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REASSESSING THE LIMITS OF HUMANITY IN EXECUTING HUMANITARIAN INTERVENTION WITHIN THE RTOP FRAMEWORK

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Abstract

Humanitarian Intervention (HI) is the third pillar of the Responsibility to Protect (RtoP) framework, which frequently invokes the concept of humanity as the fundamental source of legitimacy. However, the absence of clear criteria defining the limit of humanity has led to a double standard in the implementation. Therefore, this study aims to examine two main legal issues, namely the broader legal implications of the principle of humanity in the international legal system and the standard threshold to legitimize the intervention within the RtoP framework. A doctrinal legal method was used with regulatory, conceptual, and case approaches. In addition, interpretative methods were used for legal argumentation. The results showed that the concept of humanity has historically played a crucial role in shaping international law. The evolution of international humanitarian law (IHL) and international human rights law, particularly within the context of international criminal law, is closely related to the concept of humanity. According to this concept, intervention may be justified to prevent and stop humanitarian crises within a specific state to protect the victims. However, only actions that exceed the limits of humanity, including extraordinary acts of cruelty and crimes under universal jurisdiction, can serve as the basis for HI legitimacy. Moreover, the threshold for invoking HI must also include a determination that the state is unwilling or unable to prevent or stop the ongoing atrocities.

Keywords: humanitarian intervention; humanity; RtoP.

Abstrak

Intervensi kemanusiaan sebagai pilar ketiga RtoP seringkali menggunakan prinsip kemanusiaan sebagai dasar legitimasinya. Namun demikian belum ada kriteria yang jelas limit kemanusiaan yang mengharuskan intervensi kemanusiaan sehingga terjadi standar yang berbeda dalam implementasinya. Artikel ini fokus membahas dua isu hukum yaitu apa implikasi hukum prinsip kemanusiaan dalam hukum internasional dan kriteria yang menjadi ambang batas intervensi kemanusiaan dengan militer berdasarkan prinsip kemanusiaan. Artikel ini menggunakan pendekatan regulasi, konseptual dan kasus untuk membantu menjawab masalah dan menggunakan interpretasi untuk membangun argumentasi hukum. Hasil penelitian menunjukkan bahwa konsep kemanusiaan memiliki peran yang sangat penting dalam sejarah pembentukan hukum internasional. Perkembangan norma hukum humaniter internasional, hukum hak asasi manusia, hukum pidana internasional termasuk perkembangan konsep kejahatan internasional tidak lepas dari pengaruh prinsip kemanusiaan. Menurut konsep kemanusiaan, intervensi dapat diterapkan untuk mencegah dan menghentikan krisis kemanusiaan yang terjadi di wilayah negara tertentu yang bertujuan

untuk melindungi para korban. Namun, hanya tindakan yang melampaui batas kemanusiaan, seperti adanya tindakan kekejaman yang luar biasa dan kejahatan internasional di bawah yurisdiksi universal, yang dapat menjadi dasar legitimasi intervensi kemanusiaan. Selanjutnya, tindakan yang melampaui batas kemanusiaan sebagai legitimasi intervensi kemanusiaan harus memenuhi persyaratan bahwa negara secara faktual tidak mau dan tidak mampu mencegah dan menghentikan kejahatan yang terjadi.

Kata Kunci: intervensi kemanusiaan; kemanusiaan; RtoP

Introduction

The 20th anniversary of the 2005 United Nations World Summit was observed in 2025, when Member States of the UN General Assembly (UNGA) unanimously adopted the Responsibility to Protect (RtoP) framework. RtoP affirms the collective responsibility of the international community to protect populations from atrocities, specifically, "genocide, war crimes, ethnic cleansing, and crimes against humanity". The concept originated when the International Commission on Intervention and State Sovereignty (ICISS) introduced the term in a report in 2001. RtoP consist three elements, namely "responsibility to prevent, react, and rebuild". Although humanitarian intervention (HI) is permitted under certain circumstances, it should only be considered a last resort within the responsibility to react.[1] Four years after the ICISS report, the UNGA officially supported the shared responsibility to safeguard populations from genocide and other serious crimes against humanity during the 2005 World Summit.[2] Under RtoP, states are designated as the primary actors responsible for protecting the populations. However, when states are unwilling or unable to perform this obligation, the responsibility shifts to the broader international community, which may include coercive and military intervention when necessary.

In 2009, the UN Secretary-General (UNSG) outlined a three-pillar approach for implementing RtoP. This comprises (1) the state obligation to protect the population, (2) international assistance, and (3) a 'timely and decisive response' which may include military intervention when required.[3] The report emphasizes that "the most effective strategy to deter States from abusing the RtoP is to develop a comprehensive UN strategy, complete with standards, mechanisms, means, and practices related to RtoP." The strategy underscores the importance of prevention and, in worst cases, the need for early and flexible

1 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty* (Canada: The International Development Research Centre, 2001).

2 United Nations General Assembly, "2005 World Summit Outcome, Resolution Adopted by the General Assembly on 16 September 2005, A/RES/60/1," 2005.

3 United Nations General Assembly, "Implementing the Responsibility to Protect, Report of the Secretary-General, Sixty-Third Session Agenda Items 44 and 107 , A/63/677, 12 January 2009.," 2009.

responses tailored to the unique circumstances of each situation. There is no prescribed sequence for applying the pillars, nor does the framework imply that any one pillar is more important than the others.[4] Similar to any structure, the RtoP framework relies on the equal size, strength, and viability of each supporting pillar. Among these, the third pillar remains the most controversial in assessing RtoP acceptance and implementation.[5] Deitehoff mentioned that the first and the second pillars are generally accepted, but challenges arise with implementing the third pillar.[6] Welsh also suggested that although the three pillars are intended to be viewed equally, the third, which focuses on military intervention, receives the least attention from the international community.[7]

HI refers to the use of force by a state or coalition to protect the population in another state from atrocity crimes, without the initial consent and justified on the grounds of humanity.[8] The distinguishing factor between HI and other common intervention is the explicit purpose. HI has been a recurring practice in the international community, as evidenced by intervention in Iraq/Kuwait in 1990, Iraq (1993, 1998 and 2003), Somalia (1992), Yugoslavia (1993 and 1999 Kosovo), Sudan (1998), Haiti (1994), Rwanda (1994), Afghanistan (2001-2002), and Congo (2003).[9] Following the adoption of RtoP by the UNGA, several HI have occurred, including Libya in 2011, Côte d'Ivoire in 2011, Mali in 2013, Gambia in 2017, as well as the Democratic Republic of Congo in 2013 and 2022.[10] In nearly all these cases, humanitarian reasons "in the name of humanity" were cited as the basis for legitimacy, with force used to de-escalate the crisis.

Two decades following the adoption of RtoP by the international community, the legitimacy of HI remains contentious in international law, both conceptually and practically. Conceptually, Article 2 (4) of the United Nations (UN) Charter explicitly prohibits states from intervening and using force against the sovereignty of other countries. However, gross human rights violations on a

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4 Alan J. Kuperman, "How HI Can Succeed: Liberia's Lessons for the R2P," *Civil Wars,* 26, no. 4 (2023): 597, https://doi.org/10.1080/13698249.2023.2196180.

5 Christopher Hobson, "The Moral Untouchability of the Responsibility to Protect," *Journal of Intervention and Statebuilding* 16, no. 3 (May 27, 2022): 369, https://doi.org/10.1080/17502977.2021.2015146.

6 Nicole Deitelhoff, "Is the R2P Failing? The Controversy about Norm Justification and Norm Application of the Responsibility to Protect," *Global Responsibility to Protect* 11, no. 2 (April 1, 2019): 167, https://doi.org/10.1163/1875984X-01102003.

7 Jennifer M Welsh, "Norm Robustness and the Responsibility to Protect," *Journal of Global Security Studies* 4, no. 1 (January 1, 2019): 67, https://doi.org/10.1093/jogss/ogy045.

8 Benjamin Daßler and Bernhard Zangl and Hilde van Meegdenburg, "Is There a Religious Bias? Attitudes towards Military HI in Germany," *European Journal of International Security* 9 (2024): 434–448, https://doi.org/doi:10.1017/eis.2024.12.

9 Brian Frederking, *The United States and the Security Council: Collective Security since the Cold War*, 1st ed. (London: Routledge, 2007), 79.

10 Tonny Brems Knudsen Peter Viggo Jakobsen, "The Post-Hegemonic Turn in HI: Regional Ownership and Troubled Great Power Management," *International Relations* 0, no. 0 (2024): 2, https://doi.org/10.1177/00471178231222893.

massive scale may demand intervention to prevent the growing number of victims and the worsening of crimes. Nicholas Wheeler explained this dilemma as a conflict between a rule (order) and justice or legality and legitimacy.[11] In practice, HI becomes controversial when military actions in the name of humanity are conducted without UN Security Council authorization. Robert Keohane categorizes these actions as an unauthorized intervention. A prominent example is the Kosovo intervention, in which on March 24, 1999, the North Atlantic Treaty Organization (NATO) launched an unauthorized intervention in Yugoslavia to end widespread violence, following brutal acts by the Serbian Army.[12]

The legality of HI is generally not supported by the primary laws governing the use of force in international relations, and state responsibility laws fail to provide a foundation for the legitimacy.[13] In general, the legitimacy of HI is often defended through the just war theory, a concept grounded in natural law that establishes moral criteria for the justifiable use of force, aiming to limit violence in conflict.[14] Beyond the just war framework, some scholars assess HI legitimacy based on the authority executing the intervention, posing questions such as: who should carry out HI? Should the authority rest with the UN Security Council, regional organizations, groups of states, or a single state? Is HI an obligation or merely a right?.[15] Several individuals and groups believe that RtoP has addressed these questions, promoting debate over the need for a new doctrine on permissible HI.

The practical application of HI, which aims to protect populations in other states from atrocity crimes, remains ambiguous. The absence of definitive criteria that delineate the parameters of humanity as the foundation for legitimacy leads to inconsistent execution and double standards in the application.[16] For instance, HI under the RtoP framework has been implemented in Libya, Mali, Gambia, and the Democratic Republic of the Congo. In contrast, the severe human

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11 Nicholas J. Wheeler, Saving Stranger: HI in International Society (Oxford: Oxford University Press, 2000), 11.

12 Viola Trebicka, "Lessons from the Kosovo Status Talks: On HI and Self-Determination," *Yale Journal of International Law* 32 (2007): 255.

13 Federica I Paddeu, "HI and the Law of State Responsibility," *European Journal of International Law* 32, no. 2 (August 19, 2021): 649, https://doi.org/10.1093/ejil/chab041.

14 Nicholas J. Wheeler, "Legitimating HI: Principles and Procedures," *Melbourne Journal of International Law* 32, no. 2 (2001): 550–67.

15 James Pattison, *HI and the Responsibility To Protect* (Oxford: Oxford University Press, 2010), https://doi.org/10.1093/acprof:oso/9780199561049.001.0001; Cristina G. Badescu, "Authorizing HI: Hard Choices in Saving Strangers," *Canadian Journal of Political Science* 40, no. 1 (March 19, 2007): 51–78, https://doi.org/10.1017/S0008423907070084; Frederick Harhoff, "Unauthorised HIs – Armed Violence in the Name of Humanity?," *Nordic Journal of International Law* 70, no. 1–2 (2001): 65–119, https://doi.org/10.1163/15718100120296520.

16 Sidita Kushi, "Selective Humanitarians: How Region and Conflict Perception Drive Military Interventions in Intrastate Crises," *International Relations* 38, no. 2 (2024): 216–255, https://doi.org/10.1177/00471178221104344.

suffering and widespread violations of human rights occurring in Syria, the Occupied Palestinian Territory, Myanmar, and Ukraine have not prompted similar intervention. It is crucial to establish clear criteria for justifying intervention within the RtoP framework to ensure that the actions are based on well-defined principles and standards. Although substantial literature exists on HI legitimacy as the RtoP third pillar within international law, this study focused on the principle of humanity, often cited by interveners to conduct intervention. Therefore, this study aims to address the broader legal implications of the principle of humanity in international law and the criteria of humanity needed to justify the intervention under the RtoP framework.

Methods

This study aims to explore the wider legal ramifications of the principle of humanity within international law-making and to establish the parameters necessary for legitimizing the intervention. To accomplish these objectives, a regulatory, conceptual, and case approach was used. This study examined international law, using both hard and soft law instruments in the analysis. These include treaties, customary international law, court decisions, as well as declarations, resolutions, and guidelines that govern state behavior within the international community. Several concepts used include the concept of humanity, RtoP, jus cogens, erga omnes obligations, and jurisdiction. These concepts are critical for constructing legal arguments regarding the influence of principles of humanity on the international law-making process. In addition, several cases were cited, including those from the International courts, to provide strong arguments for establishing limitations on the principle of humanity, which serves as the foundation for HI legitimacy.

Result and Discussion

Legal implications of the principle of humanity within International Law

The concept of "humanity" extends beyond a strictly legal discourse, residing instead within the domains of philosophy and ethics. However, humanity has become increasingly significant in international law and politics, as certain nations, groups of countries, and international organizations invoke it as a justification for HI. Examining the nature of and the potential role as a foundation for intervention is essential for understanding the influence on international relations.

Robin Koupland identified two perspectives on humanity, namely "humanity-humankind" which represents humanity as a collective existence of human beings, and "humanity-sentiment", related to behavior or disposition". Koupland explained that the meaning of humanity is inherently ambiguous. In this context, humanity reflects a drive to limit the potential for armed conflict and to mitigate the impacts

on security and health.[17] However, this raises a critical question, namely, do personal security and health constitute the ultimate objectives of HI? Considering humanity in terms of security and health shows that various sectors of international law aim to mitigate armed violence, thereby fostering the broader principles of humanity. Koupland further added that clarifying the concept of humanity is essential for enhancing legal dialogue and addressing the complexities of armed violence and the regulation in international law.[18]

Vasil Gluchman approaches humanity with respect for human life, grounding the concept more in natural or biological instincts than purely in moral (or other) considerations. Humanity can be divided into two types based on human behavior, including biological and moral qualities. Biological qualities arise from natural or social bonds with familiar people, while moral qualities are demonstrated through altruistic actions toward strangers, reflecting a uniquely human sense of morality. This distinction underscores the difference between humans and animals. "Humane" behavior, as evident in most manifestations of human conduct, has primarily biological or natural dimensions, which can also be observed in other animal species, particularly mammals and primates. These behaviors also include actions aimed at protecting and sustaining life. However, beyond biological or natural dimensions, humanity embodies a moral aspect unique to humans. The moral aspect is evident in actions toward strangers, such as helping individuals on the street or providing aid to those in distant countries affected by wars or natural disasters. These altruistic actions, and the moral values being represented, are exclusive to humans and cannot be found in other species.[19]

In discussing HI, Vasil Gluchman conception of humanity provides a compelling moral foundation. The author presents an analogy as follows: *"when we embark on a journey to help someone enduring torture and rape, even if we do not know their identity, our instinct compels us to assist. Similarly, when mass atrocities occur within a state, such as genocide or grave breaches of human rights, nations are instinctively obligated to intervene and protect individuals from these grievous acts."* HI within the RtoP framework derives legitimacy from the extraordinary nature of mass crimes, which shock the human conscience and prompt a moral obligation for countries and the international community to collaborate in preventing and addressing horrific situations.

Immanuel Kant "formula of humanity" states that humans should never be treated merely as a means to an end but always be ends in themselves.[20] Within this framework, two primary principles arise, namely the "respect requirement,"

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17 Robin Koupland, "Humanity: What Is It and How Does It Influence International Law?," *International Review of the Red Cross* 83, no. 844 (2001): 969.

18 Koupland, "Humanity: What Is It and How Does It Influence International Law?"

19 Vasil Gluchman, "Humanity in Context of Professional Life," *European Scientific Journal* 10, no. 10 (2014): 184–91.

20 Christine M. Korsgaard, "Kant's Formula of Humanity," in *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 106–32, https://doi.org/10.1017/CBO9781139174503.005.

which mandates treating others with inherent respect, and the "mere means" requirement, prohibiting the view of others purely as instruments without acknowledging intrinsic value. Humans, possessing rationality, will, and moral agency, must be regarded as the ultimate purpose of all actions. Therefore, Kant positioned human beings as both the foundation and purpose of moral imperatives, asserting that morality should always be directed to humans. In the context of HI, Kant philosophy underscores a moral duty to promote humanity and justice. It supports HI by emphasizing the moral duty to protect humanity. Furthermore, Kant "formula of humanity advocates for the safeguarding of human rights and postulates that intervention may be warranted when the intention is to uphold the dignity and welfare of individuals on a global scale.

The relationship between humanity, humanitarianism, and state sovereignty is also elaborated by Anne Peters, who stated that sovereignty is evolving into a concept oriented toward the protection of humanity. State sovereignty exists primarily to uphold human rights and meet the needs of individuals. Failure to protect these rights may result in the suspension of sovereignty. Peters further suggests that the international societies, particularly the UNSC, have the responsibility to authorize HI under specific conditions to prevent or address egregious human rights violations.[21] Therefore, humanity pertains to humans as beings created by God Almighty, endowed with mind, emotion, and intention. Moral values, intrinsic to humans, enable people to extend help to strangers who are in need due to war or natural disaster. These compassionate actions are unique to humans and cannot be found in other creatures. In essence, the moral qualities possessed by humans are used to legitimize intervention in another sovereign nation.

The notion of humanity has historically influenced international law-making. The concept is extensively discussed in the context of humanitarian work and IHL. It serves as one of the basic principles of the International Red Cross.[22] The principle of humanity mandates humane treatment of individuals in times of conflict.[23] The concept was first used in 1868 as the "law of humanity," in "the Declaration Renouncing the Use, in Time of War, of Certain Explosive Projectiles," which was adopted on November 29/11 December 1868. This document is more commonly known as the Declaration of St. Petersburg, 1868, which recognizes the law of humanity and includes two important principles of IHL, namely unnecessary suffering and military necessity.

The St. Petersburg Declaration greatly influenced the development of contemporary IHL, particularly regarding the methods in armed conflict, as outlined in the Hague Convention of 1899 and 1907. The law of humanity,

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21 Anne Peters, "Humanity as the A and Ω of Sovereignty," *The European Journal of International Law* 20, no. 3 (2009): 513–544, https://doi.org/10.1093/ejil/chp026.

22 Natalie Deffenbaugh, "De-Dehumanization: Practicing Humanity," *International Review of the Red Cross* 106, no. 925 (2024): 56–89, https://doi.org/10.1017/S1816383124000079.

23 Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction* (Geneva, Switzerland: International Committee of the Red Cross, 2019).

recognized in the preamble of the St. Petersburg Declaration, is commonly referred to as the "Martens Clause". This clause is articulated in the Preamble to the Hague Convention II of 1899 and the Hague Convention IV of 1907 concerning the Laws and Customs of War on Land. Martens Clause declares that in situations where humanitarian law lacks specific regulations, the governing principles should be derived from international law established by state practice, humanitarian law, and the dictates of the public conscience. It thereby requires all parties within armed conflict to ensure that the actions remain consistent with the principle of humanity, even in situations lacking explicit legal regulation. Although international law does not explicitly prohibit these actions, Martens clause is referenced in the preamble of the Geneva Convention 1949 (63/I, 62/II, 142/III, 158/IV), as well as Article 1 (2) of Additional Protocol I of 1977, and the Conventional Weapons Convention established in 1980. The clause has become a widely accepted practice in international law and attained customary international law status.

The influence of the St. Petersburg Declaration also extends to the development of contemporary IHL, particularly regarding warfare strategies as outlined in the Principles of the Hague Convention of 1899 and 1907. Restrictions explicitly outlined in the three Hague Declarations of 1899 include 1) the prohibition of *dum-dum bullets*, 2) the temporary ban on launching balloon projectiles and explosive materials during a five-year period that ended in 1905, and 3) the prohibition of projectiles that produce toxic gases. The concept of the law of humanity, as recognized in the preamble of the St. Petersburg Declaration, is known as the Martens Clause. This clause has two functions, first, it prevents the speculation that anything not explicitly forbidden by treaties is allowed. Second, the clause can evolve in response to different types of conflict situations and technological advancement.[24]

Theodor Meron postulates that the law inherent in the Martens Clause refers to the principle of humanity.[25] The principle is closely related to fundamental humanitarian considerations, an idea that judges, arbitrators, scholars, and others have long endeavored to interpret with greater specificity. At the core, the principle of humanity asserts that every individual deserves to be treated with dignity and compassion in all circumstances, without any discrimination.[26] This principle comprises three interrelated elements, namely preventing unnecessary

[24] Robert Kolb and Richard Hyde, An Introduction to the International Law of Armed Conflicts (Oxford: Hart Publishing, 2008).

[25] Theodor Meron, "The Martens Clause, Principles of Humanity, and Dictates of Public Conscience," *American Journal of International Law* 94, no. 1 (January 27, 2000): 79, https://doi.org/10.2307/2555232.

[26] International Committee of the Red Cross, "The Fundamental Principles of the Red Cross: Commentary," January 1, 1979, https://www.icrc.org/en/doc/resources/documents/misc/fundamental-principles-commentary-010179.htm.

suffering, protecting human life, and ensuring respect for each individual rights, including life, freedom, and all aspects integral to existence.

Contemporary international law is replete with fundamental humanitarian considerations. These considerations have been recognized in international case law,[27] particularly regarding state obligations. For instance, in the Corfu Channel case (1949), ICJ judges observed that Albania obligations were not derived from the Hague Convention of 1907, No. VIII, applicable in times of war. Instead, the obligations were founded on certain general and well-recognized principles, namely the basic humanitarian considerations, applied even in peacetime.[28] Two years later, the International Court of Justice (ICJ), in the Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1951), emphasized the "special characteristics" of the Convention, stating that it was clearly adopted for humanitarian and civilizing purposes. Furthermore, in the Nicaragua v. United States case (1986), the ICJ underlined fundamental considerations of humanity, asserting that states have obligations arising from general principles of humanitarian law.[29]

Within IHL, as reflected in the Martens Clause, the principle of humanity is clearly articulated in the common article of the Geneva Conventions of 1949. Article 3 establishes minimum humanitarian standards, outlining universal rules that constitute the essential basic requirements for humane treatment in all situations and conditions.[30] In the 1986 decision regarding military and para-military activities (United States vs. Nicaragua), the ICJ affirmed that the rules outlined in Article 3 represent a fundamental criterion for basic humanitarian consideration. The Secretary-General of the United Nations frequently references a statement in the report concerning the Statute of the ICTY, asserting that Article 3 embodies a fundamental element of humanity during armed conflict. In the ICTY trial on the Martic case, the courts explicitly prohibited attacks on civilians. Additionally, the court also admits a general principle that limits the methods and means of warfare based on essential basic considerations of humanity. This principle applies to all armed conflicts and serves as the foundation for the ambiguous framework of IHL.[31] The general standards of humanity outlined in Article 3 are further amplified in Article 4 of Additional Protocol II of 1977 of the Geneva Conventions. Article 4 mandates that all individuals under the control of the parties must be treated humanely in all circumstances, without discrimination.

The principle of humanity not only influenced the development and formation of IHL, but IHL also became the philosophical foundation for the creation of international human rights law. This law developed from the horrific

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27 Antônio Augusto Cançado Trindade, *International Law for Humankind* (Leiden: Brill | Nijhoff, 2010), 395, https://doi.org/10.1163/ej.9789004184282.i-728.

28 Meron, "The Martens Clause, Principles of Humanity, and Dictates of Public Conscience."

29 Cançado Trindade, *International Law for Humankind.*

30 Kolb and Hyde, *An Introduction to the International Law of Armed Conflicts* , 261.

31 Meron, "The Martens Clause, Principles of Humanity, and Dictates of Public Conscience," 83.

international experience of the Nazi genocide that tore humanity and human dignity. The grievous experience has made the world turn back to natural law theory that had been opposed by utilitarians and positivists such as Jeremy Bentham and John Austin.[32] After the extraordinary outrage of World War II, the revival of natural rights resulted in the design of the principal international instruments of human rights. Following the establishment of the United Nations, the international community agreed to make human rights a benchmark of common achievement for all people and all nations (common standard of achievement for all peoples and all nations). This consensus is reflected in the acceptance of the human rights legal regime by the international community, as prepared in the United Nations system, called the International Bill of Human Rights. IHRL instruments recognize that human rights belong to individuals solely due to the nature as humans. These rights do not emanate from society but stem from dignity as human beings, the creatures of God the Almighty.

IHRL and IHL are both fundamental for the protection of humanity. Therefore, these two areas of law are interconnected to each other.[33] The transformation of the law from ancient to modern war arises from humanitarian values derived from various factors. The human dimension generally states that human rights law is based on humanitarian considerations, even though the law is actually formed through the balance between humanitarian and military needs.[34] Presently, the expansion of the doctrine of HI and RtoP is influenced by the concept of humanity in the framework of human security. RtoP has been identified as the preferred normative tool for preventing and stopping atrocity crimes through collective action. At the core, RtoP imposes two obligations on the international community, first, the responsibility to care for vulnerable individuals trapped in dangerous situations, and second, the duty to refrain from unilateral violations of fundamental international norms.[35]

Based on the description above, the concept of humanity has affected the development and establishment of international law. The rise in international crimes such as genocide and war cannot be separated from the influence of humanity. Furthermore, the development of the doctrine of HI within the RtoP framework is also affected by the humanity concept, even though it has triggered a controversial issue in international law, especially in IHL and IHRL. In this law, the concept of humanity is the basis of philosophy. The humanization of public

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32 Rhona K. M. Smith et al., *Hukum Hak Asasi Manusia*, ed. Knut D. Asplund, Suparman Marzuki, and Eko Riyadi (Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia, 2008), 12–13.

33 Elizabeth M. Bruch, *Human Rights and HI Law and Practice in the Field* (New York: Routledge, 2018).

34 René Provost, *International Human Rights and Humanitarian Law* (Cambridge: Cambridge University Press, 2002), 5, https://doi.org/10.1017/CBO9780511495175.

35 Ramesh Thakur, *Reviewing the Responsibility to Protect* (New York: Routledge, 2018), https://doi.org/10.4324/9781351016797.

international law, influenced by the concept of humanity, has shifted the focus from the state to the individual.

Threshold of Humanity for the Legitimacy of HI

The concept of humanity, as outlined in the previous section, suggests that intervention may be justified to prevent and halt severe humanitarian crises within a particular country to assist victims. However, each country sovereignty, as guaranteed by the UN Charter, must be respected and cannot be interfered with by any foreign entity. This raises a question about what limitations within the concept of humanity allow foreign intervention to be considered legitimate. Specifically, what type of humanitarian situation permits intervention into another country sovereignty? This study postulates that there are at least three conditions under which HI can be justified, including the occurrence of extraordinary acts of cruelty violating non-derogable rights, the presence of crimes under universal jurisdiction, and the state unwillingness or inability to stop the crimes. However, HI can only be applied when the state in question is deemed unable or unwilling to address the crisis.

Extraordinary Acts of Cruelty

History is full of cruel, evil, and inhuman acts. The examples include atrocities committed by the German Nazis during World War II against the Gypsies and Jews, the Serbian army massacre of Bosnian Muslims in Srebrenica, and recent acts of sexual violence in India. Child abuse, serial killings, and the torture inflicted upon prisoners at Guantanamo also fall within this dimension of brutality. This raises the question of what degree of cruelty and atrocity is significant enough to warrant intervention in a sovereign state under the legitimized HI?. Sovereignty is a principle recognized by civilized nations and upheld by the UN. Article 2(7) of the UN Charter prohibits intervention in the domestic matters of another nation, except for self-defense and with UNSC authorization based on Chapter VII of the UN Charter. Therefore, intervention generally contradicts international law. However, how does this principle apply when intervention is undertaken in the name of humanity? What forms of brutality constitute a violation severe enough to justify overriding sovereignty?

The threshold for HI should be defined by acts that strip individuals of dignity and humanity on a large scale. Two elements are essential to establish this threshold, namely the presence of extraordinary mass atrocities and the large scope of occurrence. These elements must coexist for the justification of HI.

The first element is centered on acts of extraordinary and brutal cruelty, which inflict severe physical and mental suffering on victims. According to the Declaration of Minimum Humanitarian Standards, these prohibited acts include (1) atrocities against life and health, such as murder, torture, mutilation, rape, detention, and other forms of dehumanizing conduct, (2) collective punishment, (3) taking hostages, (4) forced disappearances, (5) pillaging, and (6) depriving

populations of essential resources, including food, water, and medicine, (7) use of human shields.

Aside from the acts outlined in the Turku Declaration, other severe actions constitute significant violations of the law of humanity. According to Article 50 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949), significant breaches in armed conflict may include deliberate killings, torture, persecution, inhuman acts such as biological experiments, intentional infliction of severe suffering, wanton destruction or appropriation of property, deportations, unlawful detention, hostage-taking, attacks on civilians and civilian objects, assaults on medical personnel, and actions causing widespread casualties, injuries, and mass destruction. Violations also include attacks on protected sites, mutilation, use of humans in medical experiments, deployment of poison or poisonous weapons, or any weapon causing unnecessary suffering, as well as acts of rape, sexual exploitation, forced prostitution, forced reproduction, forced sterilization, and sexual harassment. Acts of genocide include the intent to destroy specific groups based on religion or race, namely murders of particular group members, creating conditions that inflict serious physical or mental harm, preventing births, and forcibly transferring children from one group to another.[36] Meanwhile, crimes against humanity include murder, mass expulsions, severe deprivation of personal freedom, torture, rape, sexual slavery, forced sex work, involuntary pregnancy, forced sterilization, forced displacement, and apartheid.

There are at least two reasons why the actions described in the previous paragraphs are considered to be extraordinary acts of cruelty. First, actions such as torture, extermination, rape, biological experimentation, and other inhumane acts represent the most extreme forms of human behavior. Humanity requires that every person be treated with fairness and should never endure torture, humiliation, or inhumane treatment. Acts such as rape, murder, torture, and extermination violate the boundaries of humanity. Second, from the perspective of Natural Law, the actions are not only extreme and contrary to the principles of humanity as a divine creation but are also morally reprehensible and infringe upon fundamental human rights. Natural Law maintains a clear distinction between right and wrong, as Thomas Aquinas stated, "Do good and avoid evil." Torture, along with acts including rape, ethnic cleansing, biological experimenttation, and slavery, is universally condemned as gross and evil deeds, morally indefensible under Natural Law, and universally denounced by the international community.

The second element of extraordinary acts of cruelty is the widespread and massive scale occurrence. The ICTR Statute, particularly Article 3, specifies that a widespread and massive scale of atrocity and cruelty is reflected in the number

[36] United Nations, "Rome Statute of the International Criminal Court" (1998).

and diversity of casualties.[37] The Nuremberg Charter interprets this as atrocities extensive enough to include various situations associated with a large number and range of victims, often caused by a series of massive, inhumane actions. A well-known example is the My Lai massacre. Under the command of Lt. William Calley, approximately 500 Vietnamese civilians in My Lai village were subjected to mass killings, sexual violence, and other forms of cruelty in March 1968. In September 1969, Calley also led the organized murder of 109 Vietnamese near My Lai. During the massacre, about five hundred villagers, primarily women, children, babies, and elderlies, were rounded up and attacked by soldiers from Charlie Company.[38]

Another event that deeply shocked humanity was the civil war in Somalia from 1991 to 1992. This conflict destroyed 60% of the government infra-structure, forcing medical care and healthcare services to operate amid the ruins. The destruction killed 70% of the livestock, and agricultural activities ceased as farmers could no longer plant crops, leading to widespread harvest failures. Nearly one-third of Somalia pre-war population (approximately 6 million) was displaced, with around one million Somalis becoming refugees, including 400,000 who fled to neighboring Kenya. These circumstances ultimately triggered a local famine that ravaged the conflict zones, particularly in the "triangle of death" region among the cities of Kismayo, Baardheere, and Baidoa. By 1992, over 4.5 million Somalis were suffering from extreme hunger, and the famine claimed an estimated 300,000 to 350,000 lives from 1991 to 1992.[39]

The widespread cruelty witnessed in events such as those in Vietnam and Somalia demonstrates extraordinary acts of inhumanity. According to Immanuel Kant philosophy, humans possess conscience and will. Therefore, each person must be treated as an end, not as objects or property to be used wantonly. This principle indicates that extraordinary acts of cruelty on a massive scale, causing the deaths of many people, displacing countless others from homeland, destroying essential infrastructure, and committing atrocities such as rape and torture, are egregious violations of humanity, exceeding the moral limits of human conduct.

The concept of humanity requires that all human behaviors should aim to protect and preserve life, not to inflict harm or destruction through brutality. Fundamentally, a person can act as a good Samaritan, extending help to a stranger or to foreign citizens suffering due to war or other humanitarian crises. This altruism arises from humanity intrinsic value, which defines human beings. Based on this fundamental concept, massive, extraordinary acts of cruelty that transcend the limits of humanity can serve as moral justification for HI.

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37 M. Cherif Bassiouni, *Crimes against Humanity: Historical Evolution and Contemporary Application* (New York: Cambridge University Press, 2011), 186, https://doi.org/10.1017/CBO9780511976537.

38 John Janzekovic, *The Use of Force in HI: Morality and Practicalities*, 1st ed. (New York: The Use of Force in HI Morality and Practicalities, 2006), 16.

39 Melissa Labonte, *Human Rights and Humanitarian Norms, Strategic Framing, and Intervention: Lessons for the Responsibility to Protect* (London: Routledge, 2013), 66.

Atrocities Crimes Under Universal Jurisdiction

Beyond the occurrence of extraordinary acts of cruelty, another limitation on the concept of humanity as a basis for justifying intervention is the existence of international crimes subject to universal jurisdiction. International crimes are actions that violate fundamental interests protected by International Law.[40] A crime may be classified as an international crime when it is recognized by a treaty.[41] The term "most serious crime," as defined by the International Criminal Court (ICC) Statute, reflects offenses that deeply concern the entire international community. These crimes, which threaten global peace, security, and prosperity[42] include genocides, crimes against humanity, war crimes, and aggression.[43] International crimes typically fall under universal jurisdiction due to two key reasons. First, the crime is considered grossly cruel and widespread. Second, the national legal system has proven insufficient to enforce laws against these crimes, particularly when the scene is outside a state territorial jurisdiction, such as in international waters.[44] Given the international scale, the extreme nature of these crimes, the scale of the widespread attack, and the occurrence outside the state territorial jurisdiction, the universal jurisdiction applies to hold perpetrators accountable. Universal jurisdiction is a legal doctrine that mandates domestic courts to prosecute and punish individuals who commit crimes considered offenses against humanity, regardless of the location or the nationality of the victim or perpetrator. This principle overrides the usual jurisdictional requirements in international law.[45]

Universal jurisdiction has become a rather controversial issue in international law. This is because the jurisdiction refers to crimes merely based on the nature, regardless of the location, the alleged perpetrator citizenship, and other related factors.[46] At the same time, international crimes disrupt the order of law and pose potential threats to world peace. In response, international law allows and grants each state the right to address crimes, effectively enabling universal jurisdiction. This means any state may intervene or pursue legal action when crimes occur.

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40 Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge University Press, 2007), 4, https://doi.org/10.1017/CBO9780511801006.

41 Bassiouni, *Crimes against Humanity: Historical Evolution and Contemporary Application*, 4.

42 United Nations, Rome Statute of the International Criminal Court, para. 3 of the Preamble.

43 Preparatory Commission for the International Criminal Court, "Report of the Preparatory Commission for the International Criminal Court. Addendum. Part II, Finalized Draft Text of the Elements of Crimes," November 2, 2000, https://www.refworld.org/legal/leghist/icc/2000/en/46337.

44 Susan Nash Ilias Bantekas, *International Criminal Law*, 2nd ed. (London: Cavendish Publishing Limited, 2003), 156.

45 Nergis Canefe, *Crimes Against Humanity: The Limits of Universal Jurisdiction in the Global South* (Cardiff: University of Wales Press, 2021).

46 Luc Reydams, "The Rise and Fall of Universal Jurisdiction," in *Routledge Handbook of International Criminal Law* (London: Routledge, 2010), 331.

Within the framework of the international law system, the category of crimes under the universal jurisdiction is generally based on two criteria, namely, the crime takes place in *terra nullius* (territory not under any state jurisdiction), or is classified as an international crime by convention or treaty under universal jurisdiction. Examples of crimes typically occurring in *terra nullius* include sea piracy, the slave trade, and trafficking in women and children. These are categorized as crimes committed beyond any state territorial jurisdiction.[47] International crimes classified by convention or treaty include aircraft piracy,[48] sea piracy,[49] attacks on diplomats,[50] terrorism,[51] apartheid,[52] torture,[53] genocide,[54] crimes against humanity,[55] and crimes of war.[56]

The most critical question is that do all of the aforementioned crimes breach the boundaries of humanity to an extent that justifies the application of HI. These international crimes are examples of extraordinary acts of cruelty that shock the conscience of humanity, particularly in situations where states are either unwilling or unable to end the crimes. Moreover, in some cases, the states are even perpetrators. A fundamental principle institutionalized in international law is the sovereignty of each state, which must be respected by other nations. In this framework, respect for state sovereignty prohibits any intervention unless a compelling, legitimate reason is decreed by international law. Consequently, not every crime recognized by the international community under universal jurisdiction justifies the implementation of HI. Determining the position of a crime under universal jurisdiction depends on the criterion of being exceptionally and extraordinarily cruel, to the extent that it offends or outrages the moral conscience of humanity. The next question is what types of crimes meet the criterion. The phrase "shocking the moral conscience of humanity" is consistent with public conscience, suggesting a broad consensus within the international community that the crime in question flagrantly violates morality and exceeds the

47 William A. Schabas, *An Introduction to the International Criminal Court* (Cambridge: Cambridge University Press, 2004), 73, https://doi.org/10.1017/CBO9781139165310.

48 United Nations, "Hague Convention for the Suppression of Unlawful Seizure of Aircraft" (1971); United Nations, "Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation" (1971).

49 United Nations, "United Nations Convention on the Law of the Sea" (1982).

50 United Nations, "Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents" (1977).

51 United Nations, "International Convention Against the Taking of Hostages" (1983).

52 United Nations, "International Convention on the Suppression and Punishment of the Crime of Apartheid" (1973).

53 United Nations, "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (1987).

54 United Nations, "Convention on the Prevention and Punishment of the Crime of Genocide" (1948); United Nations, Rome Statute of the International Criminal Court.

55 Article 7 of the Rome Statute of the International Criminal Court.

56 Article 8 of the Rome Statute of the International Criminal Court.

bounds of humanity due to the cruelty and scale. The Rome Statute preamble identifies three categories of international crimes considered unimaginable atrocities which deeply shock the conscience of humanity, including genocide, crimes against humanity, and war. These three crimes constitute exceptional acts of cruelty beyond the limits of humanity. The ICTR refers to genocide as "the crime of crimes".[57]

State Must be Unwilling or Unable to Halt Atrocity Crime

The two limiting factors on the principle of humanity, namely, extraordinary acts of cruelty and international crimes under universal jurisdiction, can legitimize the implementation of HI when the state is unwilling or unable to stop the crimes. In the context of Article 51 of the UN Charter, international law permits violations of the territorial sovereignty of "unwilling or unable states" during operations, including targeted killings, aimed at neutralizing attacks from non-state actors according to existing law. However, there is no clear definition of being unwilling or unable in international law theory and practice. The Rome Statute of the ICC is the only international treaty that uses the precise phrase unwilling or unable in relation to states.

Article 17 of the Rome Statute provides the criteria for determining a state unwillingness, as follows (1) legal measures have been taken, but the state protects the perpetrators from responsibility for the crimes committed, (2) there is an unjustified delay in legal proceedings, demonstrating an unwillingness to bring the perpetrator to justice, and (3) existing legal measures are not executed independently or impartially. On the other hand, a state inability to prevent atrocities may be evident through a partial or total collapse of the judicial system, preventing the presentation of perpetrators, evidence, or witnesses before the court. The process of determining a state inability or unwillingness, as outlined in the 1998 Rome Statute, focuses on assessing whether the judicial process for the perpetrators is conducted at the national level or falls under the jurisdiction of the ICC.

In the context of HI, a state can be considered unwilling and unable in two circumstances. First, when the state cannot prevent, stop, or punish perpetrators who have committed crimes without any connection to the government. Second, when the state is the perpetrator of the crime, indicating that the government has zero effective control over the affairs. Examples of this include the conflicts in Rwanda and Libya. During the Rwandan conflict from April 8, 1994, to July 18, 1994, the Prime Minister Jean Kambanda orchestrated a widespread and

[57] International Criminal Tribunal for Rwanda, "Prosecutor v. Jean Kambanda (Case No. ICTR 97-23-S)," *Judgement and Sentence* (Arusha, September 4, 1998); International Criminal Tribunal for Rwanda, "Prosecutor v. Serushago (Case No. ICTR-98-39-S)" (Arusha, February 5, 1999); William A. Schabas, *Genocide in International Law: The Crimes of Crimes*, 1st ed. (Cambridge: Cambridge University Press, 2000), 385.

systematic assault against the Tutsi people, aiming for destruction. The massacre was fueled by delivering incendiary speeches, distributing weapons, and leading cabinet meetings where the genocide of the Tutsi population was planned and coordinated.[58] In the 2011 Libyan conflict, Gaddafi, as head of state, responded to mass demonstrations with intimidation, detention, and murder. The protests escalated into a conflict, during which Gaddafi condemned all demonstrators as traitors, declaring over a radio broadcast that forces would "come tonight, and there will be no mercy." The subordinates were ordered to search for traitors "house by house, "*house by house*, *alley by alley*".[59] The UN High Commissioner for Human Rights described the conflict in Libya as "shocking and brutal." Hundreds of people died, many more were arrested, thousands were injured, and the Libyan population suffered tremendously. Therefore, acts which exceed the bounds of humanity, such as extraordinary cruelty and international crimes under universal jurisdiction, can indeed justify HI in cases where the affected country is both unwilling or unable to prevent or stop the crimes.

Conclusion

In conclusion, the concept of humanity has historically played a crucial role in the international law-making process. The development of international humanitarian and human rights law, particularly in the dimension of criminal law, is closely related to the concept of humanity. This is evident in the acknowledgment of international crimes that deeply violate the principle of humanity, including war and genocide. Humanity is also invoked as a moral basis of HI aimed at ending mass atrocities in other countries. However, each country has sovereignty, which cannot be infringed upon by other states, as guaranteed by the UN Charter and respected by every nation. Therefore, HI is only permitted during extraordinary acts of cruelty that exceed the bounds of humanity under universal jurisdiction. Furthermore, HI is justified when the state is unwilling or unable to prevent and stop the crimes occurring within the jurisdiction. The terms unwilling or unable under the RtoP framework lack a precise definition, leading to divergent interpretations and applications in practice. Therefore, further studies are needed to examine and clarify the nature of unwilling or unable in the international legal system.

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[58] Schabas, *Genocide in International Law: The Crimes of Crimes*.

[59] Zachary D.A. Hingst, "Libya and the Responsibility to Protect: Building Block or Roadblock," *Transnational Law and Contemporary Problems* Spring (2013): 247.

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