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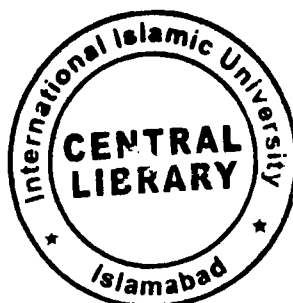
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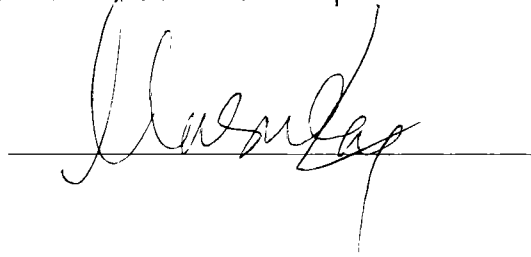
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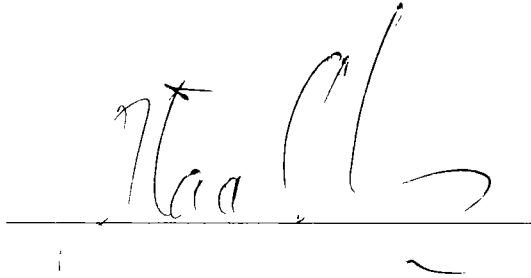


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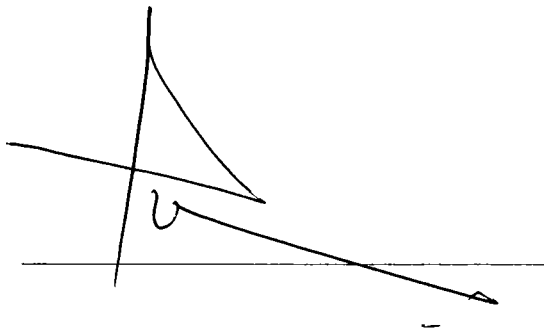
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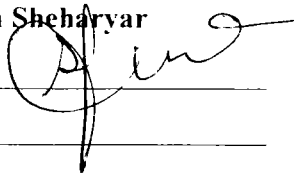
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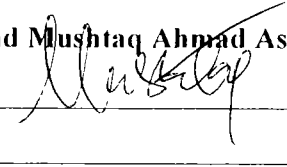
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## ACRONYMS

AIOC	Anglo-Iranian Oil Company
AMAG	The American Mission for Aid to Greece
CIA	Central Intelligence Agency
CDP	The Christian Democratic Party
ELAS	Greek People's Liberation Army
EAM	National Liberation Front (Greece)
EU	European Union
ICC	International Criminal Court
ICJ	International Court of Justice
ISAF	The International Security Assistance Force
PCI	The Italian Communist Party
PSI	Italian Socialist Party
RUF	The Revolutionary United Front
S.C	Security Council
WMD	Weapons of Mass Destruction
NATO	North Atlantic Treaty Organization
U.K	United Kingdom

U.N Charter	United Nations Charter
UNO	United Nations Organization
USSR	Union of Soviet Socialist Republics
USA	United States of America
UNO	United Nations Organization

**DEDICATED TO MY FAMILY**

## ACKNOWLEDGMENTS

Praise be to Allah, the sustainer of the worlds, the Merciful, the compassionate and may his everlasting blessings and peace be on Muhammad (P.B.U.H), the last of his Messengers!

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Allah bless them All.

## **ABSTRACT**

This thesis aims to look at the concept of regime change around the globe and considers the limitations and scope of intervention in other states in accordance with international law. This assessment is premised on the historical evaluation of the regime change and its role in shaping international politics and international law. This Thesis also examines the current situation of regime change in Ukraine and the potential threats to the international peace due to the recent Russian intervention in Ukraine and annexation of Crimea. It explores the legal standing of Russian actions with respect to Crimea. The study does not only look into Russian Actions but also evaluates the role of other suspected players which might have compelled Russia to resort to aggression. This research also examines Russian authorities' claims that they had been forced to intervene in Ukrainian crisis and their pleas of protecting ethnic Russians abroad and the formal invitation for military assistance by the ousted President of Ukraine are also analyzed. The role of United Nations in tackling and minimizing these crisis is also discussed with special reference to the powers entrusted to the Security Council under Chapter VII of U.N Charter. Article 2(4) of U.N Charter prohibits the use of force except in cases where it has been authorized by the Security Council. In this research, case studies of various types of interventions are discussed and these cases are compared with the case of Crimea. Meanwhile this research tries to highlight the different modes of regime change with real world examples and draws light on the measures to control such aggressive regime changes and interventions for protecting the national sovereignty and territorial integrity of the states. This research aims at containing or at least minimizing the use of notion "Regime Change or Unilateral Intervention" because of its vague interpretations, perceptions and of its destructive practical implications. This research finds out that the generality of the notion of Regime change may

lead into a series of non-ending conflicts and may further endanger peace and order in the world community.

# INTRODUCTION

## Introduction

International law as defined by many renowned scholars is the law of nations which deals with regulating relationship between states on the basis of equality keeping in view their territorial as well as political sovereignty. According to some legal experts, the legal system or makeup of International law made it vulnerable and accessible to the incursion by major international players especially in cases of forceful regime changes.

Regime change is the removal of an aggressive and suppressive regime by some external actors in order to protect from atrocities the citizens of the state where the regime is to be replaced, or to preserve international peace and order if the regime is considered to be a threat to it. This notion has been used time and again by different countries at different times. This research discusses the notion of regime change, its limitations and the legal standing of these actions under international law.

The purpose of this research is also to analyse the nature of Regime change in Ukraine in the context of International law. As far as the significance of my research is concerned it will go through the origin of concept, history of Regime change and the limitations of UN charter. It will search out for the legality and importance of regime change by referring to different examples in the recent past. It will try to analyse the recent revolution in Ukraine and that if it was a revolution or a foreign sponsored regime change and will try to find the essential ingredients necessary for a regime change in it.

A few of famous examples of regime change are; regime change in Libya which began in 2011 as a continuation of the Arab Spring, regime change in Cambodia from 1965

to 1973, by the names of “operation menu” and “freedom deal” and regime change in Afghanistan that began in 2001 after the 9/11 attacks on United States

### **Thesis Statement:**

Although the doctrine of Regime Change has occasionally helped in protecting the oppressed people from the arbitrary rule, genocide and serious human rights violations, yet recognizing this doctrine as a valid excuse for the use of force will unleash a series of interventions, covert as well as overt, and may lead to anarchy at international level besides negating the concept of sovereignty which is the basis of the contemporary international legal regime.

### **Background of the Study**

Regime change is the replacement of one Regime with another by any external force. The use of the term dates back to at least 1925. Michael Reisman defines regime change as “the forced replacement by external actors of the elite and/or governance structure of a state so that the successor regime approximates some purported international standard of governance”<sup>1</sup>. However Regime Change should not be confused with government change. Government change is a mere change of faces and not the change in the fundamental

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<sup>1</sup>W. Michael Reisman, “Why Regime Change is (Almost Always) a Bad Idea,” *Faculty Scholarship Series*, Paper 1003(2004) 516. Accessed at <[http://digitalcommons.law.yale.edu/fss\\_papers/1003](http://digitalcommons.law.yale.edu/fss_papers/1003)> on January 1<sup>st</sup>, 2015.



dimensions upon which a government operates, whereas regime change is a deliberate attempt of changing those very dimensions along with the change of faces.<sup>2</sup>

The recent issue of Ukraine leading to Crimea's takeover by Russia is a case worth looking into. A pro-Russia democratically elected president, Viktor Fedorovych Yanukovich, was ousted from the power, for the reason that he had refused to sign the most anticipated EU-Ukraine trade and association agreement with European Union (as it apparently seems). Protests, by pro-Europeans, started in Ukraine leading to unrest and violence and consequently a new government was formed in Ukraine ousting the former president. Sadly, it was not the end of story. Russia in the name of self-defence and protecting its nationals/ national interests intervened and occupied Crimea, a small region in Ukraine where the majority of population is Russians. A referendum under the Supervision of Russian authorities was held which opted in favour of joining Russia. Owing to this, Tensions between Russia and US (along with its western allies) rose to the highest level. But the point of concern of this research is to ascertain the situation pertaining to the coup/ revolution allegedly sponsored and supported by external players and the law of Regime change. This research is based on comparing this situation with the past precedents where different governments were toppled keeping in view different motives and will elaborate the Standings of UN charter and United Nations in these crises. Although Article 2(4) of UN charter<sup>3</sup> provides protection to the states from foreign threats and interventions but in some cases pleas of self-defence under Article 51 of UN charter<sup>4</sup> and measures under chapter VII of the charter are taken to intervene in other countries

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<sup>2</sup> Ibid.

<sup>3</sup> See U.N. CHARTER, art.2, para 4.

<sup>4</sup> See U.N. CHARTER, art 51.

besides other covert measures like funnelling funds, using propaganda and destabilisation through secret intelligence agencies. Apparently these secrete proxy wars and forcible regime changes for promoting democracy are as illegal<sup>5</sup> as are unilateral interventions without the confirmation of Security Council<sup>6</sup> but different situations require different cures.

Regime change can occur through conquest by a foreign power, revolution, coup d'état or reconstruction following the failure of a state. Regime change may replace all or part of the state's existing institutions, administrative apparatus, bureaucracy and other elements. However regime change can be classified into two major types' i.e. internal regime change where the system is changed from within and external regime change where the system is changed by external actors overtly or covertly <sup>7</sup> The phenomenon of regime change is a relatively new entrant on the international arena, yet the recent history is replete with a number of examples where this phenomenon could be seen at work in its full force, some of these examples are following:

In 1953 UK and USA covertly intervened in Iran under the name of "Operation Ajax". This operation was blatant violation of international law as it had no pretext other than protecting the interests of Anglo American Oil Company. This operation resulted in

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<sup>5</sup>Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States), Merits, I.C.J. Rep. 1986(Jan. 27), para. 254-263. Accessed at <<http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5>> on 03.01.2015

<sup>6</sup>Anthony Aust, *Handbook of international law*, 2<sup>nd</sup> ed (Cambridge: Cambridge University Press, 2010), 216-24

<sup>7</sup>W. Michael Reisman, "Why Regime Change is (Almost Always) a Bad Idea," *Faculty Scholarship Series*, Paper 1003(2004):516. Accessed at <[http://digitalcommons.law.yale.edu/fss\\_papers/1003](http://digitalcommons.law.yale.edu/fss_papers/1003)>on January 1<sup>st</sup>, 2015.

the overthrow of the democratically elected prime minister Mohammad Mosaddegh's regime and the installation of Reza Shah Pahlavi as the shah of Iran.<sup>8</sup>

The regime change in Cambodia lasted from 1965 to 1973, by the names of "operation menu" and "freedom deal". During these operations United States carried out bombing missions over Cambodia in the name of humanity as there were some serious issues with respect to human rights violations and according to some estimates approximately two million people perished during Khmer rouge regime. Then Vietnamese army attacked Cambodia and toppled the government, ultimately resulting in the fall of Khmer Rouge.<sup>9</sup>

The United States Invasion of Panama, code-named Operation Just Cause, was the invasion of Panama by the United States in December 1989. It occurred during the administration of U.S. President George H. W. Bush, and ten years after the Torrijos Carter Treaties were ratified to transfer control of the Panama Canal from the United States to Panama by 1 January 2000. During the invasion, *de facto* Panamanian leader, general, and dictator Manuel Noriega was deposed, president-elect Guillermo Endara sworn into office, and the Panamanian Defense Force dissolved.<sup>10</sup>

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<sup>8</sup>"CIA finally admits it masterminded Iran's 1953 coup," RT, <http://rt.com/usa/iran-coup-cia-operation-647/> (accessed January 2, 2015)

<sup>9</sup>Sok Udom Deth, "The Rise and Fall of Democratic Kampuchea," *Asia in World History: The Twentieth Century*, [https://www.academia.edu/374624/The\\_Rise\\_and\\_Fall\\_of\\_Democratic\\_Kampuchea](https://www.academia.edu/374624/The_Rise_and_Fall_of_Democratic_Kampuchea) (accessed December 26, 2014).

<sup>10</sup>Ibid.

The case of Sierra Leone, where the United Kingdom began military intervention in 2000, by the name of operation Palliser. It was aimed at assisting UN mission in Sierra Leone and changing the RUF regime. This mission involved training the Sierra Leone Army but it culminated in "Operation Barres" which not only involved the active engagement of the British Troops but also resulted in the toppling of RUF regime.<sup>11</sup>

Regime change in Afghanistan began in 2001 after the 9/11 attacks on United States. The Taliban Regime was declared as a threat to the international peace and perpetrator of the 9/11 attacks and ISAF and NATO under the leadership of United States intervened actively in Afghanistan, resulting in the toppling of Taliban regime and thousands of casualties on both sides.

In 2003 USA attacked Iraq to find Weapons of Mass destruction and topple the government of Saddam Hussein in order to liberate people from his arbitrary rule and to end the sectarian strife. Security Council adopted the following resolutions to provide legal cover to the attack 1483 (2003), 1511 (2003), and 1546 (2004).<sup>12</sup>

The regime change in Libya began in 2011 as a continuation of the Arab Spring. It began when the Libyan security forces fired at pro-democracy and pro-reforms protestors in Benghazi. This marked the beginning of a brutal civil war, between pro-government and

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<sup>11</sup>Patrick J. Eboe, "Operation Palliser, the British military intervention into Sierra Leone, a case of a successful use of Western military interdiction in a sub-Sahara African civil war," (Theses and Dissertations-International Studies, 2008), 1.

<sup>12</sup>Steven Wheatley, "The Security Council, Democratic Legitimacy, and Regime Change in Iraq," *European Journal of International Law* 17(2006): 531

anti-government factions supported by NATO on humanitarian grounds. This resulted in the toppling and subsequent execution of the Libyan ruler Colonel. Gaddafi<sup>13</sup>

### **Significance of the Research**

International law as defined by many renowned scholars, is the law of nations which deals with regulating relationship between states on the basis of equality keeping in view their territorial as well as political sovereignty. It is and has been the law that was meant for the reason and justice to prevail. Under the banner of this law humanity has felt some relief and it has been a major instrument against the arbitrary/ cruel rule, human rights violations, suppression of minorities, genocides, perpetual wars and other draconian acts. Besides other arrangements, under international law, regime change has been used as a successful strategy in minimizing and neutralizing the factors that endanger the peace and stability of different regions and of the world at large. As history unfold its pages Regime change seems to be an essential tool for toppling governments of different countries which were either suppressive to their own people or were at odd with the international community. But have been instances where international law has been used as an excuse for interfering in foreign countries, in the name of promoting democracy, protecting human rights and other humanitarian causes, but the hidden motives behind these interventions were purely geo-political interests. The legal system or makeup of International law makes it vulnerable and accessible to the incursion by major international players especially in cases of forceful regime changes.

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<sup>13</sup>Ismael Hossein-Zadeh, "Why Regime Change in Libya?", *Counterpunch*, 17 June 2011. Accessed at <<http://www.counterpunch.org/2011/06/17/why-regime-change-in-libya/>> . on 30<sup>th</sup> of December, 2014>

As far as the significance of this research is concerned it has tried to trace the origin of the concept, history of Regime change and the limitations in UN charter. It has searched out the legal status and importance of regime change by referring to different precedents in the recent past. It has tried to analyze recent revolution in Ukraine and that if it was a revolution or a foreign sponsored regime change and tries to find the essential ingredients necessary for a regime change in it. It will probably help in understanding the positive and negative aspects of regime change and the grave consequences of generalizing this concept. It will figure out the problems and complexities involved in the after math of a regime change which have often backfired. It will look into lacunas found in the legal system of international law especially in case of Ukrainian issue and will discuss the impact of force, politics and geo-political interests in the arena of international law with special focus on Crimea Issue.

### **Framing of Legal Issues**

The purpose of this research is to analyze the nature of Regime change in Ukraine in the context of International law and in this regard this research tries to investigate the answers to the following questions:

- What is the basis of regime change in International law and Politics?
- What principles of International Law are used to justify forceful Regime Change?
- Whether promoting democracy/ human rights give legitimacy to military intervention by foreign countries for changing tyrannical regimes?

- How the United Nations Security Council and General Assembly resolutions address the various instances of Regime Change?
- What is the status of regime change that took place in Ukraine and whether the action of Russia in Crimea was in accordance to International Law?

## Literature Review

1. In his article "Why Regime change is (almost always) a bad idea".<sup>14</sup> W. Michael Reisman states that Regime change might be sometime lawful or feasible but not always. He further elaborates that protecting the weak and safeguarding the frail is a noble work, however, it will be hard to imagine the general legitimization of Regime change and a system based on the principle of sovereignty working parallel with one another. He explains different forms of regime change and call regime change a more radical claim than "Humanitarian Change". The author has briefly explained the concept of regime change in the light of history. In short, the writer has also critically analysed the role of United States in different regime changes. The author has called regime change both hideous and dangerous, both pathogenic and pathological because he fears that one day this will lead the world community to chaos, allowing and legalizing the interference of one state in another and slaughtering the concept of sovereignty and endangering the idea of equality of states.

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<sup>14</sup>W. Michael Reisman, "Why Regime Change is (Almost Always) a Bad Idea," *Faculty Scholarship Series*, Paper 1003(2004):516. Accessed at <[http://digitalcommons.law.yale.edu/fss\\_papers/1003](http://digitalcommons.law.yale.edu/fss_papers/1003)> on January 1<sup>st</sup>, 2015.

2. "Foreign imposed 'Regime-Change' violates the UN Charter in letter and spirit"<sup>15</sup>an

Interview with Professor Dr. phil. et iur. Alfred de Zayas.

In this interview it has been extracted that any action outside the Security Council sphere would amount to illegal interventions and called aggressive acts or crimes against peace, and those found guilty of them would be brought to justice. He further elaborates that the principle, aim and purpose of United Nations are very clear and which also consists the policy of non-intervention. According to him the transition of United Nations from a peace keeping organization to "Regime Changing" organization is very much against the spirit and purpose of its formation. He advocates for prosecuting those found guilty of violating the policy of non-intervention without any support from United Nations Security Council. The Interviewee is of the view that United Nations function is as a moderator for dialogue and that she should strive to diffuse all tension without violence and intervention. He accepts the concept of right to self-defence but according to him there is no pre-emptive right to do so. According to him intervention is not a *lex-specialis* and any violator need to be tried under article 5 of International Criminal Court and should be considered a crime against peace as described in Nuremburg verdict. According to the interviewee regime change through intervention without the support of United Nation is illegal and punishable as war crime.

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<sup>15</sup>An interview with Professor Dr. phil. et iur. Alfred de Zayas. "Foreign imposed 'Regime-Change' violates the UN Charter in letter and spirit." *EL RO-SI VERGIES*, 9 May 2012, Accessed at [http://www.currentconcerns.ch/index.php?id=1641&print=1&no\\_cache=1](http://www.currentconcerns.ch/index.php?id=1641&print=1&no_cache=1) on 1<sup>st</sup> of January 2015.



3. UKRAINE: THIS ISN'T A REVOLUTION – IT'S REGIME CHANGE is a column written in Magazine-within a Magazine-Spiked Plus <sup>16</sup>

In this column the writer tries to explain the view of both sides, one who calls it a revolution and the other who calls it a Regime change, actually to ascertain the nature of events and the consequences thereafter. After analyzing different technicalities, the writer calls the event unfolded in Ukraine a Regime change, not a revolution. The author critically analyses the involvement of United States in Ukraine, its covert and overt support to the so-called opposition in toppling the democratically elected government and their Russian Counterpart. He calls the so-called revolution in Ukraine as an externally generated Regime change as enunciated by the statements of US and EU officials from time to time. The writer highlights the matter how the United States and European Union removed a purely democratically elected pro-Russian president to get their own goal. He further calls the endeavors of US for international mediation as an attempt of legitimization of new Ukrainian Government.

4. In “Regime change and its limits”<sup>17</sup> by Richard N. Haas explains in his article that Regime change is not a new term or policy. According to the author Regime change allows one country to solve its problem with another country by changing the

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<sup>16</sup>Brendan O'NEILL, “UKRAINE: THIS ISN'T A REVOLUTION – IT'S REGIME CHANGE.” *Spiked*, <http://www.spiked-online.com/spikedplus/article/ukraine-this-isnt-a-revolution-its-regime-change#.VsZl9yh97IU> (accessed April 12, 2014).

<sup>17</sup>Richard N Haas, “Regime change and its limits,” *Foreign Affairs* 84, no. 4 (2005): 66-78. Accessed at <<https://www.foreignaffairs.com/articles/north-korea/2005-07-01/regime-change-and-its-limits>> on 23 December, 2014.

offensive government with less offensive one. The author explains his point of view by giving different examples, i.e., Iran, Japan and Germany. He further explains the role of United States in different regime change policies and sees it risky and reckless. He further highlights the views of US administration regarding Regime change, who see it to be immediate and direct, involving both covert and overt action. The author also sees it as a tool to isolate the offensive government both economically and politically in international arena. He also sees the second step, reinstating a new government, more difficult phase than removing the offensive government, the first phase of regime change. The author sees that other policies could be used in place of Regime change which are more safe, healthy and easy to go with international law and are allowed under United Nation Charter.

## **Methodology**

This research is more or less based on the literature review and the methodology used for this research is qualitative desk-based/library research. The data is collected through cyber and print media. Different interviews of legal experts are also taken into account and the findings & conclusions are mostly based on the secondary data.

For this study Internet has served to be a major source in obtaining relevant information, leading to search for a number of articles in journals and newspapers from databases. Internet is a major source for gathering information. Data about almost all fields of study is available and easily accessible. Campus library was visited for gathering valuable data from textbooks & journals. The main conclusive data was the result of a thorough analysis of the material found online. The research involved analysis of news

posted on the web over a phase of year. The criterion of selection for literature was in relevance to the research topic and year of publication. These databases enabled access to libraries that contain surplus information and recent knowledge about the role of international law. Also the data was mostly peer-reviewed and valid.

Conducting qualitative research is comparatively less costly than conducting quantitative research. Qualitative research also proves to be effective when the research requires vast amount of information. This study is conducted using the qualitative research. This methodology and approach is suitable for my research since the issue of the topic required vast amount of information in the history, evolution and role of International law which is only possible through qualitative research.

The major difference between qualitative and quantitative research method is the element of subjectivity. As compared to the quantitative research, qualitative research has more subjectivity. The information gathered from the qualitative research method can be both primary information and secondary information. By nature, qualitative research method is open-ended and exploratory.

## **CHAPTER 1**

### **The Doctrine of Regime Change in International Law**

#### **1.1 Introduction**

Research scholars have explained different forms of regime change and call regime change a more radical claim than “Humanitarian Change”. They have tried to explain the view of both sides, one who calls it a revolution and the other who calls it a Regime change, actually to ascertain the nature of events and the consequences thereafter. This research is more or less based on the literature review and the methodology used for this research is qualitative desk-based/library research.

Regime changes, carried out in different names i.e. protecting Human right violations, promoting democracy, humanitarian basis, intervention for protecting national interests and protection of nationals abroad, are used to justify covert as well as overt interventions. In some of the cases, regime change involves supporting anti-government forces/rebels in the shape of funnelling secrete funds, provisions of weaponry, media campaigns, orange revolutions and maintenance of No-Fly Zone to protect rebels from aerial bombings. No state negates the protection of territorial and political sovereignty available to every state under Art. 2(4) of the U.N charter although some of those states themselves are involved in carrying out the games of regime change.

## 1.2 Types and Condition for Regime Change

For bringing regime change in other countries, some justifications like, protecting Human right violations, promoting democracy, humanitarian basis, intervention for protecting national interests and protection of nationals abroad, are commonly used to justify covert as well as overt interventions. Though world history is full of such instances, but many legal jurists still consider such pleas for intervention as lame excuses by the powerful states to achieve their geo-political and economic objectives. There might be some cases where intervention was necessary and inevitable, and the states intervening had no other choice but legal jurists think that in most cases situations were fabricated to pave way for interventions and win the support of international community.

In some of the cases, regime change involved supporting anti-government forces in states that was termed as state-sponsored terrorism by United States such as the Miami Cuban exiles, the secessionists in Indonesia, the secret armies in Laos, the Nicaraguan contras, the mujahedeen in Afghanistan and Iran, and the Kosovo Liberation Army.<sup>18</sup> In other instances, civil wars that sometimes involved brutal counterinsurgency campaigns were aided by the United States. Some of the examples are provoking civil wars against the existing governments like Greece, Philippines, the Congo, Nicaragua, Iran, Cambodia, South Vietnam, and Indonesia.<sup>19</sup> Some other less violent tactics included manipulation of the constitutional relationship between the legislative branch and the head of state, or

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<sup>18</sup>Michael J.Sullivan III, "American adventurism abroad: Invasions, interventions, and regime changes since World War II," *Praeger*(2004), 4-6

<sup>19</sup> Ibid

tampering with electoral processes. In addition, military and economic development assistance has been used in almost all cases for narrow political benefits.<sup>20</sup>

In all the above mentioned cases, two ways were used to accomplish the aim of intervention. One was the use of “thugs”, characters as partners for many interventions. This included policies that preferred capitalism and dictatorship over democracies and was the result of means used to ensure America’s desired economic system.<sup>21</sup> The second theme reveals, the dealings with un-submissive Third World leaders, or “pests” and the technique involved in defaming these leaders as “crazy, unstable, Hitler-like and so forth”.<sup>22</sup> They were either targeted to be taught a harsh lesson (probably as a deterrence for others), or they were ill-fated, weak states that had to be sacrificed for larger strategic goals.<sup>23</sup>

### **1.3 Intervention for Preservation of International Peace and Order:**

#### **Afghanistan and Iraq**

It is a well-known fact that powerful states jostle for the Regime change in certain states, due to their own political and economic interests. However, in the absence of any other legal justification, occasionally the excuse for such intervention is associated with some global issue, usually the preservation/protection of international peace and order. The most recent example of such regime change is the US invasion of Afghanistan and Iraq.

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<sup>20</sup> Ibid

<sup>21</sup> Walter LaFeber, “The tension between democracy and capitalism during the American century,” *Diplomatic History* 23, no. 2 (1999): 263-84.

<sup>22</sup> Ibid

<sup>23</sup> Ibid

The U.S intervention in Afghanistan in 2001 can be traced back to Soviet Union's cold war in Afghanistan. In 1979, Soviet Union attacked Afghanistan but was backed off by the Islamist fighters known as Mujahedeen through Guerilla war which was covertly backed by Pakistan, U.S and Saudi Arabia. After Soviet departure, there was instability and there started a clash between different groups of Mujahedeen for the lead of government. In 1996, a prominent group of Mujahedeen, known as Taliban seized Afghan Capital Kabul and set a very strict Islamic law for the country to run accordingly. The same year Osama bin Laden, being leader of Al-Qaeda was ousted from Sudan and was welcomed to Afghanistan. Al-Qaeda, then established its headquarters in Afghanistan and with their help Taliban took control of 90% of the Afghanistan.<sup>24</sup>

On September 11, 2001, four of the U.S jetliners were hijacked and crashed by 19 hijackers of Al-Qaeda, claiming 3000 American's lives. Al-Qaeda allegedly plotted and trained these hijackers in Afghanistan. Soon after that, U.S pressurized afghan Taliban government to hand over Osama bin Laden and to stop supporting Al-Qaeda. On the refusal of this demand by Taliban leader Mullah Omar, U.S officials employed a plan for Regime change in Afghanistan. In this regard Security Council passed resolution 1373 of 2001<sup>25</sup> which emphasized that all countries must take effective steps to curb the menace of terrorism and to prevent all types of funding and financing of the terrorists, although U.S was not clearly authorized to attack Afghanistan by the resolution. The stance U.S took for this intervention was to preserve international peace and order as Taliban government backing Al-Qaeda was seen as potential harm to international peace. Another justification

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<sup>24</sup>Encyclopaedia Britannica, s.v. "Afghanistan War," Accessed on January 13, 2015 at <<http://www.britannica.com/event/Afghanistan-War>>

<sup>25</sup>S.C. Res S/1373 (28 September 2001).

presented by United States was that they had also acted in exercise of its right to self-defense under Art. 51 of U.N Charter.

U.S operation in Afghanistan started covertly on 26<sup>th</sup> September 2001, with a CIA team known as Jawbreaker, working with anti-Taliban allies including Northern Alliance under Commander Muhammad Faheem and Pashtuns in southern Afghanistan (under the command of Hamid Karzai) for overthrowing the regime. On October 7, U.S. and British forces started air campaign and started bombing Taliban targets, making the war open in the air. On November 13 Kabul was overtaken by U.S forces and finally Kandahar fell down on December 6, 2001, marking the end of Taliban regime in Afghanistan.

Iraq is another example of U.S intervention for protection of international peace and order. Iraq being rich in oil and under the command of the arrogant Saddam Hussain has been the bull's eye for U.S since Vietnam War. U.S alleged that Iraq might have potential nuclear assets and might be involved in nuclear proliferation and as Iraq was not willing to allow U.N inspectors to its alleged Nuclear program, it raised many doubts that it might handover some of its nuclear weapons to Al-Qaeda. Based on these allegations with an excuse to protect the world from nuclear disaster, U.S attacked Iraq in 2003 and toppled the regime by replacing it with new democratic government. However, till date Iraq is facing political instability and disorder.



## 1.4 Intervention for Promoting Democracy: Greece and Italy

Since 1821, UK had been a dominant power because of its imperial role and colonialism. This situation came to an end when Hitler invaded different regions and in 1941, his invasion on Greece provoked a civil war between pro-UK monarchist Greeks, fascist Greeks, and the communist Greeks. The Greek People's Liberation Army (ELAS) drove out the Germans in 1944, and its political wing, the National Liberation Front (EAM), took control of the country.<sup>26</sup> At this time, UK returned and made an agreement with its ally, the USSR to re-establish a pro-British government and was given a free hand to move against the Greek communists<sup>27</sup>

However, in 1946, the Greek civil war restarted with the addition of a fourth party. In addition to the monarchists, fascists, and communists, there were "freedom-loving democrats" who wanted to establish a republic without the interventions of imperial crown. By February 1947, the Greek communists once again became powerful to overthrow the pro-UK government. As U.K. was thoroughly devastated by World War II, it came to United States to plea for an aid. Thus, United Kingdom was replaced with US as hegemon of the global capitalist system in this era.<sup>28</sup> President Harry S. Truman, in a speech on March 12, 1947, provided the rationale for American intervention in the Greek civil war as well as fighting communism throughout the world. Two sentences from Truman's description about war in Greece are as following: "I believe that our help should be primarily through economic and financial aid which is essential to economic stability and

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<sup>26</sup>Denna FrankFleming, *The Cold War and Its Origins 1917-1960 1950-1960*, Vol. 2(New York: Doubleday, 1961), 183-185.

<sup>27</sup>Howard Kingsbury Smith, *The State of Europe*(Knopf, 1949), 225-230.

<sup>28</sup>Michael J Sullivan III, "American adventurism abroad: Invasions, interventions, and regime changes since World War II,"*Praeger*(2004): 4-10.

orderly political processes. . . . If Greece should fall under the control of an armed minority, the effect upon its neighbor, Turkey, would be immediate and serious. Confusion and disorder might well spread throughout the entire Middle East".<sup>29</sup> Though he claimed that US intervention would not involve any warfare troops, the presence of about 500 military personnel in AMAG (the American Mission for Aid to Greece) gives an indication that "the line between 'economic' and 'military' aid was blurred from the start".<sup>30</sup> Thus, by providing overwhelming financial leverage, United States managed to take control of Greece's "national budget, taxation, currency issuance, price and wage policies, state economic planning... imports and exports... foreign exchange... military reconstruction and relief"<sup>31</sup>

Italy faced intervention in 1943 when American army landed in Sicily during World War II. Within two months, the Fascist Grand Council of Field Marshall Pietro Badoglio surrendered to US troops. However, United States then denied to share administration of the conquered area with U.S.S.R that was its wartime ally<sup>32</sup>. Badoglio was selected as head of the government whereas Fascist collaborator King Victor Emmanuel III was made the head of state. Thus, United States inflicted the expansion of Cold War as it lay the foundation of excluding other allies from collaborative administration of conquered territories. The campaign for the 'first free Italian national election after World War II' was

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<sup>29</sup>"Text of President Truman's Speech on New Foreign Policy," *American Rhetoric*, delivered on 12 March, 1947. Accessed on 20 July, 2014 at < <http://www.americanrhetoric.com/speeches/harrystrumantrumandoctrine.html> >

<sup>30</sup>Eugene F. Rossides, *The Truman doctrine of aid to Greece - a fifty-year retrospective*, (The University of Wisconsin - Madison: Academy of Political Science, 1998).

<sup>31</sup>Michael Mark Amen, *American Foreign Policy in Greece 1944-1949*(Bern: Peter Lang International Academic Publishers, 1978), 114-15

<sup>32</sup>Stephen E. Ambrose, *Rise of globalism - American foreign policy since 1938*(Pittston: Penguin, 2010).

conducted under the strict administration of the US forces in 1948.<sup>33</sup> The three main political parties at that time were the Italian Socialist Party (PSI), the Christian Democratic Party (CDP), and the Italian Communist Party (PCI). In the June 1946 referendum, a government of grand coalition was established under the leadership of the CDP<sup>34</sup>. However, within a year, the two left-wing parties were deposed from the government<sup>35</sup>. United States increased its economic aid six-fold to fully support the CDP government<sup>36</sup>. By using the technique of secret funding from 1950s to the early 1970s, the United States ensured that the CDP continued to be the dominant force in every coalition government. Meanwhile, the Communist Party, though consistently the second largest party, never once was admitted into the coalition. In short, the United States created and sustained for 46 years (until 1994) a “one-party dominant” form of political democracy that was designed to keep the communist party (second largest party in Italy) from ever having share of government<sup>37</sup>. As a result, a weak political system was formed in which Italy saw 52 governments in 46 years because of CDP and its increasingly corrupt system.<sup>38</sup>

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<sup>33</sup>Henry Stuart Hughes, *The United States and Italy*, Vol. 28 (Cambridge: Harvard University Press, 1979), 147

<sup>34</sup>Giuseppe Mammarella, *Italy after fascism: a political history, 1943-1965* (Notre Dame: Univ. of Notre Dame Press, 1966), 116

<sup>35</sup>*Ibid.*, 117-18

<sup>36</sup>James E. Miller, "Taking off the gloves: The United States and the Italian elections of 1948," *Diplomatic History* 7, no. 1 (1983): 35-56

<sup>37</sup>Michael J. Sullivan, *Comparing state politics: a framework for analyzing 100 governments*, Vol. 369 (Westport, CT: Greenwood Publishing Group, 1996), 80

<sup>38</sup>*Ibid*

## **1.5 Intervention for Protecting Human Rights Violations: The Recent Case of Syria**

Syria has been the focus of many debates due to the complicated situation, it is facing for the regime change. Many international players such as U.S. NATO, Russia, Saudi Arabia, Turkey, Iran etc. are involved in the game and are pulling the ropes. The conflict started with the arousal of Arab Spring in 2011, as protests started all over Arab countries and Middle East in favor of democracy as many of Arab countries are still ruled by monarchs or dictators. Such protests were observed in Syria as well but brutally crushed by President Bashr-ul Assad. This act of Bahr-l Assad was considered as against the fundamental human rights by western countries and U.S. Bashr-ul Assad was allegedly involved in committing Genocide and use of biological weapons against ethnic and religious sects, opposed to him. U.S and western countries also discussed the options of military intervention in Syria to protect Human rights violations. This suggestion of direct military intervention was bitterly opposed by Russia and China and hence disregarded <sup>39</sup>

Since 2011, U.S. and NATO, without the approval of Security Council have decided to stop the ongoing human rights violations in Syria by supporting the opponent rebellions of Bashrul Assad and maintained a no-fly- zone in Syria. On the other hand, Bashrul Assad is backed by Russia and Iran against these rebel groups. As a result the situation grew worse and resulted in complete anarchy prevailing in Syria. Parts of Syria are now captured by

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<sup>39</sup>Legal Action Worldwide, "Intervention in Syria – The Ongoing Debate," October 4, 2013. Accessed on March 13, 2015 at <<http://legalactionworldwide.org/intervention-in-syria-the-ongoing-debate/>>.

U.S backed rebels, while the main cities are still under control of president Bashr-ul Assad and more than half of the territory is occupied by ISIS, a terrorist group.

## **1.6 Humanitarian Intervention: Bosnia Case**

Yugoslavia was a country of 24 million people in 1990 that consisted of six federal republics—Bosnia, Serbia, Croatia, Slovenia, Macedonia, and Montenegro, with the presence of eight ethnic groups. Each of these republics were dominated by its respective main ethnic groups. However, there was an overlap of minorities in each republic that resulted in integrated living patterns. In 1919, the artificial “nation-state” of Yugoslavia was constituted by the winners of World War I with an aim to provide a land to the “southern Slavic” peoples. In the first 20 years, it was held together by the King of Serbia, whereas after World War II by the communist party until 1980. However, Yugoslavia was dismembered forcibly after the end of the Cold War with its former Croatian, Bosnian, and Kosovan parts respectively in 1992, 1995 and 1999 while Slovenia and Macedonia were seceded more peacefully<sup>40</sup>. This was aided by the two US military interventions into the civil wars in Yugoslavia: specifically in Bosnia in 1995 and in Kosovo in 1999. Bosnia was attacked by Bosnian Croats and Bosnian Serbs in 1991 receiving support from their ethnic kinsmen in respective homelands. It was not until 1994 that President Clinton started to intervene in order to protect the Bosnian government when around 200,000 people had died in the ‘bloody civil war’.<sup>41</sup> For the first time, NATO used airstrikes against Bosnian

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<sup>40</sup>Wayne Bert. "[Book Review] The Reluctant Superpower. United States' Policy in Bosnia, 1991-95." *Political Science Quarterly*: vol. 113, no. 1 (1998): 135-136.

<sup>41</sup>Ibid., 195-202. See also James Gow, *Triumph of the lack of will: international diplomacy and the Yugoslav War* (London: Hurst Publishers, 1997).

Serbs that was the largest military movement in NATO's history<sup>42</sup>. As a result, Bosnia obtained a peace-plus-partition plan under the supervision of NATO force<sup>43</sup>. Though many people object to the US and NATO's intervention in this conflict, the United States maintained that they intervened on the humanitarian basis and that it was not only a moral but a legal duty to protect millions of innocent human lives.

### **1.7 Intervention for Protecting Nationals Abroad: Israeli Operation in Uganda**

Israel intervened in Uganda in 1976 and justified its action on the basis of protecting its nationals abroad. A French passenger aircraft was hijacked by some Palestinian freedom fighters on 27<sup>th</sup> of June, 1976 and was landed in Entebbe, Uganda. The hijackers demanded that around fifty of their colleagues must be released by Israeli government in return for the release of the passengers. As most of the passengers on-board were Israeli citizens, Israel tried its level best to resolve the matter through diplomacy and dialogue. However when the dialogues failed, the hijackers released passengers who did not belong to Israel. This gesture of hijackers was taken very serious by Israel. Israel also suspected that the President of Uganda Idi Amin was secretly supporting the hijackers. In order to rescue 98 Israelis, Israeli Special Forces conducted a rescue operation without taking on board the Ugandan government, on 4<sup>th</sup> of July, 1976. Most of the Israeli citizens were rescued with

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<sup>42</sup>Ivo H. Daalder, *Getting to Dayton: the making of America's Bosnia policy* (Washington, D C: Brookings Institution Press, 2004), 129-138

<sup>43</sup>Josef Joffe, "The new Europe: Yesterday's ghosts," *FOREIGN AFFAIRS-NEW YORK* vol. 72, no. 1 (1993): 29

five casualties on Israeli side while almost all the hijackers were killed. Some of the Ugandan soldiers who were guarding the airport were also killed by the Israeli forces<sup>44</sup>. Western countries supported the action of Israel, whereas many Arab countries and U.S.S.R considered it a deliberate violation of Ugandan national and territorial sovereignty. Though there was no Security Council resolution on the matter.

## **1.8 Intervention for Protecting National Interests: The Case of Iran and Suez Canal Case**

In 1951, the prime minister of Iran Muhammad Mossadegh announced to nationalize the Anglo-Iranian Oil Company. That was a joint venture of British and Iranian government and there was an agreement between them that they would share the profits according to a treaty signed between these parties in 1933.<sup>45</sup> This nationalisation of AIOC was not acceptable to the U.S and U.K at any cost. These countries started to imposed sanctions on the Iranian oil the then produced by Iranian government. U.S sided with U.K in order to strengthen its position and influence over the oil reserves.<sup>46</sup> Another reason was that U.S was in a serious struggle of influence and supremacy with U.S.S.R. over natural resources throughout the world and feared that U.S.S.R might use this situation to its advantage and

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<sup>44</sup>The Knesset, "Operation Entebbe " Accessed on April 11, 2015 at <[https://www.knesset.gov.il/lexicon/eng/entebbi\\_eng.htm](https://www.knesset.gov.il/lexicon/eng/entebbi_eng.htm)>.

<sup>45</sup>Mostafa Elm, *Oil Power and Principle Iran's Oil Nationalization and Its Aftermath* (New York: Syracuse University Press, (1992), 198-99.

<sup>46</sup>Richard W.Cottam, *Iran and the United States a cold war case study* (Pittsburgh: University of Pittsburgh Press, 1989), 62-69

might get closer to the government of Iran and the oil reserves therein. . With Ronald Reagan taking charge of the office of president-ship in USA, the U.S authorities started to have assertive role in controlling the situation to their advantage. In 1953, a series of propagandas were initiated against Mossadegh and CIA was assigned the task of overthrowing the government taking advantage of the instability in Iran. In order to accomplish that task, CIA sought the help of the constitutional monarch Raza Shah Pahlavi of Iran and the clergy and rich businessmen.

Many of the people in governmental machinery including army officers who were loyal to the monarch considered the decision as unjust and while many people considered the decision of nationalisation as a prerogative of a sovereign state. When on the instigation of U.S. Shah tried to remove the Prime Minister, Mossadegh arrested the officer who was sent to arrest him. Shah fled the country and CIA used the supporters of Shah and Mossadegh to attack each other and provide army with an opportunity to take over. On 19<sup>th</sup> of August Army toppled the Government of Muhammad Mossadegh and arrested him paving way for the return of Shah.<sup>47</sup>

In September 1954, USA brokered a new deal between UK and Iran in which it was decided that UK and USA each will get 40 percent of royalty of Iranian Oil. USA and UK justified their covert intervention and regime change in Iran on the basis of protecting their national interests.<sup>48</sup>

Suez Canal crisis was the reason of intervention of United Kingdom, France and Israel into Egypt to protect their national interests. Suez Canal was built in 1869 and

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<sup>47</sup>Michael J. Sullivan, *Comparing state politics: a framework for analyzing 100 governments*, Vol. 369 (Westport, CT: Greenwood Publishing Group, 1996), 39-41

<sup>48</sup>Ibid.



connected Mediterranean Sea with Red sea giving it a huge geo-strategic importance in the region. This canal was owned and administered by Suez Canal Company, a joint British-French enterprise. Though located in its territory, Egypt also exercised some military control over the canal. Egypt had signed a treaty with United Kingdom in 1936, allowing British army to maintain limited presence in the waters of the canal. In July 1956, the Egyptian leader Gamal Abdel Nasser decided to nationalize Suez Canal which stirred the outrage within U.K and French governments.<sup>49</sup> Although Nasser offered to fully compensate the company, British and French refused the offer and deemed it as an attempt to challenge their political influence in the region on the instigation of U.S.S.R. On the other hand, relations between Israel and Egypt were quite hostile and both the states had minor clashes on the border from time to time. The angry British asked for French and Israeli military support to attack Egypt and occupy Suez Canal. On October 29, 1956, Israeli forces attacked Egypt initiating the Suez crisis and were soon joined by the British and French troops. Egypt sought help from U.S.S.R, which stood by Egypt and warned to rain down nuclear missiles on Western Europe if the Israeli-French British did not withdraw their forces from Egypt. The situation was ultimately controlled by United States and the British-Israeli-French troops withdrew in late 1956 and early 1957.<sup>50</sup>

## **1.9 Conclusion**

It is a well-known fact that powerful states jostle for the Regime change in certain states, due to their own political and economic interests.

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<sup>49</sup>History, "SUEZ CRISIS," <<http://www.history.com/topics/cold-war/suez-crisis>>(accessed November 9, 2014).

<sup>50</sup>Ibid

The U.S intervention in Afghanistan in 2001 can be traced back to Soviet Union's cold war in Afghanistan. The stance U.S took for this intervention was to preserve international peace and order as Taliban government backing Al-Qaeda was seen as potential harm to international peace. Iraq is another example of U.S intervention for protection of international peace and order. However, the United States then denied sharing administration of the conquered area with U.S.S.R that was its wartime ally.

Syria has been the focus of many debates due to the complicated situation it is facing for the regime change. U.S and western countries brought the issue to United Nations Security Council for military intervention in Syria to protect Human rights violations. However, Yugoslavia was dismembered forcibly after the end of the Cold War with its former Croatian, Bosnian, and Kosovan parts respectively in 1992, 1995 and 1999 while Slovenia and Macedonia were seceded more peacefully. This was aided by the two US military interventions into the civil wars in Yugoslavia: For the first time, NATO used airstrikes against Bosnian Serbs that was the largest military movement in NATO's history. As a result, Bosnia obtained a peace-plus-partition plan under the supervision of NATO force. Though many people object to the US and NATO's intervention in this conflict, the United States maintains that they intervened on the humanitarian basis and that it was not only a moral but a legal duty to protect millions of innocent human lives.

Israel intervened in Uganda in 1976 and justified its action on the basis of protecting its nationals abroad. Suez Canal crisis was also the result of intervention of United Kingdom, France and Israel into Egypt to protect their national interests.

## Chapter No 2

### Legality of Regime Change: UN Charter and UN Resolutions about Regime Change

#### 2.1 Introduction

There is a division among the legal jurists about the legality of Intervention whether that is on humanitarian grounds or others. Many of them consider it to be right and just. According to some jurists, when a state is involved in serious violations of human rights, it may lose the authority to govern in the eyes of Global community. According to this approach, primarily it's the duty of U.N to take necessary security measure to tackle such human rights violations timely and if fails to do so, individual intervention of a state shall be rendered as legal. The very Article 2(4) was meant to safeguard the legal rights of weak states against any hegemonic designs of the mighty ones. There a consensus on the principle that it is the duty of every state to abide by the laws of UN and to carry it in its letter and spirit, and for deciding whether force shall be used in a certain situation, the duty has been given to the Security Council to decide.

In 1965, a declaration on the admissibility of intervention was passed by the UN, which clearly stated that interference in the matters of other states is illegal and all states were barred from doing so. If the United Nations documents are the yardstick to ascertain the legality of unilateral intervention for carrying out regime change, then it is almost impossible for a state to claim that it intervened in another state on legal grounds. In most of the cases at that time, states intervened in the name of protecting its nationals abroad to justify their aggressions and the practice of quoting intervention on humanitarian basis

declined. Soon after the judgement, states showed some maturity by tackling serious issues of human rights violations and problems of aggression in the shape of collective efforts on Humanitarian grounds.

## **2.2. Unilateral Interventions in the eyes of U.N Charter and International Court of Justice**

Different schools of jurists have different opinion on the legality of Regime change. According to the supporters of the notions, it is legal as well as moral obligation to intervene humanitarian grounds. According to them, if a regime is involved in the suppression of its own people, then it has no right to remain at the top seat and enjoy the status of sovereign. International community always respect those who have some respect at home. The cruel regime loses any sympathy it might enjoy under international law.<sup>51</sup> It is the duty of a state to protect its nationals from external as well as internal dangers, which confers sovereignty to a state and its protections under international law.<sup>52</sup> There are others who contemplate that once a state is involved in heinous crimes like genocide and extermination of minorities, then other states on behalf of the oppressed people can intervene.<sup>53</sup> The underlying concept behind this approach is that the value of human life

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<sup>51</sup>Barry M. Benjamin, "Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities," *Fordham International Law Journal* 16(1) (1992):127-129.

<sup>52</sup>Ibid.

<sup>53</sup>As cited in Barry M. Benjamin, "Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities," *Fordham International Law Journal* 16(1) (1992):127-129. See also Jean-Pierre L. Fonteyne, "Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the UN Charter," *Cal W Int'l LJ* 4 (1973): 203.

and safeguard of humanity must be rendered above everything.<sup>54</sup> These jurists consider it morally wrong and inhuman to be a silent spectator while people are crushed by their own guardian governments.<sup>55</sup> According to them, wars fought for guarding human rights are legal and justified.<sup>56</sup> However they are of the opinion that politicization and polarization of Security Council has made it difficult to timely tackle the heinous human rights violations.<sup>57</sup> There are numerous cases in the recent political and legal history in which United Nations has fizzled to address serious crises amicably and effectively and hence enabled the critics of United Nations to question the very purpose of it.<sup>58</sup> The most recent examples include Myanmar, Syria, Libya, and Iraq.<sup>59</sup> However, if the perpetrators of such Human Rights violations are left untamed, it would unleash a series of unstoppable crimes of oppression by oppressors and dictators.<sup>60</sup> Therefore, in such cases, these authors justify the intervention of an individual state, besides the collective security apparatus of UN. They argue that such intervention is legalized even by U.N charter because the preservation of human rights is one of the Charter's primary goals.<sup>61</sup> Moreover, it is neither deterrent to the territorial integrity nor negates the political sovereignty of the subject state as provided

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<sup>54</sup>U.N. CHARTER, art. 2, para 4.

<sup>55</sup>Kirthi Jayakumar, "Humanitarian Intervention: A Legal Analysis," *Available at SSRN* 2121008 (2012).

<sup>56</sup>Richard A. Falk, "International Law and the United States Role in the Viet Nam War," *Yale Law Journal* (1966): 1122-1160.

<sup>57</sup>Richard B. Lillich, "Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post-Cold War World," *Tulane J. Of Int'l & Comp Law* 3(1995): 11-14.

<sup>58</sup>David P. Forsythe, "The UN Security Council and human rights: state sovereignty and human dignity," *Friedrich-Ebert-Stiftung, International Policy Analysis* (2012): 2-5.

<sup>59</sup>Barry M. Benjamin, "Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities," *Fordham International Law Journal* 16(1) (1992): 126-128

<sup>60</sup>*Ibid*

<sup>61</sup>*Ibid*

by Article 2(4) of U.N Charter.<sup>62</sup>It does not intend to alter the geographical boundaries of the subject state.<sup>63</sup>And in case the arbitrary regime is toppled, still the political independence is kept intact.<sup>64</sup>According to this approach, primarily it's the duty of U.N to take necessary security measure to tackle such human rights violations timely and if fails to do so, individual intervention of a state shall be rendered as legal.<sup>65</sup>This view is supported by their argument of evaluating legislative history of U.N Charter and conclude that legislators could have explicitly banned such intervention but chose "not to do so" implies its legality.<sup>66</sup>And as law evolves over time, some insist that Article 2(4) should be taken into account with reference to the situation on ground.<sup>67</sup>

On the other hand there is another school of thought which deems such humanitarian intervention as illegal, regardless of the situation. Their Argument is based on the norm provided by article 2(4) of UN Charter which prohibits the use of force by one state against another, unless and until invoked under article 42 and 51. The Charter provided a set of rules to govern the use of force to protect international peace and security against any threat to it by any state, however the politicization within Security Council made the Article 2(4) very debatable. The duty of intervention and the restrictions placed on Interventions were remarkably defined by International Court of Justice in Corfu

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<sup>62</sup>Ibid

<sup>63</sup>Ibid

<sup>64</sup>Ibid

<sup>65</sup>Maya Stanulova, "As Humanitarian Intervention Become an Exception to the Prohibition on the Use of Force in Article 2(4) of the UN Charter," *THE UNIVERSITY OF LONDON REGIL*, 8-12, [http://www.atlantic-community.org/app/webroot/files/articlepdf/Stanulova\\_Humanitarian%20Intervention.pdf](http://www.atlantic-community.org/app/webroot/files/articlepdf/Stanulova_Humanitarian%20Intervention.pdf)(accessed February 15, 2016).

<sup>66</sup>Captain Thomas E. Behuniak, "Law of Unilateral Humanitarian Intervention by Armed Force, A Legal Survey," *Military Law Review* 79 (1978): 157-160

<sup>67</sup>Natalino Ronzitti, *Rescuing nationals abroad through military coercion and intervention on grounds of humanity* (Dordrecht: Martinus Nijhoff Publishers, 1985), 90.

Channel Case.<sup>68</sup> The dispute came to lime light when British Navy warships trespassed the territorial water of Albania while sweeping mines in the Corfu Channel and were fired by Albanian Navy. When the case came to International Court of Justice, Albania pleaded that UK has violated Albanian sovereignty by passing through its territorial jurisdiction without prior permission.<sup>69</sup>

While Britain, narrowly interpreting article 2(4), held that their Act was neither deterrent to the territorial jurisdiction, nor affected the political sovereignty of Albania.<sup>70</sup> The International Court of Justice, in its decision by rejecting the narrow interpretation of Article 2(4), held the action of British Navy as violation of Albanian sovereignty and a display of a policy of force which could lead to abuse of power by states, if unchecked.<sup>71</sup> The Court maintained the respect of territorial sovereignty as an indispensable principle of international law.<sup>72</sup> While rejecting British pleas, it stated that rather the very Article 2(4) was meant to safeguard the legal rights of weak states against any hegemonic designs of the mighty ones.<sup>73</sup> Basically this Article implied that whatever the case be, use of force was considered illegal under international law.<sup>74</sup>

There a consensus on the principle that it is the duty of every state to abide by the laws of UN and to carry it in its letter and spirit, and for deciding whether force shall be used in a certain situation, the duty has been given to the Security Council to decide. So

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<sup>68</sup>*The Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Judgment, I.C.J. Rep. 1949(April 9), p. 35

<sup>69</sup>*Ibid.*, 33-37.

<sup>70</sup>David John Harris, *Cases and materials on international law* (London: Sweet & Maxwell, 2004), 892.

<sup>71</sup>*Ibid.*

<sup>72</sup>Olaoluwa Olusanya, *Identifying the aggressor under international law – a principles approach* (Bern: Peter Lang, 2006), 96-98

<sup>73</sup>Ian Brownlie, *International law and the use of force by states* (Oxford: Clarendon Press, 1963), 268-269

<sup>74</sup>G.A. Res. 2131 (XX) (21 December 1965).

the authenticity and validity of Article 2(4) cannot be compromised. This practice of non-intervention and keeping the article and its purpose in high esteem has been endorsed by UN resolution, its declarations and by the International court of justice many times.

In 1965, a declaration on the admissibility of intervention<sup>75</sup> was passed by the UN, which clearly stated that interference in the matters of other states is illegal and all states were barred from doing so. Time and again forceful interference and military intervention were deemed illegal and were disregarded.<sup>76</sup> The United Nations has made it clear to all its members, since its main objective was to bring international peace and stability, that attacking or threatening to attack the political or territorial jurisdiction of another state amounted to negating the basic aim of United Nations.<sup>77</sup> All these principles were again endorsed by the Declaration on principles of International law in 1970.<sup>78</sup> It went further by stating that it was the obligation of every member nation, not to interfere in the affair of other states, whether that be internal or external. Since then, many difficult situations had arisen but the stance of General assembly is static with respect to the prohibition of individual intervention. If the United Nations documents are the yardstick to ascertain the legality of unilateral intervention for carrying out regime change, then it is almost impossible for a state to claim that it intervened in another state on legal grounds. All most all States accepts the legality of this principle, whether that follow it or not, but no state has ever negated the validity of this principle. At some stage every state recurses to it. With the inception of United Nations charter, it was decided that intervention in the affairs

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<sup>75</sup>Ibid.

<sup>76</sup>Ibid.

<sup>77</sup>Ibid.

<sup>78</sup>Robert Rosenstock, "Declaration of Principles of International Law Concerning Friendly Relations: A Survey," *The American Journal of International Law* 65(5) (1971): 713



of other states must be avoided in order to provide a chance to peace and negotiations, although gross human rights violations took place at that time. At that time if states wanted to intervene, it could have intervened in Rwanda, Kashmir and South Africa in the name of humanitarian interventions, but avoided it because the doctrine of non-interference and its long-term effects were more important for bringing international peace and harmony.<sup>79</sup>

In most of the cases at that time, states intervened in the name of protecting its nationals abroad to justify their aggressions and the practice of quoting intervention on humanitarian basis declined. Even when India intervened in East Pakistan, it claimed that it was doing so on the basis of self-defense.

When USA covertly intervened in Nicaragua to overthrow its regime through rebels called "Contras" from period 1970-1979, the government of Nicaragua went to International Court of Justice against the actions of USA. In Nicaragua vs USA case<sup>80</sup>, it was pleaded by Nicaragua that USA is supporting rebellion financially and militarily, and the rebels are bent upon toppling the incumbent regime.<sup>81</sup> It further accused USA of negating Article 2(4) and violating the principle of prohibition of force against other states.<sup>82</sup> The court figures out that the importance of both Treaty law and customary law was intact and both have their own value even if both are same on a certain question.<sup>83</sup> U.S didn't participate in the proceedings and refused to accept the jurisdiction of ICJ in this respect. So the court after thorough consideration of the events, held that the principles of Political sovereignty and jurisdictional integrity implies the illegality of interference in

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<sup>79</sup>Thomas M Franck and Nigel S. Rodley, "After Bangladesh: the law of humanitarian intervention by military force," *American Journal of International Law* 67 (1973) 295-298

<sup>80</sup>*Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Nicagua v. United States of America), I.C.J. Rep. 1986 (June 27)

<sup>81</sup>*Ibid.*, para 20.

<sup>82</sup>*Ibid.*, para 23.

<sup>83</sup>*Ibid.*, para 176.

other states whether that be covertly or overtly.<sup>84</sup> Moreover the court also elaborated the meanings of Prohibited Intervention giving touch to different ways of pressures and use of force<sup>85</sup> in the light of United Nations deliberations at different occasions. It further stated that International law can be changed with time with respect to the principle of non-intervention. If states want to alter this rule, it can be done through state practice and with the consent of all.<sup>86</sup>

The decision of International court of Justice in Nicaragua case proved to be a good posture towards the principle of non-intervention but the attitude of USA towards the court was too dubious. USA tried its best to settle the matter out of court and withdrew from proceeding the case in the court, thereby, challenging court's jurisdiction in this respect. Still the court gave its decision.

Soon after the judgement, states showed some maturity by tackling seriously issues of human rights violations and problems of aggression in the shape of collective efforts on Humanitarian grounds. United Nations through Security Council authorized its members to stand united against the Iraqi attack on Kuwait<sup>87</sup>, Somalian issue<sup>88</sup> and the serious case of Kosovo<sup>89</sup> and asked them to utilize their all-out resources in bringing peace and stability in the respective areas.<sup>90</sup> It must be made clear that at that time collective interventions were carried out in the name of humanitarian assistance. Security Council also asked its

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<sup>84</sup>Ibid . para 205.

<sup>85</sup>Ibid

<sup>86</sup>Ibid., para 207.

<sup>87</sup>S.C. Res. 678 (29 Nov. 1990).

<sup>88</sup>S.C. Res. 794 (3 Dec. 1992)

<sup>89</sup>S.C. Res. 1160 (31 March 1998) And S C Res 1199 (23 September 1998).

<sup>90</sup>S.C. Res. 678 (29 November 1990), para. 2.

members to provide military forces<sup>91</sup> and all other required resources necessary for bringing peace and safe environment in Somalia<sup>92</sup>

In case of intervention in Kosovo, though Security council had not expressly authorized the use of force, rather in first instance security council asked the Yugoslav government to make necessary arrangements for settling the issue through amicable means and if it fails to so, the Security Council would be compelled to take other necessary measures for addressing the issue.<sup>93</sup> With the increase in hostility and refusal of Yugoslav government to comply with the demands of Security Council, it decided to consider further action to reinstate peace and stability, in other words paved the way for collective humanitarian intervention.<sup>94</sup> This led to the addition of a new standard in the development of international law in the form of collective security apparatus on humanitarian grounds. These steps taken by Security Council and additionally supported by many states, exhibited a shift towards permissibility of such collective intervention, though only when authorized by Security Council itself. Moreover, Security Council acknowledged the idea of collective military intervention as justified against internal affairs of a state, if they present a threat to international peace or violated human rights.

However, individual intervention, according to ICJ, are still considered unlawful because there is no state practice or *Opinio Juris* on the issue. Hence the invasion of Iraq in 2003 exhibits that although the Security Council impliedly allowed U.S.A to establish a

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<sup>91</sup>S.C. Res. 794 (3 Dec 1992), para. 11.

<sup>92</sup>*Ibid.*, para. 10

<sup>93</sup>S.C. Res. 1160 (31 March 1998), para. 19.

<sup>94</sup>S.C. Res. 1199 (23 September 1998), para. 16

No-Fly-Zone for the protection of local population against Iraqi military, the U.S attack on Iraq is still rendered as unlawful and has been condemned by the General Assembly.<sup>95</sup>

Similarly, the intervention in Kosovo by NATO not being authorized by Security Council explicitly, raised many debates and controversies on the issue.<sup>96</sup> Yugoslavia, in its appeal to ICJ contemplated that since NATO was not the authorized international force to carry an intervention, it questioned the legality of such attack on the basis of two propositions, i.e. first there is no vivid and recognized doctrine of humanitarian intervention and second, the attacks were not in proportion to humanitarian grounds as they resulted in more civilian casualties.<sup>97</sup> Belgium on the other hand maintained that there was an absolute and immediate need for an armed intervention due to gross human rights violation going on in Kosovo and felt bound to do so in accordance to the Security Council resolutions, to help the people in agony.<sup>98</sup> Belgium, moreover, contended that such intervention was not in breach of Article 2(4) of U.N Charter as it did not violate the territorial sovereignty of the state and was not meant to occupy Kosovo.<sup>99</sup> Still in that case Security Council was not unanimous on this issue as Russia was against this intervention and China was also not in favor of any intervention without the prior permission of Security Council.

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<sup>95</sup>Christine Gray, "From unity to polarization, international law and the use of force against Iraq," *European Journal of International Law* 13, no. 1 (2002): 9.

<sup>96</sup>Antonio Cassese, "Ex iniuria ius oritur: are we moving towards international legitimization of forcible humanitarian countermeasures in the world community?," *European Journal of International Law* 10, no. 1 (1999): 23-30.

<sup>97</sup>Ibid.

<sup>98</sup>Aaron Schwabach, "Yugoslavia v. NATO, Security Council Resolution 1244, and the Law of Humanitarian Intervention," *Syracuse Journal of International Law and Commerce* 27 (2000): 91-92

<sup>99</sup>Christine Gray, "Legality of Use of Force (Serbia and Montenegro v Belgium) (Serbia and Montenegro v Canada) (Serbia and Montenegro v France) (Serbia and Montenegro v Germany) (Serbia and Montenegro v Italy) (Serbia and Montenegro v Netherlands) (Serbia and Montenegro v Portugal) (Serbia and Montenegro v United Kingdom): Preliminary Objections, Judgment of 15 December 2004," *The International and Comparative Law* 54 (2005): 787-794

The traditional interpretation of the Charter renders humanitarian intervention illegal.

The conventional approach towards Article 2(4) U.N Charter reckons it as prohibiting humanitarian intervention. According to Benjamin, originally, Article 2(4) prohibits all types of aggression or use of force by a state for any reason, except self-defense and when authorized by Security Council.<sup>100</sup> The logic behind this ban on use of force was to preserve the territorial sovereignty and political independence of a state.<sup>101</sup> Nonetheless, the Charter's Collective measures were enacted to ensure peace.<sup>102</sup>

### **2.3. State Practice vs Unilateral Regime Change**

Another school of thought argues that even unilateral Humanitarian intervention is illegal, even if it is backed by state practice. They argue that armed actions could not be rendered as legal merely on the basis of state practice.<sup>103</sup> Even the states who have been involved themselves in such interventions also oppose such actions if taken by any other state and challenge its legality, e.g. America condemns Russian interventions in Afghanistan and Ukraine while itself being guilty of the same in Iraq and Afghanistan. Similarly Russia opposed American intervention in Nicaragua, Libya Afghanistan and Iraq. The recent example of Syria is a vivid example of state practice where all the parties directly involved

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<sup>100</sup>Barry M. Benjamin, "Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities," *Fordham International Law Journal* 16(1) (1992): 120.

<sup>101</sup>U.N. CHARTER, art.2, para. 4.

<sup>102</sup>Natalino Ronzitti, *Rescuing nationals abroad through military coercion and intervention on grounds of humanity* (Dordrecht: Martinus Nijhoff Publishers, 1985), 92.

<sup>103</sup>Wil D. Verwey, "Humanitarian intervention under international law," *Netherlands International Law Review* 32, no. 03 (1985), 357-418

in the war are blaming others of negating the norms of International law. The state machinery is devastated and the country is turned into ruins but Major players are waging wars for their own interests. This represents a dual standard of their policy on the issue, based on their political motives. Such state practice, being not able to justify such humanitarian interventions solely, is usually supplemented with excuses such as self-defense, or threat to international peace, as was the case of U.S attack on Afghanistan or India's intervention in East Pakistan.<sup>104</sup> India in fact didn't intervene in East Pakistan for preventing human rights violations rather it did so with the aim of settling score with its political rival and causing damage to Pakistan under the shield of self-defense invoking Article 51 of the U.N Charter.<sup>105</sup> India might have deliberately avoided the use of term humanitarian intervention for the reason that it knew that it had hostile relations with Pakistan over Kashmir Issues. If in Bangladesh case India used the term humanitarian intervention, it would have paved a way for Pakistani intervention in Kashmir in the name of liberating the oppressed and preventing human rights violations. Most of the legal thinkers maintain this view about the Indian intervention in East Pakistan leading to the inception of East Pakistan.

In another instance when the regime of President Idi Amin (1971 to 1979) was overthrown by Tanzanian army, it did not invoke the humanitarian ground rather it did so and occupied Uganda on the basis of self-defense. Although, Idi Amin was believed to have massacred a massive number of his political opponents<sup>106</sup>, and could have been prevented on humanitarian grounds but neither Tanzania took the stance, nor United Nation

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<sup>104</sup>Ibid

<sup>105</sup>Ibid

<sup>106</sup>Barry M. Benjamin, "Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities," *Fordham International Law Journal* 16(1) (1992):120.

took any step on the grounds.<sup>107</sup> We can see that, in most of the cases, state practice involved the political or other ulterior motives instead of humanitarian grounds, while intervening another state and hence it could never justify the legalization of unilateral intervention. " This type of legal gamesmanship, where a state professes to conform its actions with established precedent despite the state's true motives has, in part, led to the current debate over whether humanitarian intervention should be legalized ".<sup>108</sup>

The main reason for opposing unilateral regime change is the fear of potential abuse of the doctrine, by stronger states to achieve their political or economic objectives.<sup>109</sup>

According to that approach, if the unilateral intervention is legalized, the stronger states could easily manipulate this doctrine for their political or any other ulterior motives.<sup>110</sup> And thus it would be unfair to the weaker nations and the concept of fairness in general.<sup>111</sup>

Another opinion is that International criminal responsibility must be affixed for those who are instrumental in initiating and materializing unilateral regime change as they consider it to be a form of Aggression. In order to fix international Criminal responsibility on the persons responsible for Crime of aggression, it is necessary to determine what the crime of aggression means and if it has been criminalized by some international competent forum or not. As far as the definition of Crime of aggression is concerned, international customary law has never provided us with the unanimous and concrete definition of aggression. Since every state had been waging wars claiming it to be just and lawful, so

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<sup>107</sup>Ibid.

<sup>108</sup>Ibid . 136-138

<sup>109</sup>JostDelbruck, "A Fresh Look at Humanitarian Intervention under the Authority of the United Nations," *Indiana Law Journal* 67 (1991): 887-891.

<sup>110</sup>Thomas M Franck and Nigel S. Rodley, "After Bangladesh: the law of humanitarian intervention by military force," *American Journal of International Law* 67 (1973) 284.

<sup>111</sup>Barry M. Benjamin, "Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities," *Fordham International Law Journal* 16(1) (1992) 120

there was no clear definition of the notion. But if look at the Nuremberg trials, its charter has to some extent criminalized the War of Aggression and fixed responsibility on the persons who are involved in it. But since then a serious debate has broken out about the exact definition and limitations on the Crime of Aggression. With the adoption of the Rome statute establishing International Criminal Court on 1 July, 2002, international community endeavoured actively to define different criminal acts so that ICC could exercise its jurisdiction over that acts. When the crime of aggression came up for discussion, again there was a serious debate over the definition and nature of the term. Some countries supported the general definition for the Crime of aggression, thereby suggesting that all types of aggressions, whether that be against the territorial or political sovereignty of an independent state, be criminalized and included in the definition of Aggression. On the other side there were states who wanted that there must be some acts which needed to be exempted from the definition of aggression. They contended that sometimes it is inevitable to intervene in order to protect the oppressed from atrocities and mass human rights violations, thereby suggesting that Humanitarian intervention must be exempted from the definition of Crime of aggression. To review the progress and consider the amendments to the Rome statute of International Criminal Court, a review conference was held from 31 may to 11<sup>th</sup> of June 2010 at Kampala. Kampala review conference adopted the definition of the Crime of Aggression neglecting the objections of certain countries. The definition of Crime of Aggression and the Criminal Responsibility involved therein has been provided under Article 8 bis as such;<sup>112</sup>

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Accessed at <[https://asp.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf)>, on 18<sup>th</sup> September, 2016.



“1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State:

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement:

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State.

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.”

So the definition of Aggression has been clearly defined in the Statute of International Criminal Court and there is no exception to it thereby declaring humanitarian intervention without the approval of the Security Council also a crime of Aggression and has paved way for fixing International Criminal Responsibility.

## **2.4. Regime Change and Unilateral Intervention never Guarantee Peace and Prosperity for a Longer Time**

According to Michael Riesman, interventions for protecting human rights violations or promoting democracy are not that simple as it seems.<sup>113</sup> It is a very difficult and a time consuming task. A state does not have to topple the government or to stop the atrocities only, it is the duty of intervening state to use its all-out energies for bringing peace and tranquility in the subject state. Still if the intervention is carried out successfully achieving all of its objectives, the state instigating the regime change/intervention is considered as an alien after a very short time. Native people expect much more from the intervening state and once these out of the way expectations meet the reality check, people start to feel the occupying force as aliens and the people working for them as agents or traitors<sup>114</sup> and the feelings of nationalism originate with great fervor.

Even if we assume the Regime Change as legal, it is difficult to measure the pros of military intervention. It's easy to initiate a war on blame game, however once the regime has been evicted, it's almost impossible to transplant a perfect and workable mechanism for the governance of the subject state. Moreover, the duty of supervision also lies on the shoulders of regime changers, as their picked model of government might not be culturally, politically or technically suitable to the native population. That can be seen both in case of Iraq and Afghanistan where the new governments are still struggling to bring peace and stability to their respective countries even after almost 10 years. In fact, the regime change in these states, led to more ethnic divisions and mere anarchy within these states. The new

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<sup>113</sup>W. Michael Reisman, "Why Regime Change is (Almost Always) a Bad Idea," *Faculty Scholarship Series*, Paper 1003(2004): 532.

<sup>114</sup>Ibid.

government usually fails to win the public as they are deemed as puppets of international Players of the game. The public considers it merely the change of faces instead of changing the machinery or system of the government.

In most cases, ethnic divisions among a particular state are used to crush the ethnic group in power. Once the group in power is overthrown, a never-ending series of conflicts start to originate that leads to permanent instability. In recent history ethnic and religious divisions were used to weaken the dominant groups and permanent tussles and scuffles between different groups provided excuse to the interveners to stay for a longer and indefinite time in the name of normalizing situations.

So it can be stated safely that Unilateral Intervention for removing dictators or oppressive regimes has never been fruitful and rather had been the cause of more problems. Legal researchers consider it to be a blatant violation of the very base of International law, i.e. good will and respect for other. If it was a right and just doctrine, then there was no need for UN, and its courts, justice has to be carried out by the powerful states and the weaker state that are in no position to do so, has to accept the role of silent spectators even if their interests were really at stake. So whatever the case might be, Intervention/regime change is and should be allowed under the patronage of Security Council only and nothing less.

## **2.5. Conclusion**

In case of intervention in Kosovo, though Security council had not expressly authorized the use of force, rather in first instance security council asked the Yugoslav

government to make necessary arrangements for settling the issue through amicable means and if it fails to do, the Security Council would be compelled to take other necessary measures for addressing the issue. Moreover, Security Council acknowledged the idea of collective military intervention as justified against internal affairs of a state, if they present a threat to international peace or violated human rights.

However, individual intervention, according to ICJ, is still considered unlawful because there is no state practice or Opinion Jurist on the issue. Even the states who have been involved themselves in such interventions also oppose such actions if taken by any other state and challenge its legality, e.g. Such state practice, being not able to justify such humanitarian interventions solely, is usually supplemented with excuses such as self-defense, or threat to international peace, as was the case of U.S attack on Afghanistan or India's intervention in East Pakistan. We can see that, in most of the cases, state practice involved the political or other ulterior motives instead of humanitarian grounds, while intervening another state and hence it could never justify the legalization of unilateral intervention. " This type of legal gamesmanship, where a state professes to conform its actions with established precedent despite the state's true motives has, in part, led to the current debate over whether humanitarian intervention should be legalized".

According to that approach, if the unilateral intervention is legalized, the stronger states could easily manipulate this doctrine for their political or any other ulterior motives. A state does not have to topple the government or to stop the atrocities only; it is its duty to use its all-out energies for bringing peace and tranquillity in the state where intervention has taken place. So it can be stated safely that Unilateral Intervention for removing dictators

or oppressive regimes has never been fruitful and rather had been the cause of more problems.

## **Chapter No 3**

### **Regime Change in Ukraine: A Case Study**

#### **3.1. Introduction**

Ukraine, having strategical and geographical importance for both Russia and Europe could have foreseen itself to be a political battlefield between the rivals. however the Russian's blunt actions of aggression and annexation has practically stirred the situation towards the military confrontation.

It would be unwise to assume that Ukraine's inclination towards Russia or EU was avertible, as strategically and economically Ukraine is strongly linked with Russia, and on the other hand, west has its strong influence on the technology and cash inflows of Ukraine; therefore it was almost impossible for Ukrainian government to make a choice between them. This chapter will analyse the Budapest Memorandum of 1994, concluded between Ukraine, US, UK and Russia whereby all the participant countries pledged to protect Ukraine from every type of external aggression in exchange of Ukraine destroying its Nuclear Arsenal. Russian justifications of intervening for protecting Russian speaking Ukrainians and the formal invitation by the incumbent president are carefully examined. All the legal aspects of Russian intervention in Ukraine are scrutinized.

#### **3.2. Background of Ukrainian Crisis**

Ukraine has been a separate member state of United Nations since 1945, though being part of U.S.S.R and it remained so after it attained independence at the time of disintegration

of Soviet Union in 1991. In August 1991, in a nationwide referendum, 90% of the Ukrainian population voted for independence from USSR even 54% of Crimean population voted in support of independence.<sup>115</sup>

In December 1994, Ukraine entered into a Nuclear Non-proliferation treaty with Russian, UK and US known as **Budapest Memorandum**.<sup>116</sup> Under this treaty Ukraine agreed to abandon the nuclear arsenal in return of economic, political and military support, including “respect for the sovereignty and existing borders of Ukraine” by other members of the treaty.<sup>117</sup> The thought-provoking factor is that Crimea was given a commitment by all the parties to the treaty that its political as well as territorial sovereignty will be respected and protected jointly, but rather than saving it, Ukraine is disintegrated by the Russia (who was a party to that treaty) for its political and strategic interests.

In May 1997 Ukraine signed another agreement with Russia known as “Partition Treaty on the status and conditions of the black sea fleet”. Under this treaty Ukraine and Russia maintained independent navies and divided bases between them. The most vital part of this treaty was that Russia was entitled to use the port of Sevastopol in Crimea until 2017 further extended by “Kharkiv Pact” of 2010.<sup>118</sup> Russia’s Black sea fleet uses this port till date.

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<sup>115</sup>Adam Taylor, “To understand Crimea, take a look back at its complicated history,” *The Washington Post*, 27 February 2014. Accessed at <<http://www.washingtonpost.com/blogs/worldviews/wp/2014/02/27/to-understand-crimea-take-a-look-back-at-its-complicated-history/>> on 3<sup>rd</sup> of February, 2015

<sup>116</sup>Council on Foreign Relations, “Budapest Memorandums on Security Assurances, 1994,” Primary Sources, <http://www.cfr.org/nonproliferation-arms-control-and-disarmament/budapest-memorandums-security-assurances-1994/p32484> (accessed October 15, 2015).

<sup>117</sup>Mariana Budjeryn, “The Breach: Ukraine’s Territorial Integrity and the Budapest Memorandum,” *Nuclear Proliferation International History Project Issue Brief* 3 (2014): 2.

<sup>118</sup>Tamerlan Vahabov, “Ukraine: a challenge for US, EU & NATO regional policy,” *Caucasian Review of International Affairs* 4, no. 3 (2010): 297.



The current Ukraine crises could be linked to the election of President Viktor YANUKOVYCH who won with heavy majority in 2010. Since the beginning of his tenure, he is deemed as pro-Russian and most of his policies exhibit inclination towards Russia. The turning point of this issue appeared when the president Viktor Yanukovich abandoned its EU-Ukraine Association Agreement and instead announced to seek co-operation with Russia. This decision was received with great resentment within European Union circles and it triggered massive protests within Ukraine as well

While Yanukovich refused to bow down to the pressure of mass, the protests gained momentum day by day and led to a protest of at least 800,000 on a single day in the streets of Kiev.<sup>119</sup> The situation got worse and Ukraine faced anarchy and violence broke out between pro-Russian and pro-European protestors. In February 2014 the Ukraine parliament deposing Yanukovich, made its speaker as interim President and issued an arrest warrant of President Yanukovich. After this decision of parliament a civil war broke out between pro-Yanukovich and anti-Yanukovich groups leading to unidentified pro-Russian armed men attacking on government buildings and other military installations. While Ukraine Army started military operations everywhere to crush the pro-Russian rebellions, President Yanukovich, asked for Russian assistance to control the situation. Suddenly heavily armed men with no known identity or insignia were reported to have taken control of all significant government building and airports of Crimea. Russia initially refused to have sent its troops to Crimea. On 1<sup>st</sup> March 2014, on the request of Yanukovich and to protect the Russian-origin citizens of Crimea, President Putin, after obtaining the approval of its parliament, sent its troops to Crimean Peninsula. According to Russia it

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<sup>119</sup>Robert J. Delahunty, "The Crimean Crisis," *University of St. Thomas Journal of Law* (2014): 18-20.

intervened as Crimea was on the brink of civil war, threatening the lives of many civilians including Ukrainian nationals of Russian origin. Another reason Russia relies on, was the protection of military personnel stationed in Crimea in southern Ukraine, where the Russian Black Sea Fleet and other key military installations are located. And that Russia's national security was also at stake because this civil war like situation could have also dragged Russia and its citizens into this war in Russian territory as has been evident from the cases of independence of Tajikistan and Uzbekistan where Islamists had launched Jihad against Russia. Media all over the world reported that Russian military forces had entered and occupied the Crimean peninsula.<sup>120</sup> International leaders considered Russian intervention as an all-out aggression from Russian side. Even then Russia refused to accept any kind of involvement in Crimea. According to Russia, the armed men were self-defense forces of Crimea fighting the Ukrainian forces. Later on, it was disclosed that the armed men were actually Russian special response unit who had removed their insignias in order to conceal their identity.<sup>121</sup>

Interim Ukrainian government accused Russia of violating international norms and said that Russia could have used other amicable means, provided by international law, to address the issue of protection of its nationals in Crimea. Russian intervention according to them was an attempt to curb the sovereignty of Crimea and to take control of its important strategic installations.<sup>122</sup>

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<sup>120</sup>Kathy Lally, William Booth, and Will Englund, "Russian Forces Seize Crimea: Ukraine's Interim President Declares 'aggression'," *The Washington Post*, 1 March 2014. Accessed on April 7, 2015 at <[https://www.washingtonpost.com/world/a-deeply-concerned-obama-warns-russia-against-action-in-crimea/2014/03/01/c56ca34e-a111-11e3-a050-dc3322a94fa7\\_story.html](https://www.washingtonpost.com/world/a-deeply-concerned-obama-warns-russia-against-action-in-crimea/2014/03/01/c56ca34e-a111-11e3-a050-dc3322a94fa7_story.html)>.

<sup>121</sup>Vitaly Shevchenko, "Little green men" or "Russian invaders"?, *BBC News Europe*, 11 March 2014. Accessed at <<http://www.bbc.com/news/world-europe-26532154>> on 13<sup>th</sup> April 2015.

<sup>122</sup>British Foreign Secretary William Hague speech in British Parliament on 4 March 2014. Accessed at <<https://www.gov.uk/government/speeches/uks-response-to-the-situation-in-ukraine>> on 27 of Sep. 2014.

In the start of March, it was decided by the Crimean authorities that Crimea would accede to Russia and for that reason a referendum was proposed to be held to ascertain the wishes of the Crimean people. Though Russian forces were still in Crimea and all government machinery was in their control. Taking notice of the situation, EU states lobbied with other like-minded countries to bring a resolution in the Security Council. USA with the help of others brought a resolution in the Security Council to consider any possible accession of Crimea with Russia as illegal. But that resolution was vetoed by Russia. Though majority of the members of the Security Council voted in the favour of the resolution.

Russia held a referendum on 16<sup>th</sup> of March 2014 in which above 90% of the population voted in favour of joining Russia as per the official reports. This referendum was not conducted and regulated by any neutral party. Moreover, there were no independent and international observers to ascertain the validity and authenticity of the referendum. After the referendum result, Russian parliament gave approval to the Crimea joining Russia without taking into consideration the international outcry and condemnation. Russian forces occupied all the military installations and military equipment in Crimea.

Another draft resolution was submitted to the General Assembly of the UNO by Ukraine, which demanded the condemnation of Russian aggressive action and its illegal occupation of Crimea; the integral part of Ukraine. This resolution was adopted and almost 100 state members voted in its favour.

The issue is still debated and no party to the case is backtracking from its position and stance. Crimea is in complete control of Russia and Russia is not ready to relinquish

its authority over Crimean territory. Russia defends its actions to be in accordance with the principles of Customary International law.

### **3.3 Russian Justifications and Pleas for Intervention**

Notwithstanding other covert issues in this crisis, it is imperative to look into the Russian version of its actions and see whether they were in accordance with the UN charter and international customary law

Russia has tried to justify its intervention and subsequent annexation of Crimea on the following two legal principles of International law:

- (a) Intervention in order to protect its nationals abroad
- (b) Intervention upon the request of the Yanukovych government

#### **3.3.1 Intervention in Order to Protect its Nationals Abroad:**

It has been argued by the Russian authorities that they were bound to intervene in Ukrainian crisis, because the life and property of Russian population living in Ukraine was in danger. They argue that they were morally as well as legally bound to act, so to stop the bloodshed of those people. Russian authorities claimed that they were justified in intervening because there was “a real threat to the life and security of Russian citizens living in Ukraine. There was a threat to their military in Sevastopol and the Black Sea Fleet, and stressed that they must not sit idle. But caution required them to have used all the possible measures, to ensure the security of their citizens living in Ukraine. Russia relied on state practice referring to

Israeli action in Uganda to protect its nationals, Panama Canal issue and relies upon self-defence clause under Article 51 of UN charter.<sup>123</sup>

But legal jurists are divided on the principle of Intervening in another state in order to protect one's nationals. Some considered it impliedly attached to the self-defence clause given in the Article 51 of the United Nations Charter. They say that since it is the responsibility of a state to protect its territory from different forms of aggression, citizens are more important to be protected from any type of harm. As the territory of a state cannot move from one place to other, it is easy to maintain forces in different corners of state, whereas its nationals can move freely from one place to another. So if nationals of a state are in imminent danger of harm or extermination, then the state reserves the right to take all types of necessary measure including use of force to ensure their safety irrespective of their location. Some also maintain that intervention in order to protect nationals abroad is a principle of international customary law and an exception to Article 2(4) of United Nations Charter.

On the other hand, the limits of self-defence are also debatable. It is commonly believed that a state can invoke the principle of self-defence only when its territorial and political integrity is either attacked or is under a threat of attack. While self-defence, as a justification for the use of force to safeguard its nationals in another territory, is more of a controversial issue. It is argued that population, being one of the integral parts of state, must be protected against any external aggression, regardless of the population residence. Hence the attack or violence on a considerable number of nationals can amount to an armed

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<sup>123</sup>U.N Charter, Chapter VII, art. 51.

attack against the state.<sup>124</sup> However, it is very broad and wide application of the term “self-defence”.<sup>125</sup> Another justification for the rescue of nationals in another territory, is linked to the customary law and state practice. Many recent instances show the implied acceptance of such rescue operations by international community, nonetheless, they are still considered unlawful, unless carried out in the exceptional circumstances and in good faith.<sup>126</sup> “The limited scope of such intervention is derived from the Art 2 (4) of the UN Charter which offer a very narrow justification for the use of force: (a) there must be an eminent danger to the life of citizens in foreign territory (b) and the host state is either unwilling or unable to offer adequate protection and (c) the intervening state has no other reliable means to rescue the persons in danger”.<sup>127</sup>

Nevertheless, if this stance is to be accepted, yet Russia has to prove that there was a significant threat to its nationals in Crimea and Russia was left with no other choice but to intervene in order to protect its ethnic Russians. Again Russia fails on the criteria of the protection of “citizens”, as the minority Russians in Crimea were mere ethnic Russian, not actual citizens of Russia.

### **3.3.2 Intervention upon the Request of the Yanukovych Government**

Another well-founded justification provided by Russia is that it was requested by the Ukrainian president Yanukovych through a letter, asking Russia to help with stabilising

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<sup>124</sup>Kristen Eichensehr, "Defending nationals abroad: assessing the lawfulness of forcible hostage rescues," *Virginia Journal of International Law* 48, no. 2 (2008): 468-470.

<sup>125</sup>Heidi Tagliavini, "Independent International Fact-Finding Mission on the Conflict in Georgia," *Official Journal of the European Union* 323/66 (2009): 23-25.

<sup>126</sup>Christian Marxsen, "The Crimea Crisis—An International Law Perspective," *Zeitschrift ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of International Law)* 74, no. 2 (2014): 372-374.

<sup>127</sup>Robert J. Delahunty, "The Crimean Crisis," *University of St. Thomas Journal of Law* (2014), 18-39

the deteriorating law and order situation in Ukraine, against anti-Semite Maidan protestors.<sup>128</sup>

Yanukovych, being the then legitimate president of Ukraine, acknowledged writing that letter to Russia, for military assistance. Since he has been ousted he has taken refuge in Russia. Russia still considers him as a legitimate president living in exile. They argue that he was and still is in position to invite foreign troops for assistance as provided by the Ukrainian constitution. It is pleaded that as per the Ukrainian constitution the removal of President Yanukovych was not in line with the described procedure of impeaching a sitting president. For removing a sitting president it is necessary that an impeachment motion is moved by the majority of members of Ukrainian parliamentarians on the bases of treason or some other gross crime and followed by an inquiry. If the investigation commission finds the president guilty of the alleged crime, then two-third majority is required to remove him. In case of Yanukovych, the constitutional procedure was not followed and even the number of parliamentarians who had voted in favour of impeaching the President were also less than the required two-third. According to Russia Yanukovych was ousted illegally and forcibly, and all the state machinery was unlawfully controlled by the opposition with the tacit help of some European countries, therefore he was in no position to control the situation but had to rely on Russian assistance

However, international law jurists maintain that though he might had been impeached wrongfully according to Ukrainian constitution, but from international law perspective, it was necessary that he must have exercised some legal and administrative

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<sup>128</sup>Bob Dreyfuss, "Full Text and Analysis of Putin's Crimea Speech," *The Nation*, 19March 2014 Accessed on June 3, 2015 at <http://www.thenation.com/article/full-text-and-analysis-putins-crimea-speech/>.

authority in his country, in order to invite foreign military to invade his own country, which in fact he lacked. If he were the rightful president and commanding the state machinery, he was entitled to ask for foreign military assistance.<sup>129</sup> According to the commentary of International Law Commission to Article 29, it is imperative that the government which is asking for foreign assistance must be doing it in the good faith of its countrymen and its territory and must exercise effective control over its territory and government machinery. In case of Yanukovich, it is understandable that he was a De-jure president, but he was not in fact exercising that authority, and it is questionable if he was authorised to invite foreign troops to invade his country which would otherwise be considered as unlawful use of force.

In International law, the internationally recognized regime has the rightful authority to ask for foreign assistance,<sup>130</sup> but in case of civil wars and regime changes, internationally community is usually divided on the subject to whom the recognition be given. Countries keeping in view their own political objectives, usually give recognition to different parties to the conflict according to their own understandings and interests.

It is still debatable whether Yanukovich retained the status of president by the time he sought Russian military assistance or not, it is agreed upon that his very act validated the Russian plea for intervention to a larger extent.

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<sup>129</sup>See generally, *Case Concerning Military and Paramilitary Activities in and against Nicaragua*(Nicaragua v. United States of America), I.C.J. Rep 1986 (June 27).

<sup>130</sup>Olivier Corten, *The law against war: the prohibition on the use of force in contemporary international law* (NY, Bloomsbury Publishing, 2010), 263.



### 3.4 Conspiracy Theories Portraying Other Picture

There are various perceptions with respect to these crises, as many international players were involved in the game behind the scene. U.S is alleged to be actively involved in the unconstitutional overthrow of an elected government and install a fascist regime.<sup>131</sup> The taped phone messages of (US Undersecretary of State) Victoria Nuland show that who was actually calling the shot. U.S condemned the Russian intervention on almost every platform and denounced the referendum held in Crimea that resulted in its accession to Russia. The U.S ambassador to Ukraine Mr. Pyatt called it as “so called referendum patrolled by the gangs of Russian thugs”.<sup>132</sup> On the other hand, Mr. Pyatt himself was allegedly involved and was a lead player in orchestrating the whole plot of riots and overthrowing the elected government of Yanukovich as evident from the “leaked phone conversation” between him and Victoria Nuland, the US assistant secretary of state for European and Eurasian affairs. In their conversation they discussed the need to a formation of new government through opposition movement and unanimously agreed on the suitability of Arseniy Yatsenyuk, referred to as “Yats,” to replace president Yanukovich.<sup>133</sup> Interestingly, neither Mr. Pyatt, nor the US State department has negated the authenticity of these tape conversations.

There are traces found of other US and EU sponsored NGOs such as National Endowment for Democracy, USAID, IRI, NDI and Techcamp etc. involvement in supporting protests and national destabilization in Ukraine.<sup>134</sup> Techcamp was accused of

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<sup>131</sup> Joseph Kishore, “Ukraine, the United States and International Law,” *International Committee of the Fourth International*, 11 march 2014. Accessed at <<https://www.wsws.org/en/articles/2014/03/11/pers-m11.html>> on March 7, 2015.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid

<sup>134</sup> Brandon Turbeville, “US-Backed “TechCamp” Color Revolution Revealed By Ukraine Official,” Brandon Turbeville, <http://www.brandonturbeville.com/2015/04/us-backed-techcamp-color-revolution.html> (accessed June 24, 2015).

stirring instability with the help of Europe, by Oleg Tsarev: a former Deputy of Ukraine, and now a member of the separatist parliament in Eastern Ukraine before he was removed along with president Yanukovich. These NGOs were also criticised by RPI advisors Dennis Kucinich and Lawrence Wilkerson. Kucinich served eight terms in the United States House of Representatives and ran for president as a Democrat, exposed the US indulging in the internal affairs of Ukraine as following, "If I was President of United States, what I'd do is not have USAID and the National Endowment for Democracy working with US taxpayers' money to knock off an elected government in Ukraine, which is what they did. I wouldn't try to force the people of Ukraine into a deal with NATO against their interests or into a deal with the European Union which is against their economic interests."<sup>135</sup>

Likewise, U.S was allegedly the main sponsor in paid protests and violence in Ukraine through Andriy Parubiv, who was the coordinator of the volunteer security corps for the mainstream protesters. He has been known as co-leader in the Orange Revolution in 2004 which was a straight forward CIA operation. In recent Ukraine crisis his force is suspected to have killed a massive number of protestors as well as policemen to create anarchy.<sup>136</sup>

Richard North accusing the alleged role of the Eastern Partnership Civil Society Forum, states that this forum was paid by EU to bring Ukrainian people closer to EU. It even went too far in playing a role in supporting mass protests against the government of

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<sup>135</sup>"Exposed: CIA, NATO and NGOs Created the Ukrainian Crisis." Hang the Bankers. <http://www.hangthebankers.com/exposed-cia-nato-and-ngos-created-the-ukrainian-crisis/> (accessed February 2, 2015).

<sup>136</sup>Eric Zuesse, "NATO Lies to NPR." Real Independent News And Film, June 2015 ed., <http://rinf.com/alt-news/editorials/nato-lies-to-npr/> (accessed August 12, 2015).

Yanukovych and its policies.<sup>137</sup> Even the frequent visits of US officials to Kiev and their active participation in mass protests is also seen with suspicion. Konstantin Kosachev argues that whenever US officials visited Kiev, the new wave of protest started and became more intense.<sup>138</sup> Some people question the interest shown by U.S in brokering a deal to transition of power in Ukraine. If it was that serious in minimising the violence it should have done that while there were massive protests in the tenure of President Yanukovych.. Another objection on US-EU role in these crisis is that, since Yanukovych was an elected president of Ukraine and his decision of rejecting the EU association agreement, was a sovereign decision and an internal matter of Ukraine, so why US and EU were taking that much interest in the protests. At first these protests were also not aimed at toppling the regime of Yanukovych, nor were there any human rights issues, then what the US authorities were looking for and what were their objectives in openly supporting the opposition?. The urgency in giving legitimacy to the interim government immediately after the removal of Yanukovych raises many eye brows The opposition parties which EU and U.S supported, were called as fascists and Hitler-like by European politicians several time in the recent past, then how come they were regarded that respect and privilege in giving them recognition at international level as soon as they usurped power in Ukraine.

### **3.5 Discussions and Analysis of the Issue**

The Russian intervention has paved the way for an endless debate among almost all the legal jurists around the globe. Russia is in serious violation of international law by

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<sup>137</sup>Kurt Nimmo, "European Union NGO Played Direct Role in Violent Coup in Ukraine," *Alex Jones' Infowars*, 14 March 2014 <http://www.infowars.com/european-union-ngo-played-direct-role-in-violent-coup-in-ukraine/> (accessed August 14, 2015).

<sup>138</sup>An interview with Konstantin Kosachev, "Key US Role in Ukraine Crisis Portrays Europe as 'passive Participant'," *RT Question More*, 3 February 2015, <https://www.rt.com/op-edge/228563-pace-assembly-conflict-russia/> (accessed July 17, 2015)

breaching Budapest treaty (1994). Under this treaty United States, United Kingdom and Russia agreed to protect the borders of Ukraine in return of its agreement to Non-nuclear proliferation.

The act of Russia not only violated the agreement and international law, but also deteriorated the international legal framework for preventing nuclear proliferation.<sup>139</sup> It is a serious matter of concern that Russia wishes to rewrite the borders on its own terms and conditions. This not only endangers the regional peace, but is also a threat to international peace at large. However, it's also important to take into account the Russian justification on the issue and use of force in Ukraine. Nonetheless, Russia yet has to satisfy the international audience specifically on the issue of annexation of Crimea. Russia is struggling to justify its actions through state practice or international law and trying to "muddy the waters of international opinion".<sup>140</sup> Ukraine, having strategical and geographical importance for both Russia and Europe could have foreseen itself to be a political battlefield between the rivals, however the Russian's blunt actions of aggression and annexation has practically stirred the situation towards the military confrontation.

It would be unwise to assume that Ukraine's inclination towards Russia or EU was avertible, as strategically and economically Ukraine is strongly linked with Russia, and on the other hand, the West has its strong influence on the technology and cash inflows of Ukraine, therefore it was almost impossible for Ukrainian government to make a choice between them.

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<sup>139</sup>Jeffrey D. Sachs, "Ukraine and the Crisis of International Law," *Project Syndicate*, 24 March 24 2014 <http://www.project-syndicate.org/commentary/jeffrey-d--sachs-sees-in-russia-s-annexation-of-crimea-the-return--with-us-complicity--of-great-power-politics> (accessed 12 June, 2015)

<sup>140</sup>BBC News, "Ukraine: UK Condemns Russian 'land Grab' of Crimea," *Politics Sec.*, 18 March 18 2014, <http://www.bbc.com/news/uk-politics-26632857> (accessed August 1, 2015)

Hence, this situation was cashed by both Russia and EU to their political and economic advantage. Russian justification of defending its Ethnic Russians in Ukraine is actually a weak standpoint for such a vigorous act. However, while judging Russia for such a heinous act, on the standards of its opponents, one must look at continuous breach of international law by US, EU and NATO.

In recent years US along with its NATO allies, has been involved in many military interventions in various parts of the world, against the norms of international law. In this regard it went so far as to surpass the UN Charter and without the approval of UN Security Council. The US-NATO intervention in Kosovo and its subsequent declaration and recognition as an independent state in the shape of Bosnia from Serbia, by US and its allies without the clear permission of Security Council is an example that Russia eagerly quotes for its actions in Crimea.<sup>141</sup>

Similarly US intervention in Iraq and Afghanistan, having no support from Security Council has disturbing results until now. Both the countries are still suffering from internal turmoil and instability, even after one decade of the regime change. It is assumed that if Security Council were taken on board, the situation would have been different today.

Another such example is of US- NATO intervention in Libya to overthrow the government of Qaddafi, despite the strong objection of the Security Council. The results are no different than that of Iraq and Afghanistan.

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<sup>141</sup> Jeffrey D. Sachs, "Ukraine and the Crisis of International Law," *Project Syndicate*, 24 March 2014 <http://www.project-syndicate.org/commentary/jeffrey-d--sachs-sees-in-russia-s-annexation-of-crimea-the-return--with-us-complicity--of-great-power-politics> (accessed 12 June, 2015)

One of the most recent example is, the US efforts for regime change in Syria, which are deemed as illegal and unauthorized steps by Russia and China. In Syrian issue, U.S and its allies are not only involved militarily but also openly supporting the rebel groups fighting against the regime of Bashar al Assad. Another thought provoking fact in this issue is that US has been supporting some Al-Qaeda affiliated group which are fighting against the Assad regime, notwithstanding the fact that US and its allies have waged a global war against Al-Qaeda. This disregard and excessive use of mandate by U S and its NATO allies has devastated the region and most of Iraq and Syrian territories are occupied by Islamic State of Iraq and the Levant; a terrorist and extremely violent group. We can never deny the oppressiveness of incumbent Syrian regime, but the actions of U.S and its allies have openly negated the concept of Territorial integrity and political sovereignty guaranteed to Syria by International law and claimed more than 130,000 Syrian lives.<sup>142</sup>

Other instances include US drone strikes in different countries and covert military operations without the permission of states, e.g. Abbottabad operation against Usama-bin-Laden and drone attacks in Pakistan etc. These acts show that powerful states try to override the rules of international law and violate the integrity of states for their own political and strategic interests with feeble justifications. International law is mocked at, as powerful states tailor it to their advantage when needed or shelve it when they are the wrongdoers. However, these acts of US, NATO and EU do not legitimize the act of Russia and Russia can not cite these as a state practice for its mal-intentions in Crimea.

Russian justification of protecting ethnic Russians was a honey-nectar to gain local support for intervention and Annexation of Crimea, due to its strategic importance since

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<sup>142</sup>Ibid.

Russia had its Black sea fleet standing on the Sevastopol port, Crimea. But, as this ethnic Russian minority faced no direct imminent threat by the Ukraine's ongoing protests or with the ousting of Yanukovych, it is seen as a lame excuse for such an extreme aggression by Russia. It is also believed that since Yanukovych was pro-Russian, his illegal removal from his office was taken personally by Putin as an insult and a challenge to Russia's vision of Russia-led Eurasian integration.<sup>143</sup> Though annexing Crimea with its large ethnic Russian population, surely enhanced the image of Putin within his own country, nonetheless, his very act brought him into the severe criticism from all over the globe. Russian action has also made the region insecure and a permanent struggle for influence over the region has broken out between Russia and its rivals. It has also given an opportunity to others that if they have power, they can act without accountability. The weaker nations which are considered as buffer states between the powerful states have become more vulnerable to external interventions in case of internal disturbances.<sup>144</sup>

All the open and hidden understandings between Russia and its rivals to maintain peace and accommodate each other's interests have been disregarded.<sup>145</sup> Now it is feared that in order to exert influence on the weaker nations in the region, both Russia and Western power would go to any extent, which again would result in further disruption. If Russia and Ukraine donot develop a mutual understanding, then Russia might land in another Afghanistan in shape of Ukraine.

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<sup>143</sup>Roy Allison, "Russian 'deniable' intervention in Ukraine: how and why Russia broke the rules," *International Affairs* 90, no. 6 (2014): 1255-1297.

<sup>144</sup>"Meeting of the Valdai International Discussion Club," *President of Russia*, October 24, 2014 <http://en.kremlin.ru/events/president/news/page/57> (accessed September 15, 2015).

<sup>145</sup>Roy Allison and Phil Williams, *Superpower competition and crisis prevention in the Third World*, ed (New York: Cambridge University Press, 1990), 249-57

The tension between Russia and Ukraine is building up due to stubborn attitude of Russia over the issue. Ukraine, on the other hand, besides considerable support from EU and US, has also strong legal standing on the issue of Crimea. As per international law, Crimea still belongs to Ukraine, regardless of its De-facto status. This view has been expressed by the UN. General Assembly through draft Resolution A/RES/68/262 on 27th of March 2014, in which more than 100 members of United Nations voted in favour of the resolution.<sup>146</sup> The resolution is based on the principle of obligatory-non-recognition, according to which “states are under an obligation not to recognize, through individual or joint acts, the claimed statehood of an effective territorial entity, created in violation of one or more fundamental norms of international law”.<sup>147</sup> This principle is also supported by the International Law Commission’s Article 41 of the Draft Articles on State Responsibility.<sup>148</sup> As a general principle of international customary law, recognition to an illegal or controversial act, validates its authority to some extent. While non-recognition carries “minimum resistance” and “a continuous challenge to a legal wrong”.<sup>149</sup> Besides, Russia might face more potential economic sanctions from the rest of world as a good-will and sympathy gesture towards Ukraine. However, if these sanctions are practically implemented any time soon, it might make the situation more complicated, stoking even more tension between Russia and the rest of the world. Unwise or hasty decisions from either side may further jeopardize the peace in the region.

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<sup>146</sup>S.C. Res S/2014/189 (15 March 2014).

<sup>147</sup>John Dugard and David Raic, “The role of recognition in the law and practice of secession,” *Secession: International Law Perspectives* (2006), 107.

<sup>148</sup>International Law Commission, “Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries,” *Report of the International Law Commission on the Work of its 53rd session* (2001)

<sup>149</sup>Hersch Lauterpacht, *Recognition in international law* (New York, Cambridge University Press, 1947, 431.



As far as the Russian stance on the Ukraine issue is concerned, it's not for the first time that Russia has been doing alike acts with the similar excuses of "self-defense" and "intervention upon invitation". Russia availed itself of the same argument of "self-defense" even in 2008 for its intervention in Georgia, killing almost 200 Georgian soldiers. And when confronted with international pressure, Russia withdrew its troops from Georgia. Likewise, when Russia intervened in Afghanistan in 1979, Russia came up with the argument that it was invited by the Government of Afghanistan, the same excuse it now presents to justify its action in Ukraine. Though according to International law, a state might ask for the help of another state, if it is attacked by another state or if there is a serious threat to its territorial integrity from another state, but in above mentioned cases none of the foreign countries had attacked Ukraine nor was there any external threat to Ukraine, rather there were infightings in Ukraine, thereby nullifying the stance of Russian authorities. The situation is very tense as no punitive action can be initiated against Russia from the platform of Security Council, for its irresponsible behavior towards its weaker neighbor. The reason is that Russia is a permanent member of Security Council and probably would veto any move directed toward Russian interests. This situation is alarming not because of what has been done, but the real threat is that if powerful and aggressive states are not stoped/restricted from jeopardizing the interests and rights of smaller countries, the world might go towards the situation where there will be no international law to regulate peaceful regulations between the states. International court justice may play some constructive role in abating the tensions and in addressing the crisis, but the fear of Russian veto also makes it impossible for the rest of the world to rely on it.

In this case the only viable option left with the world community is that they must not recognize the accession of Crimea to Russia, as a gesture of their protest towards the actions of Russia in Crimea. Besides that some countries have proposed sanctions against Russia. Russia may take sanctions from U.S.A and other European Union states, against it, as counterpunch in order to settle score. Therefore, it is the responsibility of every state to at least show some disapproval of the Russian aggression and impose some sanctions against Russia. It will not only stop Russia from taking such aggressive actions again, but will also be a reminder to other powerful states who have hegemonic designs in the region. U.S is in a position to play a leading and constructive role in addressing the issue through amicable means, but it must come clean in order to convince Russia for withdrawing from the Crimean territory.

### **3.6. Conclusion**

The US-NATO intervention in Kosovo and its subsequent declaration and recognition as an independent state from Serbia, by US and its allies without the clear permission of Security Council is an example that Russia eagerly quotes for its actions in Crimea. These acts of US, NATO and EU do not legitimize the act of Russia and Russia can not cite these as a state practice for its mal-intentions in Crimea. It is perceived, the Russian justification for the protection of ethnic Russian was a honey-nectar to gain local support for intervention and Annexation of Crimea, due to its strategic importance since Russia had its Black sea fleet standing on the Sevastopol port, Crimea. Russian action has also made the region insecure and a permanent struggle for influence over the region has broken out between Russia and its rivals. All the open and hidden

understandings between Russia and its rivals to maintain peace and accommodate each other's interests have been disregarded. The world community must sit together not only to settle this issue amicably but take such course of action which should prevent the coalition of the two poles which may jeopardise international peace and order.

## **Chapter 4**

### **Recommendations and Conclusions**

#### **4.1. Recommendations**

- While defining the nature of regime changes, it can be said that regime changes may have been useful at some times but a strict system of check and balance must be in place to check the excesses in initiating regime changes. Because if we look into Ukrainian crisis, no party in Ukraine is ready to accept its responsibility for bringing instability in the region and there is a serious possibility of a war. Law also stands helpless in this situation as both parties justify their acts as legitimate and adequate according to the circumstances. So some strict set of laws must be formulated and approved by the General Assembly of United Nations thereby declaring the act of unilateral regime change as illegal. Penalties and the nature of penalties such as economic sanctions, social boycott and military actions etc. must be specified in that law. While drafting laws for preventing unilateral interventions, advisory opinion must be taken from the International Court of Justice because of its expertise and authenticity of its opinions.
- There is no competent forum at international level to adjudicate these type of issues and if there is one such as Security Council, it is also handicapped due to the veto power of the five permanent members. So either the membership of the Security Council must be increased so that most of the countries can have their say in decision making or the decisions with respect to Regime changes must specifically

be decided by the General Assembly of U.N. Whatever the case be, hands of the competent forums must be strengthened.

- The forum competent to deal with the issues like regime change was/is International Court of Justice, but keeping in view the fate of its decision in Nicaragua vs USA case, it is clear that it has been assigned a very limited and dictated role in adjudicating international issues especially when powerful countries of the world are parties to these issues. Nonetheless, the world community must not sit idle, rather it should follow the route of uprightness and justice. The General Assembly resolution to the International court of justice for its advisory opinion on the construction of wall in Occupied Palestinian Territory, is a landmark step towards the realization of a just and fair world community. Though the decision of the court had no tangible effect, but it is a sort of a moral defeat to the Israeli government and a message has been conveyed that the world community will no more bear with the aggression of any kind. The same can be done in the case of Ukraine, if the matter is sent to the International Court of justice for its advisory opinion. This may not liberate the Crimean territory from the clutches of Russian authorities, but the fair decision will convey a strong message from the international community that they will never accept the lame excuses put forth by Russia while disintegrating an independent country. This may also prove a dent to the foreign policy approach of Russia.
- Unilateral Regime changes always bring destruction and casualties. In illegal interventions many people die and there is a state of catastrophe in the occupied country. Most of the people live as refugees in their own countries. Ideally to stop

people from initiating such arbitrary actions and to make them examples for the world community. the jurisdiction of International Criminal court must be extended to try the individuals instrumental in orchestrating unilateral regime changes as under Kampala Review Conference of 2010. the definition of Crime of Aggression has been defined and all forms of unauthorised interventions has been described as aggressions. International Criminal Responsibility for the crimes aggressions must be fixed and all those persons who fulfil the criteria set for the said crime must be punished accordingly as a token of deterrence for others.

- Flexibility can only be given in cases where the incumbent regime which is to be removed is in reality a threat to international peace or is extremely oppressive to its populace. The approval for forceful regime change must be obtained with the consent of General Assembly of U.N and subsequent approval of the Security Council must be taken. The approval must be accompanied by the commitments of tangible support from the world community as regime change is not a one time job. it is a time consuming task. All types of resources must be allocated for normalisation of the situation in the occupied state.
- In authorized interventions, the transition period must be quick and swift. Human casualties must be minimized at any cost. The aim of intervention must only be the removal of oppressive regime.
- With respect to Russian Actions in Crimea, Russia must be held accountable for its violation of international Law and International norms. It must be given a befitting reply in the shape of Economic sanctions, Social boycott and other tactful measures.

But calculated response is essential, keeping in view Russian Geo-Economic position and military strength. As the region is not ready to withstand another war, efforts must be made for normalising the situation and endeavours must be made for minimizing the endangering situation in the Ukrainian peninsula.

## **4.2. Conclusion**

From the research conducted in this thesis, it can be concluded that the forceful intervention and Regime Change in Ukraine is not an issue peculiar to Euro-Asian region only, rather it has its implications for the rest of the world. If the world community fails to stop such aggressive actions, then there will be Crimea, Ukraine and Syria everywhere. The weaker states will always be vulnerable to the hegemonic designs and actions of the powerful states. The world, especially the third world countries will remain in a state of perpetual chaotic position. Pakistan can also become the victim of this disastrous practice because Pakistan being a weak third world country is surrounded by powerful neighbors having far reached ambitions and designs. The disintegration of Pakistan in the shape of Bangladesh is one such example of such threats. Mostly, interventions in weaker states are carried out in one pretext or another just to avoid the wrath and condemnation of International community. So one thing is for sure that at international level, politics mostly overshadow truth and principles. The only option left with the weak states is to ask for United Nations help. Although United Nation is a regulatory institution of International law and International relations, but it is not independent in its working mechanism and is regulated by the State members who have their own political, strategic and economic interests. Security Council, which is the principal organ of the UN and has been given the power to ascertain the circumstances viable for conducting regime change, is itself divided into different groups. Each group solicits its opinion, actions and policies to be in line with the principles of International law and justice. Economic and strategic interests are mainly instrumental in guiding standings on international issues.



International law is not some divine law but a law based and dependent on understandings.

In order to define the legality of any action, three things must be defined clearly, which are the nature of the act, the intention behind committing an act and the consequences of the act being committed. Thus, if the nature of the act is wrong and the other two defining factors are in conformity with the law, the act may be deemed as illegal. Similarly, if the nature of the act and its consequences go hand in hand but the intention behind the act is bad, the act may be deemed as illegal. In the same fashion, if the first two defining factors are in consonance with the law but the consequences of the act are bad, the act will stand illegal. Therefore, the nature of the act being committed, the intention behind the act and the consequences should all be in conformity with the law if the action need to be defined as a legal one. Thus, if the above stated definition of an act is applied to Russian aggression on Ukrainian territory, the case stands illegal in all the three above stated defining factors. The act itself is extremely aggressive, violent and against the principles of International law. The intention of Russia is also doubtful as it was clear from the very start that it wanted to occupy Crimea at any cost. And last but not least, the consequence of the Russian action is that it has forcefully dismembered and disintegrated an independent country. Russia cannot justify its actions in Ukraine by quoting state practice and illogical legal principles which have never become part of International Customary law. Russian aggression must be given a calculated response from the world community because if left unchecked, will not only aggravate the already tense situation but will also prove detrimental to protective role of United Nations Organization. Besides that Forceful

Regime change is a timeless saga common to all spaces and times. It is a denominator used by every hegemon at different periods of history to promote its selfish and self-centric interests.

This research concludes that respect for humanity must be kept in high esteem. The world community must strive hard for securing better and brighter future for the upcoming generations. Selfish motives must not be given preference over political and territorial integrity of nations. Legal principles may not hold a state responsible for its violent actions, but humanity demands that moral court must be satisfied at any cost.

This research can be concluded by the following suggestions:

- Strict body of laws must be formulated by the General Assembly of United Nations for declaring unilateral regime change as an illegal act.
- Calculated penalties in the shape of economic sanctions, social boycott etc. should be placed on the countries that practice regime change.
- While drafting laws for preventing unilateral interventions, advisory opinion must be taken from the International Court of Justice because of its expertise and authenticity of its opinions.
- Jurisdiction of International Criminal Court must be extended to the cases of Unilateral Regime Changes.
- Flexibility can only be given in cases where Regime change is authorized by the Security Council, the approval must be accompanied by the commitments of tangible support from the world community.

- If removing an oppressive regime is a common goal, then the General Assembly must be taken into confidence on every step taken for achieving that goal. The Occupation must be quick and swift.
- With respect to Russian Actions, Russia must be held accountable for its violation of international norms.
- Calculated response is essential for minimizing the endangering situation in the Ukrainian peninsula.

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