# HUMANITARIAN INTERVENTION: TO PROTECT STATE SOVEREIGNTY

DR. JASMEET GULATI* AND IVAN KHOSA**

## I. INTRODUCTION

*Is it possible to resist evil without succumbing to the dangers of righteousness?*

This question, posed by Tzvetan Todorov, aptly sums up the debate over the issue of humanitarian intervention.[1] The heart of the debate is the perceived conflict between the notion of state sovereignty and the concept of humanitarian intervention. While NATO's intervention in Kosovo was seen as a direct attack upon the state sovereignty, the silence of the international community to intervene in Rwandan genocide at the same time has also been criticized as a failure of the community of nations to protect the lives of those people. Many jurists seem to contend that these two concepts can never co-exist.[2] They hold humanitarian intervention as inconsistent with the concept of sovereignty. However, as former Secretary-General Kofi Annan asserted in September 1999, "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?"[3]

This paper does not intend to suggest that the principle of sovereignty of individual states is violable in favor of humanitarian intervention. Rather, it tries to demonstrate that when an authority appointed to enforce sovereignty starts to violate that sovereignty, the international community must step in to stop the violation of this impregnable principle. This argument centrally rests on a standard assumption that the concept of sovereignty is separable from the authority

* Dr. Jasmeet Gulati is an Assistant Professor of Law, University Institute of Legal Studies, Panjab University, India; Ph.D. (International Criminal Law, Panjab University); L.L.M., *Fellow*—Cambridge Commonwealth Trust (Public International Law, University of Cambridge); M.A. (Public Administration, Panjab University); Management Development Program (Indian Institute of Management).

** Ivan Khosa is an Undergraduate Student of Law, University Institute of Legal Studies, Panjab University, India (2010-2015). The author may be contacted at ivan.khosa@gmail.com.

1. Jennifer M. Welsh, *Conclusion: Humanitarian Intervention After 11 September*, *in* HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS 176 (Jennifer M. Welsh ed., 2004) [hereinafter Welsh, *After 11 September*] (quoting Tzvetan Todorov, Amnesty Lectures (Feb. 1, 2001)).

2. INT'L COMM'N ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 1-2 (2001) [hereinafter ICISS REPORT], *available at* http://responsibilitytoprotect.org/ICISS%20Report.pdf.

3. *Id*. at 2.

appointed as sovereign. The authority appointed as a sovereign is the one governing its people, and could be termed as government. The purpose of government is to secure the people's rights. Thus, the sovereign is meant to protect the rights and interests of its citizens. Therefore, if the sovereign engages in policies that threaten the basic purpose for the enforcement of sovereignty, he will be said to be violating the sovereignty of his state and his people. Due to this, sovereignty can no longer vest in its violator, and he will not be able use its inviolability as a defense when international actors intervene on humanitarian grounds to protect the sovereignty of that state by preventing the ruling sovereign from violating it. This paper will also explicate the basic purpose of sovereignty along with the principles of self-determination, non-intervention, and Article 2(4) of the U.N. Charter along with various moral and ethical limitations in the context of humanitarian intervention.

*A. Research Methodology*

This paper is divided into four sections. The first section discusses the basic concept of humanitarian intervention. Here, we will argue that the basic criticism of this concept revolves around the principle of state sovereignty. The second section tries to delineate the core features of sovereignty that have survived the interpretations of numerous jurists throughout history. The third section discusses the legality of humanitarian intervention by testing its validity using the core features of sovereignty in light of other principles, including self-determination and non-intervention. The final section highlights the emerging doctrine of responsibility to protect and its acceptance of a genial relation between the concept of sovereignty and humanitarian intervention.

*B. Scope and Limitations*

The research is limited to only one aspect of humanitarian intervention, namely, its relation with the concept of sovereignty. Most of the issues raised in this paper are only incidental to this main issue of sovereignty and its relation to humanitarian intervention. In this paper we do not deal with other disputes regarding humanitarian intervention—for example, the debate whether sufficient state practice and *opinio juris* exists to establish humanitarian intervention as a customary law or not. Also, because the topic of sovereignty is very vast and extensive, the research is limited to only a few important jurists of sovereignty, and further, to only their main ideas.

## II. THE CONCEPT OF HUMANITARIAN INTERVENTION

In the last two decades, the issue of humanitarian intervention has emerged as one of the most hotly debated topics amongst both theorists and practitioners of international law.[4] This paper seeks to answer one straightforward question—is

4. Jennifer M. Welsh, *Introduction*, *in* HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS 1 (Jennifer M. Welsh ed., 2004).

there actually any conflict between the concept of humanitarian intervention and the protection of state sovereignty, especially in the situation of grave humanitarian crises that is posed by the ruling sovereign himself? However, before starting with the main arguments, it is important to define the concept of humanitarian intervention in order to make clear the end and scope of the matter that is to be discussed.

*A. Humanitarian Intervention Defined*

J. L. Holzgrefe defines humanitarian intervention as:

> [T]he threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the government of the state within whose territory force is applied.[5]

According to James Pattison, there are four defining conditions of humanitarian intervention.[6] First, humanitarian intervention is always a forcible military intervention that is carried out without the consent of the government of the state.[7] The lack of consent and forcible nature distinguishes it from the humanitarian assistance, which involves relief work done by international actors (mainly non-governmental organizations such as the International Committee of the Red Cross or Oxfam) that is done with the consent or at the request of the government.[8] The second defining condition is that "humanitarian intervention takes place where there is actual or impending grievous suffering or loss of life."[9] Intervention after the occurrence is not allowed.

Third, humanitarian intervention must have a humanitarian purpose.[10] It should only be carried out with the purpose of "preventing, reducing, or halting actual or impending loss of life and human suffering."[11] This also means intervention that is mainly for self-defense may not be a humanitarian intervention. The use of force in self-defense has its origin in Article 51 of the U.N. Charter, wherein use of force is legal only if the armed attack has occurred against the state using force.[12] The use of force in humanitarian intervention is merely for the protection against violations of human rights in another state.[13] This feature distinguishes between a humanitarian intervention and the War on Terror. While humanitarian intervention is aimed toward protecting against loss of life in the

5. J. L. Holzgrefe, *The Humanitarian Intervention Debate*, *in* HUMANITARIAN INTERVENTION: ETHICAL, LEGAL AND POLITICAL DILEMMAS 15, 18 (J. L. Holzgrefe & Robert O. Keohane eds., 2003).

6. JAMES PATTISON, HUMANITARIAN INTERVENTION AND THE RESPONSIBILITY TO PROTECT: WHO SHOULD INTERVENE 25 (2010).

7. *Id*.

8. *Id*. at 26.

9. *Id*. at 27.

10. *Id*. at 27.

11. *Id*.

12. U.N. Charter art. 51.

13. PATTISON, *supra* note 6, at 27.

target state, the War on Terrorism is mainly concerned with eliminating the risk posed by some militants of the target state to the citizens of the intervening state.[14] Thus, the War on Terror may be argued as being limited only to self-defense. Finally, humanitarian intervention is always carried out by an external power.[15] A state using force to protect its own territory from rebels is not an example of a humanitarian intervention, as it comes under the domestic jurisdiction of a state.[16]

### *B. Sovereignty: The Biggest Limitation In The Legitimacy Of Humanitarian Intervention*

It is conspicuous that the acceptability of the concept of humanitarian intervention can only rest upon its legal validity.[17] It seems that any test for corroborating or refuting the legality of humanitarian intervention mainly rests upon the interpretation of Article 2(4) of the U.N. Charter, which has codified the customary norms of "state sovereignty" and "non-intervention."[18]

Proponents in favor of establishing the legitimacy of humanitarian intervention argue that Article 2(4) of the U.N. Charter does not expressly bar humanitarian intervention because the prohibition under Article 2(4) of the Charter only applies when the use of force is in a "manner inconsistent with the [p]urposes of the United Nations."[19] However, the duty to prevent human rights violations is consistent with the aforementioned purposes.[20] This is because preventing these violations is, at its essence, about "reaffirm[ing] faith in fundamental human rights" and "sav[ing] succeeding generations from the scourge of war," text that is found in the Preamble to the U.N. Charter and is indicative of the purposes of the United Nations.[21] This is highlighted in Article 1(3) of the Charter.[22]

Other provisions of the U.N. Charter, such as Article 55[23] and 56,[24] also reflect the importance of protecting human rights as a fundamental purpose and

14. *See* Welsh, *After 11 September*, *supra* note 1, at 180-83.

15. PATTISON, *supra* note 6, at 27.

16. *Id*.

17. *See, e.g.*, Henry Shue, *Limiting Sovereignty*, *in* HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS 11, 14-15 (Jennifer M. Welsh ed., 2004) (describing intervention by another state more as a "qualified prerogative" than a right).

18. U.N. Charter art. 2, para. 4 ("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.").

19. *Id*.

20. *See* Sarah Joseph & Joanna Kyriakakis, *The United Nations and Human Rights*, *in* RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW 1, 1-2 (Sarah Joseph & Adam McBeth eds., 2010).

21. U.N. Charter pmbl.

22. *Id*. art. 1, para. 3 ("The Purposes of the United Nations are . . . [t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.").

23. *Id*. art. 55 ("With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote . . . universal respect for, and

objective of the United Nations. Another argument justifying the validity of humanitarian intervention relates to the customary nature of humanitarian intervention and how it is validated by state practice and *opinio juris*.[25] A foreign office minister of the United Kingdom wrote that a limited use of force without the Security Council's express authorization is justifiable in support of the purpose laid down by the Council when that is the only means to avert an immediate and overwhelming humanitarian catastrophe.[26]

Critics of humanitarian intervention have also used Article 2(4) of the U.N. Charter to formulate a major criticism that directly attacks the validity of humanitarian intervention. According to these critics, the principle of humanitarian intervention conflicts with the principle of sovereignty of a state, which is considered to be inviolable.[27] The principle of the inviolability of sovereignty is codified in Article 2(4) of the U.N. Charter,[28] which expressly prohibits the use of force against the sovereignty and integrity of a state. Critics of humanitarian intervention argue that since Article 2(4) is a *jus cogens* norm,[29] and thus, that it imposes an absolute restriction on humanitarian intervention.[30] Moreover, they also reject the argument relating to customary nature of humanitarian intervention on the premise that humanitarian intervention cannot become a customary law because it conflicts with the *jus cogens* norm of territorial sovereignty.[31]

Countering this criticism, the central thesis of this paper is built around the concept of sovereignty, discussing it thoroughly in subsequent parts. But before discussing this thesis, let us look at the second criticism regarding the ethics of humanitarian intervention. This criticism deals with the actual motive of the

observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.").

24. *Id*. art. 56 ("All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.").

25. State practice prior to the U.N. Charter may include British, French and Russian intervention in Greece (1827), American intervention in Cuba (1898), French intervention in Syria (1860), and Greek, Bulgarian, and Serbian intervention in Macedonia (1912). State practice after the adoption of the U.N. Charter may include NATO's intervention in Kosovo (1999), intervention in Iraq by western troops (1991), and U.N. intervention in Somalia under Security Council Resolution 794 (1992).

26. *See* Geoffrey Marston, *United Kingdom Material on International Law 1999*, 1999 BRIT. Y.B. INT'L L. 387, 587 (1999).

27. Sir Adam Roberts, *The United Nations and Humanitarian Intervention*, *in* HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS 71, 76 (Jennifer M. Welsh ed., 2004).

28. U.N. Charter art. 2, para. 4.

29. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, ¶ 190 (June 27) (separate opinion of Judge Nagendra Singh) (holding that the prohibition of the use of force against territorial sovereignty is a *jus cogens* norm).

30. *See, e.g*., Roberts, *supra* note 27.

31. The second argument was also rejected by another counter-argument citing that none of the intervention that took place after the Charter was adopted was held legal by the international committee, even though none of it was severely condemned by the Security Council of the U.N. This argument is not dealt in detail in this paper, as it is secondary to the argument of inviolability of sovereignty and requires its own separate research.

intervening state. Critics argue that a state is primarily concerned with the interests of its own citizens, whereas the interests of the citizens of the other state are always secondary in nature.[32] Therefore, a state would never engage in humanitarian intervention, as it is not beneficial for its own citizens.[33]

However, James Pattison has tried to counter this argument by distinguishing between the intentions of the intervening state, and its corresponding motives for the intervention.[34] Pattison argues that the "intentions" of the intervening state means having a humanitarian purpose of "preventing, reducing, or halting the humanitarian crisis," whereas a "motive" is the "underlying reason for undertaking the humanitarian intervention."[35] This "reason" may involve considerations such as political gains to ending regional animosity.[36] Critics argue that because no state possesses a genuine and selfless humanitarian motive for intervention, there can be no such thing as humanitarian intervention.[37] On the contrary, Pattison argues, "humanitarian *motives*, unlike humanitarian *intentions*, are not a defining condition of 'humanitarian' intervention."[38] He continues by explaining "an intervener can be engaged in 'humanitarian intervention' without possessing a humanitarian motive."[39] Moreover, since it is very difficult to determine true motives of the intervening state, humanitarian motives have little definitional or normative significance. Therefore, until the intervening state possesses genuine humanitarian intentions, we can say that the humanitarian intervention is genuine.

As such, it is quite evident that the only major hindrance in the interpretation of Article 2(4) of the U.N. Charter as supporting humanitarian intervention is the limited and parochial interpretation of the term "sovereignty." If this limitation is removed, then a sound, persuasive, and legally based argument can be constructed in support of humanitarian intervention. Other concerns, such as the relation of humanitarian intervention to the concepts of self-determination and non-intervention, are all incidental to the main limitation of sovereignty, and are addressed along with it. The subsequent parts of this paper will explore whether the true concept of sovereignty actually poses a limitation to humanitarian intervention.

## III. UNDERSTANDING SOVEREIGNTY

Professor Henry Shue argues that "[t]he sovereign state is a historically recent and contingent form of human organization, invented in modern Europe and largely imposed by Europeans upon the remainder of the modern world."[40] It is a

32. K. Mills, *Sovereignty Eclipsed?: The Legitimacy of Humanitarian Access and Intervention*, J. OF HUMANITARIAN ASSISTANCE (July 4, 1997), http://sites.tufts.edu/jha/archives/111.

33. PATTISON, *supra* note 6, at 132-33.

34. *Id*. at 154.

35. *Id*. at 154-55.

36. *Id*. at 154.

37. *Id*. at 155.

38. *Id*.

39. *Id*.

40. Shue, *supra* note 17, at 11.

highly complex concept both for political thinkers and legal jurists that has many definitions, many of them also contradicting each other.[41] Since humanitarian intervention has a relationship with the concept of sovereignty, to begin, let us evaluate the core aspects of sovereignty.

*A. Core Aspects Of Sovereignty*

There are four core aspects of sovereignty that are common to almost all of its definitions and evaluations. Each will be addressed in turn to prove the validity of humanitarian intervention.

**1. Sovereignty Is A Power**

Despite the changing definitions of sovereignty throughout history, one aspect that is generally accepted by all jurists is that sovereignty is a "power." For instance, Greek philosopher Aristotle, in his work *Politics*, recognized sovereignty as a "supreme power existing in the state," which may be "in the hands of one, or a few, or of many."[42] This power may vest in some person, in a group of persons, in artificial institutions created by men, or even in the general will of the people, as argued by Rousseau.[43] At this stage, we can say that this power composes the "intangible aspect of sovereignty," which is bestowed in the "tangible aspect of sovereignty," meaning in the physical authority in the form of men and institutions.[44]

**2. Power Is Vested Through Some Contract**

The next question that arises is how this power is vested in different authorities that are asserted by various thinkers. On this issue, "[t]here is a general agreement in the postulation of an original contract as the foundation of the sovereign power."[45] As argued by Hobbes, Locke, and Rousseau:

> Whatever the divergence of opinion respecting the exact terms of this contract, or the effect of the agreement when made, there is a general admission of the formation of a contract at some time or other, in some form or other. The contract might be one between government and people, as argued by many of the Monarchomachs; or a social contract organizing the people, followed by a further agreement between people and government, as with Pufendorf; or, again, the single contract in which the sovereign and the State are created simultaneously.[46]

This aspect of sovereignty makes it quite evident that the sovereign power, or the "intangible aspect of sovereignty," was originally separate from the sovereign

41. *See id*. at 13-14.

42. C. E. MERRIAM, JR., HISTORY OF THE THEORY OF SOVEREIGNTY SINCE ROUSSEAU 5 (Batoche Books 2001) (1900).

43. *Id*. at 19.

44. *See id*. at 46.

45. *Id*. at 19.

46. *Id*.

authority, or "the tangible aspect of sovereignty." The contention that the sovereign authority is born with sovereign power cannot be upheld. The correct position is that the sovereign power is delegated to the sovereign authority through a contract, the nature of which is still disputed among various jurists.

### 3. The Sovereign Is Only To Enforce The Sovereign Power

As it is established that sovereign power is given to the sovereign authority through some kind of contract, the question that begs our attention is why there was a need to create sovereign authorities to which all sovereign powers are delegated. French writer Philippe de Mornay speculated as to "why kings were established in first place and for what essential purpose."[47] He felt confident that "men would not have surrendered their natural liberty . . . had they not anticipated great advantages."[48] Roman philosopher Marcus Cicero tries to answer this question by arguing that the final, and most important, development of a community or a state is that "the various members composing it must come to an agreement about the law which is to govern their conduct and relations toward one another."[49] According to him, this led to the formation of a sovereign to make laws effective in the realm of human action.[50] In other words, the sovereign power is given to an authority for the sole purpose of enforcing that power in the real world. Thus, the sovereign authority is only a tangible representative of the "intangible aspect of sovereignty." Sovereign authority only subsists to enforce sovereign power. This tangible authority may change from a theocracy to an autocracy, or it may shift toward a democracy, but its function remains the same—to enforce the sovereign power, which is intangible and unchanging. Therefore, we can conclude that the root of sovereignty lies in the sovereign power and not the sovereign authority, which is a flexible concept.

### 4. The Sovereign Cannot Go Against The Objectives Of The Sovereign Power

Because the sovereign authority is only created to enforce the sovereign power, the question of whether the sovereign can go against the objectives sought by the enforcement of sovereign power must largely be answered in the negative. This aspect of sovereignty is otherwise known as the "rule of law." There are disputations among various jurists regarding all the objectives sought by the enforcement of sovereign power. Despite contradictions, one common objective contained in all the theories about sovereignty and rule of law is "the protection of

47. Philippe du Plessis-Mornay, *Vindiciae Contra Tyrannos*, *in* CONSTITUTIONALISM AND RESISTANCE IN THE SIXTEENTH CENTURY: THREE TREATISES BY HOTMAN, BEZA, & MORNAY 169 (Julian H. Franklin ed. and trans., 1969).

48. *Id*.

49. MARCUS TULLIUS CICERO, ON THE COMMONWEALTH 51 (Oskar Piest ed., George Holland Sabine & Stanley Barney Smith trans., 1950).

50. *Id*.

life of men," which is regarded as the most basic purpose for creating a state and sovereignty.[51]

Various jurists have unanimously held that the sovereign cannot go against this objective. Jurists have tried to limit the sovereign in many ways to ensure that it cannot violate this objective. For example, Johannes Althusius, the founder of the concept of popular sovereignty, defined sovereignty as "[t]he highest and most general power of administering the affairs which generally concern the safety and welfare of the soul and body of the members of the State."[52] According to Althusius, the "government owes its existence to a contract which if not express must be presumed, and whose terms if detrimental to the people's right are to be regarded as null and void."[53] Hugo Grotius assumed that the "rules governing the organization and behavior of states exist ultimately for the benefit of the actual subjects of the rights and duties concerned, individual human beings."[54] Further, he tried to limit sovereignty by divine law, natural law, law of nations, and any contract signed with the people.[55] French philosopher Jean Bodin, who propounded the absolutist theory of sovereignty, also tried to protect the objective of protecting the life of men by trying to limit the sovereign by "the laws of God, of nature, and of nations."[56]

Many other jurists used the concept of "rule of law" to limit the sovereign authority. According to them, the objectives for the enforcement of sovereign power are the "laws," against which the sovereign cannot act. "Plato insisted that the government should be bound by the law."[57] Aristotle argued that the rule of law is preferable, and sovereign authorities should only be made guardians and ministers of law.[58] Cicero, in his book *The Republic*, "condemned the king who does not abide by the law as a despot who 'is the foulest and most repellant creature imaginable.'"[59] He observed, "[h]ow can anyone be properly called a man who renounces every legal tie, every civilized partnership with his own citizens and indeed with the entire human species."[60]

Social contract theorists also reflected this rule of law. According to them, the state and the sovereign were created as a result of the "original contract" between the members of the society.[61] John Locke, an English jurist and a

51. *See, e.g.*, ICISS REPORT, *supra* note 2, at xi.

52. MERRIAM, *supra* note 42, at 9.

53. *Id*. at 10.

54. Carsten Stahan, *Responsibility To Protect: Political Rhetoric Or Emerging Legal Norm*, 101 AM. J. INT'L L. 99, 111 (2007) (citing HUGO GROTIUS, DE MARE LIBERUM, ch. V (Ralph Deman Magoffin trans., Oxford Univ. Press 1916) (1609)).

55. MERRIAM, *supra* note 42, at 11.

56. *Id*. at 8.

57. BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 8 (2004).

58. *Id*. at 9.

59. *Id*. at 11 (citing CICERO, THE REPUBLIC AND THE LAWS (Niall Rudd trans., Oxford Univ. Press 1998)).

60. *Id*.

61. MERRIAM, *supra* note 42, at 19.

proponent of social contract theory, argued that the authority created under the contract only has the "power to protect and preserve, not to destroy; hence 'it is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people.'"[62] If the power is used for the general good it would seem to be almost without limit. But, if the authority acts contrary to the contract and tries to suppress the natural rights of the citizens, it will lose its sovereignty. Locke contended that:

> Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of nature for, and tie themselves up under, were it not to preserve their lives, liberties and fortunes, and by stated rules of right and property to secure their peace and quiet.[63]

Jean Jacques Rousseau limited the sovereign by his concept of "general will" in which, according to him, the sovereign power lies, and according to which only the sovereign can act.[64] Thomas Hobbes, according to whom "the sovereign created by the original contract wields absolute untrammeled power," also tried to limit the sovereign by binding his conscience by natural law, and giving the individual the right to resist if threatened by the sovereign with death.[65]

Thus, it is evident that jurists never envisioned sovereign authority as going against the objectives for which the sovereign power is enforced. The powers of the sovereign are limitless until they conflict with the basic purpose for which it was given unlimited powers in the first place. Henry Shue, while analyzing Kratochwil's thesis, rightly points out that the right to sovereignty is a right to do wrong, as any right to genuine liberty must be.[66] "However, it is a constrained right to do wrong; a right to commit some wrongs but not others."[67] A sovereign is free to commit wrongs to the extent that those wrongs do not violate the basic purposes for which sovereignty was created. The protection of life is unanimously considered as a basic purpose.[68] Thomas Hobbes made a prominent argument that, "the creator of law cannot be limited by the law," and therefore, the law created by the sovereign is always subordinate to him.[69] Applying the same logic, it can be deduced that the sovereign power that created the sovereign will always be superior to the sovereign's authority, and thus, the sovereign can never violate it. The creator is always superior to the creation. If sovereign power did not exist,

62. *Id*. at 16.

63. TAMANAHA, *supra* note 57, at 49 (citing JOHN LOCKE, SECOND TREATISE OF GOVERNMENT 72-73 (1980)).

64. John B. Noone, Jr., *The Social Contract and the Idea of Sovereignty in Rousseau*, 32 J. POL. 696, 707 (1970).

65. TAMANAHA, *supra* note 57, at 47.

66. Shue, *supra* note 17, at 12.

67. *Id*. at 16.

68. *See* ICISS REPORT, *supra* note 2, at xi ("State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.").

69. TAMANAHA, *supra* note 57, at 48.

there would have been no need for a sovereign authority. Therefore, a sovereign can have supremacy over the laws made by him but not over the law that made him. This contention is also in consonance with the "Grundnorm" envisioned by Hans Kelsen.[70]

*B. The Sovereign Violating The Objectives Of Sovereign Power*

From the above discussions, we can finally draw two inferences. First, the sovereign authority was only created to enforce the sovereign power in the realm of human action. Second, the sovereign cannot go against the most basic objective sought for enforcing the sovereign power, namely, protection of life of men. Numerous jurists have asserted other objectives at different points in time that may not be violated by the sovereign, but since the concept of humanitarian intervention is concerned primarily to protect only the objective of protecting lives of people, this paper will be limited to the above-mentioned objective.

The question arises as to what will follow if the sovereign authority violates this basic purpose of the sovereign power. What if the sovereign becomes a threat to the basic security and life of the citizens, when the sovereign was made the implementer of sovereign power to avoid such a threat? Legal academic Fernando Tesón argues that "[g]overnments and others in power who seriously violate those rights [which they were created to protect] undermine the one reason that justifies their political power, and thus should not be protected by international law."[71] He rightly says that sovereignty is not an intrinsic value, but rather is instrumental in fulfilling its basic purpose.[72] Consequently, the sovereign power will discontinue to be vested in the sovereign authority if that authority grossly violates the basic purpose for which it was given power. This is in consonance with the contractual laws of the civilized world, according to which a violation of the basic purpose amounts to a breach of contract, resulting in its termination. This principle has also been included in Article 60 of the Vienna Convention on the Laws of Treaties, enacted in1969.[73] If the sovereign authority violates the basic purpose for which sovereign power was vested in him, the contract vesting the sovereign power will stand terminated. This contingency of sovereign power is also consonant with the basic rule of equity that "to seek equity, one must do equity." A violator of sovereign power can never seek its benefits or protection at the same time.

70. *See* HANS KELSEN, GENERAL THEORY OF LAW & STATE 123-24 (Anders Wedberg trans., Russell & Russell 1961) (1945).

71. Fernando R. Tesón, *The Liberal Case for Humanitarian Intervention*, *in* HUMANITARIAN INTERVENTION: ETHICAL, LEGAL AND POLITICAL DILEMMAS 93 (J. L. Holzgrefe & Robert O. Keohane eds., 2003) [hereinafter Tesón, *The Liberal Case*].

72. For an extended analysis of this idea, see FERNANDO R. TESÓN, A PHILOSOPHY OF INTERNATIONAL LAW 39-66 (1998).

73. Vienna Convention on the Law of Treaties art. 60, May 23, 1969, 1155 U.N.T.S. 331 (addressing the conditions for termination of treaties).

## IV. HUMANITARIAN INTERVENTION TO PROTECT SOVEREIGNTY

As contended, when the sovereign authority violates the basic purpose for which sovereign power was vested in it, that authority ceases to be a sovereign. By becoming a threat to the lives of the citizens, the sovereign authority ultimately becomes a violator of sovereignty. Therefore, humanitarian intervention is sought and carried out against this abuse of power by the sovereign authority. Hersch Lauterpacht, in the sixth edition of Oppenheim's *International Law*, noted "when a State renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible."[74]

It can be said that every intervention is directed against the "ruling authority" in which the sovereign power is vested. The only variable determining the legality of that intervention is the relation of the "intervener" and the "ruling authority" with the "sovereign power." If the sovereign power continues to be vested in the ruling authority, then the intervention conflicts with the principle of sovereignty, and the intervention constitutes one of the highest crimes of the international law. However, on the other hand, if the sovereign power ceases to vest in the ruling authority because it is violating the basic purpose of sovereignty and the intervening state intends to protect this sovereignty from being violated by the ruling authority, then intervention cannot be said to be violating the same sovereignty, and thus it cannot be deemed illegal. Humanitarian intervention, as argued by James Pattison, is only carried out to prevent gross violations of the right of the people to life.[75] It is carried out against the authority that has lost its sovereign powers by violating the basic purpose of sovereignty and becoming a threat to the lives of the people of its state.[76] Therefore, if humanitarian intervention is carried out to protect against violations of the basic purpose of sovereignty by the former sovereign authority, then by no logic of this civilized world can the intervention be said to violate that sovereignty.

As argued earlier, a violator of sovereignty—the former sovereign authority—cannot invoke the protection of sovereignty at the same time. Comparing this to the law of inertia or the law of friction, the concept of humanitarian intervention, like inertia, will immediately come into effect as soon as the sovereign applies "force" against the objectives sought by the enforcement of sovereignty. The position of the principle of self-determination in relation to this has also been subsequently discussed.

### *A. Humanitarian Intervention Only To Stop Crimes Against Humanity*

If the humanitarian intervention is carried out to protect sovereignty from being violated by the authority that has lost its sovereign power, one major concern

74. LASSA OPPENHEIM, INTERNATIONAL LAW: A TREATISE 312 (H. Lauterpacht ed., 8th ed. 1955).

75. PATTISON, *supra* note 6, at 23-24.

76. *Id*.

arises as to the exact nature and definition of the offenses that can result in the "sovereign authority" losing the "sovereign power," and thus, justifying humanitarian intervention. When can it be determined that the sovereign authority has grossly violated the people's right to life and has become a threat to the objectives sought by the enforcement of sovereign power?

It is generally agreed that the determination of whether the sovereign authority has become a threat to the basic objective of sovereignty should not be left solely upon the judgment of the intervening state.[77] Further, a sovereign authority cannot be said to lose its sovereign power for every wrong it does with respect to the life of its citizens.[78] Tesón argues that "[a]ll regimes that are morally vulnerable to humanitarian intervention are of course illegitimate, but the reverse is not true."[79] Humanitarian intervention, as further reiterated by James Pattison, is only carried out to prevent gross violations of the right to life of the people.[80] Therefore, to protect the international order, humanitarian intervention can only be validated against those crimes that are well established in international law as grossly violating the right to life of the people of the state.

Due to substantive progress in the legal jurisprudence of international criminal law, all acts grossly violating the basic security and fundamental right to life of the people are brought under the legal concept of "crimes against humanity."[81] These crimes are systematic in nature, their commission is widespread and massive, and they are committed directly against the civilian population.[82] The systematic, widespread, and massive nature of these crimes directly committed against the civilians bluntly violates the most essential and basic purpose for which sovereign power was vested in the sovereign authority—namely, to provide security of life to the population.[83] According to Cherif Bassiouni, these crimes are termed as *jus cogens* crimes because they "shock the conscience of humanity."[84] Moreover, there is an emerging recognition of the concept of *erga omnes* obligations—the obligations of a state towards the international community as a whole—with respect to the commission of these *jus*

77. *See* ICISS REPORT, *supra* note 2, at 49.

78. *See id*. at 29; PATTISON, *supra* note 6, at 23.

79. Tesón, *supra* note 73, at 98.

80. PATTISON, *supra* note 6, at 22-24.

81. *See* Rome Statute of the International Criminal Court art. 7, U.N. Doc. A/CONF.183/9, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

82. *Id*. These characteristics have been discussed in detail in Prosecutor v. Tadić, Case No. IT-94-1-A, Appeals Judgment, ¶¶ 36-38 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 26, 2000), http://www.icty.org/x/cases/tadic/acjug/en/tad-asj000126e.pdf. *See also* Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic, Case No. IT-96-23 & IT-96-23/1-A, Appeals Judgment, ¶¶ 93-98 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2002), http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf.

83. *See* ICISS REPORT, *supra* note 2, at xi.

84. Cherif Bassiouni, *International Crimes:* Jus Cogens *and* Obligatio Erga Omnes, 59 L. & CONTEMP. PROBS. 63, 69 (1996).

*cogens* crimes.[85] Crimes against humanity include acts like genocide, mass murders, and mass persecutions.[86] The commission of these crimes by the sovereign authority against civilians warrants humanitarian intervention to protect the sovereignty of that state from being violated by the authority. In contrast, if the international community fails to prove the systematic and widespread commission of these crimes, then the intervention might not be considered as humanitarian.

### *B. Humanitarian Intervention Does Not Conflict With The Right Of Self-Determination*

The right to self-determination involves the right of the people to "freely determine their political status and freely pursue their economic, social and cultural development."[87] Critics of humanitarian intervention may argue that due to the intervention of a foreign actor, the right to self-determination of the people of the target state is compromised. However, Michael Walzer, a strong propagator of the right to self-determination, agrees "when the rights of individuals within a community are seriously threatened, such that they are no longer truly self-determining, outside intervention to protect basic individual rights is morally defensible."[88] Self-determination is all about giving people an adequate chance to determine their political status. Crimes against humanity committed by a sovereign authority are *prima facie* denials of this chance. The commission of systematic and widespread atrocities against civilians by the authority means that the right to self-determination of the people has been eclipsed by the authority. In fact, humanitarian intervention, by restoring the sovereignty, aims at restoring this cherished right.

International law has recognized the existence of the principle of humanitarian intervention, wherein a state, which is not party to the conflict, "may decide . . . to come to the aid of the dissidents and assist them in overthrowing the established government or even establishing a new state."[89] According to Leslie C. Green, "[t]his was one of the grounds put forward by India when intervening in operations in East Pakistan that resulted in the establishment of Bangladesh in 1971, followed by the latter's admission to the United Nations regardless of Pakistan's membership and its right to territorial integrity."[90]

85. *Id*. at 66. For *erga omnes* obligations, see Barcelona Traction, Light and Power Co. Ltd. (Belg. v. Spain), 1970 I.C.J. 3, ¶¶ 32-35 (Feb. 5).

86. Article 7 of the Rome Statute discusses various crimes that fall within the requirements of crimes against humanity while Article 6 exclusively deals with genocide. For further details, see Rome Statute, *supra* note 81, arts. 6, 7.

87. International Covenant on Civil and Political Rights art. 1, March 23, 1976, 999 U.N.T.S. 171.

88. Jennifer M. Welsh, *Taking Consequences Seriously: Objections to Humanitarian Intervention*, *in* HUMANITARIAN INTERVENTION AND INTERNATIONAL RELATIONS 61 (Jennifer M. Welsh ed., 2004).

89. LESLIE C. GREEN, THE CONTEMPORARY LAW OF ARMED CONFLICT 68 (2d ed. 2000).

90. *Id*.

### *C. Humanitarian Intervention Does Not Conflict With The Norm Of Non-Intervention*

Having discussed the nature and scope of humanitarian intervention and its relation to the concept of sovereignty, let us now determine whether humanitarian intervention is essentially in conflict with the customary principle of non-intervention. This principle is believed to have begun with the Peace of Westphalia, drawn up in 1648 to end the Thirty Years War in Europe.[91] John Vincent emphasized that the principle of non-intervention functions as a protector of state sovereignty.[92] According to Oliver Ramsbotham and Tom Woodhouse, this principle "protects the internal sovereignty of one state by limiting the external sovereignty of all other states."[93] It can be understood that the principle of non-intervention customarily protects the sovereign power from the threats of external authorities by giving legal protection to the internal sovereign authority.

However, this principle does not seem to apply where the threat is from the internal sovereign authority. It should be born in mind that the purpose of the principle of non-intervention is only to protect the sovereign power from the external sovereign. Its provisions are silent where the internal sovereign authority threatens the sovereign power. Here, the principle of humanitarian intervention fills the abyss by allowing the external authority to protect the sovereign power from being violated by the internal sovereign. If the internal sovereign authority is violating the basic purpose sought by the enforcement of sovereign power by committing crimes against humanity against its citizens and eclipsing the right to self-determination, then the principle of humanitarian intervention is not in conflict with the norm of non-intervention. Since the basic purpose of both non-intervention and humanitarian intervention is to protect the sovereign power, these principles cannot be held to be in conflicting with one another. While the principle of non-intervention protects the sovereign power from an external sovereign, humanitarian intervention protects the same from the wrath of internal sovereign. Both are complimentary to each other. One begins where other ends. Together, they provide complete protection to the concept of sovereignty.

Furthermore, looking at the principle of the "use of force in self-defense," which if proved, absolves the liability of a state from the violation of the rule of non-intervention,[94] Fernando Tesón argues that the basic purpose of this principle is to protect the lives of civilians and also to defend sovereignty.[95] As humanitarian intervention shares the same purpose of protecting civilians and the sovereignty, Tesón states that "any moral distinction between self-defense and

91. Michael J. Kelly, *Pulling at the Threads of Westphalia: "Involuntary Sovereignty Waiver"—Revolutionary International Legal Theory or Return to Rule by the Great Powers?*, 10 UCLA J. INT'L L. & FOREIGN AFF. 361, 374 (2005).

92. Shue, *supra* note 17, at 14.

93. *Id*. at 14.

94. *See* U.N. Charter art. 51 (providing this exception to the principle of use of force and non-intervention).

95. Tesón, *The Liberal Case*, *supra* note 71, at 99.

humanitarian intervention . . . has to rely on something above and beyond the general rationale of defense of persons," and of the protection of sovereignty as well.[96]

### *D. Humanitarian Intervention Does Not Violate The Jus Cogens Norm Given In Article 2(4) Of The U.N. Charter*

In the light of above stated arguments, let us finally discuss the biggest criticism regarding humanitarian intervention involving the violation of a *jus cogens* norm encompassed in the Article 2(4) of the U.N. Charter.[97] A plain reading of this provision shows that it chiefly incorporates three rules: (1) a prohibition against the threat or use of force against the territorial integrity or political independence (sovereignty) of a state; (2) a prohibition against the threat or use of force in any manner inconsistent with the Purposes of the United Nations; and (3) a general prohibition against the threat or use of force.[98]

The first rule prohibits the violation of the state sovereignty. It is regarded as *jus cogens*.[99] It has already been argued that the principle of humanitarian intervention is not a threat to sovereignty, but is instead carried out to protect sovereignty from being violated by the ruling authority.[100] Therefore, first rule given in Article 2(4) does not conflict with or invalidate humanitarian intervention.

The second rule prohibits the use of force in a manner inconsistent with the purposes of the United Nations. Since humanitarian intervention is carried out to protect the fundamental human rights of the people—which is one of the purposes of the United Nations[101]—the second rule of Article 2(4) also does not invalidate humanitarian intervention.

The third rule deals with the general prohibition of the use of force. This rule cannot be regarded as *jus cogens* because the U.N. Charter itself provides two exceptions to this rule, namely Article 42[102] and Article 51.[103] On the contrary, humanitarian intervention is carried out to stop a *jus cogens* crime, namely, a crime

96. *Id*.

97. U.N. Charter art. 2, para. 4 ("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.").

98. *Id*.

99. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, ¶ 190 (June 27) (separate opinion of Judge Nagendra Singh).

100. *See* discussion *supra* Parts III.(B), IV.(A).

101. *See supra* notes 20-24 and accompanying text.

102. U.N. Charter art. 42 ("Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.").

103. U.N. Charter art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.").

against humanity.[104] Therefore, any law of lesser value conflicting with a *jus cogens* norm has to give way to this norm.[105] If these arguments are to be accepted, then it is evident that Article 2(4) is not an impediment upon the concept of humanitarian intervention.

*E. Humanitarian Intervention: A Duty & A Right*

After delineating the central argument that the principle of humanitarian intervention does not conflict with the principle of inviolability of sovereignty, we have outlined three issues with regard to humanitarian intervention. First, let us consider whether humanitarian intervention is a duty or a right. From the general discussion of this paper, whenever the ruling authority violates sovereign power, it is the duty of the international community to intervene to protect the sovereignty. As discussed in this paper, for this duty to arise, crimes against humanity should be proven to have been committed by the ruling authority in order to provide sufficient proof of the violation of the purpose of sovereignty.

However, Pattison argues that the intervening state should also have "the right" of humanitarian intervention along with an existing duty.[106] To have the right to intervene, the intervening state needs to possess the qualities necessary for its intervention to be justifiable.[107] It needs, for instance, to follow international humanitarian law, to be welcomed by the victims of intervention, and to have a reasonable expectation of success.[108]

Therefore, Pattison believes that to have a duty to intervene, the intervening state would first need to meet these permissibility criteria so that it has the right to intervene.[109] The 2001 report of International Commission on Intervention and State Sovereignty ("ICISS"), *The Responsibility to Protect*, provided various principles that need to be fulfilled by the intervening authority before, during, and after engaging in humanitarian intervention.[110] These principles include fulfillment of a "just cause threshold," various precautionary and operational principles, and the necessity of authorization from the United Nations.[111]

Second, let us address the consent of civilians who are being protected as part of intervention. Critics of humanitarian intervention argue that the self-respect of the people of the target state could get wounded due to the foreign intervention.[112] In response to this, Tesón argues that since there may be a group of people that benefits from a government prosecuting other parts of the population, the only

104. Prosecutor v. Kupreškić, Case IT-95-16-T, Judgment, ¶ 520 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 14, 2000).

105. *See, e.g.*, Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331.

106. *See* PATTISON, *supra* note 6, at 15-20.

107. *Id*.

108. *Id*.

109. *Id*.

110. ICISS REPORT, *supra* note 2, *passim*.

111. *Id*. at xii-xiii.

112. Tesón, *The Liberal Case*, *supra* note 71, at 106.

people whose consent or opposition deserves consideration are the victims of the ongoing atrocities.[113] According to him, no communal interest can validly oppose the aid to the victims being persecuted by the ruling authority.[114] According to Malcolm Shaw, "[o]ne variant of the principle of humanitarian intervention is the contention that intervention to restore democracy is permitted as such under international law."[115] He notes, "[o]ne of the grounds given for the U.S. intervention in Panama in December 1989 was the restoration of democracy."[116] However, the international legal community has not accepted this contention due to political considerations in defining the term democracy.[117]

## V. HUMANITARIAN INTERVENTION TO PROTECT THE SOVEREIGNTY & THE EMERGING NORM OF RESPONSIBILITY TO PROTECT

To conclude, we will discuss the emerging doctrine of "responsibility to protect." The "responsibility to protect" doctrine is a concept that includes, within itself, humanitarian intervention as a duty to protect the sovereignty of a state.[118] The concept of "responsibility to protect" emerged in the 2001 ICISS report, *The Responsibility to Protect*. The central theme of the report was "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe—from mass murder and rape, from starvation—but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states."[119] Commenting on this concept, the high-level U.N. panel established that "emerging norm of a collective international responsibility to protect," encompasses not only "the 'right to intervene' of any State, but the 'responsibility to protect' of *every* State when it comes to people suffering from avoidable catastrophe."[120] In September 2005, the concept of the "responsibility to protect" was incorporated into the outcome document of a high-level meeting of the General Assembly.[121] Additionally, the U.N. Security Council made a reference to this concept in its Resolution 1674, on the protection of civilians in an armed conflict.[122]

The concept of "responsibility to protect" lucidly consents that sovereignty is an intangible entity from which the sovereign is created.[123] Furthermore, the concept accepts supremacy of this sovereign power by stating that if the sovereign

113. *Id*.

114. *Id*.

115. MALCOLM N. SHAW, INTERNATIONAL LAW (6th ed. 2008) (citing James Crawford, *Democracy and International Law*, 1993 BRIT. Y.B. INT'L L. 113, 113).

116. *Id*.

117. *Id*.

118. *See* ICISS REPORT, *supra* note 2, at 69.

119. *See id*. at viii.

120. U.N. Secretary-General, *A More Secure World: Our Shared Responsibility: Rep. of the High-Level Panel on Threats, Challenges and Change*, ¶¶ 201-02, U.N. Doc. A/59/565 (Dec. 2, 2004).

121. 2005 World Summit Outcome, GA Res.60/1, ¶¶ 138-39, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

122. S.C. Res. 1674, ¶ 4, U.N. Doc. S/RES/1674 (April 28, 2006).

123. *See* ICISS REPORT, *supra* note 2, at 69.

fails to protect sovereignty, he is deemed to have forfeited its ruling authority and the responsibility of its protection shifts to the international community.[124] This principle is expressly included in the Constitutive Act of African Union.[125] Article 4(h) of this Act provides that there is a "right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity."[126] Also, Article 40 and 41 of the ILC Articles on State Responsibility requires the state to cooperate in the situation of serious breach of a peremptory, or *jus cogens*, norm.[127] This principle of "responsibility to protect" still is at its infancy, but slowly is congregating the general acceptance of international community.

## VI. CONCLUSION: HUMANITARIAN INTERVENTION TO PROTECT HUMANITY

The doctrine of "responsibility to protect," which has been recently developed, may be seen as an effort to redefine the principle of humanitarian intervention in a way that seeks to minimize the motives of the intervening powers. There is no doubt that it reflects an important, influential trend in international society, particularly in the context of U.N. action. Such responsibility lies not only with states, but also with the U.N., which includes a commitment to reconstruction after intervention. The responsibility of states to protect human rights creates a broad obligation, and it is to that extent that humanitarian intervention can be seen as the responsibility of states to overcome the issue of sovereignty wherein the sovereign authority itself abuses fundamental human rights of its people.

Tesón rightly states that a "gross violation of human rights is not only an obvious assault on the dignity of persons, *but a betrayal of the principle of sovereignty itself*."[128] He argues:

> The principle of non-intervention denies victims of tyranny and anarchy the possibility of appealing to people other than their tormentors. It condemns them to fight unaided or die. Rescuing others will always be onerous, but if we deny the moral duty and legal right to do so, we deny not only the centrality of justice in political affairs, but also the common humanity that binds us all.[129]

This paper emphasized that the concept of sovereignty has never been an absolute limitation on the humanitarian intervention. Vesting sovereignty in an authority was never intended to make him invincible. As Henry Shue puts it:

> If all of us do nothing to define and assign default duties for the case in which a state does not protect its own people against [the crimes like]

124. *Id*.

125. Organization of African Unity, Constitutive Act of the African Union art. 4, July 11, 2000, *available at* http://www.au.2002.gov.za/docs/key_oau/au_act.htm.

126. *Id*.

127. Rep. of the Int'l Law Comm'n, 53d Sess., April 23−June 1, July 2−Aug. 10, 2001, arts. 40−41, U.N. Doc. A/56/10; GAOR, 56th Sess., Supp. No. 10, (2001).

128. Tesón, *The Liberal Case*, *supra* note 71, at 110 (emphasis in original).

129. *Id*. at 129.

> genocide—even for the most common case in which the state is the orchestrator of the genocide—then we genuinely are assigning the vital interests and basic rights of non-compatriots zero weight in our calculations about how to organize the planet, specifically how to understand sovereignty.[130]

There should be no doubt that humanity is the founding pillar of any society. No artificial concepts should be allowed, whatever they may be, if they challenge the basic existence of humanity itself. Our arguments have demonstrated that the ideal of humanitarian intervention is an important tool to establish humanity, especially in today's highly polarized world. Humanitarian intervention has never challenged the indomitability of the concept of sovereignty. In fact, humanitarian intervention is a glorious invention of the neo-natural school, which reminds the sovereign of its basic duty.

130. Shue, *supra* note 17, at 21.