

Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World

*Ian Hurd**

The concept of humanitarian intervention has evolved as a subset of the laws governing the use of force and has very quickly come to occupy an institutional position alongside self-defense and Security Council authorization as a legal and legitimate reason for war. It is both widely accepted and yet still highly controversial. This article considers whether humanitarian intervention is legal under international law. This is a common question but one that produces an uncertain answer: humanitarian intervention appears to contradict the United Nations Charter, but developments in state practice since 1945 might have made it legal under certain circumstances. Those who argue for its legality cite state practice and international norms to support the view that the prohibition on war is no longer what it appears to be in the Charter. The debate suggests that humanitarian intervention is either legal or illegal depending on one's understanding of how international law is constructed, changed, and represented. Since these questions cannot be answered definitively, the uncertainty remains fundamental, and the legality of humanitarian intervention is essentially indeterminate. No amount of debate over the law or recent cases will resolve its status; it is both legal and illegal at the same time.

This article examines the implications of this finding for the idea of the rule of law in world politics. It suggests that the traditional emphasis that scholars have put on compliance with international law is misplaced; that is, the power of international law in this case comes not from its ability to differentiate rule breakers

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Ciarán Burke



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International Conflict and Security Law Sergey Sayapin, Rustam Atadjanov, Umesh Kadam, Gerhard Kemp, Nicolás Zambrana-Tévar, Noëlle Quénivet, 2022-07-21 This unique two volume book covers virtually the whole spectrum of international conflict and security law It proceeds from values protected by international law Part I through substantive rules in which these values are embodied Part II to international and domestic institutions that enforce the law Part III It subsequently deals with current challenges in the application of rules of international conflict and security law Part IV and crimes as the most serious violations of those rules Part V Finally in the section on case studies Part VI lessons learnt from a number of conflict situations are discussed Written by an international team of experts representing all the major legal systems of the world the book is intended as a reference work for students and researchers domestic and international judges as well as for legal advisers to governments and international and non governmental organisations Sergey Sayapin is Associate Professor and Associate Dean at KIMEP University School of Law in Almaty Kazakhstan Rustam Atadjanov is Assistant Professor at KIMEP University School of Law in Almaty Kazakhstan Umesh Kadam is formerly Additional Professor at the National Law School of India University Bangalore India and Legal Adviser with the International Committee of the Red Cross Gerhard Kemp is Professor of Law at the University of Derby in the United Kingdom Nicol s Zambrana T var is Associate Professor at KIMEP University School of Law in Almaty Kazakhstan No lle Qu nivet is Professor in International Law at the University of the West of England Bristol Law School in the United Kingdom

Humanitarian Intervention and the AU-ECOWAS Intervention Treaties Under International Law John-Mark Iyi, 2016-01-22 The book reconciles the conflicts and legal ambiguities between African Union and ECOWAS law on the use of force on the one hand and the UN Charter and international law on the other hand In view of questions relating to African Union and UN relationship in the maintenance of international peace and security in Africa in recent years the book examines the legal issues involved and how they can be resolved By explaining the legal theory underpinning the validity of the AU ECOWAS laws the work provides a legal basis for the adoption of the AU ECOWAS laws as the frameworks for the implementation of the R2P in Africa

Reviewing the Responsibility to Protect Ramesh Thakur, 2018-12-07 This volume is a collection of some of the key essays by Ramesh Thakur on the origins implementation and future prospects of the Responsibility to Protect R2P norm The book offers a comprehensive yet accessible review of the origins evolution advances and shortcomings of the R2P principle A literature review is followed by an overview of the background meaning and development of R2P With a focus on the International Commission on Intervention and State Sovereignty ICISS Part I analyses the features of and explains the factors that make for success and failure of commission diplomacy Part II discusses the controversies surrounding efforts to implement R2P including the role and importance of emerging powers Part III describes the remaining protection gaps and explains why R2P will remain relevant because it is essentially demand driven Finally the book concludes with a look back at

the origins of R2P and looks ahead to possible future directions This book will be essential for students of the Responsibility to Protect and of much interest to students of global governance human rights international law and international relations

Interference in Sovereign Affairs and the Discursive Economy of International Law Frédéric Mégret, 2025-02-10

Interference in sovereign affairs is seemingly everywhere but nowhere at the same time Whether it is pressure on or corruption of public officials conditionality in development assistance criticism of one's human rights record psychological or propaganda operations instrumentalization of diasporas international organization supervision or meddling diplomats the phenomenon is as amorphous as it is diffuse But what if it was the lens that we use to capture interference that was the problem How do the tools we use in international law blind us to the reality of certain phenomena The urgency of understanding interference on its terms has never been greater and it requires nothing less than a reimagining of the sort of discursive investments on which international law rests

Peremptory Norms of General International Law (Jus Cogens)

Dire Tladi, 2021-08-16 *Peremptory Norms of General International Law Jus Cogens* Disquisitions and Dispositions brings together an impressive collection of authors addressing both conceptual issues and challenges relating to peremptory norms of general international law Covered themes in the edited collection include concepts relating to the identification of peremptory norms consequences of peremptory norms critiques of peremptory norms the relationship between peremptory norms and particular areas of international law as well as the peremptory status of particular norms of international law The contributions are presented from an array of scholars and experts with different perspective thus providing an interesting mosaic of thoughts on peremptory norms Written against the backdrop of the ongoing work of the International Law Commission it exposes some tensions inherent in the jus cogens

Islamic Jihadism and the Laws of War Omar

Mekky, 2023-07-21 The rapid rise of global Islamic Jihadism in the past few decades and the limited success of the anti terror campaign in halting its expansion have raised hard hitting questions about how different political actors might preserve and restore the world's peace and security Since the end of the Second World War international law has often been the chief instrument employed to address global conundrums of this kind Nevertheless international law alone cannot solve this problem Jihadist groups often cite Islamic law argumentations to justify their combat related actions against states while rejecting traditional international law rules On the other hand some states themselves ignore traditional international law rules to apply their so called counterterrorism measures The internationally recognized laws of war created to protect those who do not participate in hostilities are constantly challenged by jihadist groups and responding states in justification of their combat actions In *Islamic Jihadism and the Laws of War* Dr Omar Mekky explores both sides legal frameworks synthesising findings from both English and Arabic sources Drawing from the author's field expertise as a legal advisor in the Middle East and North Africa the book narrates how Islamic Jihadism began and evolved outlines the laws jihadists apply during combat addresses how states often react in their fights against jihadist groups and aims for a pragmatic humanitarian legal formula

An essential resource for legal professionals policymakers academics and students Mekky s book initiates a constructive dialogue between international law and Islamic law **Institutional Supports for the International Rule of Law** Charles Sampford,Ramesh Thakur,2014-08-27 The rule of law is widely seen as the cornerstone of any effective polity and increasingly a vital component of the international political system If the international rule of law were to be strengthened it would greatly contribute to trade security human rights and global cooperation in a range of fields Yet in many areas the rule of law seems almost absent in international affairs This book explores the institutions that support the effectiveness of the rule of law domestically It focuses on the extent to which similar institutions already exist at international level and analyses the possibility of their further development The authors speculate on how the international rule of law might be advanced in the future thereby suggesting potential strategies for strengthening the international rule of law Adopting an interdisciplinary approach and combining the fields of international relations politics and law this book covers a range institutions including UN Security Council International Court of Justice Human rights machinery Regional human rights International Criminal Court World Trade Organization International Tribunal for the Law of the Sea UN Department of Peacekeeping Operations It will be of strong interest to students and scholars of international relations international organisations global governance international law migration law international peace and security law applied ethics political economy political science and sociology **The Charter of the United Nations** ,2024-07-04 Since the third edition of this commentary on the Charter of the United Nations was published in 2012 the text of the Charter has not changed DL but the world has Central pillars of the international order enshrined in the UN Charter are facing serious challenges notably the prohibition of the use of force Human rights too have come under increasing pressure now also from contemporary information technology Global warming poses fundamental challenges for the world community as a whole in its effort to stabilize global ecosystems Fully updated the commentary takes up these and other developments It features new chapters on Climate Change and the Human Rights Council The commentary remains the authoritative article by article account of the legislative history interpretation and practical application of each and every Charter provision Written by a team of distinguished scholars and practitioners this book combines academic research with the insights of practice It is an indispensable tool of reference for all those interested in the United Nations and its legal significance for the world community The Commentary will be crucial in combining solid legal foundations with new directions for the development of international law and the United Nations in the twenty first century **Diplomacy and the Making of World Politics** Ole Jacob Sending,Vincent Pouliot,Iver B. Neumann,2015-08-20 This book shows how changing diplomatic practices are central in explaining key dimensions of world politics from law to war *How to Do Things with International Law* Ian Hurd,2019-08-27 A runner up for the 2018 Chadwick Alger Prize International Studies Association s International Organization Section this provocative reassessment of the rule of law in world politics examines how and why governments

use and manipulate international law in foreign policy Strengthening the Rule of Law through the UN Security Council Jeremy Farrall, Hilary Charlesworth, 2016-04-14 The UN Security Council formally acknowledged an obligation to promote justice and the rule of law in 2003 This volume examines the extent to which the Council has honoured this commitment when exercising its powers under the UN Charter to maintain international peace and security It discusses both how the concept of the rule of law regulates or influences Security Council activity and how the Council has in turn shaped the notion of the rule of law It explores in particular how this relationship has affected the Security Council's three most prominent tools for the maintenance of international peace and security peacekeeping sanctions and force In doing so this volume identifies strategies for better promotion of the rule of law by the Security Council This book will be of interest to scholars and students of international law international relations international development and peacekeeping State Interest and the Sources of International Law Markus P. Beham, 2018-05-11 This book addresses the disparity between positive non treaty law and its scholarly assessment in the area of moral concepts understood as altruistic as opposed to reciprocal legal obligations It shows how scholars are generously willing to assert the existence of a rule of international law thereby moving further away from actual state practice not taking into account the factors of legal rhetoric and the core survival interests of the state in the formation of custom and general principles of law The main argument is that such moral concepts can simply not manifest themselves as non treaty sources of international law from a dogmatic perspective The reason is the inherent connection between the formation of the non treaty sources of international law and state interest that makes it difficult if not impossible to assess state practice or *opinio juris* in the case of altruistic obligations The book further demonstrates this finding by looking at two cases in point Human rights and humanitarian exceptions to the prohibition of force As opposed to the majority of existing works on the subject *State Interest and the Sources of International Law* takes a bigger picture approach to a number of distinct problems in international law scholarship by looking at the building blocks of international relations on the one hand and merging this with sources doctrine on the other It will be of interest to researchers academics and students in the fields of international law human rights international relations political science legal philosophy and legal theory *An Equitable Framework for Humanitarian Intervention* Ciarán Burke, 2013-05-09 This book aims to resolve the dilemma regarding whether armed intervention as a response to gross human rights violations is ever legally justified without Security Council authorisation Thus far international lawyers have been caught between giving a negative answer on the basis of the UN Charter's rules positivists and a turn to ethics declaring intervention legitimate on moral grounds while eschewing legal analysis moralists In this volume a third solution is proposed The idea is presented that many equitable principles may qualify as general principles of law recognised by civilised nations one of the three principal sources of international law though a category that is often overlooked a conclusion based upon detailed research of both national legal systems and international law These principles having normative force in international law are then used to craft an

equitable framework for humanitarian intervention It is argued that the dynamics of their operation allow them to interact with the Charter and customary law in order to fill gaps in the existing legal structure and soften the rigours of strict law in certain circumstances It is posited that many of the moralists arguments are justified albeit based upon firm legal principles rather than ethical theory The equitable framework proposed is designed to provide an answer to the question of how humanitarian intervention may be integrated into the legal realm Certainly this will not mean an end to controversies regarding concrete cases of humanitarian intervention However it will enable the framing of such controversies in legal terms rather than as a choice between the law and morality has potential to become one of the most important books in public international law of the decade or in a generation Martin Scheinin Professor of Public International Law European University Institute Florence **Israel Yearbook on Human Rights, Volume 43 (2013)** Yoram Dinstein, 2021-10-11 The Israel Yearbook on Human Rights an annual published under the auspices of the Faculty of Law of Tel Aviv University since 1971 is devoted to publishing studies by distinguished scholars in Israel and other countries on human rights in peace and war with particular emphasis on problems relevant to the State of Israel and the Jewish people The Yearbook also incorporates documentary materials relating to Israel and the Administered Areas which are not otherwise available in English including summaries of judicial decisions compilations of legislative enactments and military proclamations

Norm Contestation Betsy Jose, 2017-12-02 This Brief uses the theory of norm contestation as a model for understanding variation in norm related behavior in international relations While most typical approaches to understanding norms view norms as stable structures and actor responses to them as unquestioned in a global political climate where departures from expected behavior may occur a more nuanced model is needed By using a norm contestation framework that highlights norm fluidity and actor agency this book expands the discussion providing insight into divergent interpretations of norm violation and compliance and the dynamic nature of norms The first two chapters introduce the norm contestation model explain how it contributes to the literature on norm violations and discuss the reasons for the cases discussed Chapters Three and Four provide detailed case studies of the mechanisms of norm contestation as they apply to the civilian immunity and non intervention norms Chapter Five concludes by reconnecting the norm contestation model to the case studies and describing how it can be applied to norms other than those regulating armed conflict It also discusses policy implications and avenues for future research As such this book will appeal to students and researchers working broadly on issues related to international relations theory armed conflict security studies humanitarianism human rights international law and global governance It will also be of interest to policy makers and practitioners interested in influencing the normative behavior of actors in diverse arenas **Michigan State Journal of International Law**, 2011 The Law Against War Olivier Corten, 2021-07-29 Praise for previous edition a comprehensive meticulously researched study of contemporary international law governing the use of armed force in international relations Andrew Garwood Gowers Queensland University of

Technology Law Review Volume 12 2 When this first English language edition of *The Law Against War* published it quickly established itself as a classic Detailed analytically rigorous and comprehensive it provided an indispensable guide to the legal framework regulating the use of force Now a decade on the much anticipated new edition brings the work up to date It looks at new precedents arising from the Arab Spring the struggle against the Islamic State in Iraq and Syria and the conflicts in Ukraine and Yemen It also reflects the new doctrinal debates surrounding recent state practice Previous positions are reconsidered and in some cases revised notably the question of consensual intervention and the very definition of force particularly to accommodate targeted extrajudicial executions and cyber operations Finally the new edition provides detailed coverage of the concept of self defense reflecting recent interpretations of the International Court of Justice and the ongoing controversies surrounding its definition and interpretation

Humanitarian Intervention American Society for Political and Legal Philosophy. Meeting, 2006 Somalia Haiti Bosnia and Kosovo All are examples where humanitarian intervention has been called into action This timely and important new volume explores the legal and moral issues which emerge when a state uses military force in order to protect innocent people from violence perpetrated or permitted by the government of that state Humanitarian intervention can be seen as a moral duty to protect but it is also subject to misuse as a front for imperialism without regard to international law In *Humanitarian Intervention* the contributors explore the many questions surrounding the issue Is humanitarian intervention permitted by international law If not is it nevertheless morally permissible or morally required Realistically might not the main consequence of the humanitarian intervention principle be that powerful states will coerce weak ones for purposes of their own The current debate is updated by two innovations in particular the first being the shift of emphasis from the permissibility of intervening to the responsibility to intervene and the second an emerging conviction that the response to humanitarian crises needs to be collective coordinated and preemptive The authors shed light on the timely debate of when and how to intervene and when if ever not to Contributors Carla Bagnoli Joseph Boyle Anthony Coates Thomas Franck Brian D Lepard Catherine Lu Pratap Bhanu Mehta Terry Nardin Thomas Pogge Melissa S Williams and Kok Chor Tan

Peace or Democracy? Izabela Pereira Watts, 2023-04-03 Contrary to the common belief that peace and democracy go hand in hand after a civil war Pereira Watts argues they are in fact at a crossroads Offering an innovative framework based on Philosophical Actors and Tactical considerations Pereira Watts identifies 14 dynamic dilemmas in democratic peacebuilding with respective trade offs She focuses on explaining the contradictions in modern post conflict recovery the challenges facing interim governments and the international community's role Based on an analysis of more than 40 countries between 1989 and 2022 and more than 60 UN peace operations she presents critical issues that commonly need to be addressed in such scenarios Elections and Political Parties the Constitution Checks Balances and Power sharing Transitional Justice Human Rights Amnesty Truth Commissions and War Crimes Tribunals Disarmament Demobilization and Reintegration and Media Reform and Civil Society Solving any of these dilemmas leads to others that

shape a complex apparatus for restoring peace and installing a new political regime An essential resource for decision takers policymakers international analysts and practitioners in the field of peacebuilding that will also be of great value to students of International Relations and Peace Studies as well as anyone interested in peacekeeping democracy building and state building

Rethinking the Just War Tradition Michael W. Brough, John W. Lango, Harry Van der Linden, 2007-03-08 The just war tradition is an evolving body of tenets for determining when resorting to war is just and how war may be justly executed Rethinking the Just War Tradition provides a timely exploration in light of new security threats that have emerged since the end of the Cold War including ongoing conflicts in the Middle East threats of terror attacks and genocidal conflicts within states The contributors are philosophers political scientists a U S Army officer and a senior analyst at the Center for Defense Information They scrutinize some familiar themes in just war theory from fresh and original angles and also explore altogether new territory The diverse topics considered include war and the environment justice in the ending of war U S military hegemony a general theory of just armed conflict principles supreme emergencies the distinction between combatants and noncombatants child soldiers the moral equality of all soldiers targeted assassination preventive war right authority and armed humanitarian intervention Clearly written and free of jargon this book illustrates how the just war tradition can be rethought and applied today Book jacket

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