tillgå, dock övergår diskussionen sällan i det som egentligen är viktigast: Borde humanitära interventioner vara lagliga inom den internationella rätten? Det är denna fråga som detta arbete syftar till att reda ut. Detta kommer att göras genom att studera två historiska händelser: NATOs intervention i Kosovo 1999 och folkmordet i Rwanda 1994.

Humanitära interventioner kan definieras på olika sätt beroende på vilka faktorer man ämnar att tillämpa. Jag har valt att definiera humanitära interventioner på ett sätt som enbart innefattar interventioner gjorda med militära medel och väpnad kraft. Interventioner kan också genomföras genom ekonomiska sanktioner, diplomatiska påtryckningar osv. Jag har dock valt att bortse från sådana interventioner då syftet med denna uppsats är att utreda de interventioner som ses som allvarligast inom den internationella rätten, de som är gjorda med militär kraft och bryter mot förbudet i artikel 2(4) FN-stadgan om användandet av väpnad kraft mot andra stater. För att klassas som en humanitär intervention krävs det inte enbart att interventionen är gjord med väpnad kraft utan också att den är gjord av humanitära skäl. För att nå upp till detta krav krävs det att en stat har överträtt och brutit mot de mänskliga rättigheter som gäller enligt internationell rätt. Alla överträdelser av mänskliga rättigheter berättigar dock inte en väpnad intervention. Det måste vara en överträdelse av en mänsklig rättighet som är av ett grundläggande värde. Att tortyr, slaveri och folkmord är av ett sådant grundläggande värde står klart, dock anser många att sådana rättigheter som, om de går förlorade, gör att alla andra rättigheter ej kan åtnjutas, också är av grundläggande värde. Denna definition avgränsar humanitära skäl från att gälla exempelvis politiska och sociala

rättigheter. Överträdelsen måste också vara av viss omfattning och riktas mot mer än bara ett få antal individer. Överträdelsen i sig måste dock ej ha inträffat innan interventionen, då humanitära interventioner är ämnade att vara förebyggande i sin natur. För denna uppsats syfte definieras humanitära interventioner enligt följande: Användandet av väpnad kraft av en stat gentemot en annan stat med motivet att förhindra eller stoppa överträdelser av grundläggande mänskliga rättigheter utförda av den staten gentemot dess invånare, utan att ha föregående tillåtelse av förenta nationernas säkerhetsråd eller av staten i sig.

De definierade interventionerna är olagliga under internationell rätt då de strider mot artikel 2(4) FN-stadgan som stadgar ett förbud mot användandet av väpnad kraft mot suveräna stater. Humanitära interventioner faller varken under undantaget i artikel 42 FN-stadgan (Föregående tillåtelse av förenta nationernas säkerhetsråd) eller artikel 51 FN-stadgan (Väpnad kraft använd i självförsvar). Humanitära interventioner som de är definierade här faller inte heller under begreppet the responsibility to protect, då en sådan intervention kräver föregående tillåtelse av förenta nationernas säkerhetsråd för att vara tillåten.

I Rwanda år 1994 genomförde militären och civila extremister från folkgruppen Hutu ett folkmord riktad mot minoriteten Tutsis, totalt dödades omkring 800 000 människor. Omvärlden tyckte inte att en intervention behövdes och förenta nationernas säkerhetsråd kunde inte agera tillräckligt fort och kraftfullt för att förhindra folkmordet. Kosovo 1999, förföljelse och mord på Albaner utförs av Serber. NATO är snabba att påpeka att intervention behövs för att förhindra en humanitär kris. Det råder dock oenighet i förenta nationernas säkerhetsråd och ett beslut om intervention kan ej tas pga. rätten till veto som de fem permanenta medlemmarna innehar. NATO genomför därför själv en väpnad intervention och berättigar denna med humanitära skäl, dock är interventionen olaglig under internationell rätt.

Genom att studera dessa två fall kan flera risker och fördelar med humanitära interventioner identifieras. Bland annat finns det en risk för interventioner berättigade av humanitära skäl men egentligen utförda av politiska skäl. Detta visas bland annat av NATOs snabba intervention i Kosovo, ett område där de politiska intressena var stora, och det internationella samfundets icke-intervention i Rwanda, trots att folkmordet i Rwanda var av mycket större omfattning än händelserna i Kosovo. Med humanitära interventioner följer också en risk att situationen i målstaten förvärras. Både genom att aggressionen ökar från båda sidor av konflikten men också för att väpnade konflikter skapar extremt stora migrationsflöden som i sin tur kan ha negativa följder även för intilliggande länder. Humanitära interventioner ifrågasätts också eftersom de av många anses vara inhumana i sin natur, detta eftersom de oundvikligen dödar både soldater och oskyldiga civila. Humanitära interventioner, som de är definierade här, inkräktar även på staters suveränitet då de gör suveräniteten av stater beroende av vad andra stater anser om deras beteende när det kommer till mänskliga rättigheter. Att ge stater auktoriteten att bestämma över användande av väpnad kraft leder också till att suveräniteten, som ska vara lika för alla stater, blir ojämn. Med humanitära interventioner följer också en del fördelar. Bland annat kan de kringgå problematiken med veto-rätten i förenta staternas säkerhetsråd samt kan en legalisering av humanitära interventioner göra att stater kan agera på egen hand när förenta nationernas säkerhetsråd inte kan eller vill agera. Förutom detta så är den viktigaste fördelen att humanitära interventioner kan rädda oskyldiga liv i en stor skala.

Om vi gör humanitära interventioner lagliga så överskrider riskerna de fördelar jag har identifierat. Inom det internationella samfundet måste väpnad kraft alltid vara en sista utväg och användas av rätt anledningar. Förenta nationernas säkerhetsråd måste vara den enda auktoriteten, detta för att bevara suveräniteten mellan stater samt rådets auktoritet generellt sätt. Man borde alltså inte ändra internationell rätt och göra humanitära interventioner lagliga.

Preface

This thesis is dedicated to my family. They have been my great support through the last four and a half years of law school. Without their love and support this work would not have been a possibility.

Abbreviations

AU	African Union
FRY	Former Republic of Yugoslavia
KLA	Kosovo Liberation Army
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisations
R2P	Responsibility to Protect
RPA	Rwandan Patriotic Army
UN	United Nations
UNCh	Charter of the United Nations
UNSC	United Nations Security Council
USA	United States of America

1 Introduction

1.1 General

Humanitarian interventions are a subject well debated within the international community. Yet, there is no common ground to be found regarding its legal status. Some say there is such a doctrine called humanitarian interventions some say there is not. Some define it in one way others in another. Some say there is an international need for humanitarian interventions but refuse to say that such interventions are legal.¹ There are many books, articles, essays etc. written on the legality of humanitarian interventions, yet the discussion rarely turns to the subject of whether or not it should be legal.

Rwanda 1994, around 800 000 people were killed in one of the most horrible genocides in modern time.² The world watches as the United Nations (UN) fails to protect the lives of individuals. The massacre in Rwanda has shown us how inefficient the UN system can be and how reluctant the UN are to authorize the use of force towards sovereign states. Action taken by the UN was too little and too late.³ It was not just the UN who failed the people of Rwanda, the international community wasn't prepared to contribute to the UN operation in the form of military personal.⁴ It seems that somehow Rwanda wasn't as important as Kosovo or Lebanon although the loss of life was far greater. In Kosovo the North Atlantic Treaty Organisation (NATO) took forceful action despite not having United Nations Security Council (UNSC) authorisation. Yet, NATO nor the United States of America (USA) or any other state are willing to acknowledge

¹ Gray, Christine, *International law and the use of force*, p.33ff.

² Seybolt, Taylor B, *Humanitarian military intervention*, p.70.

³ Seybolt, Taylor B, *Humanitarian military intervention*, p.74; Report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility*, A/59/565, p.23.

⁴ Gray, Christine, *International law and the use of force*, p.293; Seybolt, Taylor B *Humanitarian military intervention*, p. 72.

humanitarian interventions as legal or as a necessary concept of international law. The discussion on how to prevent violations of fundamental human rights within states has since the 1999 crisis in Kosovo divided the international community. Humanitarian interventions has been discussed for a long time but the main point of the discussion has been if such interventions are legal or not. Yet, the greater and more important question is perhaps if such interventions should be made legal? For all intents and purposes, humanitarian interventions sound good but can they and should they stop violations of fundamental human rights?

1.2 The purpose of the thesis

The thesis primary purpose is to examine whether or not the international community should change international law and make humanitarian interventions legal. The thesis seeks to identify the risks and the potential benefits of humanitarian interventions out of a legal and a humanitarian perspective. It is the intention of the thesis to evaluate the identified risks and benefits with humanitarian interventions. With the evaluation the thesis will seek to give an answer to the question of whether or not the international community should make humanitarian interventions legal under contemporary international law.

1.3 Framing of a question

To be able to fulfill the purpose of the thesis some questions has to be answered. First of all I have to establish a definition of humanitarian interventions and declare whether or not such interventions are legal. This is an important part of this work since the definition of humanitarian interventions and the legality of such interventions affects the whole purpose of the thesis. Out of my definition I then have to search for and identify the legal and humanitarian risks and potential benefits with humanitarian interventions. The last thing I have to do to fulfill the purpose

of the thesis is to consider and evaluate the identified risks and benefits and establish what an effect a legalization of humanitarian interventions would have on the identified risks and benefits and of course on the international community as a whole.

The framing of my question is as follows:

- Should humanitarian interventions be legal under contemporary international law?

To this overall questions I have some sub-questions:

- How do I identify humanitarian interventions?
- Is the defined humanitarian interventions legal or illegal according to contemporary international law?
- What are the risks and benefits with legalizing the defined humanitarian interventions out of a legal perspective and a humanitarian perspective?
- Are the benefits exceeding the legal risks?

1.4 Limitations

Humanitarian interventions are a well debated subject and therefore, to make my thesis more understandable and straight forward, some limitations has to be made.

I will focus only on internal conflicts, this is a self-explanatory choice since it is in those conflicts that are internal that forceful intervention is the most contradictory. Of course an intervention will gain international status when a humanitarian intervention is initiated, but they are still created through the internal conflict. I will limit my focus to two historical cases, the crisis in Kosovo in 1999 and the genocide in Rwanda in 1994. I will identify the risks and benefits of legalizing humanitarian interventions through an examination of these two cases. I have chosen Rwanda simply because of

the fact that 800 000 people were brutally killed and the world did next to nothing to stop it. It is a perfect example of a clear case of violations of fundamental human rights. In Kosovo, NATO intervened with force and actually justified it on humanitarian grounds, which is rare. Yet, the intervention by NATO is contradictory due to the non-intervention in Rwanda and NATO's political agenda. This makes these two cases interesting to study.

Another limitation that I have taken is through my definition of humanitarian interventions. I propose the following definition:

The use of force by a state (or group of states) against another state with the motive of preventing or ending widespread violations of fundamental human rights by the target state towards its nationals, without the consent of the target state or authorization by the UNSC.

My definition will limit my thesis to those humanitarian interventions that are not in conformity with international law. This leads to me excluding forceful humanitarian interventions that are legal due to authorization by the UNSC through article 42 Charter of the United Nations (UNCh) and through the doctrine of the Responsibility to Protect (R2P). It will also exclude forceful humanitarian interventions taken in self-defence or in collective self-defence in conformity with article 51 UNCh. Those interventions taken with the consent of the target state will also be excluded through my definition. The discussion will therefore only regard humanitarian interventions that contemporary law deems illegal.

Another important limitation through my definition is that it will preclude all interventions that are not forceful. This means that interventions through, for example economic sanctions, will not be discussed.

1.5 Perspective and method

My thesis is built on a case study of two historical events, the crisis in Kosovo in 1999 and the genocide in Rwanda in 1994. The two cases will work as inspiration for identifying the legal and humanitarian risks and benefits with humanitarian interventions. I have chosen to let the analysis of the thesis flow through the whole composition. When the analysis flows through the thesis it lets me in a clearer way explain my standpoints and link them to the two cases chosen. There will, of course, be a summarized conclusion in the end.

1.6 Previous research

Humanitarian interventions are a well debated subject within international law, this gives that there is a lot of previous research done. The UN and its organs has done quite a big contribution to the research. The most important being the documents before and during the 2005 world summit. The report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility* resolution A/59/565 and The United Nation General Assembly *2005 world summit outcome* document A/RES/60/1 discusses violations of fundamental human rights within states and the responsibility of the international community to stop such violations. It was in regards to these documents that the concept of R2P was born as a means of protecting individuals within sovereign states. Several case studies has been made among others one by Mitsuhsa Fukutomi where he studies the intervention in Libya and discusses whether or not it was the cause of Libya's internal instability (Fukutomi, M, Hitotsubashi Journal of Law and Politics 45 (2017), pp.23-32). Sean Richmond has also written about the contradictions of humanitarian interventions with the Kosovo crisis as a base (Richmond, Sean, *Why is humanitarian intervention so divisive? Revisiting the debate over the 1999 Kosovo intervention*, Journal on the use of force and international law, 2016 vol.3, No 2)

Chris O'Meara has written a work named: *Should international law recognize a right of humanitarian intervention* (O'Meara, Chris. *International & Comparative Law Quarterly*. April 2017, Vol. 66 Issue 2, p441-466). Although focusing on the same issue as I, if humanitarian interventions should or shouldn't be, the authors main focus is that of the implications of state sovereignty, which is not my main focus.

1.7 Material

There is an extensive amount of material available about humanitarian interventions, this makes it even more important to be able to search for and decide on what material is the most relevant and important for this thesis. I have decided to focus on two main books in this thesis. The first is written by Michael Newman who is a Jean Monnet professor of European studies and a professor of politics at London metropolitan University. In his book, *Humanitarian interventions: Confronting the contradictions*, he writes about humanitarian interventions in a way that other writers do not. His focus lays on consequences and benefits with humanitarian interventions out of different perspectives. In a way he confronts the whole idea of humanitarian interventions from different point of views without laying emphasis on the legality of such interventions. He defines humanitarian interventions in a similar way to me, which is important because of the limitations that my definition gives me. Even if the book and the conclusions in it might not always cohere with ones own views it is written in a way which open one's mind to discussion and reflection. The second book is written by Taylor B Seybolt for the Stockholm International peace research institute. His book, *Humanitarian military intervention: The conditions for success and failure*, describes the most important interventions that has been known as humanitarian interventions, among those cases is both Rwanda and Kosovo. He confronts the events out of a success and failure perspective and gives some important reflections on why humanitarian interventions is so contradictory. An important aspect to why this book was chosen is that it disregards the whole discussion about

whether or not humanitarian interventions are legal and instead seeks to unwrap the real problems of such interventions. Some other books have been used in this thesis but the two mentioned above are the two main ones.

Some international law instruments has been used to be able to examine the legality of the defined humanitarian interventions as well as to contribute to the search for legal risks with making humanitarian interventions legal. The *Charter of the United Nations* adopted at San Francisco in 1945 and the *Declaration on Principles of international law concerning friendly relations and cooperation among states in accordance with the charter of the United Nations* adopted in 1970 are the two that has been most important to my work.

To be able to better understand the two cases that I have chosen to study, some international documents have been of importance. Among these are *The Kosovo report: Conflict, international response, lessons learned* written by the independent international commission on Kosovo. The work describes the event of the 1990 crisis in Kosovo as well as evaluates and put emphasis on how the international response and actions during the crisis effected the situation. When it comes to Rwanda the document *S/1999/1257 report of the independent inquiry into actions of the United Nations during the 1994 genocide in Rwanda*, has been of great help. It focuses directly on the actions and non-actions of the UN and the UNSC before and during the genocide. It contributes not just to an understanding of the case but also as a means to see what an effect a possible legalization of humanitarian interventions could have had on the historical event.

Last but not least, two articles about humanitarian interventions and its consequences have been used to offer a deeper understanding of the thought of critics and proponents of humanitarian interventions.

1.8 The structure of the thesis

The first section of my thesis will contain a definition of humanitarian interventions and an explanation to that definition. In the second section I will explain why the defined humanitarian interventions are illegal and not in conformity with international law. In the third section I will present the two cases which I will study throughout my thesis. Out of the definition of humanitarian interventions and the two cases presented, the fourth section will identify the risks and benefits with making the defined illegal humanitarian interventions legal. As mentioned the analysis will flow through the thesis but I will in the final section present my conclusions and epitomize the most important parts of my findings.

2 A definition of humanitarian interventions

Humanitarian interventions aren't clearly defined, mostly because of the fact that the notion has different meanings depending on which or who's perspective you choose to look at it from. If you ask scholars from different parts of the international community about the definition of humanitarian interventions, they would probably give you various answers. Of course, the biggest reason for this is the fact that there is no clear definition put forward through the international community but there is also a difference in moral standards and ethical views throughout the world.⁵ Even if there is no universal definition of the concept I have to, for the purpose of this thesis, find a working definition of what a humanitarian intervention is. I have chosen to define humanitarian interventions as follows:

The use of force by a state (or group of states) against another state with the motive of preventing or ending widespread violations of fundamental human rights by the target state towards its nationals, without the consent of the target state or authorization by the UNSC.

I will now explain how and why I have chosen to define humanitarian interventions in this way.

2.1 Humanitarian reasons

In this section, I will explain how I have chosen to define humanitarian reasons. The intervention itself has to have had humanitarian reasons,

⁵ Murphy, Sean D, *Humanitarian interventions: The United Nations in an evolving world order*, p.8; Gray, Christine, *International law and the use of force*, p.33ff.

actually the humanitarian aspect has to be the only reason for the intervention. What is then a valid humanitarian reason?

Humanitarian interventions are meant to prevent or end large scale violations of human rights. However, not all breaches of human rights count as heavy enough to justify intervention by military force. Most scholars agree that it has to be a breach of certain fundamental human rights. It stands quite clear that the prohibition against genocide, slavery and torture are such fundamental human rights and would reach the threshold of humanitarian reasons.⁶ Those three examples are not the only situations in which humanitarian reasons would be said to exist. Many argue that such rights that, if they are lost, keep an individual from enjoying all other rights, are fundamental human rights. The most obvious right would be the right to life, however it is deprived from a person the deprivation of the right to life stops that individuals enjoyment of all other rights.⁷ A breach of political and social human rights would on the other hand not stop a person from enjoying other human rights and for the most part not harm an individual physically. For that reason systematic abuse that causes bodily harm such as rape, beatings etc. would according to me also count as violations of fundamental human rights.

A violation of a fundamental human right is not enough for it to count as humanitarian reason. There also needs to be some sort of lasting element and the harm needs to be directed to more than just a few individuals. You can say that the violations of the fundamental human rights need to be widespread, of a lasting character and be directed towards the victims with the intention of causing harm.⁸ This does not mean that the actual violation has to have happened or even started by the time of the humanitarian intervention, because such intervention is meant to be preventive and can

⁶ Murphy, Sean D, *Humanitarian interventions: The United Nations in an evolving world order*, p.16f; Also based on their status as fundamental due to the fact that they have their own conventions.

⁷ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.87ff.

⁸ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.87ff.

not be carried out after a violation has already been completed. For example as we will see in the case of Rwanda the international community had knowledge about the plans for a massacre of the Tutsi population. *If* a state had intervened already then, that state still would have been able to justify the intervention on humanitarian grounds due to the fact that it would have been taken to prevent the outbreak of a genocide.⁹

The violations of fundamental human rights need to be executed by the government itself or by independent groups such as rebel forces or opposition parties and be directed towards the states own nationals. When it is not the state itself carrying out the humanitarian atrocities the state has to have no means to protect its own nationals or be unwilling to do so.¹⁰ Because if the state itself are protecting the nationals there would be no need for intervention and if an intervention was needed despite of the government's attempt to protect its nationals the consent of the state would probably be given for an intervention since it would have the best interest of its nationals in mind.

2.2 Type of intervention

In this section, I will explain how I have defined an intervention and why I have chosen this particular definition. There is not just one way in which a state can intervene in another state's sovereign affairs. The state can impose economic sanctions, end diplomatic relations, fund rebel groups within the state and much more.¹¹ Although these types of interventions would certainly make a difference, the type of intervention that I will focus on in my thesis is that of the use of force. The use of force as means to intervene in the sovereign affairs of another state stands in direct conflict with a jus

⁹ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.89.

¹⁰ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.6f; Murphy, Sean D, *Humanitarian interventions: The United Nations in an evolving world order*, p.17f.

¹¹ Murphy, Sean D, *Humanitarian interventions: The United Nations in an evolving world order*, p.9f.

cogens norm, the prohibition on the use of force found in article 2(4) UNCh. As discussed later there are exceptions to this prohibition but non which enable states or group of states to decide on their own that military force has to be used against another state purely based on that states internal conditions.¹² The intention behind this limitation of discussing interventions made with military force is to limit the thesis to only dispute the most immoderate forms of intervention.

The intervention by military force can be taken by a single state or collectively by a cluster of states, for example organisations such as NATO or the African Union (AU).¹³ Interventions made by non-governmental organisations (NGO) will not at all be discussed in this thesis. Such interventions often play an important part of internal conflicts and often make a big difference for people around the world that are in need of help. However, the role of states and the role of NGOs is different and can not even be compared to one another. The character of interventions made by states and those made by NGO's also differs in a huge way. This is because the duties and the rights of states and NGO's is different from one another and their status in the international community is of different character. This makes interventions by NGO's a completely different subject which will not be discussed here.¹⁴

The intervention also has to be taken to protect the nationals of the target state and not the intervening states own nationals. The protection of the intervening states own nationals are governed by a different set of rules and has a different character than the type of humanitarian interventions that I intend to discuss.¹⁵

¹² Article 2.4 Charter of the United Nations, adopted at San Francisco, 26th of June 1945; Murphy, Sean D, *Humanitarian interventions: The United Nations in an evolving world order*, p.12.

¹³ Murphy, Sean D, *Humanitarian interventions: The United Nations in an evolving world order*, p.14.

¹⁴ Murphy, Sean D, *Humanitarian interventions: The United Nations in an evolving world order*, p.14.

¹⁵ Murphy, Sean D, *Humanitarian interventions: The United Nations in an evolving world order*, p.15f.

Since this thesis requires that humanitarian interventions are unlawful and the question is, whether or not we should make it lawful we have to focus on the humanitarian interventions that are inherently unlawful. Those are the interventions that have not been authorized by the UNSC or the target state in accordance with the UNCh.¹⁶ The illegality of the defined humanitarian interventions will be discussed in chapter 3.

In light of the above my definition is as follows:

The use of force by a state (or group of states) against another state with the motive of preventing or ending widespread violations of fundamental human rights by the target state towards its nationals, without the consent of the target state or authorization by the UNSC.

2.3 To identify success or failure after a humanitarian intervention

To be able to weigh the legal risks and the potential benefits of humanitarian interventions I have to establish how we measure if a humanitarian intervention was successful or not.

Here I have taken the same view as Taylor Seybolt in his book about humanitarian military intervention. He argues that success should be defined as saving lives. The meaning of this is that those people who remained alive because of the intervention but would have died without it, is a measure of the success that the intervention had. He sees the number of lives saved as a common denominator and a quantifiable objective criteria. He chooses to

¹⁶ See art 2(4) Charter of the United Nations, adopted at San Francisco, 26th of June 1945 and the exceptions for that article in chapter 7 UNCh; I will explain the illegality of humanitarian interventions in chapter 3.

not measure success by political change in the target state, the reasons for this is as follows:

- So many other things than the humanitarian intervention itself influence political change.
- We do not have a universal way to measure political stability nor any definition of political stability.
- The last predicament is that of time. Reasonably political change takes time and the more time that is allowed to pass before measuring the political change, the more factors other than that of intervention has effected the change. Therefor it is very hard to use political change as a measure for success or failure.

He comes to the conclusion that the most effective way to measure success is that of the number of lives saved. To measure lives saved is the only way to establish the real impact of the intervention. One can then establish how many lives were saved, how those lives were saved and which actor who were responsible for them being saved.¹⁷

There will of course be uncertainty with the numbers of lives saved because of the problem one have of analysing something that did not happen. Despite the uncertainty, one can by establishing causes of death within a country and counting those who died of violence, compare mortality rates before and after a humanitarian intervention is initiated. Of course, one then have to conclude if the change in the mortality rate was caused by the humanitarian intervention or by other factors. It is a simple equation that physically protecting people from violence will result in people not dying from that violence. This would give us a clue of how many lives the humanitarian intervention saved but it would still leave us with the problem of determining what would have happened if intervention were not

¹⁷ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.30ff.

initiated.¹⁸ It is maybe here that my views are distinguished from that of Seybolt. For he believes that we can create a hypothetical non-intervention to see what would have been if intervention would not have taken place. I believe that such a hypothetical non-intervention would vary in its outcome to an extended degree, because it is all in the eyes of the spectator. To make an objective assessment of what would have been, is extremely difficult because it depends on what information you have access to, how manipulated that information is by subjective factors (or rather political factors) and how the evaluator chooses to process that information.

The conclusion is that it will always be extremely difficult to measure if a humanitarian intervention were or would be successful or not. However, one can establish approximately how many lives were saved because of the intervention and in that way see if it were successful or not. Lives being saved is also the most important benefit with humanitarian interventions.

¹⁸ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.34ff.

3 The illegality of Humanitarian interventions

To be able to discuss the risks and benefits of legalising humanitarian interventions I first have to explain why such interventions are illegal. It is worth mentioning that the legality of humanitarian interventions is widely debated within the international community and there are differences in the perception of the illegality of such interventions.¹⁹ However, for the purpose of this thesis I will only declare the illegality of humanitarian interventions from a purely legal perspective. I have two reasons for this. First, my thesis demands that humanitarian interventions are illegal and violates international norms. Second, a discussion outside the legal perspective would be extensive and contain so many different factors that it would end in a huge discussion about whether or not humanitarian interventions are legal, which is not the purpose of this thesis. The discussion below is based on my given definition of humanitarian interventions.

3.1 The prohibition on the use of force

The use of force by states is regulated by international law. The main rule, which is also known to be a jus cogens rule, can be found in Art 2(4) UNCh.

“All 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”²⁰

¹⁹ Holzgrefe, J.L, Keohane, Robert O, *Humanitarian intervention: Ethical, legal and Political dilemmas*, p.1.

²⁰ Article 2(4) Charter of the United Nations, adopted at San Francisco, 26th of June 1945.

The primary starting point is therefore that all use of force by states is prohibited.²¹ The prohibition on the use of force comes with two exceptions, which can be found in chapter seven of the UNCh. Article 42 UNCh declares that force may be used if it is been authorized by the UNSC²² while Article 51 UNCh allows for the use of force in self-defence or collective self-defence if an armed attack has occurred against a member state.²³ When a state uses military force outside of these two exceptions it is illegal because it is not in harmony with contemporary international law. The UNCh is a treaty which prevails over all other treaties and can only be overruled by a jus cogens norm. A right to humanitarian intervention does not exist in customary law and definitely not as a jus cogens norm.²⁴ This might seem strange since when talking about humanitarian interventions there seem to have been many cases of such interventions throughout history. The main problem is that these interventions were taken on humanitarian grounds but weren't justified on those same grounds, which makes it hard to show a developed opinio juris. The indifference and the mutability of opinions among states also makes it really hard to establish an opinio juris.²⁵ For that reason, and to some extent to what was decided in response to the development of the R2P concept, there is no right to humanitarian interventions without the authorization of the UNSC or the target state.

²¹ See article 2(4) Charter of the United Nations, adopted at San Francisco, 26th of June 1945; Holzgrefe, J.L., Keohane, Robert O, *Humanitarian intervention: Ethical, legal and Political dilemmas*, p.181.

²² See article 42 Charter of the United Nations, adopted at San Francisco, 26th of June 1945; Holzgrefe, J.L., Keohane, Robert O, *Humanitarian intervention: Ethical, legal and Political dilemmas*, p.181f.

²³ See article 51 Charter of the United Nations, adopted at San Francisco, 26th of June; Holzgrefe, J.L., Keohane, Robert O, *Humanitarian intervention: Ethical, legal and Political dilemmas*, p.182.

²⁴ Holzgrefe, J.L., Keohane, Robert O, *Humanitarian intervention: Ethical, legal and Political dilemmas*, p.180ff.

²⁵ Gray, Christine, *International law and the use of force*, p.33f; Holzgrefe, J.L., Keohane, Robert O, *Humanitarian intervention: Ethical, legal and Political dilemmas*, p.45ff.

3.2 The responsibility to protect

At the end of the 20th century and the beginning of the 21st century, states and heads of states started to realise that they needed to figure out a way to protect not just sovereign states to uphold peace and security but also individuals within those states. War between states was more than uncommon but conflicts within states had become more and more common and the atrocities that individuals suffered in those conflicts were deeply inhumane.²⁶ The UN seemed to be at a loss in how they should prevent or even stop human rights catastrophes occurring around the world within sovereign states. The genocide in Rwanda 1994 and the NATO intervention in Kosovo in 1999 sparked discussions about a responsibility for the international community to intervene in human rights catastrophes.²⁷

Because of the shift from threats against state sovereignty towards threats against humanity, the UN developed a doctrine called the responsibility to protect.²⁸ It was decided that sovereign states had a responsibility to care for and protect its own nationals within their territory. However, such a responsibility to protect its own nationals didn't come with a certainty that all sovereign states had the will or the ability to do so. The uncertainty led to the belief that on a case by case basis the responsibility to protect nationals of a state should collectively be taken on by the international community. Of course, this kind of collective security had to be realized in conformity with the UN principles and purposes and chapter seven of the UNCh.²⁹ The R2P concept even allows for military force to be used for humanitarian purposes, but since it was never the plan to change or interpret chapter seven of the UNCh differently it would still have to have the pre-existing authorization

²⁶ Report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility*, A/59/565, p.31ff.

²⁷ Report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility*, A/59/565, p.34f.

²⁸ Report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility*, A/59/565, p.11 and 16f.

²⁹ Report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility*, A/59/565, p.21f and 56f.

by the UNSC.³⁰ The adoption of the R2P concept in 2005 created a way to protect individuals suffering from genocide, ethnic cleansing, war crimes or crimes against humanity within their own state, but it is not legal to do so without the authorization from the UNSC.³¹ The R2P regime is therefore different from my defined humanitarian interventions on the ground that such a use of force is carried out with the consent of the UNSC. So despite the concept of R2P, humanitarian interventions, as I define them, are not legal under contemporary international law.

³⁰ Report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility*, A/59/565, p.11 and 53.

³¹ Report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility*, A/59/565, p.57; United Nation General Assembly, *2005 world summit outcome*, A/RES/60/1, p.31.

4 The genocide in Rwanda

1994

Rwanda is a country in central Africa with 12.6 million inhabitants (2018).³² In the year of 1994 one of the deadliest and most horrific genocides took place there. Around 800 000 people were killed in the ethnic war between Hutu and Tutsis under a three-month period.³³ I've chosen Rwanda as one of my cases because of the fact that approximately 8000 people were killed every day. Meanwhile the international community, despite having knowledge of the atrocities, chose to stand on the side-lines, watching as extreme violations of fundamental human rights were being committed. Below follows a brief description of the event, any other information needed will be given throughout the thesis.

The situation in Rwanda was not born out of thin air and the involvement of the international community before the genocide was extensive. The conflict between Hutus and Tutsis had been going on ever since Rwanda gained independence from Belgium in 1962.³⁴ The events leading up to such extreme violence as a genocide is for the most hard to apprehend. It isn't my intension to describe the events leading up to the genocide in detail but some information is worth mentioning. The Hutu were in power in the early 90ths and violence against Tutsis was occurring all over the country by extremist groups. The international involvement and interest to resolve the conflict was great and discussions and agreements were made with both sides of the conflict. Through threats about, amongst other things, withdrawing economic support, a peace agreement (The Arusha peace

³² Nationalencyklopedin, Rwanda.

<http://www.ne.se.ludwig.lub.lu.se/uppslagsverk/encyklopedi/enkel/rwanda> (hämtad 2018-12-09)

³³ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.70; S/1999/1257, *Report of the independent inquiry into actions of the United Nations during the 1994 genocide in Rwanda*, 15th of December 1999, p.3.

³⁴ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.126f.

agreement) was drawn up, which would force the Hutus to give up most of their power. The Hutus were of course against this and extremist groups continued spreading propaganda filled with hatred against the Tutsis. Warnings about plans for a massacre of Tutsis were delivered to the UN through sources within the country, however the UN did not take any action and held that the peace agreement would be enforced. On the 6th of April when the Hutu president was on his way back from negotiations his plane was shot down and he was killed. Tensions then became too high and the genocide of 800 000 Tutsis was initiated.³⁵

What makes Rwanda so special is the speed in which approximately 10 % of the entire population was executed by military and extremist groups. Up to 8000 people were killed every day during a three-month period. It was a brutal form of violence directed at civilians with the aim to exterminate an entire ethnic group.³⁶ At the same time the international community was reluctant to act in any way, not even giving the peacekeeping operation already in place any mandate to protect civilian Tutsis from being killed. When the pressure on the international community became too strong it was already too late, the war was over and the genocide had already ended thanks to the Rwandan Patriotic Army (RPA).³⁷

³⁵ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.132ff; See also S/1999/1257, *Report of the independent inquiry into actions of the United Nations during the 1994 genocide in Rwanda*, 15th of December 1999, p.6 & p10, which upholds the claim that the UN had knowledge about the severity of the situation in Rwanda.

³⁶ also S/1999/1257, *Report of the independent inquiry into actions of the United Nations during the 1994 genocide in Rwanda*, 15th of December 1999, p.3.

³⁷ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.70ff.

5 Nato intervention in Kosovo in 1999

Kosovo was one of many conflicts in the Former Republic of Yugoslavia (FRY) in the late 20th century. When it came about the memory of Bosnia and the massacre of Srebrenica was still fresh in the mind of the international community, who failed miserably to protect the victims of the war in Bosnia.³⁸ I have chosen Kosovo as one of my cases since it is one of those cases where intervention was actually based on humanitarian purposes and collective action was taken to protect individuals from violations of fundamental human rights. It is an important case due to the fact that a humanitarian intervention was initiated without the consent from either the UNSC or the target state. Despite the illegality of the intervention it was not condemned by the international community, instead it sparked discussions of how and if the international community should protect individuals suffering from violations of fundamental human rights within a sovereign state. Below follows a brief description of the events, any other information needed will be given throughout the thesis.

The FRY had a long history of conflicts and nationalistic behaviour. Kosovo was up until 1989 an autonomous province of Serbia, which were one of six republics within the FRY. Slobodan Milosevic (Milosevic) was the leader in Serbia and with his leadership an extreme nationalistic program grew.³⁹ As an autonomous province Kosovo was not a sovereign state and had no right to become one. Nationalist Serbs had long repressed Kosovar Albanians and even if the main population in Kosovo were against a Serbian rule, the

³⁸ The independent international commission on Kosovo, *The Kosovo report: Conflict, international response, Lessons learned*, p.20f.

³⁹ The independent international commission on Kosovo, *The Kosovo report: Conflict, international response, Lessons learned*, p.34f.

autonomy of Kosovo was withdrawn in 1989.⁴⁰ Some resistance was given as a response to the repression but it was given through peaceful means until around 1997 when the Kosovo Liberation Army (KLA) became more active.⁴¹ When a member of the KLA was arrested and his whole extended family was killed, groups across Kosovo started to riot to protect their communities. As always when one side of the conflict starts giving stronger resistance the other side turns to the worse as well. In 1998 reports on arrests and massacres of Kosovar Albanians reached the western world. Some wanted intervention already here but no such authorization came from the UNSC. During that time it was quite clear (and actually publicly announced) that Russia would oppose such an intervention. Russia is a permanent member of the UNSC and therefore enjoys the right to veto, which would hinder any forceful action from the UNSC. Although reports on mass killings and ethnic cleansing reached the international community, members of the UNSC were still opposed to a forceful intervention, particularly Russia and China. At the same time, NATO, with the USA as the main advocate for intervention, planned for a future intervention with the use of force. NATO first violated international law by making threats on the use of force against the Serbian leader Milosevic trying to force him to end the internal conflict peacefully. Such a resolution was not found and NATO made good on their threat on the 24th of March 1999 when they launched airstrikes against Serbian targets. The greater goal with the intervention had humanitarian purposes: Protect and end ethnic cleansing of the Albanian Kosovars and prevent the conflict from spreading to neighbouring countries. It was meant to be a short but effective use of force but it turned out that more was needed to get the Serbian leader Milosevic to accept the terms laid out by NATO and resolve the crisis in Kosovo.⁴²

⁴⁰ The independent international commission on Kosovo, *The Kosovo report: Conflict, international response, Lessons learned*, p.36f and p.41; Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.65ff.

⁴¹ See The independent international commission on Kosovo, *The Kosovo report: Conflict, international response, Lessons learned*, p.43ff, Which describes actions taken by Kosovar Albanians through peaceful means.

⁴² Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.65ff.

6 The risks and potential benefits with humanitarian interventions

In this next part of my thesis I will focus on identifying the risks with humanitarian interventions as well as to seek for any potential benefits with such interventions. This will be done out of a legal perspective as well as a humanitarian perspective. The two above described events from the past will work as inspiration for this discussion.

6.1 Intervention for humanitarian- or political reasons, or both?

As established in my definition of a humanitarian intervention the most important component of such an intervention is that military force is used for humanitarian reasons. Critics ask the question if states in any event would be willing to sacrifice its own nationals to save another state's nationals, is it even possible to only have humanitarian motives?

6.1.1 The non-intervention in Rwanda

One of the most remarkable aspects of the genocide in Rwanda was the disinclination to intervene by any single state who theoretically and practically had the ability to do so. At the same time it is one of the most brutal and deadliest genocides throughout modern history.⁴³ I ask myself why some human rights catastrophes gain international attention and some does not. If humanitarian need was the only prospect of humanitarian intervention wouldn't all human rights catastrophes during a certain time frame gain interest by the countries willing to intervene? It is easy to say

⁴³ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.72.

that one state would not have been able to intervene in all situations but how do you then as a state decide where to intervene? If humanitarian need was the only objective the state in which most people were in danger should naturally be the choice of the intervening state, but history shows that, that is not the case. This shows me that something more than just humanitarian need lays behind the decision to intervene.⁴⁴

This becomes obvious when we compare the non-intervention in Rwanda with the intervention by NATO in Kosovo. Intervention, both by the UN and the international community, came quickly after the crisis in Kosovo intensified. Though the types of intervention used was not through forceful means, a huge determination in halting the violence in the country was shown.⁴⁵ The life lost in Kosovo was not in any shape or form near that of the life lost in Rwanda.⁴⁶ Many critics to the intervention in Kosovo argue that if humanitarian motives were the purpose of intervening why didn't an intervention take place in cases like Rwanda. Sean Richmond, who is an assistant professor of international law, argues that this is an argument that assumes that all cases that are alike should be treated the same.⁴⁷ For me it is more the fact that in a more severe situation, which consisted of more inhumane factors than that of the Kosovo crisis, it was not thought that an intervention by force was needed. If it was not needed in Rwanda how could it then be needed in Kosovo? For me it all comes down to the legitimacy of an intervention. If you as a state argue that intervention by force is not needed in one state when violations of fundamental human rights are carried out, you can not argue that it is needed in another state when such violations

⁴⁴ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.72; Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.136.

⁴⁵ The independent international commission on Kosovo, *The Kosovo report: Conflict, international response, Lessons learned*, p.3f.

⁴⁶ The independent international commission on Kosovo, *The Kosovo report: Conflict, international response, Lessons learned*, Annex 1 p.306f, The report estimates that at least 10 500 persons were killed in the Kosovo Crisis; S/1999/1257, *Report of the independent inquiry into actions of the United Nations during the 1994 genocide in Rwanda*, 15th of December 1999, p.3, which stated that around 800 000 persons were killed in Rwanda.

⁴⁷ Richmond, Sean, *Why is humanitarian intervention so divisive? Revisiting the debate over the 1999 Kosovo intervention*, *Journal on the use of force and international law*, 2016 vol.3, No 2, p.253f.

is being committed there. For that implies that other factors lie behind the intervention and that the intervening state does not intervene solely on humanitarian purposes.

6.1.2 Questionable motives when NATO intervened in Kosovo

NATO argues that the intervention in Kosovo was called for on humanitarian purposes⁴⁸ but it is quite clear to me that that was not the only agenda they had. As Sean Richmond writes in *Journal on the use of force and international law*, many critics to the 1999 Kosovo intervention questions NATO's humanitarian motives.⁴⁹ The USA had an interest in the region on the basis of their relationship to Russia and their aim to not let Russia have any more influence in the region. At the same time, the Serbian leader Milosevic was an ally to Russia, which made the USA even more determined to halt the Serbian pursue on Kosovo. The argument given by most critics is that NATO (or rather the USA) wanted to show that they still had power and by that gain some strategic control over the region in question and shape the post-cold war order to benefit western norms and ideas. They believe that the USA, as the big influencer in the organisation of NATO, by intervening wanted to make sure that it kept its domination within the economic and political sectors as well as in the military field.⁵⁰ Regarding the question if NATO only had humanitarian reasons for intervening I agree with the critics that it is questionable if that was the case. The connection between the intervention, the region and the political consequences at stake is simply too strong to ignore, accidental or not.

⁴⁸ The independent international commission on Kosovo, *The Kosovo report: Conflict, international response, Lessons learned*, p.85; Richmond, Sean, *Why is humanitarian intervention so divisive? Revisiting the debate over the 1999 Kosovo intervention*, *Journal on the use of force and international law*, 2016 vol.3, No 2, p.244.

⁴⁹ Richmond, Sean, *Why is humanitarian intervention so divisive? Revisiting the debate over the 1999 Kosovo intervention*, *Journal on the use of force and international law*, 2016 vol.3, No 2, p.243.

⁵⁰ Richmond, Sean, *Why is humanitarian intervention so divisive? Revisiting the debate over the 1999 Kosovo intervention*, *Journal on the use of force and international law*, 2016 vol.3, No 2, p.244ff.

6.1.3 A risk of political interventions

We can not be a hundred percent sure of the motives of the NATO intervention in Kosovo or why intervention didn't take place in Rwanda, but we can establish that the legalisation of humanitarian interventions would come with a real risk of intervention publically justified with humanitarian purposes but privately done for other reasons. This is simply because it is much easier to justify something that is legal rather than illegal. The fact that states could act on their own without UNSC authorization or the authorization of the target state makes the risk of abuse greater than that of other exceptions to the prohibition on the use of force. Strong states would be able to use force against weaker states for their own gain, justifying it on humanitarian grounds. In other words, if we make humanitarian interventions legal there will be a greater risk of abuse of the concept of humanitarian interventions.

6.2 With humanitarian interventions comes a real risk of making the situation worse

The intervention in Kosovo, and as well the situation in Rwanda after the genocide, sparks questions as to whether or not humanitarian intervention is such a good idea. Inevitably, forceful interventions has an impact on the situation in the target state and creates humanitarian consequences. This will be discussed in this chapter.

6.2.1 Humanitarian implications with forceful intervention

NATO as the intervening part in Kosovo was not interested in putting its force at any risk and therefor withheld itself to perform airstrikes in a way that would not endanger their soldiers. Somewhat this factor and the slow pace of which the attacks had any successful progress, the intervention can

be said to have had an unfavourable humanitarian outcome.⁵¹ From the critical perspective, the enormous rise in deaths and displaced persons after the intervention was initiated, was a sign of an unfair and unnecessary forceful intervention.⁵² As Benjamin A Valentino argues for in his article about the true costs of humanitarian interventions, the threat of the use of force by NATO and the following airstrikes actually sparked the ongoing violence in the region. The Serbian population grew more loyal to the Milosevic regime and the persecution of Kosovar Albanians became worse.⁵³ In effect, the humanitarian intervention that were supposed to prevent or end the ongoing internal conflict actually intensified it, causing negative humanitarian consequences for the Kosovar Albanians.

Although we will never know how the situation would have progressed if the NATO intervention never would have happened I can agree that intervening with force comes with a real risk of making the situation worse than it already is. Supporting one side of the conflict will always influence the relationship between the parties to the conflict. Of course, it can influence the relationship for the better but in most conflicts it will feed the tensions and intensify the conflict. One can ask themselves why I have this view. It is rather simple to explain. A government, an opposition group or a rebel group simply do not wake up one morning deciding upon itself to perform violations of fundamental human rights. Instead events leading up to such violations make actors of such violations feel that they have the right to perform them and that they have some kind of legitimacy behind their actions. The thought of some kind of legitimacy will only grow stronger

⁵¹ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.82f & p.86.

⁵² Richmond, Sean, *Why is humanitarian intervention so divisive? Revisiting the debate over the 1999 Kosovo intervention*, *Journal on the use of force and international law*, 2016 vol.3, No 2, p.254; Also taking into consideration my parameter for judging success or failure of a humanitarian intervention, were a rise in deaths after intervention clearly speaks in favor of a failure rather than success.

⁵³ Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, *Foreign Affairs*, Vol 90, issue 6; Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.18.

when more people oppose or propose their actions, it is the natural reaction.⁵⁴

Although there wasn't any forceful intervention in Rwanda before or during the genocide, the part that the international community played in negotiations leading up to the Arusha peace agreement had a significant impact on developments in the country. When Rwanda was a Belgian colony the Tutsis were integrated to power and the majority Hutus were seen as a lesser group who did not have a right to any power. When the Colonial period ended and Rwanda was left fending for itself the Hutu majority took power and was actually supported by the Belgians. Already here ethnic tensions started to grow and the revolts by Tutsis was answered with great violence from Hutus. In the meantime the conflict between Hutus and Tutsis in neighboring country Burundi somewhat spilled over when knowledge of massacres of Hutus reached Rwandan leaders. When negotiations about peace in the 1990's were influenced by the international community through threats of withdrawing for example economic aid etc. it forced the president to agree to give up power of the Hutus and give it to the Tutsis. Although this might seem fair, many scholars and critics of intervention are of the opinion that forcing the president to give up power led to even more extremist actions from the Hutu population and politicians/military leading to the genocide.⁵⁵ Even though this was not a forceful intervention taken by a single state against the territorial integrity of another state, it is still an excellent example of how the involvement of the international community can spark and intensify tensions within a sovereign state. Worth mentioning is that this is not an attempt of laying blame or judging if the involvement of the international community before the genocide was right or wrong, it is simply to acknowledge that involvement by the international community comes with a real risk of making the situation worse.

⁵⁴ This is my own conclusion but it is strengthened by conclusions found in Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.103.

⁵⁵ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.130ff.

6.2.2 Possible detrimental effect on neighboring countries

When the UNSC finally approved an intervention in Rwanda under a chapter VII mandate (Operation Turquoise) it came with large consequences. First, I have to point out that the intervention had a positive effect on the situation in Rwanda and it deserves credit for saving a couple of thousand lives. Unfortunately, the effect that it had on neighboring countries was not in any way positive. The intervention actually enabled many of the Hutu leaders and extremist to flee to Zaire (Now the Democratic Republic of Congo), creating a huge wave of refugees in a short period of time. The following years this created two civil wars in Zaire, as a consequence of the presence of Hutu extremist.⁵⁶ This leads to the conclusion that one needs to take into consideration what an impact a humanitarian intervention can have on neighboring countries when evaluating its risks and benefits.

6.2.3 Possible behaviour of redemption

A humanitarian intervention often includes aiding one side of the conflict, which of course makes it even harder to distinguish political from humanitarian motives but it also, as an unfortunate side effect, legitimizes the ideas and aspirations of those people being supported. Aiding one group of people legitimates that group to think that they are entitled to certain things. To believe that aiding a group comes without consequences is wrong. Receiving help from other states or the international community can legitimise a group of people and often leads them to perform violations of fundamental human rights themselves.⁵⁷ In his article Benjamin A Valentino uses Kosovo and the actions of the KLA after NATO liberated the Kosovar Albanians from the Serbian forces as an example of this consequence of

⁵⁶ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.75f.

⁵⁷ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.103; Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, Foreign Affairs, Vol 90, issue 6.

humanitarian interventions. The KLA was eager to revenge the actions of the Serbian forces and attacked Serbian civilians. It is estimated that a couple of hundred people died from actions by the KLA after the intervention was over, through violations of fundamental human rights.⁵⁸ Even the RPA in Rwanda broke international law and committed violations of fundamental human rights while trying to stop the genocide of Tutsis. They also drove several hundreds of thousands Hutus over the Rwandan border into neighbouring countries. The support for the RPA and the Tutsi minority (Or if you want to put it in another way: The opposition of the Hutu leaders and extremist) also led to the consequence that the Tutsi minority gained full control of the country and its governmental system, which was not the goal of the international community.⁵⁹

6.2.4 Conclusion

If one would make humanitarian interventions legal it would be easier for states to take forceful action when a state is making questionable decisions about human rights. It would actually be easier for a state to take action than to go through the process of pleading its case before the UNSC. Since a use of force against a state comes with a real risk of making the situation within the state worse than it already is, the use of force needs to be an absolute last resort for dealing with the situation. The process of the UNSC ensures that all risks and benefits with intervention is evaluated, making it less possible for the risks to materialize. Making humanitarian interventions legal comes with the risk of force being used for both the wrong reasons and not as a last resort, but as an easier way for a state to get its will materialized. Making humanitarian interventions legal comes with a higher risk of escalating internal conflicts and making the outcome of them worse than it would be without intervention. Out of a humanitarian perspective there is, as

⁵⁸ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.155f; Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, Foreign Affairs, Vol 90, issue 6.

⁵⁹ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.264

described, a risk of making the situation worse for the victims as well as for neighboring countries. There is also a risk of legitimizing a behavior of redemption and creating even more violations of fundamental human rights.

6.3 Can forceful interventions be humanitarian?

Intervention by military force is by no doubt a violent action. Actions of violence are regarded by many scholars and, of course, critics of humanitarian interventions as the opposite of humanitarian. For humanitarian represents something good, something beneficial to people who suffer or are in need of assistance.⁶⁰ The question is then if a violent action really can be humanitarian?

6.3.1 The casualties of humanitarian interventions

The more specific problem here is that of casualties suffered due to the forceful intervention. If we take, yet again, NATO's intervention in Kosovo as an example there were several hundred civilians killed in the airstrikes and probably several thousand Serbian soldiers.⁶¹ My view is that the killing of soldiers is a consequence of using force and that those killings to some extent can be justified by the bigger goal of protecting innocent people from violations of fundamental human rights. Critics to humanitarian intervention instead argue that killing one group of people to protect another group amounts to a concept of choosing between people and people, because taking a life for the right reason is still as bad as taking a life for the wrong reason.⁶² As controversial as it may be for critics, it is my view that casualties in the form of soldiers can be justified with the protection of

⁶⁰ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.94f.

⁶¹ Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, Foreign Affairs, Vol 90, issue 6.

⁶² Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.93f.

innocent people from violations of fundamental human rights, if such use of violence is in conformity with international humanitarian law. It is perhaps more important to lay emphasis on the fact that with humanitarian interventions comes casualties which are innocent civilians, so in one way intervention creates violence and death even for the people it was meant to protect. The risk of civilian casualties is a risk that we can never overlook, because not even with modern technology we can eliminate collateral damage.⁶³

The question if the risk of killing soldiers and innocent people makes humanitarian interventions inhuman in nature is a question with no answer. Because no general answer can be given because of the diversity of the character of internal conflicts and violations of fundamental human rights. Since I use “lives saved” as the parameter for judging success or failure of a humanitarian intervention I have to take into consideration, at least, the possible death of innocent civilians caused by the intervention itself, when I investigate if humanitarian interventions should be legal. The inevitable death of civilians also shows, once again, that the use of force needs to be the absolute last resort in regard to solving an internal conflict and that with the use of force comes humanitarian consequences.

6.4 The question about legitimate authority

The UNSC is the legitimate authority when it comes to the use of force between and against states.⁶⁴ Making humanitarian interventions legal would make states the legitimate authority when it comes to the use of force for humanitarian purposes. As one will see in chapter 6.6 giving states the legitimate authority, when it comes to the use of force, has an impact on the

⁶³ See Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, Foreign Affairs, Vol 90, issue 6, who argues that this is one of the consequences of humanitarian interventions.

⁶⁴ Article 39 Charter of the United Nations, adopted at San Francisco, 26th of June 1945.

sovereignty of states. A right for states to decide over when intervention should be taken would make states the judge and take away the equality between states. However, it also comes with other significant consequences.

Giving states a right to intervene with military force leads to them being able to decide based on their own perception whether or not intervention is needed in the target state. Even if the right would be given within certain frames, the perception of the frames given would change depending on who the recipient of them is. To this comes the difficulty with giving an exact universal definition of a humanitarian intervention or what constitutes a violation of a fundamental human right. It gives that it would be extremely hard to define in which situations it would be legal for states to take the decision to intervene. For all humanitarian catastrophes are different and defined by very different elements, therefore the frame given for legal interventions would have to be very broad to encompass all situations which would possibly entail intervention. Unfortunately, a right for states to intervene comes with a risk of states using force in situations where it was not intended to give such a right. This is because of the fact that moral standards, or rather subjective perspectives, differ across the world and different spectators perceive human rights catastrophes differently. This is indirectly shown by both the 1999 crisis in Kosovo and the 1994 genocide in Rwanda. In these two cases the international community could not agree on what action should be taken or even if any action was needed at all⁶⁵. The fact that intervention was not taken in Rwanda but later in Kosovo shows that subjective perspectives also change over time as well as in regards to in which region of the world the human rights catastrophe is taken place. It is clear that subjective perspectives and the moral standings in the intervening state would be the decisive element for intervention if we made humanitarian interventions legal. Yet, subjective perspectives should never be allowed to act as the decisive element, when it comes to the use of force, due to its diversification and mutability around the world. Subjective

⁶⁵ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.67 & p.135f.

perspectives as a decisive element creates a huge risk of force being used in situations where it was not the intent of international law for it to be used. The risk for abuse and the possible creation of threats to peace and security simply becomes too great. This leads me to the conclusion that it is questionable if, in this particular circumstance, a state really can or should be the legitimate authority of the use of force.

6.4.1 The legitimate authority of the UNSC

There is also the question of taking away legitimate authority from the UNSC and in a way undermine the UNSC as an actor in the international community. If legitimate authority about the use of force was given to states it will somewhat be taken away from the UNSC. This can lead to the fact that humanitarian catastrophes (and possible violations of fundamental human rights) in a state would not be processed and discussed within the UNSC. Because, states would not be forced to plea its arguments and standpoints before all UNSC members to be able to intervene, they could simply act on their own. Even if the UNSC do not always function as one would like (As one will see in chapter 6.5) it is an important process to make sure that all use of force and conflicts is objectively dealt with and, of course, that the use of force always is a last resort. There is also the risk of creating doubt about the UNSC as a legitimate authority when the most important part of its purpose is taken away from it, that of keeping peace and security throughout the world.⁶⁶

6.5 The flaws in the function of the UNSC

As mentioned earlier, it is the UN and specifically the UNSC that enables the use of force within the international community. In internal conflicts where violations of fundamental human rights are being committed it is

⁶⁶ Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, Foreign Affairs, Vol 90, issue 6; Richmond, Sean, *Why is humanitarian intervention so divisive? Revisiting the debate over the 1999 Kosovo intervention*, Journal on the use of force and international law, 2016 vol.3, No 2, p.256f.

important that the international community respond quickly and with appropriate measure to prevent or stop such violations. Unfortunately, so has not been the case throughout history. With my case studies as a base, I have identified two main flaws in the function of the UN and the UNSC that could have an effect on whether or not we should make humanitarian interventions legal.

6.5.1 The right to veto in the UNSC

Kosovo is an eminent example of the problem with the permanent members of the UNSC and their right to veto a decision by the UNSC. There are five permanent members of the UNSC: China, France, Russia, The United Kingdom and the USA.⁶⁷ The UNSC has the primary responsibility to maintain international peace and security and members of the UN are bound to follow its decisions.⁶⁸ It is the UNSC that determines the existence of any threat to the peace or breach of the peace and decides what action or actions should be taken by the UN and its members.⁶⁹ It is therefor also the UNSC that decides if and when forceful measures should be taken towards a state.⁷⁰ To reach decisions on such matters the 15 members of the UNSC votes. For forceful action to be taken at least 9 members need to give an affirmative vote. The five permanent members have what's called a right to veto. In practice this means that for a decision to be reached and forceful action to be taken 9 members needs to give an affirmative vote including the concurring votes of the five permanent members. If any of the five members vote against forceful intervention, no such intervention can be taken.⁷¹

The reality is that the five permanent members are rarely in agreement when it comes to forceful interventions and whether or not they should be taken. In the example of Kosovo, both China and Russia openly were opposed to

⁶⁷ Article 23(1) Charter of the United Nations, adopted at San Francisco, 26th of June 1945.

⁶⁸ Article 24(1) and article 25 Charter of the United Nations, adopted at San Francisco, 26th of June 1945.

⁶⁹ Article 39 Charter of the United Nations, adopted at San Francisco, 26th of June 1945.

⁷⁰ Article 42 Charter of the United Nations, adopted at San Francisco, 26th of June 1945.

⁷¹ Article 27(3) Charter of the United Nations, adopted at San Francisco, 26th of June 1945.

such intervention despite the human suffering in the region.⁷² The same situation would probably also occur in the example of Rwanda since the USA was opposed to any form of intervention.⁷³ There are countless examples throughout the history where the five permanent members would have made humanitarian interventions impossible due to the fact that one or several of them would vote against intervention. The Indian intervention in Pakistan in 1971, due to the repression of the Bengalis in East Pakistan, the Vietnam intervention in Cambodia in 1979, due to the ongoing genocide initiated by the Cambodian regime, the non-intervention in Burundi around 1972⁷⁴ and the war in Bosnia during the first half of the 90's⁷⁵ are just some examples where the UNSC wouldn't be able to come to an agreement about forceful actions due to the veto right. If there even in human rights catastrophes is a divide between the five permanent members of the UNSC, preventing the UNSC from acting with forceful measures, maybe we need humanitarian interventions to be legal, so states can act on their own to prevent such human rights catastrophes?

6.5.2 The lack of will and inability to act

It is not only the right to veto in the UNSC that affects human rights catastrophes around the world, there is also the fact that the UN and its members have (in some situations) a lack of will to act and take forceful actions when so desperately needed. This is perhaps one of the most interesting aspects of the genocide in Rwanda: The UN's inability to act with promptitude and take forceful action when needed.⁷⁶ Even if they deployed a peacekeeping mission, it was reduced significantly, first on the request of the USA and then once again after a UNSC vote, and acted under

⁷² Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.66f.

⁷³ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.135.

⁷⁴ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.28ff.

⁷⁵ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.61ff.

⁷⁶ S/1999/1257, *Report of the independent inquiry into actions of the United Nations during the 1994 genocide in Rwanda*, 15th of December 1999, p.3.

a strict chapter six mandate.⁷⁷ It was first on the 22nd of June that a peacekeeping mission with a chapter seven mandate were deployed with a goal of protecting the population of Rwanda. Although deserving some credit for saving lives the peacekeeping mission only rescued a fraction of potential victims compared to the amount of individuals who were killed during the genocide.⁷⁸ This lack of will to act with promptitude when it comes to forceful interventions shows a significant flaw within the UN system. There is no doubt that the UN and its member states had knowledge about the severity of the situation in Rwanda, yet its key players did not think an intervention was necessary.⁷⁹

6.5.3 Conclusion

My two statements above, that of how the right to veto in the UNSC and UN's inability to act with promptitude effects human rights catastrophes around the world, shows me that a right to humanitarian interventions would make it possible for the international community to take forceful actions against fundamental human rights violations. As I see it a right to humanitarian intervention could enable a state to act on its own or in collaboration with other states when the right to veto stopes the UNSC from acting forceful against violations of fundamental human rights. It would also make it possible for a state to take actions immediately when gaining knowledge of such actions, instead of waiting for the UN who clearly in some situations can not act fast enough. In effect, it would create a possibility to prevent and stop violations of fundamental human rights when the UN and the UNSC is unable or unwilling to act.

⁷⁷ Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.135; Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.74.

⁷⁸ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.75f.

⁷⁹ S/1999/1257, *Report of the independent inquiry into actions of the United Nations during the 1994 genocide in Rwanda*, 15th of December 1999, p.6f & p.10f & p.30; Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.22f.

6.6 The infringement on state sovereignty

All states are equal to one another according to the principle of sovereign equality. This means, among other things, that the territorial integrity and the political independence of every state is inviolable. The principle of sovereign equality is closely linked to the principle of non-intervention. The principle of non-intervention holds that no state have the right to intervene in any matter that is essentially within the domestic jurisdiction of another state.⁸⁰

Already here we can see that these two principles and a right for states to perform humanitarian interventions would contradict each other, since a forceful intervention would inevitably breach both principles. I have already found that it would be the subjective perception of the intervening state that would decide whether or not an intervention for humanitarian reasons should be initiated. Because of this fact, humanitarian interventions makes the sovereignty of states conditional, because it depends on it being in line with what other states think is morally right. It literally makes states the judges and takes away the equality between states. When you put human rights and humanitarian need above state sovereignty, you shift the scale and put some states above others.⁸¹ This unbalance between states is in the future bound to create friction and continue to draw the world towards conflicts between states.⁸² It is not my intention to argue that state sovereignty is more important than human rights. I simply argue that state sovereignty was created to maintain peace and security throughout the international community and that the principle has helped in doing so.⁸³ Taking away the equality between states would entail a risk of even more

⁸⁰ Declaration on Principles of international law concerning friendly relations and co-operation among states in accordance with the charter of the United Nations, Res 2625 (XXV), adopted on 14 October 1970.

⁸¹ Shaw, Malcolm N, *International law*, p.839; Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.2.

⁸² Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, Foreign Affairs, Vol 90, issue 6.

⁸³ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.5ff.

international conflicts especially the risk of abusing the concept of humanitarian interventions by stronger states as a means for them to target weaker states for their own political gain.⁸⁴

There is of course another way to look at it. Many scholars and proponents of humanitarian interventions believe that some states hide behind their sovereignty to be able to perform violations of fundamental human rights. They believe that a right for states to perform humanitarian interventions takes away a state's ability to hide behind its sovereignty when it violates fundamental human rights.⁸⁵ To some extent you have to give credit to this view and take it into consideration when evaluating the risks and benefits of humanitarian interventions. Unfortunately, it is not a lasting argument because it is not state sovereignty itself that creates violations of fundamental human rights. In addition, let us not forget the concept of R2P that holds a responsibility for every state to protect its nationals from violations of basic human rights. If such protection isn't offered or breached the international community can take action through the UN, which means that when it comes to violations of fundamental human rights, state sovereignty is already not an absolute shield for a state.⁸⁶

6.7 Would legalisation be the key to end human rights violations?

The greatest benefit of making humanitarian interventions legal is the fact that it might save lives. When a state performs violations of fundamental human rights a forceful intervention from another state or a group of states would surely have the ability to prevent or stop those violations. Lives saved will always be a great benefit with forceful interventions that we can not

⁸⁴ Shaw, Malcolm N, *International law*, p.839; Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.5ff.

⁸⁵ Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, Foreign Affairs, Vol 90, issue 6.

⁸⁶ Report of the high-level panel on threats, challenges and change, *A more secure world: Our shared responsibility*, A/59/565, p.57; United Nation General Assembly, *2005 world summit outcome*, A/RES/60/1, p.31.

overlook. Unfortunately, it is not as simple as saying that if we make humanitarian interventions legal it will end violations of fundamental human rights throughout the world.

The genocide in Rwanda and the non-interventions are a perfect example of the lack of will among states to intervene with forceful measures during a civil conflict. It shows that even if humanitarian intervention was legal such an intervention would not have taken place to stop the catastrophic events in Rwanda. No blame can be thrown on not having knowledge about the mass killings or the ethnic tensions in the country, for they had been consistent for several years and warnings about the plans for a genocide was exposed to the UN.⁸⁷ Even when the genocide began the international community seemed oblivious as to how they should proceed, with the majority of the UNSC even wanting to reduce international presence in Rwanda.⁸⁸ The events in Rwanda were simply not interesting enough or important enough to the international community to stop the events.

It seems that making humanitarian interventions legal would not be the solution for the overall problem, because of the lack of will of states to intervene with force. As one have seen throughout my thesis the risks with making humanitarian interventions legal is very high and at the same time the potential benefits are few (Even if they are valued very high). The fact that a legalisation does not mean that intervention would take place and that the benefits would materialize in humanitarian catastrophes (As shown in the case of Rwanda) makes the legal risks exceed the benefits even more. It is also important to point out that the potential benefits of humanitarian interventions can be reached in other ways. It is not my intention with this thesis to find another solution to the problem with violations of fundamental human rights but it must be mentioned that preventive work such as solving

⁸⁷ Seybolt, Taylor B, *Humanitarian military intervention: The conditions for success and failure*, p.72; Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.136.

⁸⁸ S/1999/1257, *Report of the independent inquiry into actions of the United Nations during the 1994 genocide in Rwanda*, 15th of December 1999, p.20ff & p.26f.

the underlying problem (which is often that of poverty and inequality amongst people) and working to change and make the UNSC more effective in situations of human rights catastrophes could have the same benefits as those of humanitarian interventions.⁸⁹

⁸⁹ Valentino, Benjamin A, *The true cost of humanitarian intervention: The hard truth about a noble notion*, Foreign Affairs, Vol 90, issue 6; Newman, Michael, *Humanitarian intervention: Confronting the contradictions*, p.107f.

7 Analysis

I have now come to the final part of this thesis, that of the analysis. In this part I will go through and evaluate the different risks and benefits with humanitarian interventions that I have found throughout the thesis. I also seek to give an answer to the question of whether or not we should make humanitarian interventions legal. As one might discover in my discussions below the risks and benefits are somewhat contradictory to each other.

7.1 Benefits with making humanitarian interventions legal

I have found some great benefits with making humanitarian interventions legal. The most important one being *the ability to save lives*. If we would make humanitarian interventions legal we would enable states, on their own initiative, to take forceful measures against another state when violations of fundamental human rights are being committed in that state. It would enable states to take action in more cases due to the simple fact that it would be legal, since the illegality of humanitarian interventions is undoubtedly leading to fewer interventions. This action would be able to be taken without the authorization by the UNSC or the target state. This is an important fact due to the diversity in opinions between the members of the UNSC and especially between the five permanent members. As I've shown, the UNSC is often hindered in taking important decisions about the use of force because of the right to veto which the five permanent members of the council enjoys. Of course, there are other factors preventing the UNSC from acting, one of them being the unwillingness and the avoidance of using force against states. It is positive that the use of force is avoided and that it requires extreme circumstances for it to be used, but when it comes to violations of fundamental human rights, it can be negative. As I have shown in the case of the Rwandan genocide an early forceful intervention could have saved hundreds of thousands of lives. The unwillingness of the UN,

the UNSC and the international community to act with promptitude in cases like Rwanda has a detrimental effect on the outcome of those cases. *Making humanitarian interventions legal would therefore enable states to act when the UNSC can not or will not act to save the lives threatened.*

Another positive consequence of legalising humanitarian interventions is that it makes the sovereignty of states a little less absolute. When states can act on their own against states that violates fundamental human rights it *takes away the ability for states to hide behind their sovereignty while they perform violations of fundamental human rights.*

7.2 The risks with making humanitarian interventions legal

As seen throughout my thesis there are some important legal and humanitarian risks of making humanitarian interventions legal. A possible legalisation of humanitarian interventions would come with a *greater risk for interventions publicly done for humanitarian reasons but privately done with political motives.* It would be easier for states to take forceful measures for political reasons based on the fact that they could justify the intervention on humanitarian grounds. There is already a risk that political motives are intertwined with humanitarian ones (as shown in the case of Kosovo) but there would be a far greater risk if humanitarian interventions were legal, for the simple fact that it would be legal. There will in other words be a *greater risk for abuse of the concept of humanitarian intervention* if we made it legal. There is *also the risk that international involvement will make the situation worse than it is.* As shown in the case of Kosovo the threat of and the use of force actually made the situation deteriorate and escalate into more violence. At the same time the involvement of the international community in Rwanda before the genocide began was one of the factors that created the situation in the first place. It is also important to point out that humanitarian intervention has a *possible detrimental impact on neighbouring countries* because of the flows of migration that it inevitably

creates. So was the case in Zaire (Now the Democratic Republic of Congo) after the turquoise operation and the Rwandan genocide, the migration flow was the direct cause of two internal wars and the death of millions of people. I also have to mention that humanitarian intervention usually comes with the consequence of aiding one side of the conflict. This means that a humanitarian intervention most likely would support and contribute even to the extreme groups of that side. This leads to the legitimization of the actions of those groups, at least in the eyes of that group. This can *create even more violations of fundamental human rights* by the people the intervention was meant to protect, but it can also *create a behaviour of redemption* after the intervention and shift the scales so that the oppressor now becomes the oppressed one. This is of course not the goal of humanitarian intervention, but it is all too often the case. So *even if humanitarian intervention can save lives it can also take lives.*

There is also the legal problem of state sovereignty and legitimate authority. To give states the right to intervene with force, without authorization from the UNSC or the target state, gives them legitimate authority to decide over the use of force in the international community and also use force against other states. The first problem of this is that it *makes the sovereignty of states conditional* upon what other states think about that state's actions. The concept of state sovereignty was created to uphold peace and security throughout the world and it is a huge risk when you create a non-equal sovereignty, where some states are more sovereign than others. First of all, it strengthens the tensions between states and second of all it creates a way for states to target other states sovereignty for their own gain (as already discussed before with the risk of abuse of the concept of humanitarian interventions). If sovereignty is to be equal, states can not be the legitimate authority when it comes to the use of force. Except the problem with state sovereignty there is another consequence with giving states the legal authority: *We take away the legitimate authority from the UNSC and undermine the work of the UN and the UNSC as the protector of peace and security.*

7.3 Conclusion

In a world order where the security and peace between countries grows stronger but the security and peace within countries falls apart it is only natural that the work of the UN has to shift from having state sovereignty as one of its primary objects to instead uphold human rights for individuals suffering within the borders of states. One way of protecting individuals suffering of fundamental violations of human rights could be to make humanitarian interventions legal, but the question is if it should be?

As one has seen throughout my thesis there are great risks with making humanitarian interventions legal, at the same time the potential benefits are few. However, one must acknowledge that those benefits found are of great value, especially the potential benefit of saving lives. It is hard to contest that an early forceful intervention in Rwanda, before the outbreak of the genocide, could have saved close to a million lives. Yet, making humanitarian interventions legal does not come with a warranty that such interventions will be performed by states when violations of fundamental human rights are being committed within a state. Rwanda would probably have been such a case where intervention would not have been materialized, as shown through the lack of will to intervene in any way by any state who had the theoretical and practical ability to do so. It seems that making humanitarian interventions legal would not prevent or stop violations of fundamental human rights. At the same time, the risks, both legal and humanitarian, with making humanitarian interventions legal are great. Those risks occurring with humanitarian interventions have also been materialized throughout history (even if such interventions never have been legal). The risk for abuse of the concept of humanitarian interventions and the risk of using force (or not using force, when force is needed) for political motives has not just been shown through the case of Kosovo and Rwanda. It was also shown through the divide in the UNSC throughout the cold war in all situations where forceful interventions were discussed in regards to violations of fundamental human rights. Taking also into consideration the

fact that forceful interventions comes with a real risk of making a situation worse than it already is and that such an intervention often has a potential detrimental effect on neighbouring countries. It seems like there are not enough benefits with making humanitarian interventions legal that it is worth all the legal risks that comes with a legalisation.

In the end, a legalisation of humanitarian interventions would also effect the sovereignty and equality of states, potentially creating even more threats to peace and security. The fact that it would also take away some legitimate authority from the UNSC council and change our view of the UNSC as a protector of peace and security makes me even more doubtful that making humanitarian interventions legal is a good idea. A legalisation of humanitarian intervention would have a big impact on international law in a practical way as well. There would have to be made extreme changes for international law to encompass a right for humanitarian interventions, not just changing the exceptions of the use of force but also having to change rights as state sovereignty, the principle of non-intervention and as well the legitimate authority for the use of force within the international community.

We can prevent violations of fundamental human rights in other ways. Among other things, we can work to solve the underlying problem, which is often that of poverty and inequality amongst people. We can also work to change and perfect the process in the UNSC so that it becomes more effective in situations like that of Kosovo and Rwanda. Measures of this kind has the potential of bringing the same benefits as humanitarian interventions but with less legal risks. In addition, let's not forget that the concept of R2P already holds a responsibility for states to protect its nationals within its border.

The legal and humanitarian risks of humanitarian interventions are far greater than the potential benefits and my conclusion is that the international community should not make it legal under contemporary international law.

Instead, the use of force has to remain the absolute last resort in solving internal conflicts and the UNSC has to be the only legitimate authority.

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