

International Law And Legality Of U.S Humanitarian Military Intervention In Syria

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Abstract

This research paper investigates the legality of U.S humanitarian military intervention in the Syrian civil war. Civil war in Syria remains one of the most controversial conflicts in the 21st century. Loss of civilian lives, destruction of infrastructure and intervention of multiple states have created several aspects of the conflict. U.S as one of intervening states has supported the rebel forces in the civil war to topple the Assad's government. This research analyzes U.S humanitarian military intervention in Syrian civil war, findings of this paper shows that U.S intervention in Syria was not legal under the principles of international law. This study also reveals that U.S interventionist policy pursues some strategic, political and economic interests in Syrian civil war which it aimed to achieve.

Key words: International Law, Humanitarian Military Intervention, U.S, Syria, Civil War.

Introduction

The prolonged Syrian civil war is one of the most controversial conflicts that troubled the international system in the 21st century. Syrian civil war was a result of Arab uprising that was against the dictators which spread throughout the Middle East. The conflict caused the death of more than 400,000 people and worst humanitarian crisis with a total of 7.6 million people displaced and about 3.2 million people were seeking refuge in neighboring countries (Berti, 2015; Karim, 2017). Due to its many facets and strands, the Syrian civil war is described as a controversial conflict, some of which are the proxy war between international and regional powers (US, Russia, Saudi Arabia and Iran), war against terrorism (ISIS) and Al-Qaeda. United Nations efforts in the line with Chapter VII, articles 39, 40, and 41 of the

charter have been geared towards resolving the conflict. The efforts of UN have been made in the form of resolutions which have faced vetoes from the permanent members of United Nations Security Council (UNSC). Despite UN efforts, many states intervened in Syrian civil war supporting different sides. US was one of the main intervening powers in the conflict commenced its intervention in September 2014, although, Obama made calls for the resignation of Assad. Intervention carried out by US in Syria has witnessed the presence of American forces. US in its intervention supported the rebel forces to overthrow the Assad regime (Siddique & McCarthy, 2013).

The support has manifested in providing arms to the rebel forces and deployment of US troops (Gomez, 2017). Different scholars have conducted research on the legality of US

intervention in Syrian civil war. Beskardes (2016), examines the legal aspects of US intervention in Syria and described that the intervention is illegal as it violated the provision of the UN Charter on humanitarian intervention. Van der Vyver (2015) has similar view and confirmed the illegality of the intervention by contrasting it with the International Court of Justice (ICJ) decision on Nicaragua case. US intervention in Syria was also labelled illegal because US provided arms to rebel groups to overthrow the legitimate government. (Abratt, 2017) has a contrary view and asserts that US intervention in Syrian civil war was legal because it conforms the doctrine of Responsibility to Protect (R2P) which authorizes states to protect civilian from human rights violations if a state fails to do so. There seems to be no agreement between scholars on the legality of US intervention in Syria. The studies conducted on US intervention also do not examine the links between US strategic interest and its intervention in Syria. Therefore, this research study aims to investigate the legality of US intervention and its strategic interests in Syrian civil war.

The Concept of International Law

International law is a term denotes to a broader concept, it possesses many strands which covers many areas of international politics. The term international law has various definitions and lacks a universally accepted definition. First there is a need to understand the term law. Law represents a set of rules and principles that guide the behavior of man and supported by the forcible power of a legitimate authority. The term law includes rules and principles and laws articulated and executed by a legitimate and sovereign authority (Kwarteng, 2018). The main features of law is that it indicates the particularities of the society in which it operates (Shaw, 2008). Perpetually, the term international law refers to the codified set of rules and principles that directs the activities and relations of nation states and non-state entities in international system.

Shaw (2008) further emphasized that the term international law refers to the elements that fixes rules and controls the behavior of states in international system. International law also deals with the diplomatic relations and military disputes between nation states (Schreuer, 2010). International law is also refers to the set of rules and principles that can either be implemented on states on the basis of multilateral treaties or customary international law. Although, international law is a term refers to rules and principles that guides states actions, scholars questions the presence of international law as law. The main matters is the enforcement of international law and the absence of law making authority (Wolfrum, 2011).

The main characteristic of law is the existence of an enforcement authority that relies on authority conferred in the sovereign (Kwarteng, 2018). In domestic law, the government is a sovereign authority that implement the domestic law on its population to prevent crimes. These disciplinary actions are taken by executive branch formed by the government or constitution. Local laws can be taken as example that are enforced by government officials, federal body, state or local police. The absence of such law execution mechanisms in international law makes it controversial in international system. Implementation is a challenge in International law due to many factors (Bradford and Ben-Shahar, 2012). In international system states seemingly go against the principles of international law defined in UN charter. UNSC has the authority under Article 94, paragraph 2 of the charter to implement the international law (Stulajter, 2017).

However, conflicting nature of international law can be seen in different cases. A weak example of the implementation of international law is seen in Nicaragua oil case. US employed the use of force against Nicaragua through opposition armed groups which supported by western countries. The armed groups were involved in activities like interference in territorial water, use of arms against

government, attacks on oil refineries and naval bases (Zainab et al., 2018). The government of Nicaragua filed the case before the International Court of Justice (ICJ) cited that the use of force and breach of state sovereignty are prohibited in the UN Charter. The government of Nicaragua also demanded compensation for the damaged caused by western backed opposition forces. US was found guilty in ICJ for breaching of state sovereignty and violation of international law but US refused to follow the verdict of the ICJ and did not pay the compensation cost as demanded (Zainab et al., 2018). The case shows weak enforcement power of international law.

International Humanitarian Law

International humanitarian law is one of different branches of International law. In international system the existence of international humanitarian law made necessary where states struggle to achieve their strategic goals. Implementation of international humanitarian law is necessary in war situation which involves mass atrocity of human lives and violation of civilian's rights (Melzer, 2016) the international humanitarian law is defined as a set of rules that seek to protect human rights in any armed conflict (Melzer, 2016). International humanitarian law denotes to the set of rules articulated from international treaties or customs which are applicable to wars or armed conflicts, particularly intended to solve humanitarian crisis that may occur from conflict (Bouvier and Langholtz, 2012). International humanitarian law seeks to make the rudiments of military requirement balance and carry out war in a more humanitarian way (Wagner, 2011). In this discourse military requirements refers to the measures of military obligation to attain a specific goal in a conflict that may be unnecessary, inadequate and have no manner on attainable goals (Hayashi, 2010).

Despite the problem of balance, the damage to human rights in war cannot be disregarded as non-belligerents are the target of non-humanitarian actions. This stance goes to the

centrality of international humanitarian law to protect the rights of civilian in a conflict. International humanitarian law functions on basic principles that are broadly held as substantial in the matters of conflicts. These are principles of humankind which makes distinction between belligerents and non-belligerents, military and civilian objects, military requirements and proportionality which derives from restrictions to unnecessary damage and superfluous suffering (Sassoli et al., 2020). The rules and principles of humankind under International humanitarian law prohibits the use of atrocious ways to prosecute conflicts. International humanitarian law sets the rules and principles to guide the matters of conflict from targeting non-belligerents as well as civilian population. As a set of rules, international humanitarian law made up of various regulations which have over a long period added to its current nature and scope. Geneva convention is a notable contribution to international humanitarian law.

The Concept of Humanitarian Intervention

The Post-Cold war world has witnessed a surge in conflicts. These conflicts were mainly interstate wars, sectarian wars and ethnic conflicts which contributed in human rights violation on a large scale. Great powers responded to these conflicts to stop human rights violation in forms of military or humanitarian intervention (Kabia, 2016). When interventions from great powers appeared, the debates on humanitarian intervention was also predominant. Different scholars have questioned the meaning, importance, significance, relevance and purpose of humanitarian intervention. In this sense many scholars explained the concept of humanitarian intervention. Kabia (2016) has explained humanitarian intervention as either forceful or non-forceful actions taken by state or non-state entities in a situation of human right abuses which resulted from conflicts or oppressive governments.

Humanitarian intervention happens when a state fail to protect and secure its citizens in conflict. The intervening states takes different measures in conflict like providing aid and services, partnering to international organizations and supporting conflicting parties (McCarthy et al., 2016). Despite its emergence in cold war and post-cold war era, the concept of humanitarian intervention is and old practice that preludes the United Nations Charter era. The bases of humanitarian intervention are frequently linked with the just war doctrine. The just war doctrine was established to classify the just grounds for war. Particularly, the just war doctrine argues that, war is justifiable when it is carried out by a legitimate authority with the right intention and for a just cause (Gisslen, 2018).

The doctrine has evolved with its purpose to guide the conduct of war, the doctrine provide explicit guidance to actions preceding the conduct of war, in the war time and in the repercussion of war. These forms are persuasive parts of the doctrine and are recognizable with the terminologies (Jus ad bellum, jus in bello and jus post bellum) (Moellendorf, 2014). The terminology jus ab bellum covers the right to war and deals with the justifiable basis of war by assessing the right cause of conducting war, the right intention, legitimate authority, determined objectives, last resort and sufficient hope of success. Just war comprises, to deter the aggression, to make the wrong right and to protect against attack (Marr, 2019).

The second principle of just war doctrine is jus in bello, this principle deals with the proportionality of use of force and the means used in conducting war (Patterson, 2009). Primarily, the just war doctrine only offered rules for interstate armed conflict. Nevertheless, the emergence of international law (jus gentium or law of nations) prolonged the range of just war doctrine beyond interstate war. Consequently, human rights violation, oppression and maltreatment of citizens are

justifiable reasons for third party to intervene in a sovereign state (Dialla and Heraclides, 2016).

The United Nations Charter and Humanitarian Intervention

The Charter of the United Nations outlines certain measures and guides humanitarian intervention to protect the world. International community gets United Nations mandates from its Security Council to militarily intervene in a conflict (Kolb, 2004). Therefore, humanitarian intervention is legal when it has a mandate from United Nations Security Council (Foley, 2017). Chapter VII, articles 39, 40, and 41 of the United Nations Charter set out certain rules, principles and conditions that must be fulfilled before any state militarily intervene in other state. Article 39 of the United Nations Charter shall determine the presence of any kind of threat to international peace, breach of international peace, act of aggression and approves what measure shall be taken in accordance with Article 41 and 42 to restore or maintain peace and security.

Article 40 takes measures to prevent an aggravation of the situation, the United Nations Security Council may make recommendations provided in Article 39 and call upon the concerned parties to conform with such conditional measures as it deems necessary. Article 41 of the charter states that, Security Council may take decision what measures employing non-use of force are to be taken to make its decision effective, and may call upon the United Nations members to implement such measures. These may comprise economic sanction, no-fly zone, cut-off of communication (Air, Sea, Postal etc.) and the cut-off of diplomatic relations. Articles 39, 40, and 41 of the charter identifies that the first condition of military intervention is the existence of any threat or breach to international peace, though the phrase threat or breach to international peace is not defined in the charter. The concept of threat or breach to international peace seems unclear as it covers state behavior in a broader context (Wellens, 2003). By resolving this,

Security Council articulates that actions which may fall in the categories of threat or breach to international peace and acts of aggression that may include interstate war, civil war or internal conflict which have regional or internal dimensions. Based on the above articulation of United Nations Security Council, the civil war in Syria as an intrastate war with implications for Middle East can be considered as threat or breach to international peace.

The Doctrine of Responsibility to Protect (R2P)

The concept of Responsibility to Protect is a doctrine which was designed to protect human rights through humanitarian intervention. The RtoP recognized universality of human rights and encouraged its unconditional protection. RtoP puts responsibility on state to protect its citizens, and if a state fails to do so then it becomes the responsibility of international community. In 2000, International Commission on Intervention and State Sovereignty (ICISS) was established by Canadian government which aimed to propose ways to react to systemic and gross human rights violations. The ICISS commission explains and outlines the role of RtoP, for that purpose it recognizes three important features: responsibility to react, responsibility to prevent and responsibility to rebuild. Furthermore, the ICISS report states that the United Nations Security Council shall be the main authority to make a decision on humanitarian intervention, the commission also states the possibility for the United Nations General Assembly to play its role in taking such decision. The ICISS report mentions that regional organizations in crisis situation can undertake a humanitarian intervention and pursue retroactive legitimacy for certain action from United Nations Security Council. UN Secretary-General welcomed the report, who advised the world to move forward in implementing and acting on the responsibility to protect (UN 2005a, para 132).

A Brief Overview of Syrian Civil War

Civil war in Syria is described as one of the most controversial intrastate wars of 21st century. Since its inception, about 400,000 people have lost their lives in Syrian civil war (Karim, 2017). The civil war in Syria is also termed controversial because many states intervened in the war which have led to different and diverse explanations of the war. The conflict is labelled as proxy war between Saudi Arabia, the United States and Russia and Iran (Balanche, 2018). Terrorist groups like Al-Qaeda and Islamic State of Iraq and Syria (ISIS) have converted the war into war against terrorism. The origin of Syrian civil war is traced back to the Arab Spring a wave of uprisings against dictators in Middle East. The uprising started in Tunisia and spread to Libya, Yemen and Egypt, every country faced different consequences. Presidents of Egypt and Tunisia Hosni Mubarak and Zine El Abidine resigned from governments after a series of demonstration while the uprisings in Yemen and Libya converted into civil wars. The protest in Syria was similar to Libya which also converted in civil war (Lynch et al., 2014).

In Syria, the uprising was started when students were detained and tortured by the government who painted anti-Assad drawing on school wall "It's your turn now doctor." The painting represented that the fate of Assad will same as other dictators who were toppled in the Middle Eastern region (Kargin, 2018). This resulted in demonstration which started in March 2011 where protestors spread in the streets of Deraa. The protestors expressed their anger against Assad's regime for its brutal behavior against school children. The government was blamed for human rights violation, corruption, joblessness and inadequate distribution of wealth (Zuber & Moussa, 2018). The Assad's regime opened fire and used force against unarmed protesters which resulted in several deaths and casualties. Protesters also started attacks on pro-government forces, attacks from both sides converted into a full-fledged civil war in Syria (Bayoumy, 2011).

The Syrian civil war a multidimensional conflict battled by many warring groups, each group used the war to achieve its goals and objectives. The pro-government forces were loyal to Assad's regime and were fighting on its behalf. Pro-government forces were comprised Syrian air force, Syrian army and Syrian air defense command. During civil war Syrian armed forces possessed 220,000 military personnel in ground forces and 70,000 in air force (Jenkin, 2014). The persistent nature of civil war caused scarcity in military persons this was occurred because of deaths and casualties of military persons (Gaub, 2017). Syrian military forces received military and economic assistance from regional and international powers like Iran, Hezbollah and Russia (Jenkins, 2014).

The Quds force of Iran created the National Defense Force (NDF) to support Assad's regime in Syrian civil war, the NDF force was comprised of 200,000 military persons from different religious sects and were fighting against anti-government forces. The NDF received both military and economic support from Syrian army, Iran, Hezbollah and Russia (Tabrizi & Pantucci, 2016). Shabiha was another group that emerged as a pro-government military force to protect Assad's regime from opposition military groups, Shabiha a self-defense group came from Alawite community, Assad himself belongs to. The emergence of Shabiha and another ethnic military group in Syrian civil war gave rise to sectarianism in Syria (Berti & Paris, 2014). Syrian government involved in ethnic cleansings against Sunni Muslims, in April 2011, about 40 Sunni Muslims were killed by Shabiha militant group (Phillips, 2015).

Against the oppression of Assad's regime, opposition forces were also emerged usually called anti-government, anti-Assad or rebel forces comprised of numerous factions and were fighting against Syrian military forces in civil war. Scholars of international relations classified the opposition forces in different categories. Ford (2019) classified the anti-

government forces into two separate groups, the Jihadi and non-Jihadi opposition forces. These classified groups include Free Syrian Army, Syrian National Council, Syrian Islamic Front, Syrian Liberation Front and many other rebel forces. Syrian National Council presents itself as authoritative group of all the rebel groups in Syrian civil war (Carpenter, 2013). Syrian National Council was formed in October 2011 in a response to unite rebel groups and to react effectively to pro-Assad forces in civil war. The signatory representatives and groups to formation of Syrian National Council include Muslim Brotherhood, Damascus Declaration, Kurdish factions and Local Coordination Committees (Sayigh, 2013).

Syrian National Council has a strong political base which includes Alawites, Assyrians, Christians, Kurds and many others. Besides its strong base, Syrian National Council also faces some limitations such as the council has been incapable to claim its leading role in uniting rebel forces and to change their views and sentiments. Ulutas (2016) stated that the weak connection between the council and the rebel forces it claims to represent and its dependency on foreign economic assistance have weakened the council's dominant position in Syrian civil war. Free Syrian Army (FSA) a Sunni rebel group was formed to defend the cause of anti-government revolution, the group used an offensive strategy against Assad's regime and its military forces. Initially, the group possessed 1000 combatants, development in civil war has witnessed a rise in the strength of the rebel group and the numbers of combatants grew to 50,000 (Jenkin, 2014). Another militant rebel group Syrian Liberation Front was formed in February 2018 and fighting in Syrian civil war to counter the influence of Hayat Tahrir al-Sham an another rebel group. Hayat Tahrir al-Sham is a militant group that represents the religious branch of rebel forces and seeks to topple the Assad's regime and form an Islamic Caliphate in Syria (Sulce, 2019).

An Overview of U.S Intervention in Syrian Civil War

Syrian civil war has attracted many states in international system, number of states have intervened in the civil war. The intervening states took different sides in the civil war and provided military, financial and strategic support. In 2015 about 30,000 external fighters flew to Syria to fight on behalf of either sides in the conflict (Giacomini, 2016). U.S as a major power also intervened in Syrian civil war and provided economic and military support to rebel forces. In September 2014, U.S for the first time intervened and involved in the conflict. U.S intervention in Syria expressed the resignation of Assad by equipping the rebel forces with arms, the Central Intelligence Agency provided weapons worth US\$ 1 billion to militant groups. U.S also started training the rebel forces and imposed sanction on Syrian government (Mazzetti et al., 2017).

Since its first intervention in September 2014 U.S has actively been involved in Syrian civil war in all manners, predominantly in air strikes. It is perceived that U.S intervened in Syrian civil war because Assad used chemical weapons against civil population. U.S did not consider military intervention in Syria before the use of chemical weapons (Yadlin & Golov, 2013). Similarly, Manfreda (2017) has established a link between the use of chemical weapons and U.S military intervention in the conflict. Nevertheless, the stance and actions of U.S in Syrian conflict other motives for military intervention than the use of chemical weapons. For instance U.S provided military and economic assistance to rebel forces to make them strong against Assad's regime. Mahmood and Mohd (2017) stated that U.S support and training to rebel forces and conducting air strikes against Syrian army and pro-government forces, the U.S claims that these strikes are conducted against ISIS. U.S military intervention in Syrian conflict has an unusual nature and is very different from interventions of other major powers especially Russia.

In September 2015 Russia intervened in Syrian conflict after one year of U.S intervention. Russia expressed its support for Assad's regime since the start of Syrian civil war. Moscow decision to intervene in Syrian civil war was result of the invitation awarded by the Assad-led government. Damascus invited Moscow to intervene in civil war and to protect the Assad's government against rebel forces and external intervening powers (Charap et al., 2019). This act has given numerous dimensions to the debate about the legitimate use of force in Syrian conflict. Opposing the U.S use of force in the conflict, Russia claims that its use of force is legitimate because it has a formal invitation from Syrian government. Russia also criticizes the U.S for illegitimate use of force in Syrian civil war (Allison, 2013; et al., 2019).

The Legality of U.S Military intervention Syrian Civil War

Legality of U.S military intervention in Syrian civil war is a debated topic. Considering the article 2(4) of the United Nations charter that prohibit the use of force in any country, the issue of military intervention becomes a great concern in the field of international relations. Articles 39, 40 and 41 of the United Nations charter holds the authority to approve military intervention in any states during crisis. The debate on intervention has been intensified by the Responsibility to Protect doctrine that puts responsibility on international community to protect civilians of a state when the state fails to do so. Particularly, the RtoP norms intend to make sure that intervening states do not contribute in human rights violations. The RtoP norms inhibit violation of human rights through various amicable means. The international community can take necessary measures such as economic sanctions, arm embargo in situation when diplomatic means becomes ineffective. All these measures shall be implemented by United Nations Security Council (UNSC). In a situation when all these measures fails then UNSC shall consider a

military intervention (Global Center for the Responsibility to Protect, 2008).

It can be stated that, U.S use of force in Syrian civil war does not fit with the practice protected in the United Nations charter and the RtoP norms. Hence, it can be stated that the actions taken by U.S in Syrian conflict are illegal. Though U.S argued in support of its actions in the civil war that Assad's regime failed to protect its citizens from human rights violation but U.S has also violated the international law and contributed in human rights abuses. The U.S argument of state failure was weakened by its unilateral military intervention which did not have authorization from United Nations. In April 2017, U.S fired about 70 tomahawk missiles in Syrian conflict which is contrary to the principles of international law protected in charter of the United Nations. This action of U.S clearly violates the principles of United Nations which does not authorize states to intervene in any conflict, interventions must be authorized by United Nations Security Council. Thus, based on above explanation, the U.S intervention in Syria was not legal.

United States Interests in Syrian Civil War

Realism a dominant theory of international relations view humanitarian military intervention as lacking of moral and ethical contemplations, realists stipulates that interventions by third party serve as foreign policy tools for achieving political and strategic interests (Ngwa, 2017). In similar view, Taraboulsi-McCarthy et al., (2016) argues that there is a relationship between a state's political interests and its decision to involve in humanitarian military intervention. These political interests in one way or another intrudes on a country's decision to embark on military intervention in other state conflict. This argument describes the nature of U.S intervention in Syrian civil war as it was motivated by political and strategic interests of the U.S. One of main U.S interest was to defeat the Islamic State of Iraq and Syria. In 2011 the

civil war brought political instability in Syria which gave an opportunity to the growth religious extremism and afterward to the rise of terrorism. In 2014, Islamic State of Iraq and Syria became very popular by using its violent policy and mass executions (Oosterveld et al., 2017).

The growth of terrorist organizations put United Nation in a situation to take effective steps to prevent them from human rights abuses so that Syria does not become a favorable ground for terrorist organizations. U.S intervened in Syrian civil war to protect political and strategic partnerships with countries such as Turkey, Israel, Iraq, Jordan and Egypt, and only political stability would protect these relations. Another point in Syrian civil war was regime change because Assad's regime was a threat to the U.S political and strategic interests. The non-democratic Assad's government provoked U.S military intervention in Syrian civil war which was motivated towards overthrowing the Assad's regime (Byman et al., 2012). Nevertheless, U.S was afraid of political instability in Syrian after regime change. U.S has experienced this situation in the case of Libya when U.S-led NATO intervention gave support to rebel forces and toppled the Gaddafi government which led the country to political instability where people of Libya were not able to form a stable government (Sutherland, 2013).

Importantly, the fact is that, U.S provided support to rebel forces not only to topple the non-democratic government of Assad but to remove Russian ally in the Arab Middle East. Syria occupies significant strategic location and plays an important role in Middle Eastern politics as a Russian ally. Establishing a pro-west government in Syria would serve great U.S interest and can reduce Russian influence in the Arab Middle East. Moreover, U.S interests in Syrian civil war describes its intension not just to oppose Assad's regime by equipping rebel forces but also get control of natural resources such as oil and gas (Alamailes & Yurtsever, 2018). Syrian conflict provided

opportunities for U.S to secure its energy resources. U.S president Donald Trump in October 2019 reconsidered his withdrawal policy and gave order to U.S forces to stay in Syria to secure the country's natural resources, notably oil and gas (Welna, 2019). Apparently, this is one of the reasons behind the establishment of new U.S military bases in Syria to increase its stronghold on country's oil resources (Szenasi, 2019).

Conclusion

The prolonged Syrian civil war attracted numerous states and non-state entities in international system. Many major states intervened in Syrian conflict. United States was also one of the intervening powers in the civil war. This research paper argued that U.S intervention in Syria was not legal and violated the principles of United Nations and also breached the international law. This research suggests that the United Nations shall take a stronger stance with regard to the authorization of humanitarian interventions. In this regard, United Nations shall impose sanctions on any states that violate the procedure and principles of United Nations Security Council on humanitarian intervention. This research paper also suggests that the United Nations shall also take actions against states which breach the international law.

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