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Humanitarian Intervention and the Responsibility to Protect in Palestine

Unit for Political Studies

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The credibility and effectiveness of humanitarian intervention has long been a topic of contention in both international law and international relations, especially in the wake of US invasions of several countries in the 1980s, at times on the pretext of protecting civilians and at others in order to preserve democracy, combat terrorism, or protect its citizens and interests. Controversy over the reality of humanitarian intervention intensified after the United States and Britain invaded Iraq in 2003 ostensibly because it possessed weapons of mass destruction, only for the claim to later prove false. These and other incidents have fuelled widespread suspicion of most humanitarian interventions, specifically those undertaken without a mandate from the United Nations Security Council (UNSC), due to the bad faith of the interventionists and the lack of just grounds for intervention, rendering it illegitimate.

Palestine is perhaps the most obvious example of the failure of humanitarian intervention. Since 1948, amid Israel's colonisation of Palestine, its theft of Palestinians' land, and their expulsion and replacement by Jewish settlers, the international community has failed to intervene to protect the people of Palestine and prevent the grave violations and crimes to which they are subjected. This would not have been possible without the complicity of the British government, the American administration, and some European governments, despite Israel's failure to comply with its international obligations under the UN Charter and its disregard for all international resolutions, including UN General Assembly Resolution 181 on the partition of Palestine and Resolution 194 on the right of Palestinian refugees to return to their homes, as well as its imposition of a settler colonial regime based on apartheid inside Israel, which was extended to the Palestinian territory occupied in 1967.

I. Humanitarian Intervention

Humanitarian intervention is a coercive act that entails the use of force against another state to stop grave violations of human rights and international humanitarian law and serious crimes committed against national, ethnic, or religious groups.¹ It is a type of forceful military intervention in the affairs of another state, sanctioned by the UN for humanitarian reasons.²

The dispute often revolves around the legitimacy of humanitarian intervention to put a stop to violations and the party authorised to make such a decision. Some hold that the UNSC must authorise a humanitarian intervention for it to be legitimate,³ while others believe that an organisation, a group of organisations, or a coalition of states like NATO can carry out a humanitarian intervention

1 Anne Ryniker, "The ICRC's Position on 'Humanitarian Intervention,'" *IRRC*, vol. 83, no. 842 (June 2001).

2 D. R. L. Ludlow, "Humanitarian Intervention and the Rwandan Genocide," *Journal of Conflict Studies*, vol. 19, no. 1 (Spring 1999).

3 Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects* (Copenhagen: Danish Institute of International Affairs, 1999), p. 11.



without the approval of the Security Council.⁴ Several factors are pertinent in determining whether a humanitarian intervention is legitimate: it must be a good faith intervention; the right of peoples to freedom and justice may not be traduced⁵; and it must be limited to protecting civilians from the scourge of armed conflicts, stopping war crimes, crimes against humanity, and genocide, and bringing the perpetrators to international justice.⁶ Most interventions during the Cold War and its aftermath were not undertaken for humanitarian reasons, but rather were aimed at invading and occupying weak, resource-rich states and plundering their wealth. Perhaps the lone exception is the intervention of 1991, launched under UN auspices and pursuant to a UNSC resolution, to liberate Kuwait following the Iraqi invasion. The international community has not dared to intervene to protect the Palestinians and compel Israel to respect hundreds of UN resolutions, although the Palestinian issue has been at the heart of the work of the United Nations and its various agencies and institutions since 1947.⁷

II. Responsibility to Protect between Humanitarian Considerations and Interests

The international community, represented by the UN, has the responsibility to protect civilians from genocide, war crimes, ethnic cleansing, and crimes against humanity because of the threat they pose to international peace and security.⁸ In the event that the nation state or the de facto authority (e.g., a state occupying the territory of others) appears unable to protect its population, the international community must act in accordance with the UN Charter and take collective action to protect them, whether by political and diplomatic means or by military and humanitarian intervention.⁹

The question of how to address gross, systematic violations of human rights at the international level was raised in the wake of the atrocities perpetrated in the Balkans and Rwanda in the 1990s, which the international community failed to prevent. In contrast, the NATO bombing of Yugoslavia in 1999 following the Serbian rejection of Kosovan independence served the interests of the United States and Europe.¹⁰ There has been a strong consensus that each state has a responsibility to protect populations under its jurisdiction from genocide, war crimes, ethnic cleansing, and crimes against humanity. In the event that the state cannot or will not assume its duty to protect, the UNSC, after

⁴ Ian Hurd, "Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World," *Ethics and International Affairs*, vol. 25, no. 3 (June 2011); "Humanitarian Intervention," *Encyclopaedia Britannica*, accessed 1 November 2023, at: <https://bit.ly/3Qo308r>.

⁵ Alex de Waal and Rakiya Omaar, "Can Military Intervention be 'Humanitarian'?" *Middle East Research and Information Project*, nos. 187–188 (March/April 1994), accessed 1 November 2023, at: <https://bit.ly/40jxzRu>.

⁶ Lawrence Emeka Modeme, "The Libya Humanitarian Intervention: Is it Lawful in International Law?" *Academia*, accessed 2 November 2023, at: <https://bit.ly/3FMviVe>.

⁷ United Nations, "The Question of Palestine," accessed 2 November 2023, at: <https://bit.ly/49lBktw>.

⁸ UNSC, Resolution 1674, 28 April 2006, accessed 14 November 2023, at: <https://digitallibrary.un.org/record/573969>.

⁹ UN Office on Genocide Prevention, "Responsibility to Protect," accessed 2 November 2023, at: <https://bit.ly/3Mr4sGO>; UN, "United Nations Charter," Articles 41–42, accessed 4 November 2023, at: <https://www.un.org/en/about-us/un-charter/full-text>.

¹⁰ Julie Mertus, "Reconsidering the Legality of Humanitarian Intervention: Lessons from Kosovo," *William and Mary Law Review*, vol. 41 (1999–2000), pp. 1746–1752.

exhausting all peaceful means, must make the decision to intervene, including using military means, provided that there is clear, documented evidence of serious violations of international humanitarian law or international human rights law.¹¹

The absence of any humanitarian dimension in most military interventions prompted the International Commission on Intervention and State Sovereignty to establish criteria governing humanitarian intervention, including: the just cause threshold, meaning that the intervention is warranted by the large-scale loss of life with genocidal intent or actual or anticipated large-scale ethnic cleansing carried out by killing, forced displacement, acts of terror, or rape; a humanitarian intervention must be authorised by the UNSC, the UN General Assembly, and regional organisations; right intention, which requires that the intervention be aimed at stopping or averting the human suffering of the population if it is imminent; humanitarian intervention with the aim of overthrowing regime is illegitimate; military intervention must be a last resort after the exhaustion of all possible diplomatic means; the scale and duration of military intervention must be the minimum necessary to achieve the desired humanitarian objective; the intervention must respect the provisions of international humanitarian law; intervening parties should help build a lasting peace, taking into account good governance and sustainable development, while allocating the resources to achieve this goal.¹²

In light of prevailing double standards and the failure to delineate the distinction between humanitarian considerations and political interests – as most interventions since the Cold War have demonstrated, humanitarian intervention is often used as a cover to allow major powers to achieve their interests at the expense of weak states and their peoples – interventions must be limited to actions authorised by an explicit, prior resolution of the UNSC and must entail an active role for the International Criminal Court in bringing all perpetrators of grave crimes to account.¹³

III. A Hybrid of Apartheid and Occupation in Palestine

Israel exercises effective jurisdiction over all of Palestine, in the territories of 1948 and in the Palestinian territory occupied in 1967, despite the narrow administrative and security prerogatives of the Palestinian Authority, which enjoys limited autonomy in the West Bank with the exception of East Jerusalem, where Israel prohibits it from playing any role. The Gaza Strip, which has been besieged since 2007, is still under Israeli control. Although Israel claims to have withdrawn from the territory, it remains an occupying power by virtue of its effective control over the Gaza Strip by air, sea, and land; its absolute control over the movement of Palestinians in and out of Gaza and the entry and exit of

¹¹ UN Office on Genocide Prevention, “Responsibility to Protect.”

¹² International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), pp. 32–37.

¹³ Adel Hamza, “Ishkaliyat al-Tadakhkhul al-Dawli al-Insani fi al-‘Alaqa al-Dawliya,” *Majallat al-‘Ulum al-Qanuniya wa-l-Siyasiya* (2013), special issue on the Second International Scientific Conference of the College, p. 126.

goods; and its control of the population registry. Since 1948, the Israeli occupation has consolidated an apartheid regime undergirded by a system of racist legislation it has enacted, such as the absentee property law, the law of return, the land ownership law, and the nation-state law.

Given this reality, international jurists, UN experts, and international and local human rights organisations in recent years have thoroughly analysed the Israeli regime inside the Green Line and in the Palestinian territory occupied since 1967. They have concluded that it is an apartheid regime, in contrast to the prevailing view of Israel as a democratic state, because it is an occupying power that imposes a system of racial separation throughout Palestine. This regime was established and has been entrenched over the years by law, practice, and the public and judicial support it has received.¹⁴ According to B'Tselem, a single regime governs Palestine and makes decisions affecting the fate of all human beings living under its authority, with the purpose of ensuring the domination of Jews over Palestinians, thereby nullifying any claim to democracy. The organisation describes the system as an apartheid regime par excellence.¹⁵

Amnesty International supported this opinion in a report published in early 2022, which described Israel as an apartheid regime based on the oppression of Palestinians and the maintenance of Jewish domination inside Israel and the Palestinian territory occupied in 1967. Apartheid is imposed through policies and laws aimed at isolating Palestinians, systematically discriminating against them, expropriating their land, denying them equality and citizenship rights, and restricting their freedom of movement. Israel enacts discriminatory laws to prevent the reunification of Palestinian families, uses military rule to restrict right to political participation and popular resistance, and impedes Palestinian human development, denying them their economic and social rights.¹⁶

Israel has persistently violated the collective and individual rights of Palestinians since the occupation of Palestine in 1967, in contravention of international law, international human rights conventions, international humanitarian law, and relevant international resolutions. It continues its policy of illegal land seizures, annexation, the construction of illegal settlements, and the transfer of Jewish settlers to reside in them, creating facts on the ground in order to prevent Palestinians from exercising their inalienable right to self-determination. Throughout, the occupying power has continued to commit the crimes, including the deliberate targeting of Palestinians, extrajudicial killing, the seizure and theft of land and property for settlement purposes, restrictions on the freedom of movement and

¹⁴ B'Tselem, "A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid," 12 January 2021, accessed 5 November 2023, at: <https://www.btselem.org/apartheid>; Al Haq, "Israeli Apartheid: Tool of Zionist Settler Colonialism," 29 November 2022, accessed 30 September 2023, at: <https://bit.ly/46xKPUw>.

¹⁵ B'Tselem, "Not a 'Vibrant Democracy,' This Is Apartheid," October 2022, accessed 14 November 2023, at: https://www.btselem.org/publications/202210_not_a_vibrant_democracy_this_is_apartheid.

¹⁶ Amnesty International, "Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity," 1 February 2022, accessed 26 September 2023, at: <https://www.amnesty.org/en/latest/campaigns/2022/02/israels-system-of-apartheid/>.

travel bans (including for human rights activists), and the closure of Palestinian institutions and associations by military orders on the grounds that they are “terrorists.”¹⁷

IV. The Protection of Palestinians Is a Duty under International Law

The perpetuation of the occupation, the settler colonial regime and apartheid in Palestine, the Israeli coloniser’s persistent denial of the legitimate rights of the Palestinians, and its commission of the most heinous crimes are evidence of the international community’s failure to fulfil its duty to protect Palestinians. Since 1947, Israel has not complied with any UN resolutions related to Palestine, including Resolution 181 of 1947 on the partition of Palestine, Resolution 194 of 1948 on the return of Palestinian refugees, and Resolution 242 of 1967 on the withdrawal of Israel from the Arab territories occupied during the 1967 war. Taken together, this all demonstrates that there is a lack of political will on the part of the international community, particularly the United States and the countries of Europe and the West, to compel Israel to fulfil its obligations under international law and to hold it accountable for its crimes against Palestinian civilians, especially children and women, among them genocide, war crimes, and crimes against humanity.

On 8 October 2023, Israeli occupation forces launched an aggressive war on the Gaza Strip, invoking the right of self-defence in the wake of Hamas’s Operation al-Aqsa Flood, during which it attacked military positions and settlements in the so-called Gaza envelope. Motivated by a desire for vengeance, this brutal aggression sought to inflict massive loss of life and property and displace the population of the Gaza Strip to Egypt, and reduce Gaza to rubble. Five weeks on, the war has killed more than 11,000 people and injured another 28,000, most of them children and women; 825 families have been partially or wholly wiped out. Occupation forces also killed 186 Palestinians in the West Bank, including 43 children. The aggression has resulted in damage to 258 schools, the disruption of 14 of Gaza’s 35 hospitals and 51 of its 71 facilities for basic medical services, and damage to 25 ambulances.¹⁸

Although the question of Palestine constitutes a flagrant violation of international law and has posed a threat to international peace and security for seven and a half decades, due to US veto on the UNSC, the international community is still unable to intervene to protect the Palestinians and force Israel to stop its crimes using all available means under Chapter VII of the UN Charter, including military force. This impotence reflects the failure of the international community to establish a clear line between humanitarian considerations and political interests. The favour it continues to show Israel, and the near-absolute support of the United States and its Western allies, only encourages Israel to intensify its persecution of the Palestinians.

¹⁷ UN, “Outraged over Israel’s Designation of Six Civil Society Groups as Terrorists, Speakers Tell Palestinian Rights Committee Harassment against Human Rights Defenders Must End,” 7 December 2021, accessed 4 November 2023, at: <https://bit.ly/40Cd7v8>.

¹⁸ UN Office for the Coordination of Humanitarian Affairs, “Hostilities in the Gaza Strip and Israel,” 5 November 2023, accessed 16 November 2023, at: <https://bit.ly/3SsNQ54>.



The current situation in Palestine, especially in light of the atrocities committed by Israel against civilians and infrastructure in Gaza, demands that the international community send a clear message to Israel to fulfil its international obligations and immediately stop its crimes; it should know that it will be held accountable before the International Criminal Court and before national courts under universal jurisdiction, and that will be no impunity. Continued UN inaction, however, leads us to believe that member states have not learned the lesson of previous cases in which they ignored warnings about mass killings and imminent massacres: in Cambodia, where the goal was to render it ethnically homogeneous; in the former Yugoslavia in the early 1990s; and in Rwanda, which experienced a genocide in 1993–1994.¹⁹

The level of violence inflicted by the occupation on innocent people in Palestine, particularly in Gaza, requires the international community to take immediate action to protect the Palestinian people and stop the suffering they have endured since the Nakba of 1948. The UN Security Council should be authorised to take immediate collective action under Articles 41 and 42 of the UN Charter. Failing that, the General Assembly must implement the “Uniting for Peace” resolution and assume the role entrusted to it under Articles 11 and 15 of the charter – namely, to protect international peace and security – because of the UNSC’s failure to assume its responsibility due to the lack of consensus among its permanent members, a result of the United States’ consistent use of its veto to block condemnation of Israel.

Conclusion

International humanitarian intervention is based on the principle of protecting international peace and security, and protecting the population from atrocities. Most military interventions over the previous decades, however, served the interests of the major powers; their goal was not to end atrocities, protect the population, or assist in stabilisation and reconstruction, which stripped them of their legal and credibility. While Western states, especially the United States, justify their military interventions with the pretext of protecting democracy and human rights, these interventions are dictated by interests rather than humanitarian needs. Human rights have been readily sacrificed and democracy thwarted when they conflict with the interests of these powers.

In light of Israel’s continued rejection of any solution to the Palestinian issue, whether a one-state or two-state solution, it has become imperative for the international community to intervene to protect the Palestinian people and stop Israeli reprisals, massacres, genocide, war crimes, and crimes against humanity, and to recognise that Israeli occupation, settler colonialism, and the apartheid regime lie at the root of successive and ongoing waves of conflict in the region. With this in mind, it is incumbent upon the international community, now more than ever, to compel Israel to withdraw immediately, unconditionally, and completely from the occupied Palestinian territory, implement

¹⁹ UN General Assembly, “Implementing the Responsibility to Protect,” UN document A/63/677, 12 January 2009, accessed 5 November 2023, at: <https://bit.ly/3SykEJt>.



UN resolutions, and dismantle the Israeli settler-colonial apartheid regime on both sides of the Green Line. The international community should also take measures to hold Israel accountable for violations of international law and human rights inside the Green Line and in occupied Palestinian territory, and prosecute all those involved in committing war crimes or crimes against humanity and genocide at the International Criminal Court.

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