Mohammad Humayun Kabir

LAW AND NATIONAL INTERESTS IN INTERNATIONAL RELATIONS

One of the characteristics of the present-day world is the ever-increasing interdependence of nations. The interdependence implies a common aspiration for lasting world peace and stability as well as a just world order. International law is an instrument of preserving peace and security in the world as it is a system of rules and principles which are supposed to regulate the conduct and relations among the members of international community. International law represents a positive attempt to build an international legal order, in the absence of which peace and sanity in the international community are in constant jeopardy. It is a basis of enduring world peace as it sets the norms and standards of behaviour confering rights and imposing obligations upon states and peoples.

But the world community consists primarily of sovereign units—states whose interests are quite obviously not identical. Although the nations are interdependent they make perennial efforts to minimize their dependence and pursue their national interests unhindered. In fact these national interests are the supreme consideration of a nation in the development of relations with other members of the world community. The whole gamut of international relationship is, by and large, determined by the complex interaction between various national interests which in turn are pursued by foreign policy initiatives and postures. But, ideally an individual state alone decides when, how

and how far to involve itself with others in order to serve its national interests best. Sometimes, it adjusts its own actions and behaviour with those of others while most often it seeks an adjustment by others with its own. In so doing, a nation, particularly a more powerful one, may, on certain occasions, step beyond the realm of prescribed norms of behaviour in international relations. Sometimes these extra-legal actions are so gross and blatant that they invoke immediate condemnation worldwide and, often, reprisal. Such actions are not only in contravention of norms of international law, but they also endanger the peace and security both regional and global. The countries which pursue their national interests and foreign policy objectives in disregard to those of others, however, offer an 'extended meaning' of national interests and tend to interpret the provisions of norms of international law in a way that justifies their actions.

International Law may serve as an instrument of pursuing national interests. But when they are pursued on the basis of a country's power, law is often ignored. In such cases power takes precedence over law as power is seen as crucial and the view of what is or what should be the meaning of law appears wholly subjective. Such an attitude towards law often leads to intervention by one state in the affairs of another state resulting in a stir in the regional and global equilibrium. And such cases of interventions are not rare. As a matter of fact, it is pertinent to raise questions such as who is to decide whether the vital interests of a country are in issue and what are the limits of those interests ? Is recourse to use or threat of use of force or economic coercion is permissible in international relations? Who is to determine and characterize a situation including domestic situation of a country endangering peace and security ? Who is to act in order to redress such a situation, and is intervention permissible in international law ?

The paper is an attempt to answer some of these questions on the basis of empirical evidences in two specific cases of intervention - one is the US intervention in Grenada, the Indian intervention in Sri

Lanka being the other. In the first section of the paper conceptual aspects of international law, national interests and power are briefly reviewed while the second and third seek to show, by examining the two cases of intervention, how the international conduct and behaviour of a state in course of realizing its perceived national interests are at variance with the norms and standards of behaviour prescribed by international law. The paper ends with some conclusions on the gap between theory and practice in international relations.

I. International Law and National Interests

A society can not operate without some normative social control of the behaviour of its members. Although international society is different from national societies, certain analogy may be drawn between them. International law sets the norms of behaviour for various actors in international relations. It establishes and preserves order and regularity in international life.

Unlike the municipal law, international law does not have any effective institutional arrangements for enforcement. This is a situation so 'anomalous' for a legal system that some professional lawyers altogether deny the legal character of international law, claiming that it lacks the distinctive characteristics of effective sanctions. Sovereign states and an international legal system of the same type as domestic legal systems are logically incompatible. Either the states are truly sovereign and recognize no superior, in which case there can be no legal rules binding them; or, if such rules exist, then states are not truly sovereign.[1] But, unlike in a national society, a proper appreciation of the realities and dynamics of international relations would convince that international law obviously can not play the role of municipal law in the international arena.

One of the characteristic features of international life is suggestive of *voluntary* observance and adherence to legal norms. Its alternative

1. Joseph Frankel, *International Relations*, 2nd ed,, Oxford University Press, London, 1969, p. 146.

is anarchy, a highly uncertain situation, and hence undesirable for the members of international community. Secondly, the binding character of international legal norms is founded upon their acceptance by states themselves, explicit or implicit. This very voluntary acceptance of norms of behaviour as binding is a form of exercising sovereignty. Thus one author argues that the true nature of international law which tries to reconcile sovereign states and international order is the expression both of state-sovereignty and of its limitations.[2] One of the most controversial issues in international politics, one that has long been debated, concerns the status of international law. One extreme is represented by John Austin who argues that there is no such thing as international law; there is only positive international morality. The other extreme is upheld by Hans Kelsen who argues that international law is at the very apex of all legal systems, that it is a source of legitimacy for municipal systems of law.[3] The stand one takes in this debate depends on the definition of international law one chooses to work with.

To fix international law in its proper relationship to the conduct of international politics, some definitions of that law are offered. According to Professor Oppenheim, "Law of Nations or International Law is the name for the body of customary and treaty rules which are considered legally binding by civilized states in their intercourse with each other".[4] He says that international law is "essentially a product of Christian civilization, and began gradually to grow from the second half of the Middle Ages".[5] This definition is not acceptable today for it has now become obsolete and inadequate. Kelsen defines international law as "a body of rules which regulate the conduct of

2. *ibid*, p. 147
3. Theodore A. Couloumbis, James H. Wolfe, *Introduction to International Relations : Power and Justice*, Prentice-Hall of India Private Limited, New Delhi, 1981, pp. 227-228
4. L. Oppenheim, *International Law : A Treatise*, Longman Green & Co. London, Vol. I, 8th ed., 1970, pp. 4-5,
5. *ibid*, p. 6

the states in their intercourse with one another.[6] This definition is also inadequate as its contention that states alone are subjects of international law is not consistent with the changing character of international law. A more adequate definition is, however, offered by Fenwick. In his words : "International Law may be defined in broad terms as the body of general principles and specific rules which are binding upon the members of international community in their mutual relations."[7]

According to the Soviet definition, International Law is "the sum total of norms regulating relations between states in the process of their struggle and co-operation, expressing the will of the ruling classes of these states and secured by coercion exercised by states individually and collectively".[8] On the basis of all these definitions S.K. Kapoor appropriately concludes that international law is a body of rules and principles which regulate the conduct and relations of the members of international community.[9] As a matter of fact, international law is a constantly evolving body of norms that are commonly observed by the members of international community in their relations with one another. These norms confer rights and impose obligations upon states and, to a lesser extent, upon international organizations and still lesser upon individuals. Non-compliance of obligations is fraught with sanctions not only of legal character but also of political, economic and moral nature. Legally, the UN Security Council may enforce the norms even with the use or threat of force. Political and economic blockade may also act as an instrument of enforcement.

---

6. Hans Kelsen, *Principles of International Law*, p. 3, quoted in M. P. Tandon, *Public International Law*, Allahabad Law Agency, Allahabad, India, 1981, p. 2.
7. Charles G. Fenwick, *International Law*, 1971. p. 31, quoted in S.K. Kapoor, *International Law*, Central Law Agency, Allahabad, India, 1985, p. 24
8. Definition by A.Y. Vishinsky in 1948, quoted in S.K. Kapoor, *op. cit*, p, 25
9. S.K, Kapoor, *op. cit*,, p. 29.

World public opinion may also serve as a moral sanction to the non-compliants of international legal norms.

As a system of normative ideas and empirical legal propositions, international law continues to envisage international order and direct its subjects towards it. As a matter of fact, international law, on the basis of a world wide perspective, can impart rules of the political game to the international community while highlighting the fact that political and power games are essentially "instrumental" and these, therefore, are relevant only till they conform to the basic principles of international existence.[10] Although international law is expected to be a controlling mechanism of international politics, its nature and scope and more importantly its implementation, however lead to differing implications manifesting not only in terms of the Western, the Marxist and the Third World perspectives, but chiefly in terms of individual national interests.

National interest is the key concept in foreign policy. Despite its ambiguity, the concept of national interest remains of central importance in any attempt to describe, explain, predict or prescribe international behaviour. "The concept of national interest is used in both political analysis and political action. As an analytical tool, it is employed to describe, explain, or evaluate the sources or the adequacy of a nation's foreign policy. As an instrument of political action, it serves as a means of justifying, denouncing, or proposing policies. Both usages, in other words, refer to what is best for a national society. They also share a tendency to confine the intended meaning to what is best for a nation in foreign affairs"[11]

Hans Morgenthau, a well-known proponent of the *realist* theory of international politics holds the view that interest is the perennial standard by which political action must be judged and directed and

---

10. Anam Jaitly, *International Politics : Major Contemporary Trends and Issues*, Sterling Publishers Private Limited, New Delhi, 1986, p, 238.
11. James N. Rosenau, *The Scientific Study of Foreign Policy*, Frances Pinter (Publishers) Ltd , London, 1980, p. 283.

objectives of a foreign policy must be defined in terms of power,[12] while power is defined as the ability to induce others to act or not to act, by the use of physical force or threat of its use.[13] The premise of Morganthau's view is that the national interest is devoid of moralistic, legalistic and ideological criteria. He equates national interest with the pursuit of state power, where power stands for anything that establishes and maintains control by one state over another.

But the ever-increasing global interdependence suggests that the states pursue 'macro politics' in relation to one another. A country's national interests should be related to those of others, they should be compatible to those of others. In a multinational world this is not only a legal obligation but also a requirement of political morality. In a nuclear age it is also a precondition for survival of international actors themselves. National interests, therefore, need not be so narrowly defined as to exclude moral, religious and other altruistic considerations, but, to be effective, these should be regarded as part of it. As a legal system, international law also subsumes these elements in it and makes its norms binding on its subjects in as much as they accepted them to be so.

So the nations are obligated to pursue their national interests in conformity with the norms and provisions of international law. They should not flout or misinterpret the provisions of law in order to justify their national interests. After all, the price for the achievement of national interests of a particular state must not be the deterioration or severance of bilateral relations, jeopardy of peace and security both regional and global. Cooperation is a precondition for a lasting survival in an interdependent world and, in turn, cooperation is conditional upon the existence of a suitable framework of a reasonably stable international order within which the actions of other states

---

12. Hans J. Morgenthau, *Politics Among Nations : The Struggle for Power and Peace*, New York : Knopf, 2nd ed., 1954, pp. 5-9, 528.
13. James Fawcett, *Law and Power in International Relations*, Faber and Faber Limited, London, 1982, p. 17.

are predictable and therefore rational foreign policy is possible. Respect and obedience to international law can guarantee such an order where all can prosper together.

But in practice there are precedences of flagrant deviations from the desirable modes of behaviour of the states in the contemporary world. In such cases, the normative and ethical considerations fade into the background as these states tend to worship power and try to perpetuate and further consolidate their power endowments. Power-monism is so compelling in their scheme that every entity appears to be a power entity—super powers, middle powers, regional powers, small powers, etc. Thus, international politics turns into power-politics. Interestingly, certain states aspire to go up the international-power-ladder seeking mutual recognition of their status as a power at a particular stage in their national achievement and capabilities.

II. US Intervention in Grenada and International Law

Grenada is a micro-state located in the southeastern Caribbean Sea, approximately 1600 miles from the United States. Its territory covers some 133 square miles–about twice the size of Washington DC and its citizen population numbers around 110,000. Granted independence from British colonial rule in 1974, Grenada functioned under a parliamentary government until March 1979, when Maurice Bishop's New Joint Endeavour for the Welfare, Education, and Liberation (JEWEL) Movement ousted then Prime Minister Sir Eric Gairy in a near bloodless coup. Following a coup and subsequent turmoil in Grenada on 25 October 1983, the US military forces invaded Grenada.[14] Given the circumstances, serious questions have been raised about the legality of the US action under international law.

This is a clear case of intervention as "intervention is dictatorial interference by a State in the affairs of another State for the

14. Christopher C, Joyner, "Reflection on the Lawfulness of Invasion", *American Journal of International Law*, Vol. 78, January 1984, No. 1, p. 131.

purpose of maintaining or altering the actual condition of things."[15] However, mere friendly advice and general political influence do not strictly constitute intervention unless coupled with use of force or a threat to use force.

In the Security Council, the United States, however, tried to justify its action on the following grounds:[16]

1) to protect US citizens;
2) to facilitate the evacuation of those citizens who wish to leave;
3) to provide support for the Eastern Caribbean forces as they assist the people of Grenada in restoring order and establishing functioning governmental institutions ;
4) to safeguard freedom, democracy and peace ;
5) to restore self-determination to the people of Grenada rather than to deny them self-determination ;
6) action on the basis of the provision of the Charter of the Organization of American States and also those of the Act of the Organization of the States of the Eastern Caribbean ; and
7) invitation from Grenada's Governor General,

The various justifications advanced by the United States can be summed up under three heads : the protection of the US nationals, the collective security in the region and the restoration of functioning institutions of govetnment in Grenada. Even if one appreciates these political motivations, the overriding legal issue looms no less salient : Did the US have the lawful right to intervene militarily into the domestic political affairs of Grenada ? In order to be able to answer a question like this it is necessary to examine the following :

15, L. Oppenheim, *op. cit.*, p. 305.
16. J.N. Singh, *Use of Force under International Law*, Harnam Publications, New Delhi, 1984, pp. 246-248

1) the pertinent facts ;
2) the legal norms governing this particular situation ; and
3) the motives behind this armed intervention.

Facts

The armed invasion of Grenada by the US forces in October 1983 constituted a tragic climax to the crisis in the Caribbean state. The events which led up to the invasion were initiated when sharp internal differences between members of the People's Revolutionary Government (PRG) of Grenada began to emerge into the open. In fact, there has always been a division of opinion within the PRG leadership between two factions of the ruling Marxist regime. The liberal faction was led by Prime Minister Bishop while the radical one was headed by the Deputy Prime Minister Bernard Coard. Though Marxist in essence they differed in adopting forms of development strategy for their country.[17] But what is contextually more pertinent is that Mr. Bishop with a view to improving the lots of people, wanted to make his country a 'Holiday Paradise'. He had, therefore, accepted a Cuban proposal to construct an airport with the cost of £ 40 million in the South of the island. In order to implement this scheme four hundred technicians had also arrived from Cuba. This created suspicion in the minds of Americans that the plan was being implemented to increase communist influence in the hemisphere.[18]

As a matter of fact, the Reagan Administration seems to have had apprehensions about the gradual increase of Soviet influence in the US strategic posture through the Cuban proxy.[19] The US interests in the area have been, in fact, most extensive covering political, strategic, economic, and human interests. Since the days

17. Anthony Payne, *The International Crisis in the Caribbean*, Croom Helm, London, 1984, pp. 161-163.
18. S.K. Kapoor, *op. cit.*, p. IXXXIV (Appendix IV).
19. Anthony Payne, *op. cit.*, p. 48

of the Monroe Doctrine, the United States has regarded itself as the leader of the countries of Western hemisphere. And on this basis the US governments have long interested themselves in the internal political affairs of all the countries of the Caribbean. Their main concern has been to deter the Soviet-Cuban influence and to secure the emergence of pro-American governments in the region.[20] Reagan himself is recorded to have stated after the landing of US troops in Grenada that 'we got there just in time', and asserted that Grenada was a 'Soviet-Cuban colony being readied as a major military bastion to export terrorism and undermine democracy'.[21]

On October 12, a military coup staged by Deputy Prime Minister Bernard Coard toppled the Bishop regime. On October 19, Bishop and at least five other Grenadan Government officials were executed by the "revolutionary military armed forces". That same day, a 16 member Revolutionary Military Council was formed, Army Commander General Hudson Austin was designated its "nominal head" and a 24-hours "shoot on sight curfew" was imposed. This unstable internal situation in Grenada, coupled with an apprehension that such conditions might spread and thus foment political instability elsewhere in the Caribbean gave cause for regional concern. To rectify what was seen as an intolerable state of affairs, a multinational invasion was launched against Grenada. Led by 1900 US Marines and Army Airborne Rangers, the invasion force also included 300 troops representing Jamaica, Barbados, Dominica, St. Lucia, Antigua and St. Vincent.[22]

The facts on invitational aspect of the intervention are very pertinent to establish objectivity necessary for legal analysis. As interpreted by the Reagan Adminisiration, the Governor General's (of Grenada) "invitation to take action" was an important element—legally as well as politically—in the decision of the US and

20. *ibid.*, pp. 35-39, 165.
21. *ibid.*, p. 162
22. Christopher C. Toyner, "Reflection on Invasion", *op cit.*, pp. 131-132.

other countries participating in the joint force.[23] Now, invitation genuinely profered by the legitimate government of state is well grounded in international law. But the question arises as to whether the Governor-General was constitutionally empowered to invite in foreign military forces. Experts hold the view that the political, legal and constitutional realities of Grenada in October 1983 strongly suggest that he was not.[24] For analysis sake, even if the competence of the Governor General is conceded to, the question remains when exactly did he issue his invitation. To be valid, he should have issued it prior to the military action. But those who followed the events carefully observe that the invitation was a fabrication concocted after the invasion and antedated so as to appear to have been issued in advance.[25]

A legal fact as to whether the lives of the American nationals were imminently at risk is to be established. According to the Department of State Legal Adviser, a basis for US participation "was the need to protect the 1000 US citizens on Grenada whom responsible US authorities considered to be threatened by the anarchic conditions on the island ... ..."[26]. Now, out of 1000 Americans in Grenada 800 were the students of a Medical College. The Chancellor of the said Medical College made it clear that there was no danger to the sccurity of American students.[27] Moreover, it was reiterated by Grenada's Revolutionary Military Council that the lives, well-being and property of every American and other foreign citizen resident in Grenada were fully

23. Statement by the Hon. Kenneth W. Dam, Deputy Secretary of State, before the House Committee on Foreign Relations, 2 November 1983, p. 9.
24. Christopher C. Joyner, *op. cit.*, p. 138.
25. J.H.H. Weiler, "Armed Intervention in a Dichotomized World: The Case of Grenada", in A. Cassese (ed.) *The Current Legal Regulation of the Use of Force*, Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1986, pp. 246-247
26. Quoted in *ibid*, p. 248
27. S.K. Kapoor, *op. cit.* p. IXXVVI (Appendix IV).

protected and guarnteed by the Government. This message was telexed to Grenada's UN representative Mr. Jacobs who read it out in the Security Council.[28] The American claim is, therefore, untenable legally or otherwise.

Norms

Until 1945, there was no international prohibition on the unilateral resort to force. It is the United Nations Charter which introduced general prohibition of the unilateral resort to force by states. It significantly changed the principle and practice in international politics. The principle was enshrined, in its most authoritative form, in Article 2 (4) of the UN Charter which provides : "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." Therefore, the basic policy of contemporary international law has been to maintain the political independence of territorial communities so that they can continue to express their desire for political community in a form appropriate to them.[29] It clearly means that the obligatory norm of non-intervention by one state in the internal or external affairs of another remains a pre-eminent tenet undergirding the law of nations. Under international law, armed intervention *per se* violates rights that should be inviolable.

Article 2 (4) of the UN Charter was part and parcel of a complex collective security system. Chapter VI of the Charter established procedures for pacific settlement of disputes. Chapter VII conferred on the Security Council a broad competence to act on behalf of the international community with respect to varying characterizations of unlawful unilateral resort to force : threats to the peace, breaches

28. M. Jacobs, S/PV. 2487, 25 October 1983 pp. 42-46.

29. W. Michael Reisman, "Coercion and Self-Determination : Construing Charter Article 2(4)", *American Journal of International Law*, Vol. 78, July 1984, No. 3, p. 643.

of the peace and acts of aggression.[30] The US intervention was, therefore, unlawful. The appropriate UN organ did not characterize the developments in Grenada as a threat to the peace and security, nor did it authorize anybody to 'rectfy' the situation. On the other hand, the intervenors did not make adequate efforts for peaceful means of settlement nor did they turn to the UN for addressing the situation.

The action in Grenada has also violated a General Assembly resolution of 1965 and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN, as they reaffirmed the principle of non-intervention.[31]

The US action has also violated certain provisions of some regional arrangements. That is why the argument of the intervenors on the basis of the provisions of the Charter of the Organization of American States (OAS) and those of the Act of the Organization of the Eastern Caribbean States (OECS) falls flat before a careful legal scrutiny. Articles 15, 17, 18 of the OAS provide that no state or group of states has the right to intervene directly or indirectly, for any reason whatseover in the internal or external affairs of any other state ; the American states bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defence in accordance with existing treaties or in fullfilment thereof ; the territory of a state is inviolable. The Rio Treaty also stipulates the same provisions.[32] The members of OECS also could not lawfully authorize the US invasion of Grenada. Article 8 of its Charter restricts OECS competence in such matters to situations amounting to an "external aggression" and then only in accordance with the right of individual or collective self-defence recongnized by UN Charter Article 51. As known, no external aggressor existed as Grenada was a Treaty member. Furthermore, OECS Article requires unanimous agreement among member

30. *ibid*, p. 642,
31. S. K. Kapoor, *op. cit.*, pp. 174-175.
32. Christopher C. Joyner, *op. cit.*, pp. 140-141.

states before action can be taken, and that condition was never fulfilled. What is interesting is that the United States was not a party to the Treaty and therefore legally lies outside the ambit of its concerns.[33] All the efforts to justify US action resemble a debate around an archer who after shooting his arrow, proceeds to draw the target around it.[34]

Admittedly, political conditions in Grenada during October 1983 may have been unstable and perhaps even critical. Nevertheless international law categorizes civil strife as strictly a domestic matter beyond the purview of other states. As a consequence, there is no legitimate ground for foreign intervention to aid in suppressing the civil conflict unless such assistance comes with the consent of the state in question. Thus the pretext of 'establishing order' was rightfully questioned by some members of the Security Council when the issue was being considered. They asked : who had given the US the right to be an international policeman ?[35] Thus, foreign governments had no business to interfere in the internal affairs of Grenada and had no justification for sending troops for restoring law and order and restoring functioning institutions of the Government. And as such the US intervention was very widely and unequivocally condemned including some of its allies.

Motives

It is, therefore, only obvious that the United States was not legally justified to have intervened in Grenada. In this particular case, the perceived politico-strategic interests took precedence over norms of law. In the ultimate analysis, it was an evidence of the zero-sum game between the superpowers displayed by one in its backyeard. In fact, the Reagan Administration's hostility to the

33. *ibid*, pp. 135-137; Francis A. Boyle, et al, "Letter : International Lawlessness in Grenada", in *ibid*, p, 173.
34. J.H.H. Weiler, *op. cit.* p. 274
35. Christopher C. Joyner, *op. cit.*, p. 140 ; S.K. Kapoor, *op. cit.*, p. IXXVVI (Appendix IV)

Marxist regime in Grenada had long been evident. Ever since Reagan came to power, his Administration had opposed and harassed Bishop and his colleagues without succeeding in breaking their nerve and without convincing the rest of the world that Greneda, even with its new airport, constituted a threat to US national security.[36] Plans were made to bring the regime down and it was a question of finding an appropriate opportunity to do so. The October 1983 developments in Grenada offered the Reagan team the opening they had been searching for.[37] In other words, the motive that lay behind the US intervention was the one-up-manship by scoring a 'victory' in the world-wide-anti-communist crusade to which the Reagan Administration was committed.

As a matter of fact, the intervention is a fresh demonstration of the US commitment to the "Monroe Doctrine" after more than a century and a half since its inception. The "Monroe Doctrine" has been a guiding principle in the US foreign policy in its hemispheric relations in general and in the Caribbean affairs in particular.

In direct violation of its international obligations the Reagan Administration out of an ingrained distaste and systemic hatred, deposed the leftist military junta that had seized power after the coup against Prime Minister Maurice Bishop and then installed a government more favourably disposed to the United States. It not only helped remove the Soviet-Cuban influence in Grenada, but also denied the Communists the strategic opportunities presented by the island's location. Following the "Big Stick" policy, the Reagan Administration preferred the imposition of unilateral military solution as a panacea for the endemic instability throughout the Caribbean and Central America. It may, therefore, be concluded that the perceived national interests of the United States, mainly its political and strategic considerations in the given context, overrode the international legal obligations.

---

36. Anthony Payne, *op. cit.*, p 163.

37. *ibid.*

III Indian Intervention in Sri Lanka and International Law

Rephrasing the words of Verwey about the Grenadan intervention by the USA one can state that the recent intervention in Sri Lanka by India is the latest in a series of armed interventions carried out by members of the UN, without being authorized by the competent UN organs and nevertheless claimed by them not to be violative of the UN Charter allegedly (among other reasons) because they were of a 'humanitarian' character.[38]

India intervened in Sri Lanka on 4 June 1987 when an Indian Air Force squadron with five Soviet-made An-32 transport planes and a fighter escort of four French-made Marage jets, set off for Sri Lanka and parachute-dropped about 25 tonnes of food and medicine over the Jaffna peninsula for its 'starved' and wounded Tamil inhabitants. It was followed by a peace accord signed by India and Sri Lanka on 29 July 1987 which appeared to be an act of imposition by the former on the latter. Immediately afterwards the Indian 'peace-keeping force' took control of Northern and Eastern Sri Lanka.

The situation in Jaffna Peninsula that was cited as an excuse for the Indian intervention was one obtained as a result of Colombo's blockade and a military offensive against the Tamil militants in the north. Beside the militants, the area's civilians had endured some hardships from the military operation and five-month long cut off of supplies and telephone service. The government troops scored some success aganst the rebels including the sealing off of key landing sites for supplies ferried across the straits from Tamil rebel bases in southern India. True that many Point Pedro civilians were hungry, but the army appeared to be making their best to bring in supplies.[39] But New Delhi characterized the situation as one of very grim and serious nature warranting immediate action

38, W.D. Verwey, "Humanitarian Intervention", in A. Cassese (ed.), *op. cit.*, p. 57.

39. *Time*, 15 June 1987, p. 16.

on its part on 'humanitarian ground'. For our purpose of analysis the official New Delhi version of this 'humanitarian intervention' may be summarized as follows :[40]

1) to feed a population starved by Sri Lanka government's food and fuel blockade clamped on the Jaffna Peninsula since January 1987 ;

2) to support the Tamils falling prey to a policy of 'genocide' pursued by Colombo in the northern part of the country ;

3) to extend medical help to those who were injured by the Sri Lanka Government forces during its 'Operation Liberation' launched since 25 May 1987.

In short, it may be put that India wanted to redress 'violation of human rights' – a situation allegedly perpetrated by the Colombo Government pursuing a policy of genocide. It may be recalled, in this connection, that India's June 4 intervention (dubbed as "Eagle Mission 4") was preceded by its June 3 "Mercy Mission" (sarcastically dubbed as "Parippu Invasion") in the form of an Indian flotilla escorted by at least one Indian gun-boat which was faced down by the Sri Lanka Navy.[41]

To facilitate a scrutiny of the Indian 'humanitairan intervention' in light of norms of international law a look at Colombo's version would be of relevance —

> Colombo was still in a position to feed its citizens and did not need any outside assistance to deal with the Jaffna situation. Colombo invited foreign diplomats and journalists to visit the beseiged Jaffna Peninsula to verify the Indian charges. Sri Lanka's Air Force was not equipped for systematic carpet bombing on the Tamils in the North. The Colombo Government did not solicit any humanitarian aid, but if the Government and

---

40. *Time*, 8 June 1987, p. 11; *Time*, 15 June 1987, pp. 16-17; *Newsweek*, 15 June 1987, pp. 10-11; *Asiaweek*, 14 June 1987, pp. 15-22.
41. *ibid.*

people of India insisted it, they could deliver the supplies to the Sri Lankan officials in Colombo for distribution by them. Indian action is considered as an unwarranted assault on its sovereignty and territorial integrity.[42]

Intervention was permitted in the past on humanitarian grounds. But with the enforcement of the UN Charter (and commencement of New International Law compared to traditional International Law) the right has ceased to exist. Although the UN has done commendable work in the field of human rights, it does not provide any provision for any state to intervene in another state on humanitarian considerations. Although on the basis of Articles 1,55 and 56, the Charter provisions create legal obligation upon the members in respect of human rights, the Charter does not authorize any state to intervene in the affairs of another.[43] If intervention is at all permitted on humanitarian grounds it may be done only by the United Nations and that too by characterizing the situation otherwise, e.g., by connecting or linking the matter of human rights with that of the maintenance of international peace and security. That is to say, if under Article 39 the Security Council determines that violation of human rights in any state poses a threat to peace or amounts to breach of peace, then the Security Council may intervene in accordance with the Chapter VII of the UN Charter.[44]

It is well acknowledged that the Government of India did not draw the attention of the United Nations, nor did the latter characterize the situation in northern Sri Lanka as a threat to regional peace and security, not to speak of global peace and security. The only legal remedy available to Rajiv Gandhi was to take the issue to the UN. He did not. Instead, he took his own decision in a Machiavellian fashion of justifying the means for his ends. Legal considerations do not appear to have weighed with him very much.

---

42. *ibid.*
43. S.K. Kapoor, *op. cit.* p. 180.
44. *ibid.* pp. 180-181

In fact, the motives behind India's intervention may be attributed to New Delhi's politico-strategic and ethnic interests and considerations connected with the situation (then) obtaining in Sri Lanka. Added to this was a domestic dimension of the Gandhi Government's compulsions. It is quite plausible that New Delhi had apprehensions that if the Sri Lankan troops prevailed against the Tamil guerrillas in the former's offensive, rioting would break out in Tamil Nadu state– home of 55 million Tamils. Prime Minister Rajiv Gandhi arguably needed the support of Tamil Nadu politically particularly in light of the ongoing sectarian strife in India's life.[45] Coming back to New Delhi's politico-strategic interests in Sri Lanka it may be only restated that the Nehruvian vision envisaged a South Asia based on a strategic unity of India and her regional smaller neighbours. He is quoted to have written that 'this small national state is doomed' and envisaged that Sri Lanka would inevitably be drawn into a closer union with India 'presumably as an autonomous unit of the Indian Federation.[46] The successive Indian rulers have been true to their predecessor's South Asian policies in general and in relation to Sri Lanka in particular, if not literally, at least in spirit. In recent times also, in a span of only four years, from the role of a 'mediator' India assumed the role of a 'guarantor' of peace in Sri Lanka. And quite arguably all the actions of India in Sri Lanka are attributed to the former's perceived politico-security interests.[47] The intervention was clearly a show of India's force in a bid to demonstrate its ability to establish its hegemony in the region and status of a great power on a global plane. The intervention also seems to have worked as a filler to other countries of the region and a "hands off South Asia" notice to the outside powers. The Indian action virtually set the beginning of establishing the 'India Doctrine' meaning South Asia is for the

45. *Newsweek*, 15 June. 1987, p. 11
46. Shelton Kodikara, *Strategic Factors in Interstate Relations in South Asia*, Heritage Publishers, New Delhi, 1984, pp. 1, 13, 17.
47. Iftekharuzzaman, Mohammad Humayun Kabir, "The Indo-Sri Lanka Agreement : An Assessment", *BIISS Journal*, Vol. 8, No. 4, October 1987, pp. 466-467.

Indians (a suitably modified version of 'Monroe Doctrine' which meant Americas for the Americans).

Events following the airdropping incident showed that Indian compulsions were much more than humanitarian. The objective and content of the peace accord that was signed in less than two months are certainly more political and strategic than humanitarian. Indeed, as indicated by J.N. Dixit, Indian influential High Commissioner to Colombo, the relief airdrop was part of a "graduated scale of options that were available to the Indian Government. The despatching of the flotilla was option one and when the response to that option was negative, option two was carried out".[48] Analysts in Colombo believed India was planning a third, more formidable option: large-scale armed intervention.[49] A military intelligence official in Colombo is reported to have divulged that he had information about a heavy troops build-up in India's southern Tamil Nadu state, barely, 90 km away from Sri Lanka across the Palk Strait. He claimed that the Indian Army had rushed in men and equipment from its Central Command to beef up its Southern Command. An abandoned miliary airfield near the South Indian city of Rameswaram had also been renovated and troop transporter aircrafts stationed there. Indian Navy sources in New Delhi revealed that more than a dozen vessels had been mustered for a possible naval intervention in Sri Lanka.[50]

The very-next-day-entry of the Indian troops into Sri Lanka amply justifies the above information. So can it not be stated that what happened on that day was just to fit the events into the scheme of Indian politico-strategic designs in the region in general and Sri Lanka in particular ? In a logical sequence one can then contend that Sri Lanka, under Indian pressure, was compelled to sign the so-called Peace Accord with India for the solution of its internal problem.

---

48. *Asiaweek*, 28 June 1987. p. 26
49. *ibid.*
50. *ibid.*

With all respect to President Jayewardene's political acumen and patriotism one may venture to contend that the signing by him of the Peace Accord was not an exercise of Sri Lanka's sovereign will *per se*, as he was constrained to do so under the influence of India's (generally) hegemonic regional aspirations and (particularly) political and military pressure in the present context of Indo-Lanka relations. In such a situation, true to the provisions of Articie 52 of the Vienna Convention on the Law of Treaties of 1969,[51] the validity of the agreement may also be questionable.

Conclusion

What emerges from the above is that when perceived national interests are deemed paramount by one state in its relations with others, international law may fade into insignificance. In that case the incidence and effectiveness of international law in the conduct of international relations are doomed to suffer. True, the national interests of a nation-state are multiple and their number and range may vary with its power as well as aspirations. But it does not however, confer a right upon it to ignore the authority of international law and recklessly behave with other states. It is in conformity with the right to self-determination, the order in the contemporary world, by virtue of which all peoples freely determine their political status and pursue their economic, social and cultural development. As a matter of fact, a human community survives on organized behaviour among its members, and likewise the structure and stability of the international community depend, inter alia, upon international law. Any striking variance between international law and national interests is bound to bear on the effectiveness of the global order. At the same time, non-observance of the standards of behaviour

51. Article 52 of the Vienna Convention on the Law of Treaties stipulates : A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations, in T.B. Millar (ed.), *Current International Treaties*, Croom Helm, London. 1984, p. 29.

in conducting international relations may bring penalties in various forms or at least injure the image of the international actor accused of the same.

Intervention is one of the most fragrant forms of violation of international law. It is simply because of the fact that non-intervention has now become a *jus cogens* principle in the interest of preserving and promoting the global order. Neverthless, intervention does take place on various contexts and instances. The US intervention in Grenada and the Indian intervention in Sri Lanka are two of the latest, in the series. These two interventions amply show how a nation's perceived national interests may jeopardize those of others in contravention of international law. National interests pursued with the help of power are bound to deny the same to others. Power and law do not go together in their positive meaning. What the United States and India did in Grenada and Sri Lanka respectively in the name of safeguarding their national interests appears to be a violation of the principles of non-intervention, self-determination, and territorial integrity and political independence of the victims, and disregard to the interests of others in the respective regions.

The dictum in international politics should not be one that would suggest that the strong states should act in their national interests in violation of those of others. It should rather be in conformity with the true spirit of the UN Charter. In conducting their relations with others, the states should give due role and respect to international law as the power of that law is derived from the benefits of its voluntary obedience and observance as well as from the fear of the breakdown of the international order from its frequent non-compliance. To make our earth-planet a better place to live in, a happy synchronization between the international law and national interests two could play a constructive role in preserving and fostering peace and security anywhere and everywhere in the world.