

Transcript

00:00:00 Speaker 1

Dear faculty at the University of Oxford.

00:00:03 Speaker 1

They are students and guests. First of all, it would say let me say it's my pleasure and I'm delighted to be here today on this beautiful day to actually present this very topical issue on Interventional Point Unitarian grounds, and also let me say, although in his absence, I'm very grateful to the Director of this IW Centre at Pembroke College, Oxford Doctor Robert Johnson.

00:00:24 Speaker 1

It is my purpose of this lecture to actually establish that there is a right.

00:00:29 Speaker 1

Illegal right and moral right of humanitarian intervention and especially unilateral humanitarian intervention.

00:00:38 Speaker 1

It is definitely addressed to policymakers in the Foreign Office in the Ministry of Defence, in the US State Department.

00:00:48 Speaker 1

Uh, to academics to actually deal extensively with international law and international relations. And of course, students graduate and undergraduate who study thoroughly these very fields. I shall divide my lecturing 4 parts. First of all, I shall refer to state practise on Internet.

00:01:06 Speaker 1

Questions on humanitarian grounds. Secondly, I shall assess this state practise and also refer to relevant rulings on the rational code of justice. Thirdly, I will refer to post UN.

00:01:18 Speaker 1

Humanitarian interventions this proposed UN Charter interventions, which were launched orienteering grounds and finally, I will elaborate on legal and moral philosophy.

00:01:29 Speaker 1

Of course, including just war theory related to this very issue, so let's get started immediately with a very important definition of humanitarian.

00:01:40 Speaker 1

It may be defined as the proportionate use of force.

00:01:44 Speaker 1

By governments in order to prevent serious violations of fundamental human rights of rights of individuals in other states who would readily consent to such a military action, according to

Oppenheim, late professor of international law at the University of Cambridge in the beginning of the 20th century.

00:02:01 Speaker 1

When a state commits cruelties against and persecution of its own nationals in such a way as to deny their fundamental rights and to shock the conscience of mankind, then intervention in the interests of humanity is legally permissible.

00:02:17 Speaker 1

So turning to the state practise on this very issue. Let me just first mention some historical evidence of humanitarian interventions.

00:02:28 Speaker 1

In the massive material on this topic, which have gone through all these years, the contribution of a famous historian, facilities has been perhaps unduly neglected with respect to intervention of this sort. Within the context of international.

00:02:43 Speaker 1

So therefore I should refer to two very important examples which appear in the history of division war in facilities which actually may document the existence of such a right in ancient times, which clearly survived in the modern world.

00:03:00 Speaker 1

Of course, the affairs which follow should be seen for those who are not familiar with ancient Greek history should be seen in the light of the fact that the Greek city states in ancient times were actually, as I said, set states themselves.

00:03:12 Speaker 1

So in book four of the history and political Polynesian war made firstsite be said to pose an example of intervention upon humanitarian grounds.

00:03:22 Speaker 1

Very shortly, the facts were as follows on its way to Sicily, the Athenian fleet met was met with the storm, which forced the ships to seek refuge.

00:03:32 Speaker 1

In the Peloponnese and province of Greece and particularly in pilots as the war between Athens and Sparta was at its apex, the Athenian Navy members were arrested by lesser demonic incidence is another name for the Spartans.

00:03:46 Speaker 1

Clown, the Athenian demagogue forcefully urged the Athenian assembly for a military campaign to prevent their fellow citizens from being massacred.

00:03:56 Speaker 1

Although the incident may be better be described as an operation to save nationals abroad to use the modern terminology international law, clearly it generated the criteria.

00:04:06 Speaker 1

For legitimate humanitarian intervention, as these were formulated in the speech of the Athenian general Demosthenes before the commencement of the military rescue operation, what Demosthenes said, the leader of the Athenians were trapped in pilots was this.

00:04:22 Speaker 1

Men who have gathered in this in this venture, like none of you be esteemed, amount of intelligence or a man of rationality.

00:04:29 Speaker 1

But let us with claim courage, which casts aside reflection attack against the opponents, and even be optimistic that we shall be perfect orias when things reach a matter.

00:04:41 Speaker 1

Of necessity or a point of necessity, crude rationalism is least needed.

00:04:47 Speaker 1

Now, interestingly.

00:04:50 Speaker 1

If one.

00:04:53 Speaker 1

Modern international law case law.

00:04:57 Speaker 1

It is easy to actually spot the fact that these terminology used by Demosthenes is identical with the one used in the famous Caroline case, which actually laid down the clear criteria for the.

00:05:09 Speaker 1

Use of force.

00:05:11 Speaker 1

It is.

00:05:12 Speaker 1

It may be coincidental. The fact that those who actually use this terminology in the Caroline case follow the same pattern as the city stars, and especially General Demosthenes.

00:05:24 Speaker 1

But researchers have done into those who actually uttered these phrases in the Caroline case, looks as though they have studied the cities.

00:05:33 Speaker 1

Let me just quote very briefly an extract from the Caroline case, which indicates would have just stated.

00:05:41 Speaker 1

It will be for Her Majesty's government to show the necessity of self defence, instant overwhelming, leaving no moment for deliberation.

00:05:50 Speaker 1

These were the words of Mr Webster.

00:05:54 Speaker 1

And the Caroline case also.

00:05:57 Speaker 1

Definitely maybe said may be seen as one which sets limits to the use of force in general and calls for adherence to proportionality.

00:06:05 Speaker 1

And also when Mr. Webster said in this case did nothing unreasonable or.

00:06:09 Speaker 1

Yes, since the act is justified by the necessity of self defence must be limited by that necessity and kept clearly within it.

00:06:17 Speaker 1

Obviously, this one refers to the principle of proportionality and limited use of force in accordance with the circumstances.

00:06:25 Speaker 1

Now clearly this incident of the cities is 1, which might be described as an incident which which poses a problem example of intervention to save nationals abroad or humanitarian intervention. There is another incident in the history which actually illustrates that occasionally.

00:06:43 Speaker 1

When lives are in danger, a state may also launch an intervention to save those lives, and that is.

00:06:50 Speaker 1

The case of mytilini.

00:06:52 Speaker 1

Whereby the Italians were faced with imminent danger because of the atrocities committed against them on part of.

00:07:00 Speaker 1

The city of.

00:07:00 Speaker 1

Athens the Italians call for help.

00:07:04 Speaker 1

To Sparta, Sparta did dispatch, a military fleet, which unfortunately was recalled and never reached the Bay of Mytilini.

00:07:12 Speaker 1

The fleet basically was recalled because the foreign policy of Sparta was largely dictated by the fear of the possible fear of a helot revolt.

00:07:21 Speaker 1

Pellets were obviously the slaves of Sparta, who were occasionally revolting in various ways, so that very fact actually frustrated the whole intervention.

00:07:32 Speaker 1

Which of course.

00:07:33 Speaker 1

Might have matured in a humanitarian action.

00:07:40 Speaker 1

Turning to contemporary state practise, if we take a look at pre Charter, unilateral interventions of humanitarian kind. The first example is the joint intervention of Great Britain, Russia and France. In eight of the Greek revolutionaries in 1827. Basically the famous Navy Battle of Neighborino.

00:07:59 Speaker 1

It is interesting to actually.

00:08:02 Speaker 1

Quote the Treaty which was signed between the three major powers, the Great Powers, as they were called, and indeed they were great powers signed in London on 6 July 1827.

00:08:13 Speaker 1

Which of course, according to paragraph, one of the preamble of concern was all the disorders of anarchy caused by the struggle.

00:08:21 Speaker 1

Which both impede the commerce of the states of Europe and get opportunity to pirates which not only expose the subjects of the high contracting parties to grievous losses, but also render necessary measures which are burdensome for their observation and suppression.

00:08:35 Speaker 1

The most important part of the London Treaty actually was paragraph 2.

00:08:39 Speaker 1

Which gives us a flavour of the humanitarian sentiments which led to this action of liberating Greece.

00:08:48 Speaker 1

The paragraph 2 preamble of the paragraph 2 expressly says.

00:08:54 Speaker 1

The Great Powers had received from the Greeks and earnest invitation to interpose their mediation with the Ottoman Porter, and together with the Emperor of Russia, animated with the desire putting a stop to the infusion of blood, and of preventing the evils of every kind, had resolved to combine and regulate their efforts with a view to reestablish peace efforts demanded.

00:09:14 Speaker 1

No less.

00:09:15 Speaker 1

By sentiments of humanity, and this is the crucial point, no less, by sentiments of humanity.

00:09:22 Speaker 1

Than by interests for the trainability of Europe.

00:09:27 Speaker 1

The famous Navy Battle of Areno surprise surprise Severino is actually exactly on the same sport as ancient Pylos, where the famous intervention took place before in the context of the Pimple Nesian war.

00:09:41 Speaker 1

So the battle took place on the 20th October 1827 and M dead with a very serious defeat.

00:09:47 Speaker 1

Of the Turkey Egyptian forces. The Turkey Egyptian fleet, which eventually withdrew from the Peloponnese in Greece.

00:09:57 Speaker 1

Ian brownlie

00:09:59 Speaker 1

A former Jelly professor of public international law in the University of Oxford says that.

00:10:05 Speaker 1

The governments of the day did not refer to a legal justification for interventions.

00:10:12 Speaker 1

In this case, which might.

00:10:15 Speaker 1

Be said to have a humanitarian character now, although.

00:10:19 Speaker 1

I greatly respect, again roundly, and actually he himself in his famous book, international Law and the use of force by states, actually admits that there is such a right of unilateral humanitarian intervention.

00:10:32 Speaker 1

In this case, he submits that such a right was more and exposed factories that he is a right which was.

00:10:40 Speaker 1

Invoked by various scholars to justify the intervention. In fact, here, interestingly, Brownlee contradicts himself because in the previous page, immediately 338 of the same monograph in fact says that these legal right did exist at the time and could have been invoked by all those interested parties.

00:11:01 Speaker 1

More important is perhaps the.

00:11:04 Speaker 1

Assertion of.

00:11:09 Speaker 1

Other scholars that.

00:11:11 Speaker 1

These intervention was more launched in the context of strategic interests in the region rather than for any humanitarian sentiments, and this is the view of Simon Chesterman, who was a student, a doctoral student of Brownlee, at Modelling College Oxford and produced the monograph on just War and Riford.

00:11:31 Speaker 1

Extensively to the Navy battle of Neighborino. Now how do we strike down this argument if we want to believe that there actually existed humanitarian centre?

00:11:41 Speaker 1

In those great powers who actually launched these famous intervention, which ended up in the famous Navy battle in aid of the Greek revolutionaries, there is a very important letter which was sent.

00:11:55 Speaker 1

By Lord Bathurst, Secretary of State for the Colonies at the time to Sir Harry Neale, commander in chief of the station in the Mediterranean.

00:12:05 Speaker 1

In February.

00:12:07 Speaker 1

26 just a year before the Navy battle, let me quote this very important letter. His Majesty has long had reason to lament the atrocities which have disgraced the context in which Greece has been for many years.

00:12:20 Speaker 1

And heavily involved.

00:12:21 Speaker 1

When you dis understood that, whether with the.

00:12:23 Speaker 1

Concept of the.

00:12:24 Speaker 1

Portal or not?

00:12:25 Speaker 1

Designs are evoked by Ibrahim Pasha to extirpate systematically.

00:12:29 Speaker 1

The whole community to seize upon the women and children of the Morea, to transport them to Egypt and to re people the more rain develop ponies from Africa and Asia, to change in fact that part of Greece from a European state into one resembling the states of Barbary. That's his own terminology.

00:12:48 Speaker 1

His Majesty cannot, as the sovereign of a European state, hear of such an attempt without demanding of Ibrahim Pasha, either an explicit disavowal of his ever having entertained such an intention, or a formal denunciation of it if ever entertained.

00:13:07 Speaker 1

And Please note that these letter did not see the light at the time. Saw the light many years later.

00:13:14 Speaker 1

It was therefore not really compiled for any kind of internal politics interests for not really the purpose of promoting any kind of political.

00:13:27 Speaker 1

Experiences, but it was very honestly compiled by someone in the UK. A very high standing administrative officer was really genuinely interested in this very crisis in Greece.

00:13:42 Speaker 1

Tracks which indicate that this intervention was indeed humanitarian.

00:13:50 Speaker 1

The fact that the public opinion in the UK was very much in favour of this intervention. Impressed really. The government to eventually take this action. We have the sacrifice of Lord Byron of Trinity College, Cambridge, who actually died in missile longie

00:14:03 Speaker 1

For the.

00:14:04 Speaker 1

Purpose of liberating Greece and also the Admirals of the UK were very much in favour of the Greek course.

00:14:11 Speaker 1

Of course, I cannot deny the underlying strategic interests in this intervention, and clearly a major such interest was to prevent a possible intervention.

00:14:24 Speaker 1

On part of Russia.

00:14:26 Speaker 1

In Greece, and therefore that mean, Russia would obviously influence largely the politics of Greece after the subsequent potential independence of the state of the of the region.

00:14:39 Speaker 1

Therefore clearly George Canning, then Prime Minister of course, died just a few weeks before the next battle. Garbarino and other officials.

00:14:46 Speaker 1

Were very genuinely interested in averting this possibility of irrational intervention.

00:14:53 Speaker 1

Now a second example, pre Charter is the French occupation of Syria. Very briefly, the facts were as follows. In 1860, thousands of married Christians were killed by Muslims on Mount Lebanon, then part of Syria, but within the Ottoman Empire. After a meeting of the Ambassadors of Great Britain, France, Prussia and Russia.

00:15:13 Speaker 1

In Austria, a convention was signed.

00:15:17 Speaker 1

Under the terms of the Convention, the Sultan wishing to stop by prompting efficacious measures the effusion of blood in Syria and to show his firm resolution to establish ordering peace amongst the populations placed under his sovereignty, agreed to dispatch 12,000 troops to Syria to contribute.

00:15:36 Speaker 1

Towards the reestablishment of peace.

00:15:39 Speaker 1

France was to provide half.

00:15:40 Speaker 1

The number.

00:15:41 Speaker 1

A French force was sent, but came across restoration but of order by the Ottoman local government.

00:15:47 Speaker 1

Despite that, the French troops occupied parts of Syria and warships remained in the area from August 1862 June 1861.

00:15:56 Speaker 1

Brownlie again includes this in in this event, as the most likely exception to his general statement that international practise in the 19th century discloses no genuine case of humanitarian intervention.

00:16:10 Speaker 1

However, it has been said that the measures taken by the Ottoman Sultan made foreign intervention unnecessary and suspicious.

00:16:17 Speaker 1

In view of the various interests of European states.

00:16:23 Speaker 1

We've got to note, however, that in a protocol which was signed before the adoption of the Convention between Great Britain, Austria, France, Prussia, Russia, and Turkey, the powers declared in the most formal manner that they would not seek any territorial advantage, exclusive influence or concession.

00:16:41 Speaker 1

Under the pretext of the occupation.

00:16:44 Speaker 1

There should be no doubt that the concerns of the palace, especially France, and of course the rest of them. For the Christian populations, where to a large extent humanitarian.

00:16:57 Speaker 1

The third example.

00:17:00 Speaker 1

Pre charter

00:17:02 Speaker 1

Is the US intervention in Cuba 1898? the US intervention seems to be another instance of humanitarian action in state practise preceding the adoption of the UN Charter, STARWHEEL refers to it as one of the most important instances of humanitarian intervention.

00:17:21 Speaker 1

Simon Chesterman, on the other hand, citing Fontaine says that the action was but the flashpoint of the broader war with Spain.

00:17:29 Speaker 1

In a matter of months, the Spanish Navy was defeated, Spain had relinquished the remnants of its empire. the US had established herself as a world power, and Cuba was an American protectorate. That's exactly his phraseology. That's exactly what Chesterman says on this incident.

00:17:47 Speaker 1

Atrocities were committed by Spanish authorities in Cuba attempting to control the insurrection of 1885.

00:17:56 Speaker 1

Beyond doubt, the Spanish policy of forcing the population into concentration camps in order to identify revolutionaries instigated generally outcry in the US and according to estimations of feral, about 200,000 Cubans perished in concentration camps.

00:18:14 Speaker 1

So we do have here.

00:18:18 Speaker 1

Clearly, humanitarian grounds for intervention, and interestingly, in his special message to Congress, President McKinley of the US outlined 3 justifications for US intervention in the conflict. First, the cause of humanity. Secondly, protection of U.S. citizens and thirdly, self defence.

00:18:37 Speaker 1

And then of course a resolution would was was passed authorising intervention because of the appalling conditions which shocked the moral sense of the people of EU.

00:18:45 Speaker 1

S have been a disgrace to Christian civilization, culminating as they were in the destruction of a US battleship. In that case as well.

00:18:58 Speaker 1

Finally on this it is interesting that tests on another US scholar international law scholar concludes his brief survey of pre charter practise by stating that the most important precedent for a right of humanitarian intervention is this one and the Second World War. So we do have substantial.

00:19:16 Speaker 1

Academic support for this intervention as well coming from US scholars. Basically that in fact there were humanitarian motives which led eventually to the US action.

00:19:27 Speaker 1

Now, with respect to post charter, unilateral humanitarian interventions.

00:19:34 Speaker 1

We do have certainly some obvious examples. First of all, the Belgian and US intervention in the Congo 1964.

00:19:43 Speaker 1

Briefly, in the facts, in 64 the 3rd 1/3 of the jungle came under the control of a rebel group, which was based in.

00:19:50 Speaker 1

Stanleyville the rebel forces took 1000 or so foreign residents hostage and threatened to kill them.

00:19:58 Speaker 1

Peaceful efforts to free the hostages having failed Belgian forces, intervened with US. Sorry with UK logistical assistance and US aircrafts, the troops were withdrawn after a successful operation.

00:20:13 Speaker 1

In the 1970s, the mission was characterised as one of the clearest modern instances of true humanitarian intervention, and one that should be viewed as lawful in character.

00:20:25 Speaker 1

In a note to the address for the Security Council, Belgium spoke of the mission is being a legal, moral and humanitarian operation which conforms to the highest aims of the UN, namely the defence and protection of fundamental human rights.

00:20:41 Speaker 1

The US in a letter to the Security Council stated that the sole purpose of this humanitarian mission was to liberate hostages whose lives were in danger, however.

00:20:55 Speaker 1

The UK Scholar in international law, Harris observes that the rescue operation was undertaken under the consent of the Congolese government and hence was not dependent upon any right of humanitarian intervention. So there is some doubt on part of certain academics about these operations.

00:21:16 Speaker 1

The second example post charter of unilateral humanitarian action is the Indian invasion of Bangladesh. Of course, undoubtedly before I go on.

00:21:27 Speaker 1

There seem to be.

00:21:29 Speaker 1

Important political interests.

00:21:32 Speaker 1

In most of these cases, but SI.

00:21:35 Speaker 1

Shall comment upon later and come back to this point.

00:21:38 Speaker 1

This does not actually strike down the argument that an intervention may be termed or may be characterised as humanitarian, if indeed there are simultaneously strong humanitarian grounds. Strong humanitarian sentiments on part of those who actually launch this kind of intervention.

00:21:57 Speaker 1

Very briefly, what happened here until 1971? Pakistan consisted of east and West Pakistan with India between the two parts.

00:22:07 Speaker 1

In March 1971, E Pakistan declared itself independent under the name of Bangladesh. Although the Pakistan Army was initially successful in suppressing the rebellion, rebel guerrilla forces launched the general offensive with considerable success.

00:22:25 Speaker 1

As there was evidence to suggest that India, which had taken into its territory about 1,000,000 refugees from East Pakistan, had given the guerrillas some substantial assistance militarily.

00:22:35 Speaker 1

Pakistani and Indian troops clashed in the border area with the Indian Prime Minister. Then Prime Minister Indira Gandhi. Having first declared war.

00:22:46 Speaker 1

Eventually Pakistan surrendered and Bangladesh has since received recognition that of Pakistan included as an independent state.

00:22:56 Speaker 1

The Indian intervention in East Pakistan is commonly held as an within. More promising examples of humanitarian intervention.

00:23:03 Speaker 1

Test 1 call is considered an almost perfect example.

00:23:07 Speaker 1

And Fontaine says that it probably constitutes the clearest case of forceful individual humanitarian intervention in this century. Barrett, Sir Derek poet, and I shall refer to him largely subsequently, 'cause he's a major figure. As you may know, in public international law includes these.

00:23:28 Speaker 1

Is the only possible illustration of the practise in the period between 1945 and 1986?

00:23:36 Speaker 1

In Security Council, India Rep stated that we have on this particular occasion absolutely nothing but the purest of motives and the purest of intentions to rescue the people of Eastern Gal from what they have been suffering.

00:23:51 Speaker 1

Also, in a final comment on these intervention lillig are the author of the commentary on the UN Charter, famous international law expert actually characterised and stated this intervention as humanitarian and fully justified from the moral.

00:24:10 Speaker 1

Point of view.

00:24:12 Speaker 1

There is one more which I will skip because of lack of time. It's the Tanzanian intervention in Uganda.

00:24:19 Speaker 1

Which I'm sure many of you have gone through from studying international law cases and materials. In this context, the most important part of this section.

00:24:29 Speaker 1

Apart from what has obviously been said so far is the assessment of this state practise.

00:24:36 Speaker 1

And the relevant rulings of International Court of Justice in this regard.

00:24:42 Speaker 1

So let's see what.

00:24:45 Speaker 1

Arguments may actually be put forward in support of these state practise.

00:24:51 Speaker 1

There is clearly strong evidence to suggest.

00:24:56 Speaker 1

Was in Steeles customary international law, pre charter authorising intervention or humanitarian grants.

00:25:05 Speaker 1

It is noteworthy that the emergence of this customer international law was further endorsed in the very famous Nicaragua case.

00:25:16 Speaker 1

I'll skip the facts because what is important here is the actual decision of the ICJ International Court of Justice, and in particular, the obiter dictum in this very case.

00:25:27 Speaker 1

The court held that reliance by a state on a novel right, or an unprecedented exception to the principle of non intervention, might have shared by other states, tend towards modification of customary international law.

00:25:45 Speaker 1

And although the court found that the argument derived from this preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of EU.

00:25:53 Speaker 1

S in this particular in this particular case went on to make a critical observation. This is absolutely true.

00:26:00 Speaker 1

And I quote verbatim, no doubt the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention or in any other way contrary to international law.

00:26:21 Speaker 1

And this dictum clearly paved the way for the establishment of a post charter international custom of unilateral humanitarian intervention.

00:26:30 Speaker 1

The ICJ, having reaffirmed the criteria for the formation of new rules of customer international law, is laid down in the North Sea continental shelf cases provided a definition of opinion.

00:26:40 Speaker 1

Heuris essential requirement to the creation of international custom and as you all know or may not know it, it is absolutely important.

00:26:50 Speaker 1

But state practise is a company.

00:26:53 Speaker 1

By opinion, juries, in order that we may actually witness the establishment of a legal right that is state practise must be supported by substantial views.

00:27:04 Speaker 1

Substantial opinions of renowned academics in international law so as to be just to crystallise into a legal right.

00:27:17 Speaker 1

We also have.

00:27:20 Speaker 1

A very important statement.

00:27:23 Speaker 1

In a document of the UK Foreign Office.

00:27:26 Speaker 1

Number 148 on humanitarian intervention, which is quite illuminating in this regard, and I quote again often the humanitarian benefits of an intervention are either not claimed by the intervening state, or are only put forward as an exposed factory justification of the intervention state practise goes on.

00:27:46 Speaker 1

Especially since 19.

00:27:48 Speaker 1

45 provides a handful of genuine cases of humanitarian intervention and truly since 1945 we do have a handful of cases.

00:27:58 Speaker 1

However, an important handful of cases which illustrate that these right of humanitarian action is not just an emerging right.

00:28:09 Speaker 1

At this very moment is in fact an established right. If we take into account that this right has been accompanied by serious opinion, juries, serious views of the most renowned academics who argue for such a right.

00:28:26 Speaker 1

A widespread argument in favour of the right of unilateral humanitarian intervention is that it survived the passage of the UN Charter.

00:28:35 Speaker 1

And of course again, Derek Bow it writes, it is fallacious to assume that the members have only those rights which the Charter records them.

00:28:46 Speaker 1

On the contrary, they have those rights which international law occurs to them. General international law courts accepting so far as they have surrendered them.

00:28:54 Speaker 1

Under the charter.

00:28:59 Speaker 1

A very strong argument can be made that the right of unilateral humanitarian intervention has survived the UN Charter and is not really prohibited under 2 four Article 2 paragraph four of the UN Charter.

00:29:13 Speaker 1

In other words, it may be said as being an exception to the general prohibition of the use of force, as this is stated.

00:29:20 Speaker 1

Under Article 2, paragraph four of the Union Charter.

00:29:25 Speaker 1

Now if this argument does not sound to be very convincing in this second part of my lecture which assesses state practice and relevant ICJ decisions, then one might put forward a different argument.

00:29:39 Speaker 1

An equally strong argument.

00:29:42 Speaker 1

Which in fact goes towards the same direction of establishing a right of intervention. Humanitarian grounds, namely.

00:29:49 Speaker 1

What happens if we have a conflict as we do have here between pre Charter?

00:29:55 Speaker 1

Customary law pre charters state practice.

00:29:59 Speaker 1

And the provisions of the Human Charter, the subsequent international treaty, which lays down a general prohibition of the use of force in Article 24.

00:30:10 Speaker 1

The solution in this clash of sources of international law is actually to invoke.

00:30:17 Speaker 1

These sources of international law again and namely here, are the general principles of international law. In order to give a solution to this conflict of sources, international law, as it were.

00:30:28 Speaker 1

What happens in practice? We have to invoke the principles. In fact, the Latin legal maxims.

00:30:36 Speaker 1

Lex Specialis derogat lex generalis.

00:30:39 Speaker 1

Let's get around in this case, being the general prohibition of the use of force in the UN Charter and Lex specialis being the specific the particular law that is state practice on intervention which was developed after the Human Charter. Therefore, the specific law prevails over the general law.

00:30:58 Speaker 1

The other argument along the same lines is to actually invoke another general principle, international law, which is also a general principle of law. Assange, namely Legus Posteriores priorities contrarius aggregate. These Latin principle means that the posterior law.

00:31:17 Speaker 1

Abrogates conflicting previous law, so here we have customer international law which was developed after the passing of the UN Charter, which in this case may abrogate previous conflicting law which is in particular the Article 2 paragraph four of the UN Charter which generally prohibits.

00:31:38 Speaker 1

The use of force, so according to these general principles of international law, we may actually find a solution to the clash or the conflict of sources. The Charter on the one hand.

00:31:50 Speaker 1

State practise on the other, which was developed quite extensively on large scale after the passing of the UN Charter, obviously supporting the right of unilateral intervention based on humanitarian grounds.

00:32:05 Speaker 1

In the third section of my lecture I shall refer to post charter. UN humanitarian intervention will how much time do I have?

00:32:14 Speaker 2

Can you get it 10 minutes?

00:32:15 Speaker 1

10 minutes, OK well.

00:32:20 Speaker 1

One example is that of Iraq in 1991.

00:32:24 Speaker 1

Here the period after the defeat of Iraq and be committed, crisis witnessed risings of the Kurds in the northern part of the country.

00:32:30 Speaker 1

Which were brutally repressed by the Iraqi army in disregard of the relevant Geneva Conventions.

00:32:37 Speaker 1

Provisions or human rights. International instruments.

00:32:42 Speaker 1

Security Council resolution 688 of 1991 stated that the Security Council condemned the repression of the Iraqi civilian population and the UK and the USA and some other states brought forces into Iraq in aid of the Kurdish refugees.

00:32:59 Speaker 1

The UK Foreign Office.

00:33:01 Speaker 1

In a statement expressed that we are vigorously pursuing this proposal for safe havens. Our aim is to create places and conditions in which refugees can feel secure.

00:33:12 Speaker 1

That is the first case within the context of the UN Post Charter.

00:33:18 Speaker 1

Another instance is the instance of Kosovo, which I'm sure.

00:33:24 Speaker 1

I suppose.

00:33:26 Speaker 1

A few of you might find us a bit ambivalent.

00:33:31 Speaker 1

However, in the case of Kosovo 1999, as you know, NATO launched an intervention for humanitarian purposes to save the Muslim population in Kosovo, which was largely massacred by the Serbs.

00:33:49 Speaker 1

And of course, that was done without UN authorization.

00:33:54 Speaker 1

On the one hand, one might say that.

00:33:57 Speaker 1

Kosovo is a traditional place of the Serbian nation. Therefore deserves had rights to defend themselves and get rid of the Muslims in the area. That is one argument.

00:34:10 Speaker 1

The other argument at the other end, which I endorse largely, is that.

00:34:14 Speaker 1

Even if we do accept that Kosovo is traditionally part of Serbia.

00:34:19 Speaker 1

War crimes were certainly committed in that case by the Milosevic regime against the Muslims in the region. So we do have war crimes there.

00:34:29 Speaker 1

We do have violations of international humanitarian law and by extension, International Criminal law, so intervention might be seen as an instance of humanitarian.

00:34:39 Speaker 1

Action in spite of the.

00:34:40 Speaker 1

Fact that there was no.

00:34:42 Speaker 1

UN Security Council resolution authorising such an action in that case.

00:34:48 Speaker 1

Since time is pressing, I shall move straight forward to the final section of my lecture, which actually.

00:35:00 Speaker 1

Legal and moral philosophy.

00:35:02 Speaker 1

On humanitarian intervention.

00:35:06 Speaker 1

The first subsection.

00:35:09 Speaker 1

Analyses the conflict between sovereignty, the concept of sovereignty and the concept of human rights.

00:35:17 Speaker 1

Clearly, here when a state intervenes in order to protect human rights in another state.

00:35:23 Speaker 1

At first sight we observe a violation of that other states sovereignty, which, as you know, is a fundamental concept in international law. According to some views and inviolable concept international law.

00:35:40 Speaker 1

It is necessary to show but a right of unilateral humanitarian intervention is compatible with Article 2. Four of the UN Charter.

00:35:51 Speaker 1

So the first argument which might be employed is that a genuine humanitarian intervention would not be a use of force against the territorial integrity or political independence of any other state or the second argument goes.

00:36:06 Speaker 1

But it might be consistent with the purposes of the UN Charter.

00:36:13 Speaker 1

And very importantly again, good regen hambrough.

00:36:15 Speaker 1

So two famous American scholars who actually produced a very important commentary on the on the UN Charter observed that it is possible to construe the languages allowing certain limited uses of force, such as contemporary, such as temper intervention for protective purposes.

00:36:33 Speaker 1

Let me quote very importantly Article 56 of the UN Charter, which is very relevant in this regard.

00:36:42 Speaker 1

All Member States pledge themselves to take joint and separate action. I repeat that to take joint and separate action in cooperation with the UN Organisation for the achievement of the purposes set forth in Article 55. So here we have a clear.

00:37:01 Speaker 1

Human Charter article which allows states to take action.

00:37:06 Speaker 1

Even unilaterally, even separately, in order to promote and protect the purposes of the UN Charter, namely, in this case is in this very case the protection of human rights and fundamental freedoms.

00:37:22 Speaker 1

Then we also quoted very important view on this topic by Professor Venlaw, whom some of you may know he was the former chair and Professor International law in the University of Oxford.

00:37:31 Speaker 1

He was my professor. One of my professors in Cambridge many years ago. Then he moved to Oxford and he actually produced a memorandum submitted in response to a request from the UK House of Commons.

00:37:42 Speaker 1

Select Committee on Foreign Affairs in connexion with its hearings on the NATO intervention in Kosovo.

00:37:48 Speaker 1

So venlaw very pointedly states the following.

00:37:53 Speaker 1

The development of international law. International human rights law since 1945 through global agreements such as the Genocide Convention and International Covenant on Civil and Political Rights.

00:38:07 Speaker 1

And regional conventions such as the European Convention on Human Rights has reached the point where the treatment by a state of its own population can no longer be regarded as an internal matter in particular.

00:38:19 Speaker 1

Widespread venlaw goes on and systematic violations of human rights involving the loss of life on a large scale are well established. As a matter of international concern. So obviously we have academic support as well.

00:38:35 Speaker 1

For the view or for the argument that the protection of human rights.

00:38:40 Speaker 1

Is actually a major purpose of the UN, which may invite for interventions of humanitarian kind. Whenever these rights are flagrantly, flagrantly, and obviously in any circumstances violated.

00:38:57 Speaker 1

Let me here code another famous international law professor who in this context.

00:39:04 Speaker 1

Wrote extensively.

00:39:06 Speaker 1

Namely, church Slaughter Pact. He was again, I'm sorry to say that he was a professor in what we call here. The other place, Cambridge. But still he was a great professor and left his mark in international law.

00:39:18 Speaker 1

He very well put this statement that states are like individuals. It is due to the fact that states are composed of individual human beings.

00:39:27 Speaker 1

And the dignity of individual human being is a matter of direct concern to international law. So this statement actually suggests that from the moral standpoint, the rights of states international law derives from individual rights. So it's very important to actually protect these individual rights whenever they are obviously.

00:39:46 Speaker 1

Violated or transgressed?

00:39:51 Speaker 1

In view of this discussion so far in the section, the last part dealing with the theoretical approach and the moral and legal philosophy on the subject matter, one may obviously conclude that there is a moral right, if not a moral duty of states to intervene militarily to protect human rights whenever these are violated, the.

00:40:11 Speaker 1

Last part of or the last subsection of my.

00:40:15 Speaker 1

This lecture part refers to just war theory.

00:40:19 Speaker 1

And here let me refer to three main arguments very briefly.

00:40:25 Speaker 1

The first argument, which is eloquently put forward in favour of humanitarian intervention, is that war is not in conflict with natural law, is not in conflict with the law of nature.

00:40:39 Speaker 1

The famous Roman jurist, Cicero has presented what can be done against force without force.

00:40:48 Speaker 1

Ulpian, another Roman law expert, wrote that Casuse says it is permissible to repel force by force, and this right is bestowed by nature.

00:41:01 Speaker 1

And also gayus.

00:41:03 Speaker 1

Reports that natural reason permits defence of oneself against another deck against danger, and this is a view also shared by Josephus.

00:41:12 Speaker 1

The second argument within the just war theory is that biblical arguments, both Old Testament and New Testament.

00:41:20 Speaker 1

Say that war is not incompatible with the law of the gospel.

00:41:25 Speaker 1

And of course, this is quite important for those who actually have religious sentiments, and in my view, it is very difficult to actually detach these religious sentiments from any discussion in international law, or at least it is difficult to detach wider philosophical arguments.

00:41:45 Speaker 1

Which are connected with interventions of humanitarian character in just war generally.

00:41:53 Speaker 1

The third argument goes that war may be launched as a form of punishment.

00:41:58 Speaker 1

And thereby protect human rights at the same time.

00:42:04 Speaker 1

The famous

00:42:06 Speaker 1

Father of contemporary international law, Hugo Grattis.

00:42:11 Speaker 1

Who drew very largely on the ideas of Grotius.

00:42:15 Speaker 1

Admitted a right to wage war.

00:42:17 Speaker 1

For the purpose of punishment.

00:42:19 Speaker 1

Please hear note that a very good Grotius.

00:42:23 Speaker 1

In case you have not heard of him, was a professor a Regius professor of Roman law in the University of Oxford in the 16th century. He was a member of Saint John's College. He produced the famous work *De iure belli*, which means on the.

00:42:37 Speaker 1

Law of war.

00:42:39 Speaker 1

On which you.

00:42:39 Speaker 1

Got his later very much based his own analysis.

00:42:44 Speaker 1

So Grotius actually put forward a very important moral justification of just war on the basis of Alberico Gentili. And finally again the last.

00:42:56 Speaker 1

The very last argument is that we have in the just war theory the view that war may be launched in favour of the oppressed.

00:43:04 Speaker 1

And again, the oppressed here has its own human rights violated. Therefore, intervention in favour of the oppressed is fully justified from international viewpoint.

00:43:17 Speaker 1

Grotius again.

00:43:20 Speaker 1

Has put forward what is perhaps stated as the first authoritative statement of humanitarian intervention, and I shall end this lecture by quoting Grotius in his famous work.

00:43:32 Speaker 1

The euro bellyache pachys on the law of war and peace. It was obviously produced in Latin, but it's been translated very effectively into English as well.

00:43:40 Speaker 1

So Proteams says in paragraph eight of book 4 if.

00:43:44 Speaker 1

However, the wrong is obvious in case some boucheries falaris or freshen diomid should inflict upon his subjects up treatment as no one is warranted inflicting the exercise of the right vested in human society is not precluded, and he goes on in conformity with this principle.

00:44:04 Speaker 1

Constantine took up arms against Maxentius and Lucky News and other Roman emperors. So following larger fact, my proposition in this case is that.

00:44:17 Speaker 1

Intervention on humanitarian grounds.

00:44:21 Speaker 1

Is not simply.

00:44:23 Speaker 1

Legally justified as I have, I believe quite effectively analysed in this lecture, but it is also legally, politically, and morally imperative.

00:44:35 Speaker 1

Thank you very much.

00:44:43 Speaker 2

Thank you, thank you. Yeah it was for.

00:44:45 Speaker 2

A fantastic presentation.

00:44:46 Speaker 1

Thank you very much.

00:44:46 Speaker 2

And really for your expertise.

00:44:48 Speaker 2

He's on on this on this topic of public international law, a very forced alignment. I'm sure everyone agree what was great for us at CW as well.

00:44:56 Speaker 2

In the way.

00:44:57 Speaker 2

In which this talk really aligned with our mission, which is putting something in historical context.

00:45:01 Speaker 2

And you did that by putting you know actual international humanitarian grounds in exactly that with your cases from Persian war in 19th century.

00:45:08 Speaker 2

Thank you.