

## FAILED EFFORTS TO REFORM HUMANITARIAN INTERVENTION SYSTEM IN THE UNITED NATIONS<sup>1</sup>

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### ABSTRACT

The doctrine of humanitarian intervention is one of the most controversial issues in international relations and law. The UN Security Council, acting under its Chapter VII powers, can authorize humanitarian interventions. However, a number of interventions after the Cold War have shown that the political considerations of the five permanent members reduce the effectiveness of humanitarian interventions undertaken by the international community. Scholars who wish to improve this effectiveness have had proposals ranging from trying to remove the veto power of the permanent members in humanitarian intervention discussions to those proposing another cosmopolitan organization that will have a permanent armed force ready to be used in humanitarian crises. This article examines whether or not those proposals are strong enough to give raise any amendment in the humanitarian intervention system. If not, it aims to extract the criteria for the appropriate authority in humanitarian interventions to help future proposals.

**Keyword:** Humanitarian Intervention, United Nations, Security Council, Veto Power.

**Jel Classification:** F5, K33, F53

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## BİRLEŞMİŞ MİLLETLERDEKİ İNSANİ MÜDAHALE SİSTEMİNİ REFORM ETMEYE YÖNELİK BAŞARISIZ DENEMELER

### ÖZ

İnsani müdahale doktrini, uluslararası ilişkiler ve uluslararası hukukun en çok tartışılan konularından biridir. BM Güvenlik Konseyi, BM Şartı VII. Bölüm yetkileri dahilinde, uluslararası topluluğu insani müdahaleleri gerçekleştirme konusunda yetkilendirebilir. Ancak, Soğuk Savaş sonrası dönemde gerçekleştirilen pek çok insani müdahalenin gösterdiği gibi, beş daimi üyenin politik çıkar hesapları uluslararası toplum tarafından gerçekleştirilen insani müdahalelerin etkisini düşürmektedir. Bu etkiyi artırmak isteyen akademisyenler, daimi üyelerin insani müdahale görüşmelerindeki veto yetkisini kaldırmaktan insani krizlerde kullanılmaya hazır kalıcı bir silahlı kuvvete sahip başka bir kozmopolit örgüt kurmaya kadar pek çok öneride bulundular. Bu makale, bu önerilerin insani müdahale sisteminde herhangi bir değişikliğe neden olacak kadar güçlü olup olmadığını incelemektedir. Makalenin temel amacı, gelecekteki önerilere yardımcı olacağı ümidiyle, insani müdahalelere yetki vermek gücüne haiz uygun makam için gerekli olan kriterleri belirlemektedir.

**Anahtar Kelimeler:** İnsani Müdahale, Birleşmiş Milletler, Güvenlik Konseyi, Veto Yetkisi.

**Jel Sınıflandırması:** F5, K33, F53.

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## INTRODUCTION

A conventional definition of humanitarian intervention is “the threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights” (Murphy, 1996: 11-12). There are two types of humanitarian intervention depending on the actors undertaking the intervention. The first type is unilateral humanitarian interventions, which are conducted without a prior Security Council authorization. An example of this type of intervention is the 1999 NATO intervention in Kosovo. The second type interventions occur as a result of a United Nations Security Council Resolution such as the ones in Somalia and Rwanda in 1990s.

The current international law regime on the authorization of humanitarian interventions is clear. Although some commentators argue that humanitarian interventions may be undertaken independent of the United Nations (Benjamin, 1992; Stein, 2004; Teson, 1988), this article favors others’ contention that it is the Security Council only, acting under its Chapter VII powers, that can authorize military interventions for humanitarian purposes. If unilateral humanitarian interventions were lawful, there would be no reason for the majority of the international community to claim that the 1999 NATO intervention in Kosovo was unlawful (Kosovo Report, 2000: 4). That being said, this article accepts the contention in the 2000 Kosovo Report.

Humanitarian interventions, therefore, are accepted legal as long as they are authorized by the Security Council. However, the effectiveness of humanitarian interventions has remained at an undesirable level due to the national interest concerns among the five permanent members of the Security Council (the P5). Altruistic humanitarian interventions either occur so late after heavy losses (i.e. Rwanda) or do not occur at all (i.e. Kosovo). This is so because the leading intervener countries always possess a national interest reason along with altruism. Therefore, the current regime causes a selectivity issue.

“It is only a matter of time before reports emerge again from somewhere of massacres, mass starvation, rape, and ethnic cleansing (Evans and Sahnoun, 2002: 100). Once again the question

will echo in the Security Council and world capitals: *What should we do?* Considering high-risk conflict areas such as Eastern Europe, the Middle East, and North Africa, it is likely that the political considerations of the P5 will defeat the humanitarian impulse in the crisis.

Fortunately, international law scholars have been working on proposals to reduce the single-authority impact of the Security Council on the authorization of humanitarian interventions. This article will review some of those important proposals. The article will focus on the three approaches that have gained the greatest attention. Those three are: i-) abolishing/limiting the veto power of the P5 on the humanitarian intervention discussions in the Security Council; ii-) enabling or allowing regional organizations to intervene in humanitarian crises in cases where the Security Council is deadlocked because of political disunity; and iii-) creating a cosmopolitan U.N. standing army ready to be used in humanitarian crises. The article will also explain in each subsection why these proposals would be ineffective to make the system work better and are unlikely to be adopted. The article will later extract the criteria for the appropriate authority in humanitarian interventions from those proposals and the objections to them for the purpose of helping future proposals.

### 1. UNWANTED VETO POWER IN THE CONTEXT OF MASS ATROCITIES

The Security Council has faced criticism since its establishment in 1946. In the age of human rights and global democracy, the heaviest criticism has been directed at the veto power given to the P5 (Mahmood, 2013: 134). Originally, the purpose of the veto power was “to prevent the U.N. from taking direct action against any of its principal founding members” (Okhovat, 2011: 11). Nevertheless, since the establishment of the U.N., permanent members have used their veto powers in order to fulfill their broader national interests (Okhovat, 2011: 3).

It is no secret that a large majority of the U.N. members support the abolition of this exclusive right of the P5 (Wouters and Ruys, 2005: 21). The African Union, the Arab League, and the Group of Non-Aligned Nations as well as some Western countries have all offered proposals

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Another agenda item of the international community which relates directly to the veto power of the P5 is to prevent gross human rights abuses by the member states through humanitarian interventions. The members of the international community, aware that any military intervention without prior authorization by the Security Council would lack legality, have proposed many times to restrain the P5 from using their veto powers.

The International Commission on Intervention and State Sovereignty (ICISS), a commission convened by the Canadian government in 2001, proposed the Responsibility to Protect (R2P) Doctrine. According to the R2P Doctrine, although each state is individually responsible to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, in the event of a state’s unwillingness or failure to prevent those, the international community is given the responsibility to warn the state and, if deemed necessary, militarily intervene (ICISS, 2001a).

One of the proposals of the ICISS was that “a permanent member, in matters where its vital national interests were not claimed to be involved, would not use its veto to obstruct” a Security Council resolution authorizing a

humanitarian intervention (ICISS, 2001a). A critical issue here is the definition of “vital national interests” as addressed below in more detail.

The High Level Panel on Threats Challenges and Change also recommended in 2004 that the veto “use be limited to where vital interests are genuinely at stake” and that “the permanent members, in their individual capacities, . . . pledge themselves to refrain from the use of the veto in cases of largescale human rights abuses” (High Level Panel, 2004: 203).<sup>3</sup>

Similarly, the Small Five Group (Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland) proposed in 2006 and later in 2012 that permanent members should not apply their veto in the cases of genocide, crimes against humanity, and serious violations of international humanitarian law (Draft Resolution A/60, 2006: 14; Draft Resolution A/66, 2012: 20).

The Secretary-General Ban Ki-Moon’s report to the General Assembly in 2009 on Implementing the Responsibility to Protect speaks a similar language. Accordingly, the Secretary-General urged the P5 “to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect, as defined in paragraph 139 of the Summit Outcome [Document]” (Report of the UN Secretary-General, 2009: 61).

The relatively new French initiative should be mentioned here as well since France is a permanent member of the Security Council. The French President Hollande recommended in the General Assembly “a code of good conduct be defined by the permanent members of the Security Council, and that in the event of a mass crime they can decide to collectively renounce their veto powers” (General Debate of the 68th Session, 2013).

The question that the opponents of the veto power need to address is “which items can be considered important enough to fly the flag of ‘vital national interest’” (Wouters and Ruys, 2005: 29). That is important to bear in mind that there is always a vital interest that at least one permanent member may be affected due to an issue if that issue is important enough to be

<sup>3</sup> The High Level Panel was created in 2003 to analyze threats and challenges to international peace and security, and to recommend action based on this analysis.

brought before the Security Council for discussion.

It is, however, true that, if not all, at least some members of the Security Council have restrained themselves from using their veto powers without binding themselves with any legal commitments. Take the admission of new U.N. member states. In 1948, the U.S., the U.K., France, and China (but not Russia) declared that they would refrain from using the veto power in the admission of new U.N. member states (Yearbook of the United Nations, 1948-49: 426). The U.S. representative even stated that applying to the veto power caused "grave injustice to a number of states fully qualified for membership in the [U.N.]" (Yearbook of the United Nations, 1948-49: 426-427). Therefore, he did not consider the admission of new state membership in the U.N. as "the vital interests of the Great Powers" (Yearbook of the United Nations, 1948-49: 427).

However, in 1996, the U.S. position changed regarding U.N. membership stating that "there is relatively recent evidence, in the Balkan states and elsewhere, that considerations of regional and international security can have a direct and important bearing on all membership issues" (Global Policy Forum, 1996). Indeed, the admission of a new member state potentially touches upon security interests of some permanent members at least, such as the cases of Chechnya, Tibet, Taiwan, the Occupied Palestinian Territories, and the former Yugoslav Republics have demonstrated.

That being said, the realist theory of international relations is the biggest obstacle to passing such a proposal. Accordingly, the realist theory suggests that the international system illustrates an anarchic picture because a supranational mechanism that can enforce international rules over the states does not exist, and all state actions focus on the maximization of their own self-interest (Boucher, 1998: 47-110). In such a system, it does not seem very likely that any member of the P5 would give up its veto power, since it is one of the most privileged authorities in international affairs. This is especially true because humanitarian interventions are characteristically reformist. For example, all humanitarian interventions undertaken after the Cold War in Somalia, Haiti, Rwanda, Bosnia-Herzegovina, East Timor, DRC, and Libya caused direct or indirect regime change/independence. Therefore, it is against the realist reading of international relations that

all of those five countries would simultaneously support such a proposal that may cause loss of power in some cases.

Apart from the unlikelihood of an amendment to the U.N. Charter regarding the veto power, the permanent members feel unmotivated even to make a gentlemen's agreement, as France proposed, which would be binding in every case (Mahmood, 2013: 134). As ICISS explicitly admitted, "[i]t is unrealistic to imagine any amendment of the Charter happening any time soon so far as the veto power and its distribution are concerned" (ICISS, 2001a).

### **3. DEVOLUTION OF THE PRIMARY RESPONSIBILITY TO REGIONAL ORGANIZATIONS**

Another proposal is to improve the capacity of regional organizations to undertake humanitarian interventions (ICISS, 2001a). There are two different proposals regarding this approach. The first is "a collective reinterpretation of the U.N. Charter to give regional organizations the primary responsibility for authorizing military interventions subject to subsequent approval or disapproval by the Security Council" (Slaughter, 2014). The second is to create a new legal right of humanitarian intervention that permits regional organizations to intervene legally without Security Council authorization (Pattison, 2010: 219-239). Neither of these two is realistic.

The first proposal is obviously illegal under the current U.N. Charter, and would therefore require a charter amendment although the U.N. Charter provides that "[n]othing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security" (U.N. Charter art. 52). Unauthorized military interventions are not permitted according to the U.N. Charter, which provides that "[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council" (U.N. Charter art. 53). Again, it is obvious that the authorization should be given before an intervention, not subsequently (Walter, 1997: 177-182; Villiani, 2002: 551-555).

As seen in the African Union practice, grouping countries may come together and willingly

authorize the regional organization, of which they are a member, to militarily intervene in humanitarian crises in the member states.<sup>4</sup> Even in such a case, the states acting in the name of the regional organization shall seek prior authorization by the Security Council because “[i]n the event of a conflict between the obligations of the Members of the United Nations . . . and their obligations under any other international agreement, their obligations under the present Charter shall prevail” (U.N. Charter art. 103).

Notwithstanding this language, it might be argued that humanitarian interventions conducted by regional organizations without prior Security Council authorization are still lawful based on two interventions of the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone (Berger, 2001; Lewit, 1998: 333-375). In 1990, ECOWAS intervened in Liberia beyond the U.N. framework. Rather than condemning this action, the Security Council praised ECOWAS’ intervention (S.C. Res. 788, 1992). The Security Council similarly praised ECOWAS’ unauthorized intervention in Sierra Leone in 1998 (S.C. Res. 1162). However, neither these interventions, nor the silence of the Security Council establishes the legality of the actions. If the two interventions by ECOWAS were lawful, there would be no reason for the majority of the international community to claim that the 1999 NATO intervention in Kosovo was unlawful, though legitimate (The Independent International Commission on Kosovo, 2000: 4). The membership of the country, which the intervention is being taken against, as the cases of Liberia and Sierra Leone, cannot be the criteria because nowhere in the ECOWAS Charter did the parties give consent to the organization to militarily intervene in cases of humanitarian crises.

Although Jeremy Levitt (1998: 368) argues that the language of Article 58(2)<sup>5</sup> gave ECOWAS the

<sup>4</sup> The Constitutive Act of the African Union, which was adopted in July 2000, in Article 4(h) provides the Union with the right of intervention in a member state in respect of crimes against humanity, war crimes and genocide. *Constitutive Act of the African Union*, 11 July 2000, 2158 U.N.T.S. 3.

<sup>5</sup> Article 58(2) provides that “[m]ember States [shall] undertake to co-operate with the Community in establishing and strengthening appropriate mechanisms for the timely prevention and resolution of intra State and inter-State conflicts, paying particular regard to the need to . . . establish a regional peace and security observation system and peace-keeping forces where appropriate.”

authority to intervene, as member states were obligated to send peace-keeping forces to Sierra Leone, Berger (2001: 65) argues that “it does not authorize use of that force without mechanisms defined in relevant Article 58(3)<sup>6</sup> Protocols. Without a pertinent protocol, ECOWAS could not use Article 58(2) to justify its intervention into Sierra Leone”. Moreover, during the ECOWAS intervention, “member-states had not signed a protocol relevant to Article 58[(2)], thus leaving the security mechanisms without substance” (Berger, 2001: 65).

The second proposal, empowering regional organizations to intervene legally within their own regions without seeking Security Council authorization, does require an amendment to the U.N. Charter as well. Such an amendment would have explicitly stated, at the very least, that while dealing with matters relating to the maintenance of human dignity and international peace and security that involve enforcement measures, regional agencies do not need to seek an authorization by the Security Council based on its powers under Chapter VII of the U.N. Charter. Also the language “[b]ut no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council” in Article 53 should be amended accordingly.

Such amendments are quite unfeasible for four reasons. First, as stated above, the permanent members’ positive votes are needed to amend any provisions of the Charter (U.N. Charter, art. 108), and those members are not likely to support an amendment, which would cause a diminution of their political powers (Cox, 2009; Lee, 2011). Second, not every regional organization has an appropriate legal basis allowing enforcement measures against its members. Other than the African Union, there is no international treaty that has any provision allowing a military action against one of its members in cases of humanitarian crises. Third, many of the regional organizations are not capable of carrying out a military intervention due to poor funding. Even in the African Union practice, the organization “relies heavily on external funding for peace operations, but this is *ad hoc* and unreliable” (Pattison, 2010: 237). Although it is true that such organizations could be funded by the countries that wish an

<sup>6</sup> Article 58(3) states that “[t]he detailed provisions governing political cooperation, regional peace and stability shall be defined in the relevant Protocols.”

intervention, this might increase the tension between major powers if one or more of those do not approve the intervention. Despite its ineffectiveness, the Security Council still has a role in the elimination of polarization between the major powers. Lastly, there is no reason to be too optimistic as to think that national interest concerns that the P5 have in the Security Council would not take place in regional organizations. Such concerns are the biggest obstacle in front of necessary humanitarian interventions.

Due to the reasons mentioned above, a devolution of the responsibility to regional organizations from the Security Council would not solve the problem. Moreover, given the unlikelihood that all P5 members would agree on the abolition of the veto power, the regional organizations neither have legal authority to intervene in humanitarian crises nor most of them have the resources.

#### **4. A COSMOPOLITAN STANDING U.N. FORCE FOR HUMANITARIAN INTERVENTIONS**

One problem in humanitarian interventions is to convince countries to send troops to save strangers. It is always a hard case for governments to discuss in front of their constituents whether national resources (in other words, taxpayers' money and soldiers) should be spent on the protection of foreign people (Wheeler, 2002: 32). Some have proposed to solve this problem by establishing a standing U.N. military force of around 5,000-15,000 troops to conduct humanitarian interventions with authorization of the Security Council, which would be ready to deploy within a few days. Accordingly, the troops would be truly cosmopolitan, meaning that they would be volunteers who do not have any national allegiance (Kinloch-Pichat, 2004).

The main advantage of such a standing force is, Pattison (2010: 230) argues, that "rather than the current situation where the [U.N.] has to beg, often unsuccessfully, for *ad hoc* contributions of troops from unwilling member states in order to fulfil its mandates, there would be a readily available standing army to deploy quickly and effectively whenever needed". Besides not being subject to national authorization, these troops would be able to train together and become integrated and provide states with quickly responding the crisis.

However, the proposed U.N. standing force would not improve the system as much as it is desired. One of the many reasons is that states

would not agree to a standing U.N. force because they would fear that it might be used against them (Evans, 1993: 58). Secondly, some have argued that when we consider the size of the force (5,000 - 15,000 soldiers), such a small force would lack utility and longevity to make the intervention successful in many situations (Hillen, 1994: 62). For example, just the implementation of the no-fly zones in Northern Iraq in 1991 required 20,000 British, American, and French troops (ICISS, 2001b: 88), and 21,000 troops were needed for the multinational intervention in Haiti in 1994 (ICISS, 2001b: 104). Moreover, because of the need for rotation of the troops, when there are two or more humanitarian crises at the same time in different countries, a larger force would certainly be required (Pattison, 2010: 232).

Third, the force would heavily rely on powerful states, the U.S. in particular, "for lift capacity, communications, and logistics," and therefore, it would reduce its independent position from major powers (Pattison, 2010: 232). Moreover, the standing army would not be independent from the contributing member states (especially the U.S.) who could use this dependency to control the force (Kinloch-Pichat 2004: 206-211). This would also increase the criticism regarding the legitimacy of humanitarian intervention if the intervening parties engage in non-altruistic activities.

Fourth, any humanitarian intervention would be dependent on the authorization of the Security Council, which will make sure that even justified humanitarian intervention will never take place because the force could be used against any of the P5 or their close allies. In this sense, China's opposition in Darfur, Russia's in Kosovo, and in Rwanda reveals this conclusion. "It is very unlikely that the [U.N.] will be enriched with a cosmopolitan military force in the twenty-first century. That will continue to be a bigger pill than sovereign states will feel able to swallow" (Goulding, 2004: 114).

#### **5. CRITERIA FOR APPROPRIATE AUTHORITY IN HUMANITARIAN INTERVENTIONS**

Humanitarian intervention is a very controversial issue in international relations, probably because there are no criteria on which the international community mostly agree. Although its widespread acceptance, even the legality of humanitarian intervention doctrine is still being debated (Hurd, 2011). However, developments regarding the threshold issues are

occurring. For example, the international community seems now to have an answer to the question of when humanitarian intervention is necessary. "It is now agreed that the responsibility to protect populations relates (only) to the core crimes as defined in articles 6–8 of the [International Criminal Court] Statute (genocide, war crimes, and crimes against humanity including ethnic cleansing)" (Peters, 2011: 20).

On the other hand, international law scholars do not have a precise description of the appropriate authority criteria. In other words, the following question still seeks a new and effective answer: Who should decide when and how a humanitarian intervention should take place? ICISS has tried to find an answer to this question with six criteria. Accordingly, if the international community had right answers regarding "right authority, just cause, right intention, last resort, proportional means and reasonable prospects" criteria, the biggest part of the problem in humanitarian intervention system would be solved (ICISS, 2001a).

Moving forward from the fact that each of these six criteria would consist of different article topics, this article will only focus on the right authority question.

#### 4.1. Who Should Decide?

As seen in the above proposals and the objections, the biggest part of the discussion focuses on the question of right authority (Evans and Sahnoun, 2002: 106). The similarities in the use of words in the literature is remarkable. For example, most of the authors incline to accept that it is *the international community* that needs to take action in cases of humanitarian crisis (ICISS, 2001a; 2005 World Summit Outcome). That being the case, a nonexistent international community in reality seeks for a legitimate form of world government, which also does not exist due to the sovereign equality concept of international relations (Kelsen, 1994: 207-220). Therefore, the best way remains for us to find the most plausible right authority.

Determining the criteria of the right authority is not an easy job. Yet, it is possible. Foremost, the right authority should be legal. There is neither customary international law nor any treaty allowing a state or group of states to conduct a humanitarian intervention without Security Council authorization (O'Connell, 2000: 88-89). Secondly, as the discussion about a U.N.

cosmopolitan standing army suggests, it is very important that the intervening party have the appropriate military power to conduct an intervention successfully (ICISS, 2001a). Third, given the fragile structure of international relations, the decision-making authority should be effective enough to handle the conflicts of interests between the major powers because "[i]t is difficult to imagine a major conflict being avoided, or success in the original objective being achieved, if such action were mounted against any of them. The same is true of other major powers who are not permanent members of Security Council" (ICISS, 2001a). It is true that this would simply create a double standard that humanitarian interventions that are against the interests of any of the major powers cannot be launched. However, the fact that interventions may not be able to be launched in every cases does not necessarily mean they should not properly be launched in any case where they can be.

#### 5.1.1. Is it the Security Council?

It is argued that under the present international system, "there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes" (Evans and Sahnoun, 2002: 107). First, the Security Council's legal authority is vast. Evans and Sahnoun (2002: 106) argues that "the U.N. is unquestionably the principal institution for building, consolidating, and using the authority of the international community" and therefore, the U.N. Charter is one of the basic documents of international law with which the international community must comply (Macdonald, 2000: 263-300; Sloan, 1989: 61-126). The Charter clearly renders the power to authorize military interventions to the Security Council, including but not limited to humanitarian intervention.

Second, the Security Council is the only lawful organ that has legalized humanitarian intervention with precedents. In the post-Cold War world, there have been eight humanitarian interventions in the true sense, which were in Somalia, Haiti, Rwanda, Bosnia, Democratic Republic of Congo, East Timor, and Libya undertaken by the U.N., and the 1999 NATO intervention in Kosovo. Only the 1999 NATO intervention in Kosovo was labeled unlawful only because the NATO members did not hold an authorization prior to the intervention (The Independent International Commission on Kosovo, 2000: 4; Simma, 1999; Joyner, 2002).

Any scholars writing on the legality of humanitarian intervention have to touch upon the previous humanitarian interventions authorized by the Security Council in one way or the other.

Similarly, the international community still relies on the logistic and military capacities of the major powers (especially the U.S.) for humanitarian interventions. In all of the above-stated interventions, the leading intervening countries were the U.S., the U.K, and France. Therefore, lack of the will of these countries towards a humanitarian intervention will dramatically affect the “reasonable prospects”, which is another criterion of justified humanitarian intervention according to the ICISS (ICISS, 2001a).

Lastly, since the discussion takes place between the major powers in the Security Council, the tension in international relations is minimized (Kardaş, 2013: 23). If one major reason why humanitarian interventions are not mounted is national interests (Wesley, 2005: 58), the other is the possibility that the intervention may create a conflict of interest among the major powers (Peerenboom, 2005). However, the decision-making process in the Security Council may create peaceful diplomatic channels and may eliminate the conflicts that the parties may have.

#### **5.1.2. Is it not the Security Council?**

Despite this realistic approach, “[t]he legitimacy of humanitarian intervention . . . derives from its altruistic nature, namely the concern with defending human rights” (Krieg, 2013: 55). In other words, although the Security Council, which is a political body of the U.N. and normally has political concerns among its members (Martenczuk, 1999: 527), is definitely the legal body to authorize humanitarian interventions, the inertia in some cases such as Rwanda, Darfur, and Kosovo has also definitely undermined its legitimacy in the international community (Teson, 2006: 766).

In addition, some countries in the Security Council such as China and Russia, whose human

rights records are not pristine, have failed to convince the international community that they might be the guardian of human rights all over the world. This failure gets worse after the members of the Security Council arbitrarily use their veto power (Teson, 2006: 766).

Moreover, the Security Council itself is an undemocratic and outdated institution as it stands as the sole representative of the international community (Boutros Ghali, 2009: 111; Glennon, 2001: 56; Lillich, 1995: 15). However, the Security Council as such reminds the international community of a “legalized tyranny” (Gordon, 2011: 41), and “the decisions to assist victims of grievous injustice should not depend on the acquiescence of rulers who at the very least do not represent their people and at the very worst are tyrants themselves” (Teson, 2006: 768).

#### **CONCLUSION**

It is no doubt that the doctrine of humanitarian intervention is one of the most controversial issues in international law and relations. However, it should not prevent scholars from taking direct part in the discussion and proposing solutions to the problems that the doctrine is facing. One major problem, as seen in the above, is the right authority question. The main reason causing the problem is the Security Council itself and the undemocratic veto power given to the P5. Although scholars have proposed solutions to reform the system, they all failed; not because their proposals were of no use, but because the realist theory of international relations still prevails. Based on the proposals and the objection to them, this article has discussed whether the right authority is the Security Council. The advantages and disadvantages presented above will help scholars find effective solutions, but the conclusion that cannot be ignored is that the international community needs an immediate and effective solution to reform the humanitarian intervention system.

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