IJNRD.ORG ISSN : 2456-4184
INTERNATIONAL JOURNAL OF NOVEL RESEARCH AND DEVELOPMENT (IJNRD) | IJNRD.ORG
An International Open Access, Peer-reviewed, Refereed Journal

The Principle of Non-Intervention in the Affairs of States: Contemporary Challenges

Soumil Mishra,
Student,
BA.LLB
Symbiosis Law School, Nagpur, Maharashtra, India

Abstract: ***The recognition of principle of non-intervention is directly linked with the concept of sovereignty followed amongst various nation states. It is a concept which helps countries to decide different course of action for their respective predicaments. The principle is given a lot of importance in theory, while practical application of it is still a concern for the nations. The implications for not abiding by it is matter for concern because powerful States are given clean chit and developing nations find it hard to accept the repercussions even if violation is based upon justifiable terms (although debatable and a matter of concern for ICJ). This research primarily focuses upon the challenges which the international community is facing with respect non-interventionism, with slight allusion towards the origin and its adherence to it. Non- interventionism is an old notion, being followed as customary practice until it cemented its presence in the international law, for instance non-interventionism is found in the Article 2(4) of the UN Charter and Statute of ICJ. In addition to this there is an analysis drawn to ensure whether or not humanitarian intervention in one's territory is an exception to this principle or the biggest let off for the supposed hegemonies in the arena. Moreover, after making such analysis as mentioned above, the latter part of the research is based opinion based with slight references to present day scenario as well. Thus, devising a study to know whether or not non-interventionism is relevant in today's times or is just a notion with respect to pacta sunt servanda.***

Index Terms *- Pacta sunt servanda, challenges, non-intervention, sovereignty*

Introduction

*P*rinciple of State sovereignty is the guiding light for the notion of non-intervention being prevalent in todays' world order. But, whether it is being followed at its' strictest sense or not is a question to be answered after an analyses of the International courts' decisions, prevalent practices and treaties which exist between countries. The entire existence of the principle of non-intervention is apparently from the *UN charter* that is Article 2(4) and Article 2(7), *Customary International Law* and established *State practice*. In the words of Oppenheim non- intervention is forcible or dictatorial interference by a State in the affairs of another State calculated to impose certain conduct or consequences on that other State.1 Upon dissecting this definition by Oppenheim the first essential would be without the consent of the State that is to say dictatorial or forcible. Now, this means that Oppenheim only regards force as an essential constituting 'Proper Intervention'. Other ways such as protest, making representations and other forms which is interference with the affairs of the State in some way but not intervention as defined by Oppenheim because of the simple reason that it does not assert force upon the will of the State. Moreover, intervention when requested by the government of the State itself is also not fulfilling the essential of force, therefore, it is not intervention per se according to Oppenheim. Now, the point of requested intervention should in ordinary course be considered as 'proper intervention' by the virtue of Article 2(4), since Sri Lankan government had requested India to interfere in its civil war against L.T.T.E., to which India responded by sending it's IPKF in 1987.2 All the trouble which Sri Lankan government were facing were against its own citizens and this was 'proper interference' as Government of India used force in Sri Lanka against its citizen. This civil war was concerning the internal affairs of a country and Article 2(4) is apparently violated since this intervention is in no way furthering the 'purpose' of United Nations that is the advancement towards a peaceful environment for each and every person and not just the political party in command because it may very well happen that will and objectives of the government might differ from that of the common citizenry which might be in majority or minority, thereby this justification also cannot be used by the Indian Government that this intervention furthers the overall purpose of the U.N. and so it is justified. The curious question which might arise in our mind is that when the State machinery itself is asking for external 'aid' then it should not be considered as intervention rather it should be an external aid. But, what if under the garb of 'external aid' the government there is fulfilling it political aspiration by supressing a faction or a group by the use of military might be it their own or external.
Thus, by this preliminary examination of source(s) of Principle of Non-intervention, we might receive a shadily image attached with it. With other such instances in International law and discussions based upon it, we might gather a clear picture as to this principles' applicability as well as legitimacy in today scenario but for now it is apparent that there are challenges when it comes to practical use of this principle and

citizens of the world are the stakeholders. Apart from such contemporary challenges the principle of non-intervention has a historical notion attached to its existence which is important for us to discuss before moving further with the discussion.

Historical Notion of Non-Intervention And how it shaped

The earliest source of principle of non-intervention can be traced back to the Covenant of the league of nations and the Montevideo Convention on Rights and duties of states of 1993. A Swiss legal philosopher Emmerich de Vattel was the first jurist to put forward the idea of non-intervention in his treatise 'The law of Nations', 1758. But, the adherence to this principle was again a major concern. It was initially founded as a treaty obligation in the year 1933 under Article 15 of the Covenant of the League of Nations, the Montevideo Convention on the Rights and Duties of the State, 1933 and Additional Protocol on Non-Intervention of 1936, which was to restrict "interference with the freedom, the sovereignty or other internal affairs, or the processes of the Governments of other nations". The first institution which set forth non- intervention as one of the duties of a State after World War II in general was the → *International Law Commission (ILC)* in 1949 in its Draft Declaration on Rights and Duties of States. Art. 3 provided that every State has the duty to refrain from intervention in the internal or external affairs of any other State. 3 In ancient times, intervention was widely used as an instrument of national policy, particularly by the Roman empire. In the middle ages intervention was used in the context of completing impartial and papal rules. In the 19th century, International law adopted the principle of intervention as a Pan-European principle, which was expressed by the Holy Alliance; it was to be used against revolutionary governments of Europe in retaliation of legitimate governments and systems *"pour conserver ce qui est legalement etable",* on this basis interventions were done.4 The tradition position with respect to this principle was that intervention in all in all cases cannot be justified. But, with the coming of UN charter this view drastically took a turn as exercise of force or use of force against other States came with certain exception, provided in the Chapter VII of the Charter the UNSC could authorise by resolution, intervention in cases of humanitarian concerns. This exception can also be exercised in case of self-defence, both them being individual or collectively undertaken.

Development of the principle of non-intervention through ICJ Judgments

The development of the principle of non-intervention can be attributed to ICJ, since it was through the cases of *Nicaragua v. USA, U.K. v. Albania and Congo v. Uganda,* which provided legitimacy to this principle and opened way to newer facets attached to the notion of non-intervention.

In the case of United Kingdom Of Great Britain And Northern Ireland v. The People's Republic Of Albania5 also known as *Corfu Channel case*, in May 1946, British warships were fired at by the Albanian military in the Corfu Channel because it did take prior approval of the Albanian government to pass through the channel. Thereafter, two British warships were struck by guns in the North Corfu Channel. Thereafter the British took the task of clearing up the mines in the region and issued a notice to the Albanian concerned authorities, but the Albanian authorities did not consent to this unless the operation was carried out outside the Albanian territorial water. But, nevertheless the mine clearing operations were carried out by the U.K. and hence forth this case came before the ICJ, since U.K. approached the court with contention that Albanian caused damage to the warships to which Albania contradicted by stating breach of sovereignty and violation of international law that is the principle of non-intervention.

If this case is viewed strictly from the perspective of the principle of non-intervention, then the court had consider two issues. The one being whether Albania's sovereignty has been violated by the so-called innocent passage of the British ships and the other one being related to minesweeping operations, that whether or not it is violation of Albania's sovereignty. Firstly, settling the discussion with respect to the correctness of the decision, the court had ruled that for the question of passing of British military ships through the Corfu channel cannot be said to violative of the sovereignty of Albania. The rationale behind this was that the plea put forward by the Albanian government was that there was no innocent passage at the first place. The formation of ships, the presence of naval soldiers that too present in the action station of the ship, the position of guns etc., all these circumstances pointing out to malefice intent of the British ships but the court rejected each of the argument categorically with evidence which goes against the plea put forth. But, the intention of the British government to test the Albania's attitude as well as to display force, this can only be ascertained from the contents of the order which British ships were obeying. The court after asking for contents of such order from United Kingdom government, it had failed to produce them stating naval secrecy. No emphasis by the court on compulsion to produce the order, since the court considered it not significant in drawing any conclusion. This could have been a vital point in the case but still the court considered each plea put forth by the parties and decided the issue in favour of U.K. government. But, for the other issue the court was convinced with the view that the minesweeping operation was a violation of Albania's sovereignty, since the plea of self-help or self-protection is not justified, moreover, the court regarded the right of intervention as being necessitated by certain factors is just a policy of use of force. The line of defence used by the U.K. with related to *corpora delicti* which must be secured. The mines should be taken as soon as possible. But, this line of defence was rejected by the court by saying that this open doors for countries to abuse this notion. Similarly, the contention of U.K. with respect to taking in possession the object found for the international tribunal was also rejected based on the above founded reasoning.

In the case of Nicaragua v. United States,6 through this judgement the court very categorically aims to define the concept of humanitarian assistance. The court laid down certain parameters for the assisting country to consider while the needful. The facts surrounding this case are that in the year 1909, the Nicaraguan President was removed by the U.S. forces and a pro-U.S. was established which through a treaty granted exclusive access in the country with respect to various economic means such trade, transport, import and export etc. But, until the 1930s anti-U.S. sentiments started to take place which eventually resulted in the exit of U.S. from Nicaragua. Later on a dictatorship was established up until the year 1972 in which an earthquake caused huge loss of life and property, and the Sandinista movement started to rise, because which the control of U.S. over Nicaragua was feared by it. Eventually, the U.S. retracted from the control over Nicaragua, but certain armed activities where being carried out in its territory by a rebel group called Contra, which established for the suppressing the Sandinista movement. It was therefore blamed by the Nicaraguan government in one of its contention before the ICJ, that U.S. was responsible for supporting the Contras as against them and hence amounted to violation of international law in particular the principle of non- intervention and the sovereignty of Nicaragua. For this issue of non-intervention the court particularly began with the various declarations signed at the international level for upholding the principle of non-intervention and to which the United States and other countries had also ratified. Therefore, the court came the conclusion made initially that this customary principle had "universal application". At last after lengthy discussion upon this the court adjudged

that breach of customary principle of non-intervention will also amount to breach of non-use of force or non-intervention in international affairs of countries.

The justification by U.S for the intervening actions on its part was that it provided support or humanitarian assistance to the Nicaraguan group Contras. Without considering the intention behind providing such aid and support the court held that since the intention of the Contras was itself to overthrown the then present leadership, it therefore makes the intervention in form of support of Contras unlawful. The court came to this conclusion through the reasoning that the U.S. cannot be selective in provision aid and support to the Contras only, if the assistance is to be provided it should be uniform, without any discrimination. Moreover, the assistance should be to prevent humanitarian suffering and in not in form of military support. Thus, the court held laid down that humanitarian assistance should be to; "prevent and alleviate human suffering and to protect life, moreover, it be given without any discrimination as to nationality, race, religious beliefs, class or political opinion". By this the parameters for humanitarian assistance were drawn by the court and subsequently the U.S. was held responsible for intervention which opposed to the international law being followed by countries.

The case of *Democratic Republic of the Congo* v. *Uganda*,7 opened up new consideration for international community which are attached with non-interventionism. The question of initial consent to intervene and subsequent withdrawal from such consent was discussed by the court. The facts surrounding this case are that Ugandan and Rwandan forces were invited by the President Kabila (then not in power) to help overthrown the then present leadership. The president was successful in overthrowing the existent regime but the relations with Ugandan forces also saw a decline. Later, they asked to leave the Congolese territory as a result of the decline in relations but even after this dialogue Congo saw "armed activities" by the Ugandan forces in Congo.

The question for us to consider is with regard to the subsequent withdrawal of consent made by the Congolese government and what are the findings of the court with regard to this aspect.

In 1998, Congo asked the troops of to leave the country, it was contested by the Ugandan government that this declaration was only for the Rwanda to consider, since it did not make mention of Uganda. For, this the court although did not reach any conclusion as to whom the declaration was sought but it did came to the conclusion that formalities were not required to withdraw consent this case. Moreover, the DRC and Ugandan forces had mutually agreed to two parameters that is to assist against rebels and stop them from operating. What they have not consented to was the taking over their towns and airports. This is where the court held that the nature and extent of consent should be abided by the country which is providing such assistance and therefore the Ugandan forces were held responsible for violation of DRC's sovereignty subsequent to the consent being withdrawn by it in the year 1998. This decision was different from the other decisions of ICJ upon the issue of intervention, since the court went into the aspect of subsequent intervention which occurred because of armed activities in the Congolese territory.

To conclude this discussion, in all the three cases before the ICJ, the dispute was with respect to non-intervention but the aspect to consider were quite different and first of its kind. In the Corfu. Channel decision the court went on to determine the legitimacy of the plea taken by the States as to self-help or the necessity of doing an intervening act. Particular to the facts of the case court did not regard this as being an exception to non-interventionism because of the simple reason that it would be easier for the countries to contest necessity in all other cases, especially when we have the humanitarian intervention as an exception for this principle. Thereby restricting the scope of action of self-help to be outside the sovereign territory of another State. Although, in the Nicaraguan incident of alleged intervention it was dealt from the perspective of humanitarian assistance, the American support to the rebel group was seen as an act of intervention due to the selective nature of American aid which was only restricted to Contras, if it was actually a humanitarian assistance the aid and support should equitably be provided to all of Nicaragua. In all such cases of assistance the country doing it must not discriminate in offering aid and support. And, the aid should of course fulfil its purpose of stopping or prevention such dangers to human life and property. Lastly, in the case of Congolese intervention the court considered the question in which one country provides its consent but subsequently withdraws it. In such circumstance the court held that the State receiving such assistance can withdraw from such consent and can do it without performing any formalities. This case made evident another aspect attached to intervention at request of the host State. This would make the law regarding consented intervention clear since it also put determines the fact that the assisting State cannot go beyond the scope of assistance asked by the host country and should perform functions being restricted to what has been asked for. Consequently, all the three cases stand individually true to a certain extent in the global affairs of States.

An accumulation of concerns for the International Organisations and States in relation to the Principle of Non-Intervention

The principle of non-intervention rests upon the notion of State sovereignty, that there shall be a distinction based on the fact that domestic matters of a nation explicitly preclude domain of International Law. These domestic matter are outside the scope of International law and shall continue to be so in order to maintain a balance between the domestic and international jurisdiction. There are various instances where the international community has aimed at protecting this domestic jurisdiction of States by bringing forth the obligation or duty in form of non-intervention provisions. These provisions can be witnessed various statues such as the already discussed one the article 2(4) of the UN charter, the Draft Declaration on Rights and Duties of States by the International Law Commission in 1949, the Essential of peace resolution, 1949, Declaration on Principles of International Law. The common aspect with regards to the framing of the provision of non-intervention in these statues was threat or use of force against another country which harms its sovereignty or integrity. The fact the use force of force cannot be the only criterion to determine the act of intervention is not always true to say because the nation might not use force overtly but what in cases of 'soft intervention', this soft way of intervention would be utterance or expression of an opinion by one State with respect to another State. A classic example would US and Indian context, where it has been time and again condemned by the Indian bureaucrats and foreign minister that United States should refrain from intervening with the internal affairs or matters of India. The most recent incident leading to such interference would be the time when U.S. State department spokesperson made comment on the arrest of Delhi Chief Minister Arvind Kejriwal, in reaction to this the Ministry of External Affairs summoned to the acting Deputy Chief of the U.S. to refrain from interfering in Indian internal affairs.8 A similar statement was made by the German concerned authorities as well, to which they afterwards retracted. In similar fashion statements were made by the Washington with respect to Citizenship Amendment Act, 2019 and the Farm laws. Now, the casting of opinion with a concern for instance that the government is becoming arbitrary is one aspect and the desire to create a watchdog image are two different intentions with which such 'opinion' can be disseminated towards a country. In the present instance the U.S.'s intention can be clearly judged from the fact that it being selective with respect to what they want to 'comment' upon to ultimately further their foreign policy with respect to a particular country. This aspect attached to intervention has been clearly disregarded by Oppenheim by calling it as a way

"criticising" another countries action and not really intervention/interference.9 This is a growing concern which even the UN charter fails to acknowledge it only restricting its scope of intervention to use of force and actual damage or overt act to measure the consequence of such intervention. In contemporary time this can be matter for the United Nations to consider or the States to forms treaties revolving abstention from such interferences as well.

East and South Asia

ASEAN

The East Asian region has since years been diligently focusing on successful application of the principle of non-intervention in their region. It is an inherit belief of theirs because they have been strong defenders of the notion of State sovereignty and that is why we saw the incorporation of this as one of the main principles in the policy of ASEAN in the 1967. But, unlikely to this there have been times where this was intact as one of the ideals in the minds leaders in this region but the same is not evident from their actions. The deputy Prime Minister of Malaysia Anwar Ibrahim in 1997 has urged towards a shift from traditional notions of non- intervention to constructive intervention.10 Now, what bother the ASEAN nations is that on one end there is a growing influence from the outside world to adopt various changing notions of intervention which suggest that intervention is justified in cases of humanitarian concern. But, on the other there is a growing trend with countries like Myanmar, Malaysia and Vietnam who still support the traditional non-intervention and ideas attached to it such as rhetorical intervention and criticism. The latent challenge here is that these countries which are supporting the non-intervention in its traditional sense are the ones undergoing some kind of humanitarian problem, democracy being overthrown or protests against leadership by common citizenry etc. The point of consideration is not the problems individual states are facing rather the upon the fact that under the garb of principle of non-intervention these countries are successfully restricting the outside world from criticising or probably interfering in their matters. These concerns are the ones which should receive attention and possible aid from at least the East-Asian regions but the leaders play the non-intervention card to keep at bay the international pressure to change the status quo in their respective nations. Let's take the instance of military coup in Myanmar in the year 2021, the military forcefully took over the democratic government of Aung San Suu Kyi. The country saw huge uproar from the common citizens but the military regime successfully supressed all these protest, killing thousands of them.11 Myanmar being one of ASEAN nations and strong believers of traditional non- intervention are not open to ideas of constructive intervention because this would probably lead to them being vulnerable to criticism and pressure from ASEAN countries to bring back democratic leadership. This is the contemporary challenge that ASEAN nations are facing, since on the one end there is a surge from the various leadership of ASEAN nations to amend the principles to include constructive intervention but this would not be possible since some countries are unwilling to do so because of their vested own vested interests.

Case of Anwar Ibrahim

The arrest and detention of former deputy Prime Minister of Malaysia Anwar Ibrahim is considered as one of the instances where it posed a challenge to the principle of non- intervention. He was charged by the Malaysian Internal Security Act for interfering with the investigation of Prime Minister Mahathir's alleged charges of sexual offences and sodomy. He was later sentenced to 6 years of imprisonment. There were criticisms by the President of Philippines and President of Indonesia for using ISA to charge Mr. Ibrahim. The President of Philippines even met Ibrahim's wife during this course to convey his concerns over this matter. This was later justified by many that it does not constitute intervention, by stating that this was a personal comment and interaction and did not display any kind of "agreement or disagreement" with the Malaysia ISA.12 But, despite of this justification given by many, it shall construe intervention since rhetorical intervention and even criticism is an essential which constitutes intervention as per the ASEAN's 'traditional' way of following non-intervention. Therefore, the ASEAN countries should not deviate from what they themselves denote as non- intervention.

Taiwan Strait Crisis of 1995-1996

The Chinese and Taiwanese stand-off has been prevalent since the civil war in China had ended in 1949. The Chinese nationalist had fled to Taiwan in 1947, the Chinese have stood strong to the contention that the Chinese mainland and the Taiwanese island is one single country and is a part of the one-China policy. The use of force by the China on Taiwan is a major challenge for instance the Taiwan Strait crisis, Taiwan held its first Presidential election in 1995, during the same time China started to test fire its missiles in the Strait region. This was aimed at intimidating the voters and to reduce support for the leading contender.13 To this many countries did not host any comments let alone critiquing the Chinese display of force. This is in ordinary course be considered as threat as per the Article 2(4) of the UN Charter. But, the fact that other countries were not critiquing the Chinese is no obedience to non- interventionism rather the real reason behind countries using neutral language such as Lee Kuan Yew, senior minister of Singapore had said that "countries will not understand why China cannot be patient and resolve the matter peacefully, when using force will damage both China and Taiwan, and also hurt third parties,"14, is that they are fearing to upset the big player in international spectrum. China being the dominant player in the region is instilled fear in the minds of leadership from even fairly critiquing their action. This is not the type of adherence to non-intervention which is aimed by the UN Charter nor by the notions set up by the customary practices by the countries, this adherence is due to fear and is completely against principle of non-intervention.

The Indonesian Haze

It is to an extent fair to say that apart from the challenges discussed so far, there is a misconception with respect to what constitutes 'internal matter'. For instance the haze which resulted from the burning of land by the agriculture based industries to produce various kinds of plantations. Now, these forest fires resulted in environmental and health issues not only in Indonesia but also in other countries such as Brunei, Singapore and Malaysia. It was suggested that any kind of expression by any State on the way of handling on this matter by Indonesia would result in intervention into internal matter of the country.15 This was a wrong belief held at that time since it was any consequence resulting from the actions a country which has a cross border effect which means there is an impact upon other States as well then it is considered as a matter concerning international law and should be consulted along with other States too. This differentiation of internal matter from matter of global concern is extremely necessary.

India and Pakistan

It is well known fact that Pakistan has been interested in occupying the Indian territory of Kashmir since a long time. There have been many efforts by the government as well as the military regime which took over the democracy from time to time. The issue of Kashmir as it revolves in the UN for years now, the Pakistani forces continues to intervene in the Indian territory by use of force or threat. The infamous Pathankot air base attack in 2016 is one of the major and most recent attacks on the Indian soil. Although, Pakistan has never accepted any kind of affiliation with the militants who have executed various attacks on Indian soil. But, International Organisations have recognized Pakistani leadership being the instigator behind this.16 The main point consideration would be Pakistan's intervention in India is condemned by the whole world and this has been India's main contention in the United Nations as well. But, since India has maintained its claim of intervention and interference with internal territorial peace, the Indian leadership too has followed the same path with respect to Baluchistan to further its national interest. Baluchistan being an area in Pakistani territory where the Ahmadiyya Muslims (ethnic minority) majorly reside. The reason for concentration of Ahmadiyya in Baluchistan is because of the fact that they are not regarded as non-Muslims and backward. Anti-Ahmadiyya movements have led to such concentration of their population in the periphery. The anti-Ahmadiyya movements have gained Indian government's attention to an extent that it has expressed open support to them. Prime Minister Modi and National Security Advisor Ajit Doval have even justified this on the pretext of attacks on Indian soil.17 Now, this is where the dilemma lies, on one side India is claiming intervention on reasonable though, against Pakistan sponsored activities on Indian territory on the other end it is strategically utilizing Pakistan's internal matter to gain advantage. The Baluch people are being encouraged by the support, if there is a legitimate humanitarian concern, Indian government should opt for bilateral talk with Pakistan. But, such support indirectly casts a negative image of Pakistani leadership around the world. This in itself constitutes intervention since the constant support for Baluch people will lead towards a detached feeling from their own country and would therefore be a threat to integrity (as per Article 2(4) of UN Charter) of Pakistan.

USA in Middle East

For many United States is considered as the elite when it comes to diplomacy and furthering its national interest. National interest in general terms is defined as a countries long term goal which it aims at achieving by making use of its national power and diplomacy. Scholars have varied thoughts on the U.S. intervention in Iraq in the year 2003. Some justify it by calling it a necessity and legitimize it by denoting it as legal since it was a resolution passed by UN Security Council under Chapter VII (serves as an exception to the rule of non-intervention, to intervene in case of threat to peace and use any measure given under Article 41 and Article 42 which includes use of force). The background of this intervention was and as claimed bravely by the U.S. that Iraqi forces were developing weapons of mass destruction18. This claim led to UNSC passing the resolution to intervene in Iraqi in 2003 with the aid of U.S. armed forces. Now, this seems to be legitimate reason or justification for invoking the Chapter VII of the UN Charter, since there were mass scale manufacturing and acquiring of chemical and nuclear warheads and order law and order issues. If Iraq, as per the U.S. version of this incident, been successful at creating such "weapons of mass destruction" which ordinarily be a threat to international peace. Thus, on humanitarian grounds the intervention is necessitated and hence justified. Yet apart from all these reasons there lies some other considerations in invoking the Charter as an exception to the principle of non-intervention. As claimed by United States this was an independent decision of UNSC in passing the resolution for intervening in Iraq, which it ideally should be, but still there are doubts and serious concerns over this as well since the passing of resolution should sole decision of UNSC and not in consultation with other States.19 This would firstly question the legality of the resolution passed by the UNSC before passing on the liability on U.S. for carrying forward a illegal act. For instance if we are to presume that intervention in Iraq was absolutely legitimate and legal, but the proportion of damage inflicted compared with threat posed is in itself concerning and alarming. The threat of development of mass destruction should have been proportionately opposed with appropriate measures, if again an assumption is drawn as to proportionate measure taken by the peacekeeping forces in Iraq but the disturbing number of casualties caused due to this intervention was approximately more than 1,00,000 and these included common citizenry of foreign countries as well20. Now, the main aim of UN Charter at all times is to ensure peace, this operation was aimed at establishing peace in Iraq but this number seems to indicate more destruction than peace that too when such operation was carried forward against presumed threat in form mass destructing weapons.

This proposition leaves a wide loophole for the international community to consider with regard to principle of non-intervention, since it will bring more instability than peace. The exception to non-intervention is clearly being misused by the mighty U.S. for its own good, the national interest we discussed in the beginning might have propelled U.S. take such measures, although that is also condemned but national interest neither was the catalyst21. It is to an extent correct to say United States was not any eminent threat from Iraq developing mass destructing weapons. Therefore, the only conclusion form this would be the hegemonic mindset of the American leadership which has motivated it to act as the "saviour" in all wrongs and various other national interest motives. The entire proposition therefore, indicates that the UN mechanism with respect to non-intervention can also moulded by countries for personal gain and satisfaction. This might pose significant as significant challenge to contemporary geopolitical affairs between countries since it may lead to reduction in confidence over the prime international organisation in U.N. and the principle itself would be under jeopardy and would open to the rest of the world to be exploited.

Yugoslavian bombing by NATO

One aspect common with all these instances was USA, where the chapter VII was invoked as an exception to non-intervention the American forces were present. On the similar lines if are to analyse the legitimacy of invoking Chapter VII by the UNSC another glaring example would be the Yugoslavian intervention by UN protection force. The condition in Yugoslavia was described as threat to regional peace and was needed to bring end to Kosovo's ethnic cleansing if Albanian population. This motivated NATO to lead the charge against these political unrest and bombed the territory in 1999. This is heavily criticised as being a unilateral action by NATO that is to say the UNSC did not authorise this action22, that too when there is no eminent danger or threat. Moreover, NATO having certain interest in Yugoslavia and because dur to the unrest these interest were under jeopardy. This might be another instance where Chapter VII is used as justification for an unauthorised act in form of intervention.

Assassination of Soleimani

While on the way to meets the Iraqi prime minister the Iranian major general was killed by American drone strike near the Baghdad airport. This was shocking incident which took place since no one had expected that U.S. would go to such limits in order to restrict the Iranian government from achieving nuclear might.23 This raises a question as to the legitimacy of these drone attacks against so-called "eminent

threats", there are various examples which the international community saw in which United States has acted as a saviour of the world against "eminent threat" to peace. It raises the following question for the international organisation and community at large to consider?
Firstly, why are these military actions by the U.S. not considered as violation of the Article 2(4) and Article 2(7). If it was for any other country it would amount to intervention in the internal matter of another State. Secondly, to what extent is the justification given to such action by calling it a "necessity against eminent threat"24 sustainable? The answer to both these question would be in negative unless it is otherwise proved by U.S. Self-defence as claimed by the U.S. for their action25 is also not justified since the U.S., it can called as an instance of premeditated killing and moreover, the lack of consent by the Iraqi government to carry out such attack on their land makes it even more difficult to justify.26 It is a settled notion a by State practice and opinion juris that pre-emptive action by any country cannot be denoted as a self- defensive tactic.27 Thus, the U.S. claim stands false as per the international norms which prevalent. In all these circumstance the UN itself should consider widening the scope of Article 2(4) to include such kinds of pre-emptive measures by countries since it clearly interferes with a countries internal affairs and sovereignty.

Relief Missions: A hypothesis

One subset of humanitarian intervention could be the relief missions or assistance caried forward by countries at the request of the host country. Neither authorisation from United Nations is needed nor legality needs to be justified with respect to the UN Charter because the host State which is facing such crisis in form of civil war or mass scale protest against the leadership etc., is itself is "consenting" to such intervention. Therefore, there is no question of intervention at all, but let's say a country is facing civil war. Now, the whole idea of a civil war is that both sides fighting are the countries' own citizens and thus it is an internal matter, but still if the assistance is explicitly requested by a country then it cannot be a case of intervention. But, as mentioned that it is the common citizens who are in a civil war, it should be the countries own forces which should be conducted the operation to end such dispute and not any other countries "peace keeping" force. The problem with such assistance would be firstly, uncontrolled damage that means the "peace keeping force" of another country would not be concerned with the force being applied is proportionate or not. The only aim for it would be to end the dispute anyhow, secondly, there can be a possibility that the country offering such aid has some other vested interests in providing such aid. For instance India intervention at the request of Sri Lanka, it could be possible that Indian inclination towards USSR during cold must have motivated it to enter Jaffna, since Sri Lanka could have approached U.S. for such assistance had India rejected the aid. Thus, in order to avoid U.S. interference in the pacific, this could possibly have the motivation for India. However, this analogy cannot be supported with any kind of dialogues between these nations, but at least open door to possibilities, whose likelihood cannot be denied.
Such, kinds of assistance also does not represent the will of the people and may turn into nationalist protests for the assisting country to leave the host territory. The Maldivian incident of 2023 and "India out" sentiment is the most recent example of this analogy.28 Therefore, these kinds of assistive efforts can be pose challenges to application of the principle of non- intervention.

Literature review of Antony D'Amato's There is No Norm of Intervention or Non- Intervention in International Law

This piece of literature is itself a review of one of the writings of Professor Jianming Shen. In this, Shen writes about the humanitarian intervention being unlawful in international law context. He believes the State sovereignty prevails over international law in all cases and uses certain examples from the Bentham and Austin who believed domestic law as the "real law". But, the author rejects this argument by affirming to the fact that none of the scholars refereed by Shen were international lawyers and none of them understood none of them understood the "preceding five millennia of state practice where trade and travel were more important than state boundaries". The author even emphasis on humanitarian intervention by stating it as a moral obligation/duty of countries to step in another's jurisdiction and prevent severe human rights violation, genocide, slaughter etc. A countries domestic jurisdiction cannot override human being's "basic sense of morality and justice". Then, he compares a situation in need of an humanitarian intervention with that of a domestic violence situation in a house hold. The law enforcement in America would ordinarily would "intervene" such matter of violence by a husband on his wife and his children in order to at least bring an end to it. Similarly, is the situation of violence taking place in a particular country, therefore the international community should intervene and stop the violence. In both cases of household violence and humanitarian violence in a country, the jurisdiction aspect is vested with owner/leadership, but it is basic sense of morality and justice which creates an exception to the jurisdiction in both cases.

He agrees with Shen that there are instances where this exception can be misused as in the case of bombings in Kosovo was not justified to an extent. Shen further contends that Article 2(4) of the UN Charter uses the term "territorial integrity" which by the way of construction includes "territorial sovereignty, dignity, and inviolability of a State". But, this argument of his was again refuted by the author stating that Shen has no backing to support his claim of construction to Article 2(4).

At last, the author concludes by urging humanitarian intervention should be principled and must not violate the Article 2(4) and all other requisites should be considered.

The Interpretation as to present situation of the principle of Non-Intervention

So far what we have seen from the accounts of violations of the principle of non-intervention is there are certain list of challenges for the international community to consider. Let us look for difficulties faced countries in applicable of non-intervention in its purest form.
1. The decision of Corfu Channel poses a threat to this principle in a way that this principle is vulnerable to countries making use of plea of necessity in support if there intervening acts. Then, in Nicaragua's case the principle can violated by exempting it under the garb of humanitarian assistance, where in reality it would be a politically motivated action. Lastly, in the Congolese incident of intervention, misuse of prior consent given by requesting State can be misused by expanding its the scope of functions mutually agreed initially.
2. Then, contemporary examples are the best display of challenges as to practical application of this principle. In ASEAN's case this principle is supported by certain group of countries to keep a-loaf foreign criticisms and pressure upon its internal matter which is of concerning nature. The leadership in these countries are able to legitimize State control by restricting regional powers to intervene in their matter. Thereby, restricting the constructive intervention to be added as one of the principles of ASEAN.
Then, in the case of Anwar Ibrahim, we saw the deviations from the ASEAN principle of traditional intervention, in which political leaders interfered by criticising a countries way of dealing with a case involving political elite. This should be avoided by the ASEAN nations in particular for implementation of this principle in its truest sense.

3. The Chinese display of force upon the so-called island of its own territory is a major problem in the region and in particular for Taiwan. The hesitancy to address issue of non-intervention against a political and economic giant is another challenge and this type of hesitancy would allow the countries who are dominant such as China to violate this principle more.
4. The misconceptions with respect to what constitutes internal matter should clear, or else it would lead to environment, economic, political damage. As seen in the case of Indonesian haze where the leadership considered forest fires as an internal matter, where on the other hand the effects of such fires were seen as having a cross border effect. Thus, a matter which has a cross border consequences then it no long remains a matter of internal affairs of a country and then the other countries facing such effects can very well have a right to intervene. Therefore, such misconceptions such be kept a loft while dealing with such issues.
5. Then, in the case of soft influencing as witnessed in the case of India and Pakistan and the dilemma which lies therein. A country should not provide support in a way which would harm the integrity of a country, since such soft influence and moral support without even having a efforts to reconcile the matter with the other country can be pose a threat to integrity of country, as mentioned in UN charter, Article 2(4). The soft influence and support would be towards a particular group or country since they are already in conflict with the counties leadership.
6. Then, the case of U.S., the hegemonic violations of non-intervention which is a major challenge in today's time. Either the case of Iraq invasion or Yugoslavian bombing, the question to consider is the resolution mechanism's transparency. The resolution which it passes under Chapter VII for allowing intervention as a necessary action such as in cases of eminent threat to peace, does these resolution which are passed have U.S. influence or not. Ideally, it should be an independent decision of the body to pass such resolutions allowing such interventions. Then, there is the issue of excessive use of force against what the threat a particular country poses. Therefore, the UN machinery with respect to passing such resolution should be more transparent and some level of accountability should be placed upon countries for not using proportionate force against the threat.
7. Similarly, what constitutes eminent threat should also be clarified by the UN Charter itself, for instance in the case of drone attacks on Iran's general was justified by the U.S. by calling it an act of self defence against eminent threat but the argument mentioned in the discussions earlier and findings of the international law scholars were contrary to it.
8. Then, the hypothesis with respect to the relief missions also stands true to a certain extent the in the today international law affairs and would be considered as a selfish act if it is not carried out with the primary intention of "assistance". Then, there is the issue of damage, that the country assisting such other countries would only aim at stopping the crisis being faced at all cost without being concerned about the "means", and only the "end" would be their primary goal. Moreover, the consent given for such interventions is also partial since the actual stakeholder of this assistance are the people of the country in crisis, thus the will of the country is in reality not reflected.
9. Lastly, through the literature review the need for having a principled approach in cases of humanitarian intervention is required and it should be a moral responsibility of counties to help the country under crisis but only in legitimate cases where assistance is needed.

Therefore, the international community is not free from hindrances when it comes to practical application of the principle of non-intervention but with the consideration drafted herewith and learning from the challenges faced in the past the world can expect better implementation of non-intervention so that countries can actually separate their internal concerns and affairs from becoming a global hoax.

References

1. UN Charter
2. ICJ Cases
3. H.O. Agarwal on International law and Human Rights
4. Internet sources cited in the footnotes