HUMANITARIAN INTERVENTION, HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW

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DECLARATION

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary institution.

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Kathleen Hardie
ABSTRACT

This thesis will critically examine the status of humanitarian intervention in international law. This will involve an examination of constraints on the use of force both prior to and after the introduction of the Charter of the United Nations, along with the concept of state sovereignty and the prohibition of intervention in the domestic affairs of states.

It will be argued that the failure of the collective security system envisaged by the Charter, along with changing perceptions of state sovereignty and the increased prominence of human rights have focused attention on the need to develop appropriate international responses to egregious abuse such as genocide, war crimes and crimes against humanity. Humanitarian intervention has been promoted by various authors, non-government organisations, human rights activists and at times by states, as a potential solution.

The concept of humanitarian intervention excites considerable controversy not only about its legality, but also about the desirability and efficacy of the use of force to prevent or constrain grave violations of fundamental human rights. It also raises questions about the continuing relevance of international law relating to the use of force and its corollary, non-intervention in the domestic affairs of states. The question of whether an asserted customary international law right of humanitarian intervention survived the introduction of the Charter will be addressed along with the evolution of customary international law and the legal implications of the classification of norms jus cogens and obligations erga omnes.
The legal limits and some of the practical difficulties with humanitarian intervention will be reviewed. Essentially it will be argued that rather than focusing on an asserted or emerging ‘right’ of humanitarian intervention that does not appear to have strong state support, it might be more fruitful to focus on the need to reform the United Nations and strengthen its capacity and commitment to the development of more effective approaches to the promotion of human rights, conflict prevention and conflict resolution. Ideally this would also help to resolve critical questions relating to the legitimacy of international law.
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