

# SELF-DETERMINATION AND HUMANITARIAN INTERVENTION

*Purvi Khanna<sup>1</sup> & Vidushi Sanghadia<sup>2</sup>*

## ABSTRACT

*Sovereignty as the modern idea envisages is the supreme will of political authority that governs an independent state. It is a self-sufficient source of power which designates supreme authority over the right to govern a country, or a country to govern itself. The question being raised now is whether sovereignty should be given higher importance than protecting basic human rights of the populace inhabiting the country. Humanitarian interventions have been carried out in countries like Kosovo, Afghanistan, etc. bringing into debate the contentious issue of giving higher regard to sovereignty of a country or acting to protect basic human rights. International organisations such as the NATO in concurrence with the United Nations, the European Union, and other international conventions and treaties like the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) and the United Nations Declaration of Human Rights, etc. govern international affairs and uphold the tents of self-governance and respect for another's sovereignty. Certain cases of humanitarian interventions have been sanctioned by these organisations when situations have thus warranted. A contemporary issue of the Ukrainian peninsula and the consequent Russian intervention to protect human rights violations has been taken up. The claims made by Russians to justify their intrusion and disregard of Ukrainian sovereignty has been interrogated and examined.*

## INTRODUCTION

The modern idea of sovereignty is one of political organisation. In initial modern society, it was the ruler of the kingdom who was the source of sovereignty but in the contemporary world, it implies the rule of a group by constitutional validity. Sovereignty is the character of authority that this group possesses. It has been defined as “a single, unified one, confined within territorial borders, possessing a single set of interests, ruled by an authority that was bundled into a single entity and held supremacy in advancing the interests of the polity”<sup>3</sup>.

---

<sup>1</sup> Purvi Khanna, 1<sup>st</sup> Year Law Student, NALSAR University of Law, Hyderabad

<sup>2</sup> Vidushi Sanghadia, 1<sup>st</sup> Year Law Student, NALSAR University of Law, Hyderabad.

<sup>3</sup> *Sovereignty*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/archives/sum2014/entries/sovereignty/>.

Humanitarian intervention became a contentious issue after the intervention by NATO into Kosovo in 1999<sup>4</sup>, which highlighted the implicit dichotomy between supremacy of state's sovereignty and the protection of human rights of citizens. It generally implies use of force by foreign hands to prevent abuse of state power, human rights and freedoms. The debate over manner, morality, legality and necessity of an intervention was sparked off at this juncture.

The question that it posed at the time, of whether the principle of a country's independence or self-governance be given more importance, or the basic, fundamental rights accorded to its citizens by virtue of being members of civilisation, remains a pertinent one today.

### HISTORICAL AND MODERN SOVEREIGNTY

The concept of national sovereignty began with the Peace of Westphalia agreement of 1648 which brought the Thirty Years' War to an end. The defeat of the Holy Roman Empire resulted in its fragmentation into numerous individual units which now grappled with self-governance and equal sovereignty, marking the birth of nation-states<sup>5</sup>. The 17<sup>th</sup> and 18<sup>th</sup> centuries saw the development of the principle of exclusive territorial jurisdiction. State sovereignty implied freedom from intervention by external powers in domestic affairs as well as complete and total authority over the territory of one's nation. The essential characteristic of an autonomous political unit was self-assertion and perpetuation.

When we refer to 'sovereignty' in the contemporary sense, we mean a nation's "right to determine what goes on inside its borders. It is its right to exist as a self-determining, self-governing geographic area"<sup>6</sup>. The principles of non-intervention and sovereignty provide the basis for the Charter of the United Nations. Article 2 of the charter clearly talks about the sovereign equality of member countries as well as the need to resolve international disputes harmoniously<sup>7</sup>. The qualifications of a nation as given in Article 1 of The Montevideo Convention on Rights and Duties of States of 1933<sup>8</sup> include a permanent population, a defined territory, a government and the capacity to enter into relations with other states.

---

<sup>4</sup> Nato.int, NATO & Kosovo: Historical Overview (2014), <http://www.nato.int/kosovo/history.htm> .

<sup>5</sup> NUSSBAUM, ARTHUR, A CONCISE HISTORY OF THE LAW OF NATIONS, (New York: The Macmillan Company, rev. ed. 1954), at 116.

<sup>6</sup>Sovereignlife.com, *What is Sovereignty* (2014), <http://www.sovereignlife.com/essays/what-is-sovereignty.html>.

<sup>7</sup>CHARTER OF THE UNITED NATIONS: CHAPTER I: PURPOSES AND PRINCIPLES, <http://www.un.org/en/documents/charter/chapter1.shtml> .

<sup>8</sup> (1934) 165 League of Nations Treaty Series, 19.

## HUMAN RIGHTS AND FOREIGN INTERVENTION

Interaction and co-operation among sovereign states has necessitated formal international laws governing their behaviour. These rules are largely dictated by international organisations such as the United Nations, the European Union, North Atlantic Treaty Organisation (NATO), SAARC etc. of which most independent nation states today are members. International law and diplomatic relations are governed by mutual respect for others' sovereignty and non-intervention in their internal affairs, propounded by these institutions.

Complete authoritarian control is the basic tenet of sovereignty. However, there have been numerous instances of human rights violations by sovereign democratic and undemocratic states that often times warrant intervention by other states or international bodies. Herein lays the conflict between supreme sovereignty and protection of rights of a nation's own citizens. Mohammed Ayoob, in his article calls this balance 'the greatest challenge to the notion of international society'<sup>9</sup>. The most drastic examples of state atrocities are the Holocaust, the Apartheid in Africa, genocides in Cambodia and Yugoslavia etc. These instances are jarring examples of state overshooting its power as a ruling body and becoming excessively and arbitrarily oppressive, warranting the need for external intercession to protect citizen's human rights.

International law traditionally implied governance of relations between states but after the World Wars, also gave focus on the rights of individuals. In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) was adopted by the United Nations General Assembly<sup>10</sup>, prohibiting state-supported mass murder. In the same year, the Universal Declaration of Human Rights was adopted which became the cynosure for human rights movements across the world.

Violations of sovereign rights of states have hence often been necessitated for humanitarian reasons. In its most basic sense, intervention involves "unauthorized coercive interference in the internal affairs of another state; that is, the threat or use of force, short of aggression or war, in ways that infringe state sovereignty"<sup>11</sup>. Coercive interference may also be termed as intervention, when it involves restrictions on liberties and freedoms of a state. Humanitarian

---

<sup>9</sup>MOHAMMEDAYOOB-HUMANITARIAN-INTERVENTION-AND-STATE-SOVEREIGNTY.PDF, <http://kirstenjfisher.com/wp-content/uploads/2013/12/Ayoob-Humanitarian-Intervention-and-State-Sovereignty.pdf> .

<sup>10</sup> A/RES/3/260 - PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE - UN DOCUMENTS: GATHERING A BODY OF GLOBAL AGREEMENTS, <http://www.un-documents.net/a3r260.htm> .

<sup>11</sup> Donnelly 1993.

intervention, as the term suggests are those interventions that are motivated by humanitarian objectives. It involves the use of military force in the territory of another state by a foreign entity without its consent, in order to prevent transgressions of fundamental human rights. Intervention is a two-fold idea, in terms of goals/objectives and in terms of initiators. It is not acceptable to intervene in internal affairs of a state to pursue strategic advances; the intervention must be done to further humanitarian aid in times of extreme necessity. Second, the intervention must be representative of an international community's decision to mediate rather than a particular state. The Catechism of the Catholic Church, founded in 1992 by Pope John Paul II propounds the theory of Just War Doctrine<sup>12</sup>, which has been used as a defence for humanitarian intervention.

Andrew Fiala, an Associate Professor of Philosophy and Director of the Ethics Center at California State University, Fresno, in his article titled 'The Bush Doctrine, Democratization, and Humanitarian Intervention: A Just War Critique', condemns the use of military force for the purpose of 'democratization' and calls it an idealistic view of international relations. According to him, the idea of war being used to promote tranquillity and democracy is misplaced and problematic. The Iraq war of 2003 exemplifies how using military intervention for the sake of establishing democracy can leave such a devastating aftermath that it becomes almost absurd to pursue the idea of a democracy in its wake. He states that intervention must be carried out only in instances that shock human consciousness. Its goal must not be the pursuance of ideals like spreading democracy. There must be "controlled application of force" and actions of states must be dictated by the principle of *jus in bello*<sup>13</sup>. These are the set of rules or codes of conduct that specify how wars must take place and provide limitations to war time conduct's acceptability. Most modern wars do not succeed in maintaining this ideal during times of combat because of the indiscriminate killings of civilians that they cause. Therefore, it becomes essential to balance the need of the interventionist measures with the costs of intervening involved.

---

<sup>12</sup> Para 2309 of the Catechism of Catholic Churches states: The strict conditions for *legitimate defense by military force* require rigorous consideration. The gravity of such a decision makes it subject to rigorous conditions of moral legitimacy. At one and the same time: - the damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain; - all other means of putting an end to it must have been shown to be impractical or ineffective; - there must be serious prospects of success; - the use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition. The evaluation of these conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good.

<sup>13</sup> JUSADBELLUM.PDF, <http://users.ox.ac.uk/~polf0002/director/publications/jusadbellum.pdf>.

Kofi Annan, UN Secretary General of the time, stated in his General Assembly speech made on 20<sup>th</sup> September 1999, the following:

“They (the sovereign states that drafted the UN Charter in 1945), knew the terror of conflict, but knew equally that there are times when the use of force may be legitimate in the pursuit of peace. That is why the Charter's own words declare that ‘armed force shall not be used, save in the common interest’<sup>14</sup>.”

Principles of natural law proclaim the moral supremacy of punishing wrongdoers and defending innocent people from atrocities. They also puts forth the idea of Common Morality, which states that there are certain rights which humans possess by virtue of being humans, as part of the human community and the world as it is, and not members of a community or country<sup>15</sup>.

Fernando Tesón, a philosopher of law and humanitarian intervention and a Tobias Simon Eminent Scholar at Florida State University College of Law, in his essay titled ‘The Liberal Case for Humanitarian Intervention’ advocates that there are certain situations in which humanitarian interventions are absolutely necessary and that humanitarian intervention may in fact be complementary to a state’s sovereignty. He defines it as ‘the proportionate international use or threat of military force, undertaken in principle by a liberal government or alliance, aimed at ending tyranny or anarchy, welcomed by the victims, and consistent with the doctrine of double effect’<sup>16</sup>. He regards highly the value of sovereignty and states that those committing heinous crimes or atrocities must not be allowed to escape by taking shelter under this ideal. The liberal arguments for human intervention are as follows: (i) tyrannical and anarchist situations perpetuate grave forms of injustice and (ii) external intervention is morally sanctioned to halt the injustice. According to him, war is not inherently bad. There are times when violence and fighting are mandated by the prevailing

---

<sup>14</sup>Un.org, [20 Sep 1999] SG/SM/7136 GA/9596: SECRETARY-GENERAL PRESENTS HIS ANNUAL REPORT TO GENERAL ASSEMBLY (2014), <http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html>.

<sup>15</sup>BERNARD GERT, COMMON MORALITY (Oxford University Press) (2004), <http://www.oxfordscholarship.com/view/10.1093/0195173716.001.0001/acprof-9780195173710>.

<sup>16</sup> HUMANITARIAN INTERVENTION HAS BEEN ONE OF THE MOST CONTROVERSIAL SUBJECTS SINCE THE END OF THE COLD WAR - IS HUMANITARIAN MILITARY INTERVENTION EVER JUSTIFIED.PDF, <http://www.atlantic-community.org/app/webroot/files/articlepdf/Is%20humanitarian%20military%20intervention%20ever%20justified.pdf>.

conditions of a country in turmoil. He refers to the Kantian idea of state which dictates that it is a solution to tyranny and anarchy<sup>17</sup>.

“A More Secure World: Our Shared Responsibility”<sup>18</sup>, a report published by the International Commission on Intervention and State Sovereignty in 2004 stated that sovereignty could not be taken as a defense by states when outrages were being committed within the country. The 2005 World Summit Outcome Document<sup>19</sup>, ratified by U.N. Security Council Resolution 1674<sup>20</sup> came about as a response to this document. ‘R2P’ or ‘Responsibility to Develop’ principle was propounded in it.

An article by Helen Stacy argues the existence of ‘relational sovereignty’ in the contemporary world. In the 21<sup>st</sup> century, sovereignty is no longer a question of just boundaries and jurisdiction. The political emergence of the human rights movement and economic factors pertaining to globalisation has changed the way we look at sovereignty provided by nation states. It is now dependent and directly correlated to citizens’ ability in getting their rights enforced by incumbent governments. It is the governments’ duty to make conditions conducive to protection and furtherance of human rights, and external factors provide the standards by which these attempts will be adjudged. Effectively, a tripartite social contract exists amongst citizens, governments and external factors. Under this definition, sovereignty itself is not a self-determined unfringeable concept. When certain basic norms of authority are that are laid down by this form of social contract are dishonoured by governments, their sovereignty is automatically negated.

The problems that exist with this emerging definition of sovereignty are the varying standards of sacrosanct international laws of governance and the hegemony of superpowers in being absolved from sanctioning by these internationally ascertained standards. There are no set standards eliciting the need for humanitarian intervention. Imbalances in centres of political power mean economically advanced countries shall face lesser restrictions.

In a similar vein, an article titled ‘SOVEREIGNTY, HUMAN RIGHTS, AND SELF-DETERMINATION: THE MEANING OF INTERNATIONAL LAW’, postulates that, in a

---

<sup>17</sup>*Kant's Social and Political Philosophy*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/archives/sum2012/entries/kant-social-political/>.

<sup>18</sup>UNITED NATIONS CONFERENCES, MEETINGS AND EVENTS: A MORE SECURE WORLD, [http://www.un.org/en/events/pastevents/a\\_more\\_secure\\_world.shtml](http://www.un.org/en/events/pastevents/a_more_secure_world.shtml).

<sup>19</sup>OFFICE OF THE SPECIAL ADVISER ON THE PREVENTION OF GENOCIDE, <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml>.

<sup>20</sup>UNITED NATIONS OFFICIAL DOCUMENT RESOLUTION 1674, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1674\(2006\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1674(2006)).

democratic setup, sovereignty is not possessed solely by the government but also by the people it governs. It makes a point saying that when actions of nations violate existing norms of international law, they cannot take the defense of sovereign supremacy. An example of this would be the Nuremberg trials; Third Reich officials defended their actions by claiming sovereign power as the legitimate source of their actions. The International Military Court did not accept this defense and continued prosecution as the issue here was the infringement of existing international laws.<sup>21</sup>

### CASE STUDY: THE CRIMEAN CRISIS

A quintessential example of a country facing an identity crisis and a question of its own sovereignty would be Crimea. Crimea is a peninsula located in the Black Sea and it is an area of considerable strategic importance. It was a part of the Soviet Union before its disintegration in 1991. The Crimean populace is divided into pro-Russian and pro-European factions over language, cultural claims and political affinities. The Crimean peninsula in southern Ukraine is the epicentre of what is perceived to be the biggest crisis between Russia and the West since the Cold War. A decision to pull out of an association deal with the European Union by Ukrainian President Victor Yanukovich in late November 2013, which was perceived to be a very pro-Russian decision, led to wide-spread protests across the country which ultimately resulted in his downfall.<sup>22</sup> After months of protests and failed attempts at truce,<sup>23</sup> President Yanukovich fled Kiev<sup>24</sup> and was replaced by interim President Oleksander Turchynov.<sup>25</sup> Russian troops stormed the Crimean airbase<sup>26</sup> after a go-ahead by the Russian parliament.<sup>27</sup> Pro-Russia Crimean demonstrators then demonstrated for secession from Ukraine and to become a part of Russia. A referendum was held in Crimea on March 16, 2014 whose legality has been widely questioned. Over 96% of the population voted overwhelmingly in favour of joining the Russian Federation. This encouraged pro-Russian

---

<sup>21</sup> Robert Araujo, *Sovereignty, Human Rights and Self-Determination* 24 Fordham Int'l L. Journal . 1477.

<sup>22</sup> *Ukraine Protests after Yanukovich EU Deal Rejection*, BBC News, Europe, available at <http://www.bbc.com/news/world-europe-25162563>.

<sup>23</sup> *Ukraine Crisis: Deal Signed in Effort to End Kiev Standoff*, The Guardian, February 21, 2014.

<sup>24</sup> Sam Frizell, *Ukraine Protesters Seize Kiev as President Flees*, Time, , <http://world.time.com/2014/02/22/ukraines-president-flees-protesters-capture-kiev/>.

<sup>25</sup> Shaun Walker, *Ukraine MPs Appoint Interim President as Yanukovich Allies Dismissed*, The Guardian, February 23, 2014.

<sup>26</sup> Ian Pannell, *Russian Troops Storm Ukrainian Bases in Crimea*, BBC News, Europe, <http://www.bbc.com/news/world-europe-26698754>.

<sup>27</sup> Dayna Evans, *Russian Federation Council Okays Troop Deployment in Ukraine*, GAWKER, <http://gawker.com/russian-federation-council-okays-troop-deployment-in-uk-1534095900>.

separatist groups from Eastern Ukraine like Donetsk People's Republic,<sup>28</sup> and in Lugansk and Kharkiv to demand for referendums on independence. The referendum conducted in Ukraine has been recognised by the Russian parliament, but the West has denounced it, calling it a violation of Ukraine's sovereignty and constitution as well as international law.

### IS CRIMEA A PART OF RUSSIA OR UKRAINE?

A majority of the Crimean population is ethnically Russian, and for the last 200 odd years has been a part of Russia. It is believed that Crimea was given as a gift by the then Premier Nikita Khrushchev as he was a part of the Ukrainian Communist Party, which is why Crimea remains a part of Russia<sup>29</sup>. The ethnic composition of Ukraine has largely influenced the political instability that the country faces today. About four out of every six people in Ukraine are ethnic Ukrainian and speak the Ukrainian language. Every one in six is ethnic Russian and speaks Russian. The last one in six is ethnic Ukrainian but speaks Russian. The eastern and southern parts of Ukraine are inhabited by ethnic Russians while the western and northern parts are inhabited by the ethnic Ukrainians.<sup>30</sup> Their differences in voting preferences reflect a deep divide between ethnic identities, an additional explanation to it including socio-demographic and geographical concerns. A recent poll<sup>31</sup> indicated support of 37 percent of Ukrainians to join the EU and 33 percent, the Russian trade union. There is a marked regional difference in this divide of opinion. In the West, there is greater support to join the EU than to side with Russia whereas the opposite stands true in the south. Ethnic Ukrainians speaking Russian differed from those of ethnic-linguistic Russians in favour of pro-European policies<sup>32</sup>. A study published in *Eastern European Economics*<sup>33</sup> indicates voting preferences for the pro-European, pro-Orange political parties were prominently driven by preferences for western-type market economy and democracy. A second study published in *Economics of Transition*<sup>34</sup> dealt with a different cause of the ethnic divide.

---

<sup>28</sup> Steven Rosenberg, *Pro-Russia Protesters in Donetsk Want Referendum*, BBC News, Europe, , <http://www.bbc.com/news/world-europe-26604225>.

<sup>29</sup> Joshua Keating, *Khrushchev's Gift*, SLATE, Feb. 25, 2014, [http://www.slate.com/blogs/the\\_world\\_/2014/02/25/separatism\\_in\\_ukraine\\_blame\\_nikita\\_khrushchev\\_for\\_ukraine\\_s\\_newest\\_crisis.html](http://www.slate.com/blogs/the_world_/2014/02/25/separatism_in_ukraine_blame_nikita_khrushchev_for_ukraine_s_newest_crisis.html).

<sup>30</sup> Max Fisher, *This One Map Helps Explain Ukraine's Protests*, THE WASHINGTON POST, December 9, 2013.

<sup>31</sup> *Ukraine 2013 Public Opinion Poll Shows Dissatisfaction with Socio-Political Conditions*, December 5, 2013, , <http://www.ifes.org/Content/Publications/Press-Release/2013/2013-Public-Opinion-Survey-in-Ukraine.aspx>.

<sup>32</sup> *Ibid*.

<sup>33</sup> A.F. CONSTANT, M. KAHANEC, AND K. F. ZIMMERMAN, THE RUSSIAN-UKRAINIAN POLITICAL DIVIDE, 49 EASTERN EUROPEAN ECONOMICS 6, 97-109 (November-December 2011).

<sup>34</sup> A.F. Constant, M. Kahanec, and K. F. Zimmermann, *The Russian-Ukrainian Earnings Divide*, 20 Economics of Transition 1, 1-35 (2012).

According to the study, an earnings gap emerged between Russian and Ukrainian linguistic groups during Ukraine's transition as opposed to no ethnic differentials except those which could be explained by socio-demographical, geographical or regional diversities. Russian-speaking women earned 14 percent more than working Ukrainian women and Russian-speaking men, an average of 28 percent more than their Ukrainian counterparts.<sup>35</sup> A certain part of these differences can be explained by key factors such as age, regional differences, education, etc., but what cannot be ignored is the massive role ethnic divide plays in the workplace scenario. The situation also raises a very pertinent question of self-determination.

The 1960 Resolution on Colonialism was the first to officially recognise self-determination to mean "*the legal foundation for the establishment of the sovereign state from the colonial territory.*"<sup>36</sup> After which, in 1966 the United Nations adopted the concept in Article I of the Charter: "*All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*"<sup>37</sup> Self-determination in the late 19<sup>th</sup> century and early 20<sup>th</sup> century, during the peak of European colonization, according to socialists was a way to describe the colonized people's collective aspirations.<sup>38</sup> Woodrow Wilson at the end of World War I offered the concept of internal self-determination, to coincide with popular self-government<sup>39</sup>. Every nation on the basis of the principle of equality of opportunity and equal rights has the right to determine their sovereignty and international political status with no external compulsion or influence. It widened the scope of outcomes to include federations, associations, integration with other states, full assimilation, etc.<sup>40</sup> The necessary conditions to validate a demand for secession have to be fulfilled before a claim can be legitimized. A group of people residing in a fairly distinct territory sharing a distinct identity and history of sustained persecution at the hands of an unresponsive state unwilling to accommodate their interests, and which has made it impossible for them to effectively exercise their right to internal self-determination,

---

<sup>35</sup> *Ibid.*

<sup>36</sup> Bradley R. Simpson, *Self-Determination, Human Rights and The End of the Empire in the 1970s*, *Humanity*, <http://www.humanityjournal.net/issue4-2/self-determination-human-rights-and-the-end-of-empire-in-the-1970s/>.

<sup>37</sup> Unrepresented Nations and Peoples Organisation, *Self Determination*, <http://www.unpo.org/article/4957#sthash.iIyw2z0b.dpuf>.

<sup>38</sup> Milena Sterio, *On the Right to External Self-Determination: "Selfistans," Secession, and the Great Powers' Rule*, 19 *Minnesota Journal of International Law* (2010).

<sup>39</sup> "National aspirations must be respected; people may now be dominated and governed only by their own consent. Self-determination is not a mere phrase; it is an imperative principle of action. . . ." —Woodrow Wilson with his famous self-determination speech on February 11, 1918 after he announced his Fourteen Points on 8 January 1918.

<sup>40</sup> Brad Simpson, *Self-Determination in the Age of Putin*, *Foreign Policy*, 2014, [http://www.foreignpolicy.com/articles/2014/03/21/self\\_determination\\_in\\_the\\_age\\_of\\_putin\\_crimea\\_referendum?wp\\_login\\_redirect=0](http://www.foreignpolicy.com/articles/2014/03/21/self_determination_in_the_age_of_putin_crimea_referendum?wp_login_redirect=0).

sufficiently warrants the demand for secession from the said state.<sup>41</sup> The claim of sustained persecution does not see, to fly, however. There was no discrimination against the ethnic Russians by the central government in Kiev, and neither was there any permanent minority disfranchisement that could solidify the separatists' demand for secession.

The socio-political dilemma of the Crimean crisis that began in November of 2013 is intrinsically linked to the defining of a nation's identity as a people and the legality of the intervention of external states, in this case Russia, in the governance of an independent autonomous entity.

It is important here to consider the question of Crimea and its repercussions on discussions over international law and sovereignty rules.

Here is an extract from an article titled 'To Russia with Love: How Moral Arguments for a Humanitarian Intervention in Syria Opened the Door for an Invasion of the Ukraine' by an assistant professor at United States Military Academy, Shane Reeves:

“The moral legitimacy of a military intervention, even if widely accepted by the international community, requires a subjective determination that an offending state is violating their fundamental obligations. While the legal concept of humanitarian intervention may allow for a solution to an immediate crisis, such as that in Syria, it may also allow for an opportunist state, such as Russia, to exploit the amorphous nature of morality to justify an intervention into a coveted territory, such as the Ukraine, for geographic or political purposes.<sup>42</sup>”

Reeves is probably referring to the potentially rigged and unrepresentative March referendum undertaken by Russian military forces that showed an overwhelming support, nearly 97 per cent, to be a part of Russia and secede from Ukraine<sup>43</sup>. It is believed that Putin's real motive for annexing Crimea is potential oil and gas resources that may be found in the Kiev

---

<sup>41</sup> *Supra*, 26.

<sup>42</sup> Harriet Torry & Bertrand Bertrand Benoit, *Watchdog Sees No Threat to Ethnic Russians*, WALL ST. J., MAR.. 12, 2014, at A10.

<sup>43</sup> <http://www.vox.com/cards/ukraine-everything-you-need-to-know/so-should-crimea-be-part-of-russia-or-ukraine>.

peninsula, though he professes that it is to protect people of Russian ethnicity from the incumbent Right-wing government in Kiev<sup>44</sup>.

What we need to consider is the legal validity of the steps undertaken by the Russian government here.

There has been a large influx of Russian armed forces causing havoc in Ukraine's territory. Seizing of government buildings, communication hubs and crowding major roads in Crimea as a form of protest are all instances of Russian mobilisation in the past year<sup>45</sup>. Unmarked men in military uniforms and equipment believed to be Russian troops took over control of Sevastopol (military base) and the Republic of Crimea<sup>46</sup>. After the annexation, Putin resolved to set up a military presence in the area<sup>47</sup>.

This is an ostensible violation of international law. The UN Charter specifically prohibits the "use of force against the territorial integrity or political independence of any state"<sup>48</sup>. Russia's actions point towards attempts at overturning the Ukrainian Government under the garb of 'protecting ethnic Russians'. Even though international law recognises defending of nationals in foreign lands, there needs to be a high degree of necessity present or an imminent and dangerous threat to those nationals<sup>49</sup> which was lacking here.

## CONCLUSION

The separatist Crimean movement has failed to account for the rights of minorities and international norms. A Ukrainian government willing to negotiate and address the qualms that ethnic Russians face in Ukraine and Crimea have been ignored. A mere desire for reunification with Russia cannot legitimize a claim for secession. The government in Russia needs to employ a varied spectrum of methods to deal with demands of secession, including autonomy arrangements, decentralization, resource-sharing, representation in the parliament,

---

<sup>44</sup> WHY DOES PUTIN WANT CRIMEA ANYWAY?, <http://euobserver.com/opinion/123496>.

<sup>45</sup> Alison Smale & Steven Erlanger, *Ukraine Mobilizes Reserve Troops, Threatening War*, THE NEW YORK TIMES, Mar. 1, 2014, <http://www.nytimes.com/2014/03/02/world/europe/ukraine.html>.

<sup>46</sup> "LITTLE GREEN MEN" OR "RUSSIAN INVADERS"? BBC NEWS, <http://www.bbc.com/news/world-europe-26532154>.

<sup>47</sup> PUTIN: RUSSIA TO SET UP MILITARY FORCE IN CRIMEA ITV NEWS, <http://www.itv.com/news/update/2014-08-14/russia-sets-up-military-force-in-crimea/>.

<sup>48</sup> *Supra*, 6.

<sup>49</sup> Ashley Deeks, *Here's What International Law Says About Russia's Intervention in Ukraine*, THE NEW REPUBLIC, Mar. 2, 2014, <http://www.newrepublic.com/article/116819/international-law-russias-ukraine-intervention>.

etc., like the 2004 Indonesian negotiation with the North Sumatran province of Aceh to accommodate Crimean interests in national politics.

Humanitarian intervention remains an issue of contention with reference to sovereignty. The UN Charter functions on the basis of supremacy of rights of self-governance in international relations. However, it also provides that in matters of grave violations of human rights, it becomes the responsibility of foreign states to intervene in domestic matters. The point to ascertain would be whether there is actual violation of human rights and to what extent this violation warrants outside force. The immorality of intervention by a foreign state should be justified by the necessity of intervention in the destabilised state. If the violations of rights of citizens are basic or fundamental in nature, it would provide greater validity to foreign intervention. The banner of sovereignty must not be used to shield atrocities carried out by totalitarian or undemocratic states.

The UN must be the highest sanctioning body, and intervention must be carried out after deliberations by it so as to show that it is the general will of the global community at large and not a matter of specific interest to the intervening body. The procedure and manner in which the intervention takes place must also be accepted in international norms.

There arises a need for a legal framework to be set up to dictate terms and conditions of situations necessitating intervention through treaties and UN Resolutions. Various humanitarian aid agencies of the United Nations possess expertise on these sensitive matters, and their knowledge and awareness must be used in policy formulation. The more basic or fundamental the human rights violated, the greater the validity of the intervention is accorded to it. The immorality of the action of intervention, hence, when compared with the gravity of the situation must not supersede the latter. In the words of former UN General Secretary Kofi Annan - 'the aim of the UN Charter is to protect individual human rights, not to protect those who abuse them'.