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**LEGALITY OF THE INTERVENTION UNDER
INTERNATIONAL LAW: THE CASE OF 1918 AZERBAIJAN**

Master's Thesis

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INTRODUCTION

Jeff McMahan states that just causes for war are limited to the prevention or correction of wrongs that are serious enough to make the perpetrators liable to be killed or maimed.¹

The threshold for just cause of humanitarian intervention has been described as ‘conscience-shocking harm’. The ICISS Report proposes the following definition of just cause:

Large-scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.²

War has only one general justification: the defence of persons and their rights. This is the essential truth behind the mainstream position: all justified violence is defensive violence. However, the proper entity that deserves our defence is the individual and only derivatively, sometimes, the state. A justified war may also be a war in defence of persons in other states. Defence of persons in other states may, in turn, be classified into two kinds. The first is collective self-defence. The second is humanitarian intervention. Humanitarian intervention is a war to defend persons attacked in their territory by their government or other political groups. If we compare the humanitarian intervention with both types of self-defence (national and collective), we see that the three types of war are wars in defence of persons. The justification of humanitarian intervention is an application of the same principles that justify self-defence, national and collective.³

The defence of the state that is attacked is usually justified in international law. However, the state matters because it is inhabited by persons. The state is an artificial creation that is supposed to serve the individuals who created it. Also, territory matters because it belongs to persons,

¹ T. Fernando, B. Vossen. Debating Humanitarian Intervention: Should We Try to Save Strangers? Humanitarian Intervention as Defence of Persons. Oxford Scholarship Online 2017, p. 9. Accessible at: <http://www.oxfordscholarship.com/view/10.1093/oso/9780190202903.001.0001/oso-9780190202903-chapter-2?print=pdf> (25.11.2018)

² Report of the International Commission on Intervention and State Sovereignty 2001, p. 32, Accessible at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (26.11.2018)

³ T. Fernando, *op. cit.*, p. 5.

privately or held in trust by the state. As Michael Walzer argued in his classical treatise, aggression is a crime because the aggressor forces men and women to abandon their projects and fight for their survival. The state, then, must be disaggregated into its components, human beings. Individuals, not states, are the proper objects of moral concern.⁴

When we discuss humanitarian intervention, we often consider Kosovo, Rwanda, Iraq, East Timor, Syria etc. These are humanitarian crises close in time that first come into mind. Discourse about the beginning of 20th century and even pre-Cold War humanitarian interventions rarely gets a spot in a discussion. The current thesis aims to fill the gap and add to the discussion as by analyzing the Ottoman Empire's intervention, its connection to humanitarian intervention and its legality.

When it comes to international law, intervention is a term used to describe a situation where one country uses force to interfere with other country's internal or external matters. Intervention has been a topic that has caused much turmoil in the international arena. The practice and even the law is not coherent and defined to a level on which we all can agree. In most cases, however, intervention is considered to be unlawful. However, not all interventions are illegal. There are many kinds of interventions done in practice, e.g. military, economic and diplomatic. The objective of this thesis is the military intervention of the Ottoman Army to Azerbaijan in 1918. As there are historical references to the claim that it had humanitarian motives, the author finds it intriguing to pursue and evaluate, whether the intervention was of the humanitarian cause. However, its legality is also analyzed in the third chapter. The objects of the study are the legality of international intervention, humanitarian intervention and humanitarian crisis.

The research problem is about the type and the legality of the international intervention of the Army of the Ottoman Empire to the territories of Azerbaijan at the beginning of 20th century. In order to analyze the legality of the intervention, customary international law and scholar's opinions will be taken into account. Also, current practice and contemporary notions will be evaluated where relevant.

Moreover, as an implementation of the international intervention could be justified if it aimed to cease the ongoing humanitarian crisis and severe violations of human rights, the possibility

⁴ T. Fernando, B. Vossen. *op. cit.*, p. 4.

of the humanitarian condition in Azerbaijan in 1918 to be considered as a humanitarian crisis will be studied as well.

A humanitarian condition in Azerbaijan started to deteriorate with the confrontation of proponents of different national and foreign political parties on 30 March 1918 in Baku. The historical case is known as the 'March Days'. After the defeat of the Musavat in Baku, violence extended to other regions and resulted in the death of dozens of the civilian population all over the country. As Azerbaijan gained its independence on 28 May 1918, the new state was not able to control the situation and establish peace and security within its borders. For that reason, Foreign Minister of Azerbaijan asked the government representatives of the Ottoman Empire for help to cease an ongoing crisis and restore the peace and security based on the Treaty of Batum. The advance of the Army of the Ottoman Empire to Azerbaijan resulted in cessation of the ongoing crisis. However, one month later after the last Ottoman victory over foreign military units in Baku, the Army and state officials left Azerbaijan based on Armistice of Mudros signed on 30 October 1918.

Ottoman Empire is referred to in the literature of international law as a state caused humanitarian crises in Balkans in 18-19th centuries, including persecution of civilian population based on religious identities. For example, it is assumed that the first humanitarian intervention was implemented against the Ottoman Empire at the beginning of the 19th century in order to protect the independence of Greece. Richard Lillich traces the term 'humanitarian intervention' back to Wheaton's 1836 treatise, which cites the 'interference' of the Christian Powers of Europe in aid of Greek insurgents against the Ottoman Empire.⁵ At the same time, the international intervention implemented by the Ottoman Empire with humanitarian motives is an unknown concept in the history of international law. The reason of choosing this topic is the wish of the author to initiate a discussion about whether the intervention of the Ottoman Empire to Azerbaijan at the beginning of 20th century could be considered as a humanitarian intervention. There are different opinions whether the Turkish interference was based on pure humanitarian purpose. For instance, Firuz Kazemzadeh encapsulates that the solicitude which the Turks showed in regard to the Muslims should not be thought of as inspired only by

⁵ S. Chesterman. *Just War or Just Peace? Humanitarian Intervention and International Law*. Oxford Scholarship Online 2002. Accessible at: <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199257997.001.0001/acprof-9780199257997?rskey=qaQioX&result=2> (20.11.2018.)

philanthropy. More probably it was used as a pretext for a violation of the armistice of December.⁶

This thesis can be informative for researchers in the field of public international law interested in topics such as the possibility of the international intervention implemented out of the principle of self-defense at the beginning of 20th century to be legal and justified, as the work is focused on an analysis of the legality and justification of the international intervention carried out by the Ottoman Army in the territories of Azerbaijan in 1918. This study can also be useful for researchers in the field of international humanitarian law interested in topics such as humanitarian intervention and humanitarian crisis, as the thesis entails study about possibility of the Ottoman intervention to be counted as a humanitarian intervention, and the humanitarian condition in Azerbaijan to be considered as one of the examples of humanitarian crises ensued from an armed conflict at the beginning of the 20th century. The thesis also provides historical background for topics analyzed during the study.

The author sets out the following research questions:

1. Could the intervention carry out by the Ottoman Army be regarded as humanitarian intervention?
2. Was the intervention legal?

The author also sets out hypotheses such as:

1. The intervention of the Ottoman Army to Azerbaijan was of a humanitarian intervention
2. The intervention was legal.

In order to find answers to the research questions, the conditions when the implementation of an international intervention out of the principle of self-defense could be justified in public international law and regarded as a humanitarian intervention will be studied. Furthermore, topics such as whether the series of events taken place starting from the end of March 1918 in Azerbaijan could be considered as a humanitarian crisis ensued from an armed conflict will be analyzed as well. This study also finds out what are the possible interpretations of humanitarian intervention and humanitarian crisis. It is worth to note that all the research questions are

⁶ F. Kazemzadeh. The struggle for Transcaucasia, 1917-1921. New York: Philosophical Library 1951, p. 86. Accessible:
<https://babel.hathitrust.org/cgi/pt?id=mdp.39015002294687;view=1up;seq=88;size=150> (23.08.2018)

analysed in the light of the applicable international law and scholarly opinions of 20th and 21st centuries.

The thesis consists of three parts. The first chapter provides a historical background to the humanitarian condition and Ottoman intervention to Azerbaijan in 1918.

The second part focuses on the definition of the humanitarian crisis resulted from armed conflict and researches the condition and circumstances that could be considered as a humanitarian crisis according to the views of different scholars.

Then it examines the probability of the events started to take place at the end of March 1918 and continued several months in the territories of Azerbaijan to be considered as a humanitarian crisis in history of international law, focusing on collation of the cases with scholarly opinions on the definition of the humanitarian crisis, and examination whether humanitarian intervention was necessary for those circumstances.

The second part of the thesis also consists of analysis whether the Ottoman Army's intervention to the territories of Azerbaijan was a humanitarian intervention under the public international law. The principles of the responsibility to protect, the motive and results of the intervention are taken into account. Humanitarian intervention brings into question not merely the substance but the moral foundations of international law.⁷

The last chapter analyses the legality of the intervention of the Ottoman Army according to customary international law and scholarly opinions. It entails topics such as the legitimate government, legitimate basis for the invitation, the requisite official, validity of the consent and the treaty-based invitation.

The primary sources used in the first chapter of historical background are materials of authors such as T. Swietochowski and master's thesis of the Y. Murgul.

The research about humanitarian crisis entailed usage of sources of K. Watkin, J. G. Stewart, F. Kazemzadeh and P. Walsh.

Materials of A. Orford, O. Gross and R. Goodman were helpful in the study of the topic 'humanitarian intervention'.

⁷ S. Chesterman. *op. cit.* p. 6.

The last chapter benefitted from works of D. Wippman, L. Doswald-Beck, etc.

The thesis is supported by numerous treaties and conventions.

Research methods used in the thesis by subject matter are historical, systematic and analytical. Historical method is used in the first and second chapters where the author provides historical background to the topics of an analysis of the thesis. While the first chapter focuses on the history of the South Caucasus at the beginning of the 20th century, the second chapter provides a general portrayal of the humanitarian condition in Azerbaijan from the historical point of view. However, historical cases are referred to the study in the third chapter as well.

Systematic and analytical research methods are used in second and third chapters with the complex and correlated approach to research problems and going from general to detailed results. It encompasses the analysis of the legality of the humanitarian intervention, possibility of the humanitarian condition in Azerbaijan to be considered as a humanitarian crisis, and the Ottoman Empire's intervention to be asserted as a humanitarian intervention.

By purpose of use, method of interpreting the results has been applied due to the comparison and analysis of the achieved outcomes.

The keywords describing the thesis are legality, use of force, humanitarian intervention, international law, Ottoman Empire.

I. THE HISTORICAL BACKGROUND

This chapter is focused on the historical background of the events analyzed in the following chapters. Before reading, it is worth pointing out that at the beginning of 20th century non-Christians living in South Caucasus, mostly Azerbaijanis, Persians and other nations used to be called not by their national identities, but by religious identities, such as ‘Muslims’.

The fall of the Russian Empire in 1917 caused enthusiasm for independence in Transcaucasia. The end of Russian rule was deeply awaited by the revolutionary and nationalist groups in the Caucasus. It meant that the battlefield would now be transferred to Caucasia.⁸

Especially following the October Revolution, the opposing sides of the war intervened in the Caucasus through diplomatic, military and economic means. Germans were hoping to gain access to the oil reserves of Baku; Great Britain was trying to keep Germany and the Ottoman Empire away from the Baku oil reserves and Central Asia, while the Bolsheviks sought to prevent all powers of WWI from capturing Baku. However, since the Ottoman expedition to Baku was considered to be the most concrete step, it was the centre of attention.⁹

After the Russian Revolution resulted with the collapse of the Russian Empire and abdication of Emperor Nicholas II in 1917, the Russian Caucasus Front was dismantled, and the Bolsheviks seized power in Russia. In order to fill the administrative gap in Transcaucasia or South Caucasus, the Special Transcaucasian Committee was founded by Russian Provisional Government.

However, after a short period, the Transcaucasian Commissariat was created as a first government of the independent South Caucasus on 11th November 1917 and was seeking independence from Bolshevik Russia. Its Parliament was known as the Sejm. After a while, the Sejm proclaimed independence under the Transcaucasian Democratic Federative Republic, also known as the Transcaucasian Federation on 24th February 1918.

⁸ Y. Murgul. Baku Expedition of 1917-1918: A Study of the Ottoman Policy towards the Caucasus. Bilkent University 2007, p. 1. Accessible at: <http://www.thesis.bilkent.edu.tr/0003428.pdf> (30.11.2018)

⁹ *Ibid.* p. 2.

The Armistice of Erzincan was signed between Transcaucasian Commissariat and the Ottoman Empire on 18 December 1917 and lasted until 3 March 1918, when the Treaty of Brest-Litovsk superseded it. The Armistice ended armed conflicts between Russian and Ottoman Empires and Russian troops began to withdraw from the Transcaucasia.¹⁰ A supplement to the armistice was signed on the same day, demarcating the line of occupation between the two sides.¹¹

In December 1917, the new allied military forces were created under the command of the Lionel Dunsterville, named after its British commander as the Dunsterforce. One of the aims of the Dunsterforce was to reach the Caucasus, and the mission was already set out to the South Caucasus. The British interest in Baku had economic and political reasons. The 1828 Turkmenchai Treaty divided Azerbaijan between Iran and Russia, and thus, the Azerbaijanis were separated. However, the Russian Revolution changed this situation, and Britain faced the problem of the new Azerbaijani State in the North that would affect Iranian Azerbaijan in the East controlled by British forces.¹² The economic reason was about control of natural resources and interstate transportation. For that reason, in the period that the Ottoman army carried out the Baku operation, Britain used Dunsterforce to display influence on the Baku question.¹³

The Peace Treaty of Brest-Litovsk was signed between Bolshevik Russia and Central Powers including German Empire, Austria-Hungary, Bulgaria and the Ottoman Empire on 3 March 1918. It ended Russian participation in WWI. It also wholly terminated the Caucasus Campaign which entailed an armed conflict between Russian and Ottoman Empires continued even after the Armistice of Erzincan. According to the terms of the treaty, the cities of Batum, Kars and Ardahan which were under Russian control were transferred to the Ottoman Empire, and Transcaucasia was to be declared independent. A secret clause was inserted to the treaty which obliged Russians to demobilise Dashnak forces.¹⁴ The treaty was annulled on 11 November 1918, when Germany surrendered to the western Allies.

¹⁰ T. Swietochowski. *Russian Azerbaijan, 1905-1920. The Shaping of National Identity in a Muslim Community*. Cambridge University Press 1985, p. 119.

¹¹ R. M. Slusser, J. F. Triska. *A Calendar of Soviet Treaties, 1917–1957*. Stanford University Press 1959, p. 2.

¹² Y. Murgul. *op. cit.* p. 7.

¹³ *Ibid.* pp. 7-8.

¹⁴ R. G. Hovannisian. *The Armenian People from Ancient to Modern Times*. Palgrave Macmillan 2004, pp. 288–289.

The Trabzon Peace Conference started on 14 March and lasted until 5 April 1918. During the negotiations, the Minister of War of the Ottoman Empire Enver Pasha offered to surrender all the Empire's ambitions in return for recognition of the Ottoman reacquisition of Batum, Kars and Ardahan provinces according to the terms of the Treaty of Brest-Litovsk.¹⁵

In the meantime, from 30 March to 2 April 1918, Baku witnessed events known as 'March Days'. On 9 March 1918, the arrest of General Talyshinski, the commander of the Azerbaijani division, and some of its officers all of whom arrived in Baku increased the anti-Soviet feelings among the city's population. On 30 March, based on the unfounded report that the Azerbaijani crew of the ship 'Evelina' was armed and ready to revolt against the Soviet, the Soviet disarmed the crew who tried to resist. The three days of inter-ethnic warfare referred to as the March days, which resulted in the massacre of up to 12.000 Azerbaijanis by the Bolsheviks and Dashnak units in the city of Baku and other locations in the Baku Governorate. The March events, beyond the violent three-day period taken place in Baku, touched off a series of massacres all over Azerbaijan.¹⁶

As Stephanie Cronin states, after the 'March Days', the Bolsheviks finally came to power and established Baku Commune on 13th of April 1918.¹⁷ The Baku Commune was a short-lived political entity which came to power after the bloody confrontation with the Muslim population in Baku. It was led by 26 Baku Commissars who were members of the Bolsheviks and the Party of Left Socialist-Revolutionaries. The Baku Commune led by Stepan Shahumyan later was overthrown by the anti-Soviet administration known as Central-Caspian Dictatorship on 26 July 1918. However, the administration of the Central-Caspian Dictatorship was also dismantled as a result of the victory of the Ottoman Empire Army over foreign military units in Baku on 14th September 1918.

On April 5th, 1918, in the assembly of the Sejm, the head of the Transcaucasian Commissariat delegation Akaki Chkhenli accepted the Treaty of Brest-Litovsk as a basis for more negotiations

¹⁵ E. Kural Shaw, et. al. History of the Ottoman Empire and Modern Turkey. Cambridge University Press 1976, p. 326

¹⁶ F. Kazemzadeh. *op. cit.* p. 73.

¹⁷ S. Cronin. Reformers and Revolutionaries in Modern Iran: New Perspectives on the Iranian Left. Psychology Press 2004. p. 91.

and wired the governing bodies urging them to accept this position. However, other representatives of the Sejm refused to accept the terms of the Treaty of Brest-Litovsk and declared the state of war with the Ottoman Empire.¹⁸

The Batum Peace Conference was held from 11 May to 24 May 1918 between the Ottoman Empire and the Transcaucasian Commissariat. During the conference, Ottomans extended their demands to include Tiflis as well as Alexandropol and Echmiadzin through which they wanted a railroad to be built to connect Kars and Julfa with Baku.¹⁹ The terms of the Peace Treaty of Brest-Litovsk were violated on 21 May 1918 as the battles between Third Army of the Ottoman Empire against Armenian forces over Sardarapat, Bash Abaran and Kara Killisse started to take place. A few days later, on 26-28 May 1918, three states of Transcaucasia declared their independence. Azerbaijan declared its independence at the city of Ganja, the first capital of a new state, as Baku was under occupation at that time. The Batum Peace Conference led to the Treaty of Batum, which the Ottoman Empire signed with all three independent states on 4 June 1918.

Each of successor states of Transcaucasian delegation negotiated its conditions of peace. Finally, all three signed their separate treaties of 'peace and friendship' with the Ottoman Empire. According to the Treaty of Batum between Azerbaijan and the Ottoman Empire, Azerbaijan not only retained all its territory but under Article IV of the treaty received the promise of Ottoman military assistance for restoration of security and order.²⁰

Russia's primary goal under the Bolshevik's was to establish a new state, while the Ottomans' goal was to protect their state from collapse. For that reason, the Caucasus was equally crucial to both countries.²¹

On 6 June 1918, the Red Army began offensive operations against Ganja. The Baku Soviet troops looted and killed Muslims as they moved towards Ganja. Being unable to defend the

¹⁸ T. Swietochowski. *op. cit.* p. 126.

¹⁹ E. Kural Shaw, *op. cit.* p. 326.

²⁰ T. Swietochowski. *op. cit.* p. 130.

²¹ Y. Murgul. *op. cit.* p. 8.

independence of the country on their own, the government of Azerbaijan asked the Ottoman Empire for military support under Article IV of the treaty between the two countries.²²

The Islamic Army of the Caucasus was under the command of Nuri Pasha. It included the Ottoman divisions and the Azerbaijani Corps under general Ali-Agha Shikhlinski. 30% of the newly formed army consisted of Ottoman soldiers, the rest being Azerbaijani forces and volunteers from Dagestan.²³

The commander of the Caucasian Army of Islam Nuri Pasha arrived in Ganja to set up his headquarters in summer. During that period, Nuri Pasha advanced to the vicinity of Baku. Ottoman forces had a victory over the British Army of Dunsterforce, Bolshevik and Dashnak military units in Baku on 15 September 1918. After the victory of the Ottoman Army, the capital of Azerbaijan was finally moved from Ganja to Baku.

However, Ottoman forces left the city on 30 October 1918 due to the Armistice of Mudros. Article XI of the Armistice of Mudros entailed an immediate withdrawal of the Turkish troops from Northwest Persia to behind the pre-war frontier; Part of Trans-Caucasia is to be evacuated by Turkish troops. Consequently, Ottomans retreated to the pre-war borders between the Ottoman and Russian Empires.²⁴

The chronology of historical events taken place from 1917 to 1918 is described below in a short form:

²² *Ibid.*, p. 130-131.

²³ *Ibid.*, p. 130-131.

²⁴ The Armistice of Mudros. Mudros 30.10.1918. e.i.f. 30.10.1918.

II. HUMANITARIAN CRISIS AND HUMANITARIAN INTERVENTION

This chapter studies the definition of humanitarian crisis stemmed from armed conflict. It examines the opinions of scholars on conditions that could be named as a humanitarian crisis. Then, the chapter moves to the topic of international humanitarian intervention. As claimed by Fernando Teson, humanitarian intervention is the international use of military force to defend persons from severe rights violations, in their territory, by their rulers or other groups.²⁵ This study gives a broad approach to the definition of humanitarian intervention.

Lastly, it analyses the legality of humanitarian intervention in international law. In fact, humanitarian intervention is a kind of war. The justification of war is part of the larger question of the justification of violence. War is an extreme form of coercion, so the inquiry should start with the more fundamental concept of coercion. When is coercion against others justified? Persons enjoy a presumptive immunity against coercion. This means that any act of coercion against them must be justified. In general, a person's immunity against coercion collapses when that person violates the rights of others. A standard way of putting this is to say that the rights violator becomes liable to coercion. Someone who violates the rights of others becomes morally vulnerable to a reaction by the victim or others in response. That coercion against the rights violator may be exercised by the victim herself or by third parties on behalf of the victim. As Kant said, coercion, as a hindrance of someone else's freedom, is authorized against those who have in turn hindered the freedom of others.²⁶

2.1. Humanitarian Crisis

Globalization has brought an increased social awareness of the humanitarian crises around the world, but there continues to be a gap in the understanding of the definition of such a crisis, considering the diversity of cultures and values that surround the details of the said situation. In other words, although the world is watching these scenarios unfold, it is not clear what

²⁵ T. Fernando, B. Vossen. *Debating Humanitarian Intervention: Should We Try to Save Strangers?* Introduction. Oxford Scholarship Online 2017, p. 2. Accessible at: <http://www.oxfordscholarship.com/view/10.1093/oso/9780190202903.001.0001/oso-9780190202903-chapter-1?print=pdf> (25.11.2018)

²⁶ T. Fernando, *Humanitarian Intervention as Defence of Persons. op. cit.*, p. 8.

elements are considered to be universal for the definition of a humanitarian crisis. In situations of armed conflicts, there are additional considerations such as political and societal interests in the conflicts are taken as determinants for the perception of the events. This raises the question as to whether humanitarian crisis could be considered as a corollary of armed conflict or if the cultural, societal, and political interests determine that the armed conflict is justified. If it is not justified, does this indicate that humanitarian intervention is warranted or, despite the unavoidable armed conflicts, do scholars recognize these violations of human rights and international humanitarian law as a humanitarian crisis? In order to move towards an accurate response to these inquiries, the current paper presents a review of various perspectives as to the definition of a humanitarian crisis in the case of armed conflict.

International humanitarian law provides guidelines to prevent war crimes and violations of human rights during an armed conflict. According to Paul B. Spiegel, et al. civilians in a conflict zone have previously been left without medical attention due to the difficulty in aligning international interests with global health concerns. However, globalization has led to an increased awareness of this interconnection which has aided in the approval of international medical personnel to treat casualties during an armed conflict. According to the researchers, this tendency should minimize the humanitarian crises associated with armed conflicts as access to basic healthcare is now deemed as a fundamental human right. However, this awareness has been met with new challenges as Paul B. Spiegel explains in the following:

‘Humanitarian space - physical locations that are safe from attack in conflict and where the core humanitarian principles of independence, impartiality and neutrality are respected. Because of political polarization and a combatants’ perception that humanitarian assistance is merely an instrument of interference by foreign powers, the ability of aid agencies to access and help civilians affected by conflict has shrunk substantially’.²⁷

In other words, although the world is aware that these civilians need access to the primary medical care and treatment for injuries sustained due to the armed conflict, the politics of the conflicts and continued reduction of emphasis on human rights has made it nearly impossible for the international community to provide an aid for this basic need.

²⁷ P. B. Spiegel, F. Checchi, S. Colombo, E. Paik. Health-Care Needs of People Affected by Conflict: Future Trends and Changing Frameworks. *The Lancet* 2010. p. 341. Accessible at: https://www.healthynetwork.org/hnn-content/uploads/Spiegel_conflict.pdf (18.10.2018)

Based on the assessment made by Paul B. Spiegel, a humanitarian crisis during armed conflict would be the inaccessibility to the basic human needs. He presents the consideration that the violation of the humanitarian space and no civilian protection during armed conflicts as a primary defining trait of a humanitarian crisis. Globalization has aided in the attempts to ensure that basic human needs are met, but the political direction of armed conflicts dismisses the emphasis on accessibility to healthcare and other pertinent survival needs.²⁸

Furthermore, as the civilian areas are still protected, but these areas have been greatly diminished to prevent international humanitarian aid that could intervene in such a crisis, the humanitarian crisis is determined by the intention to prevent assistance to those who are not able to access their basic survival needs.²⁹

According to Paul Spiegel, et al. increasing numbers of intrastate conflicts have swelled the number of internally displaced people. Poor access to services and the absence of mandate and funding are few the reasons for the excess mortality rates in conflict-affected areas. High coverage of health interventions is especially challenging because of poor security, intermittent accessibility, and the incapacity of fragile states to effectively provide services to their populations or to those who are displaced³⁰.

Paul Spiegel, et al. consider that the new policies and practices are needed to deliver health services to dispersed, intermittently accessible populations, to ensure adequate health coverage and access for conflict-affected people.³¹

Consequently, according to Paul Spiegel, et al. excess mortality of people in the wake of the poor access to services, ineffectiveness to provide assistance, inaccessibility to the health services are few aspects of the humanitarian crisis.

According to Kenneth Watkin, the traditional view that the international law protects against violations of the international humanitarian law to any extent of effectiveness in modern armed conflicts serves only to prevent societal and cultural uproars at the presentation of humanitarian

²⁸ *Ibid.*, p. 345.

²⁹ *Ibid.*, pp. 342-344.

³⁰ *Ibid.*, p. 342.

³¹ *Ibid.*, p. 344.

crises. Kenneth Watkin presents the evidence that the international law is less relevant in the modern armed conflict. In other words, the researcher claims that the international law does not protect against violations of international humanitarian law, but the perception that it serves this purpose prevents the society from recognition of the true extent of the humanitarian crisis that ensues from armed conflicts. Focusing primarily on armed conflicts relating to terrorism, researcher explains that the international law does not consist of sanctions that would prevent these acts. Additionally, Kenneth Watkin explains that the current state of war involves internal conflicts more than interstate conflicts which prevent sanctions associated with the latter. Watkin further explains that the internal conflicts lead to riots and sporadic violence that serve to prevent the accessibility to survival needs.³²

In brief, Kenneth Watkin asserts that the humanitarian crisis ensued from armed conflicts is defined by the responses within the regions to the limitations of aid from the international community. The crisis then escalates to the point that the civilians, as well as the armed forces, are violently attacking one another and further making conditions unlivable. Intervention in these cases is further limited due to access difficulties and the norms of international law. When non-governmental organizations attempt to make a humanitarian intervention, they are often met with the violence from the civilian community as well as resistance from the armed forces. A humanitarian crisis is then defined by the overwhelming combination of civil unrest and inaccessibility of aid for the purpose to meet basic human needs.³³

Alex De Waal and Rakiya Omaar take a more direct approach in defining the humanitarian crisis by explaining that the protection from such a crisis involves the protection of human life against famine, civil breakdown, and government oppression. According to the authors, any action that does not provide such a protection can be considered as a severe violation of human rights. Therefore, a humanitarian crisis necessitates rapid intervention for the sustainability of the society in which the crisis has occurred. Notably, Alex De Waal and Rakiya Omaar recognize that this basic definition does not account for changes in modern warfare, politics, and globalization. Specifically, referring to the violations relating to government oppression,

³² K. Watkin. *Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict*. -98 *The American Journal of International Law*. Cambridge University Press 2004, pp. 11-14. Accessible at: https://www.jstor.org/stable/3139252?read-now=1&googleloggedin=true&seq=1#metadata_info_tab_contents (19.10.2018)

³³ *Ibid.*, pp. 13-19.

the authors note that political sovereignty once protected the governments from being held accountable for internal affairs but have since become the very basis of the human rights violations. Stating the UDHR which is binding on sovereign governments in their relationship with the population, scholars state that the ‘sovereignty lost some of its absolute power to the extent that the UN was seen to reflect the community of nations and, as such, a higher authority’. However, according to the authors, the international response is confused with political agendas and absent of any true protection for the people.³⁴

‘A separate question is whether the military can accomplish the tasks at hand. Military assistance can help with relief logistics. There is a tendency to assume that escorting relief convoys is an end in itself. But food assistance is invariably a relatively small factor in alleviating the hardship and death caused by famine. Most people die from the epidemic disease; hence public health programs are the single most important factor in saving lives. Concentrating people in protected zones without adequate public health facilities inevitably facilitates the spread of communicable diseases and increases death rates. Moreover, people’s self-help efforts are cumulatively more important than external aid. Undermining self-reliance is disastrous under any conditions; enabling people to carry out economic activities is by far the most effective form of relief. If the troops confine themselves to protecting relief convoys and creating safe distribution zones, they may do more harm than good.’³⁵

Based on this assessment of the armed conflicts, the authors assert that the humanitarian crisis is defined by the continued escalation of oppression, famine, and civil breakdown which is created by political agendas directly related to redefining the concepts of sovereignty. This indicates that international aid is not adequately allocated to these regions based on the political ties of those who claim to offer aid but further magnify the crisis. Notably, the authors maintain that there appears to be little hope for a change in the current state of the crisis as the international law appears to be weak in the modern context of armed conflicts.³⁶

³⁴ A. De Waal, R. Omaar. Can Military Intervention Be ‘Humanitarian’? -187 Middle East Report 1994. Accessible at: <https://www.merip.org/mer/mer187/can-military-intervention-be-humanitarian> (15.10.2018)

³⁵ *Ibid.*

³⁶ *Ibid.*

Researcher James G. Stewart adds discussion by the recognition that international law varies drastically based on the concepts of violation of humanitarian law as being internal or international. The author explains that attempts have been made to make the international law inclusive of any internal conflict in which foreign aid becomes involved. However, there is a significant concern relating to unwarranted interventions in internal matters. Therefore, James G. Stewart notes that the international humanitarian law is specific for interstate, and international conflicts but not to those that were initialized as a civil or internal conflict and then expanded to include international interference in the armed conflict as ‘international humanitarian law has sought to regulate the conduct of states and damage caused by conflict between, rather than within States’.³⁷

James G. Stewart goes on to explain that internal conflicts, under this definition, are determined by the cultural norms and societal expectations in the region rather than an international definition of humanitarianism. However, the researcher explains that basic survival needs are not based in a cultural or societal context and therefore should not be violated under any pretense of sovereignty or claim of cultural interference. James G. Stewart states that regardless of the nature of the conflict, if the conflict creates a situation that prevents the ability of the people to fulfil their basic needs, then there is a humanitarian crisis that must be addressed either through a new international law or the rapid intervention of the non-governmental organizations. Although James G. Stewart acknowledges the importance of sovereignty for the governments, the author states that the basic survival needs are not individualized based on the politics of the government. Instead, the international community has a responsibility to ensure that these needs are met.³⁸

According to an analysis of the Antonio Cassese of the Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law, violations of the guidelines of the international humanitarian law may warrant international humanitarian intervention. Antonio Cassese goes on to explain that these violations include any act that would diminish access to the necessities for human survival including food, water, and shelter. This would include the destruction of shelter or contamination of food and water sources.

³⁷ J. G. Stewart. Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalised Armed Conflict. *International Review of the Red Cross* 2003, pp. 316-321. Accessible at: https://www.icrc.org/eng/assets/files/other/irrc_850_stewart.pdf (15.10.2018)

³⁸ *Ibid.*, pp. 316-321.

Furthermore, any destruction of cultural or religious objects or places of worship is considered a violation of the citizens' rights to practice their traditions and therefore a violation of their fundamental human rights. These violations lead to a situation where the people are unable to survive without intervention as their basic survival needs and their cultural practices have been withheld due to the armed conflict. In this case, international humanitarian intervention would be warranted, and the armed forces responsible for the violations of human rights and international humanitarian law would be held accountable for the caused crisis. Antonio Cassese continues to explain that necessary protection should be in place for both civilians and their belongings meaning that no armed force should interfere with the daily lives of the civilians without being considered as a violation of humanitarian law.³⁹

In the further discussion, David Chandler asserts that the international community should come together to discuss different factors causing the humanitarian crisis and categorize those factors with appropriate measures of intervention. The author asserts that the concept of humanitarianism is universal while the effects of violations of human rights differ across cultures and societies due to the state of the previous accessibility to resources. In other words, what would constitute as a violation of human rights in a developed state may vary in a developing state considering global perspectives of human rights. This requires an international discussion to determine how these judgements should be made rather than allowing one set of standards to dictate the extent of intervention. To clarify, people living in developed states may consider access to the electricity as a basic fundamental right as this access has been in place for generations. An armed conflict that destroyed the access to the electricity would alter the state of the civilian life and therefore constitute a violation of human rights. However, in developed states or regions this situation would be considered as an inconvenience but not necessarily a direct violation of human rights.⁴⁰

³⁹ A. Cassese. The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law. UCLA Pacific Basin Law Journal 1984, pp. 82-85. Accessible at: <https://cloudfront.escholarship.org/dist/prd/content/qt41f8m732/qt41f8m732.pdf?t=n4pe4c> (16.10.2018)

⁴⁰ D. G. Chandler. The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda. -23 Human Rights Quarterly. The Johns Hopkins University Press 2001, pp. 680-700. Accessible at: <https://www.alnap.org/system/files/content/resource/files/main/chandler-the-road-to-military-humanitarianism.pdf> (16.10.2018)

Same humanitarian intervention tactics would not be warranted when it could cause further unrest in the region. However, more significant damages such as the contamination of food and water sources would be a violation of human rights and constitute an obstruction to human survival in any society. Thus, a situation would lead to casualties, illness, and unsanitary condition and humanitarian intervention would be justified in any society regardless of the cultural background. However, the culture should still be considered to determine the negative implications of such an intervention. David Chandler states that the actual model of humanitarian intervention cannot be formulated until the international community has such a discussion and reaches the consensus regarding the value of fundamental human rights. He presents actions of non-governmental organizations as a solution to humanitarian crises relating to armed conflicts.⁴¹

As such a consensus has yet to be reached, David Chandler explains that the implementation of the humanitarian interventions rest on the shoulders of non-governmental organizations such as the International Committee of the Red Cross (ICRC), which have been involved in a culturally diversified settings, gained information about the cultures through experiences, and have a reputation of being apolitical across the globe. These organizations, according to Chandler, usually have a more working knowledge of the society members than the government agencies because they have gained the experience through various circumstances. This means that they can determine if the rights are being violated, how the violations affect people, and whether humanitarian intervention is needed. The author explains that this approach is generally accepted as long as funding is not associated with any governmental organization. This raises the question as to how the organizations can continue to function as the ambassadors for international humanitarianism without the financial and political support of the international community.⁴²

In closing, this chapter presented different views relating to the defining characteristics of the humanitarian crisis stemmed from armed conflicts. First, the role of the international law was regarded as weak in the modern context of armed conflicts with variations ranging from political changes to the nature of war. Later it asserted that the basic survival needs of a human being should not be withheld for any reason whether the cause of the neglect is due to an armed conflict or civilian unrest. It followed a discussion about international actors have a

⁴¹ *Ibid.*, pp. 680-700.

⁴² *Ibid.*, pp. 678-679.

responsibility to seek accurate information to determine the extent of a necessary aid, potential intervention methods to prevent or respond to the humanitarian crisis during an armed conflict and how minimising any negative effect might cause to people in the region.

In the face of a humanitarian crisis, the international community must consider the extent of the violations, the effect that are being witnessed, and the safety of the people during the process of initiation of the humanitarian intervention. For instance, access to food and water are immediate needs which warrant rapid humanitarian intervention. However, it must also be considered how the intervention may affect the crisis if medical care is not taken into account. Accessibility to the medical care would be considered as a second tier depending on the extent of injuries. Although medical care is essential, there is more manageable time to implement a strategy if the injuries are minor.

Considering different commentaries on the definition of humanitarian crisis during an armed conflict, there are three primary themes that can be noted. First involves the role of international law as being weak in the modern context of armed conflicts with variations ranging from political changes to the nature of conflict whether it is internal or international. Second says that the basic survival needs of the human being should not be withheld and neglected for any reason, whether it is an armed conflict or civilian unrest. Either scenario may warrant an international intervention. Finally, society has a responsibility to seek accurate information to determine the extent of necessary aid. This determination should be made based on the notion that human rights are not cultural when the rights are associated with one's ability to survive.

It is possible to provide a general definition of a humanitarian crisis that encompasses these themes and relates to the literature reviewed. The proposed definition is as follows: A humanitarian crisis during an armed conflict is any condition that prevents access to the fulfilment of basic human needs including food, clean water, medical needs, and severely violates human rights.

2.2. The Case of 1918 Azerbaijan

Humanitarian crisis can be defined such as an event or series of events that constitute a threat to the safety, security and well-fair of a large group of people over a wide area and prevent them from reaching their basic needs, such as safe shelter, clean water and food. It could be a corollary of human-made disasters such as civil strife, civil war and internal or international

war. Man-made emergencies such as armed conflicts typically characterized by extensive violence, loss of lives, displacement of populations, widespread damage to societies and economies, and so on.

Following chapters analyses the correlation of the definition of a humanitarian crisis with the humanitarian condition existed in Azerbaijan from March to September 1918. The acceptance of the humanitarian condition in Azerbaijan as a humanitarian crisis is vital for the idea that the Ottoman Army's advance might have humanitarian and compassionate grounds.

2.2.1. General Portrayal of the Humanitarian Condition

The arrest of the commander of the Azerbaijani division and its officers at the beginning of March raised anti-Soviet feelings among the population in Baku. The unfounded report came on 30 March that the Azerbaijani crew of the ship 'Evelina' was armed and ready to revolt against the Baku Commune. Upon this report, Bolsheviks disarmed the crew who tried to resist. Confrontations resulted in the defeat of the Azerbaijani crew and the massacre of up to 12.000 Azerbaijanis by the Bolsheviks and Dashnak units in the city of Baku and other locations in the Baku Governorate. Beyond the violent three days lasted from 30 March to 2 April 1918, the March Days touched off a series of massacres all over Azerbaijan.⁴³

Pat Walsh also confirms the same scenario. He states that the March massacres had been sparked off by the arrival of a small group of armed Azerbaijanis from the Native Division of the Tsar's army on a ship in Baku. The sight of armed Azerbaijanis was taken as a provocation by the small minority that ran the Baku Soviet. It signaled what might be to come, so they decided to prevent the future through the massacre of the majority.⁴⁴

In the opinion of Firuz Kazemzadeh, the Soviet provoked the 'civil war' in the hope of breaking the power of its most formidable rival, the Musavat. However, once the Soviet had called upon the Dashnaktsutyun to lend its assistance in the struggle, the 'civil war' degenerated into a

⁴³ F. Kazemzadeh. *op. cit.*, p. 73.

⁴⁴ P. Walsh. The Battle for Baku, 1918. Accessible at: <https://drpatwalsh.com/2018/08/01/the-battle-for-baku-1918/> (17.10.2018)

massacre, Muslims were killed irrespective of their political affiliations or social and economic position.⁴⁵

In the opinion of Tadeusz Swietochowski, in the first armed confrontation of Musavat Party proponents with Bolshevik centralism, the Azerbaijanis had suffered a loss, although the penalty was not exorbitant. The truly tragic turn of events came after acceptance of the ultimatum, when the Dashnakist allies of the Bolsheviks took to looting, burning, and killing in the Muslim sections of the city. Nariman Narimanov now saw the realization of his dire forebodings. His description of this second phase of the conflict not only gave vent to his bitterness toward the Dashnakists but also suggested his feelings about the Bolshevik-Dashnakist alliance against the Muslims:

‘Even if a Muslim happened to be a Bolshevik, no quarter was given. The Dashnakists would say: We do not recognize any Bolsheviks; once you are a Muslim that is enough. They killed whom they pleased, they stripped and emptied houses. Under the banner of Bolshevism, the Dashnakists committed all kinds of atrocities against the Muslims. Not only men, but even pregnant women were not spared’.⁴⁶

The results of the March events were immediate and total for the Musavat. Several hundreds of its members were killed in the fighting; thousands of others fled Baku in a mass exodus.⁴⁷ The National council of survivors and political organizations disbanded, their leaders sought refuge

⁴⁵ F. Kazemzadeh. *op. cit.* p. 73.

⁴⁶ T. Swietochowski. *op. cit.*, p. 117.

⁴⁷ M. Smith. Anatomy of Rumour: Murder Scandal, the Musavat Party and Narrative of the Russian Revolution in Baku, 1917–1920. -36 *Journal of Contemporary History* 2001, p. 228.

in Ganja or Tiflis.⁴⁸ The same scenario was also stated by Marshall Cavendish, Thomas De Waal, Ronald Grigor Suny and James Minahan.^{49 50 51 52 53}

Ronald MacDonell, the British vice-consul of Baku in 1918 later recorded his view of the March events in a report for General Dunsterville:

Trouble started between the Bolsheviks and Musselman over the disarmament of a Musselman ship and culminated in the March massacres. The Dashnaks joined hands with the Bolsheviks, and the Musselman was practically turned out of Baku, not a single Musselman of any importance remaining.⁵⁴

Firuz Kazemzadeh continues that the March Events, as this episode became known to history, touched off a series of massacres all over the country. The brutalities continued for weeks. No quarter was given by either side: neither age nor sex was respected. Enormous crowds roamed the streets, burning houses, killing every passer-by who was identified as an enemy, many innocent persons suffering death. The struggle which had begun as a political contest between the Musavat and the Soviet assumed the character of a gigantic race riot.⁵⁵

As maintained by Pat Walsh, the Bolshevik assault on the Musavat Party was ordered by the Bolshevik Stepan Shaumyan. However, the heavily armed Dashnak forces of up to 20.000 men, upon whom the Bolsheviks depended for their power in the city, availed of the Bolshevik attack to massacre around 12.000 civilians throughout just a few days in Baku. There was a mass

⁴⁸ T. Swietochowski. *op. cit.*, p. 117.

⁴⁹ M. Cavendish. *The World and its Peoples: The Middle East, Western Asia, and Northern Africa*. Cavendish Square 2007, p. 786.

⁵⁰ T. De Waal. *Black Garden: Armenia and Azerbaijan through Peace and War*. New York University Press 2003, p. 100.

⁵¹ T. De Waal. *The Caucasus: An Introduction*. Oxford University Press 2010, p. 62.

⁵² R. Grigor Suny. *The Revenge of the Past: Nationalism, Revolution, and the Collapse of the Soviet Union*. Stanford University Press 1993, p. 42.

⁵³ J. Minahan. *Miniature Empires: A Historical Dictionary of the Newly Independent States*. Greenwood 1998, p. 22.

⁵⁴ Pat Walsh. *British Policy and the Massacres in Baku of March 1918*. Accessible at:

<https://drpatwalsh.com/2018/05/06/british-policy-and-the-massacres-in-baku-of-march-1918/>
(17.10.2018)

⁵⁵ F. Kazemzadeh, *op. cit.*, p. 73.

exodus of the civilian population to the countryside to escape the days of killing. In Quba more than 16.000 civilians were massacred by armed forces in 3 separate assaults on villages in early 1918. 35 villages were raised to the ground in the general area. Not only Moslems were killed as the Dashnaks also slaughtered the local Jewish community and other minorities. 2.000 were also put to death in the Lankaran area. In Zangezur province forces under the command of General Andranik surrounded the Moslem population in a large sweep and proceeded to destroy 115 villages. Nearly 8.000 people were slaughtered, including 2.000 children.⁵⁶

Right across the territory that would become Azerbaijan – in Shimakh, Goychay, Aresh, Javad, Lankaran, Nukha, Javanshir, Shusha, Jabrail, Nakhchivan and Zangazur – massacres were conducted against innocent civilians by flying columns of Dashnaks who would come to an area and devastate it, killing all and sundry. In a few months, more than 50.000 were murdered and many more driven from their homes to become refugees in their own land. These actions led on to deaths in the hundreds of thousands from hunger and epidemics.⁵⁷ Those who escaped often perished in the open countryside through cold, starvation or disease. Prominent among the perpetrators were Generals Andranik and Dro.⁵⁸ The perpetrators were claiming that they had British support for their operations. Andranik had indeed been assured of it.⁵⁹

2.2.2. Collation between Humanitarian Crisis and Humanitarian Condition in Azerbaijan

The previous chapter of the thesis entailed opinions of scholars on the definition of humanitarian crisis in international law. Taking thoughts altogether, the general definition of the humanitarian crisis could be outlined as a condition entailing inaccessibility to the basic human needs, violation of the humanitarian space, no protection of civilians from extensive violence and absence of assistance. It also encompasses the state of mass exodus, loss of lives due to disasters and human-made emergencies, violation of fundamental human rights such as the right to life, right to health and right to have an adequate standard of living. According to

⁵⁶ P. Walsh. Azerbaijan Year 1918. Accessible at: <https://drpatwalsh.com/2018/04/14/azerbaijan-year-1918/> (17.10.2018)

⁵⁷ *Ibid.*

⁵⁸ P. Walsh. May 28 Centenary of Azerbaijan. Accessible at: <https://drpatwalsh.com/2018/04/28/may-28-centenary-of-azerbaijan/> (17.10.2018)

⁵⁹ P. Walsh. Azerbaijan Year 1918. *op. cit.*

researchers, excessive mortality of people in the wake of the poor access to basic needs, ineffectiveness to provide aid, inaccessibility to the health services are some aspects of the humanitarian crisis.

The humanitarian condition in Azerbaijan lasting from March to September 1918 had lots of similarities with the above-mentioned aspects of the humanitarian crisis. It resulted from human-made emergencies in the face of civil strife and internal war. As the confrontations between proponents of different parties escalated to the mass murder of civilian population in vast areas in the country, there was a critical threat to safety, security and well-being of a large group of people.

Due to ongoing operations, civilians had to abandon their homes in order to find safer places to live. It resulted in mass exodus and displacement of a population. As stated by Pat Walsh, the actions led on to deaths in the hundreds of thousands from hunger and epidemics.⁶⁰

One of the characteristics of the humanitarian crisis is an environment that violates the fundamental rights of civilians to continue their daily lives or any denial of basic survival to any individual involved in the conflict. These features of the humanitarian crisis also apply to the case, as there was no protected humanitarian space and inability of a large group of people to access their fundamental needs, such as safe shelter.

Humanitarian state in Azerbaijan existed from March to September 1918 corresponded to characteristics of a humanitarian crisis ensued from an armed conflict such as no protection of human life against civil breakdown, oppression, extensive violence, loss of lives due to disasters and human-made emergencies and widespread damage to societies. The situation encompassed violations of fundamental human rights such as the right to life, right to social security, right to an adequate standard of living, right to health, freedom from torture, cruel and inhumane treatment, freedom from arbitrary interference to family life and so on.

Due to similarities between the characteristics of humanitarian crisis and humanitarian condition in Azerbaijan, this chapter comes to the conclusion that the events started with the 'March Days' and continued until the total victory of the Ottoman Army over foreign military units in Baku, can be considered as a humanitarian crisis at the beginning of 20th century. The

⁶⁰ P. Walsh. Azerbaijan Year 1918. *op. cit.*

consideration of the humanitarian situation in Azerbaijan in 1918 as a humanitarian crisis is important for the analysis whether the intervention of the Ottoman Empire's Army to Transcaucasia had humanitarian motives. The following chapter focuses on the possibility of the advance of the Islamic Army of the Caucasus to Azerbaijan to be appraised as a humanitarian intervention.

2.3. Humanitarian Intervention

The subject of intervention is one of the vaguest branches of international law. We are told that intervention is a right; that it is a crime; that it is the rule; that it is the exception; that it is never permissible at all. A reader, after perusing Phillimore's chapter upon intervention, might close the book with the impression that intervention may be anything from a speech of Lord Palmerston's in the House of Commons to the partition of Poland.⁶¹

The law on humanitarian intervention was reformulated after World War II, when following the resolutions of the UN Security Council (UNSC), states agreed to use unilateral armed force only for self-defense or with the authorization of the UNSC mainly to defend civilian population from armed conflicts within the sovereign states. Since then, humanitarian intervention is regulated within international law and regulations are enshrined in the UN Charter. Engagement of the different organizations and groups to the warfare influenced scholars' thoughts on the definition of the humanitarian intervention. For example, the UN, NATO, and some states referred military operations in Northern Iraq, Somalia, Liberia, Sierra Leone, and Kosovo as a 'humanitarian intervention'. However, there is no common definition of humanitarian intervention as international law is changing in response to the world's challenges.

All in all, prohibition to use an armed force in international law has two exceptions such as the adoption of the resolution by the UNSC under UN Charter Chapter VII and implementation of self-defense under UN Charter Article 51.⁶² However, it is stipulated that the humanitarian intervention implemented out of the UNSC resolution and self-defense, might be warranted in cases when peace is threatened by crimes against humanity, war crimes, severe violations of human rights, genocide and other breaches of jus cogens norms.

⁶¹ S. Chesterman. *op. cit.* p. 7

⁶² The Charter of the United Nations. San Francisco 26.06.1945, e.i.f. 24.10.1945

Since the end of the past century, the UN bodies have decided to make interventions to the sovereign states for humanitarian purposes. Also, in some cases, powerful states forwent to wait for the adoption of the UNSC resolution in order to implement a humanitarian intervention. Hence, the exceptions to the prohibition to use an armed force and to interfere into internal affairs of other states are acceptable, and there is no single definition of humanitarian intervention. Those exceptions mainly concern notions such as the responsibility to protect and the right to intervene and have humanitarian motives rather than the violation of the principles of international law such as the sovereignty and territorial integrity of the state.

There is a consensus on some of the essential characteristics of the humanitarian intervention. First of all, it involves the use of military force. Secondly, by sending armed forces into the airspace or territory of a sovereign state that has not engaged in acts of aggression to the intervening state, it entails intervention to the internal affairs of the incumbent state. Third, the intervention is motivated by humanitarian intentions, and the situation does not constitute a direct threat to the interests of the intervening state. Thus, the basic definition of the humanitarian intervention is the interference to the internal affairs of a sovereign state using a threat and military force with the pure humanitarian motive and purpose to put an end to the ongoing humanitarian crisis and protect civilians.

The first part of this chapter studies scholarly literature on the possible definitions of the humanitarian intervention articulated by various academics and scholars. The research finds that scholar's viewpoints contradict each other especially on notions such as the responsibility to protect, right to intervene, legitimate and illegitimate interventions, limitation on the use an armed force, and so on. The analysis of the scholarly literature about humanitarian intervention is followed by an examination of the topic in the light of the Ottoman Army's intervention to the Transcaucasia. It is worth to note that the Turkish intervention taken place in 1918 will be studied according to the literature of the 20th and 21st centuries.

Michael Walzer offers a broad approach to the definition of humanitarian intervention and states: 'When people are being massacred, we do not require that they pass the test of self-help before coming to their aid. It is their very incapacity that brings us in'.⁶³ Michael Walzer provides an example of India's intervention to Pakistan, expelling the Pakistani invasion of

⁶³ M. Walzer. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. Basic Books 1977, pp. 160-161.

Bangladesh, and not imposing political control on the new state of Bangladesh. He also argues that humanitarian intervention is rare, mainly because humanitarian motive is mixed with other purposes and since states are unwilling to send their soldiers abroad to save foreigners. His definition alerts the international community to the need to respond to extensive violations of human rights especially complemented by governments towards its population.⁶⁴

Further, Michael Walzer claims that humanitarian intervention should be pre-emptive but not preventive. This means that international actions towards states cannot be undertaken to change political regimes and balance of power and the intervention with the aim to change the balance of power is illegal and cannot be considered as a humanitarian intervention.⁶⁵

Terry Nardin claims that Walzer utilises historical precedent, i.e. it was wrong not to intervene to Rwanda and Sudan, considering the extent of atrocities there. He focuses on a human response derived from the responsibility to protect and claims that the humanitarian intervention is meant to stop the severe violations of human rights rather than protect political interests of states, preserve the balance of power, or seek independence from an oppressive government. According to Terry Nardin, intervention should be legal and necessary because of the principle of the responsibility to protect, in order to end the human sufferings from aggression and cease possible future violence.⁶⁶

Further, according to Terry Nardin, humanitarian intervention is a feature of a just war as well as the means to bring reconciliation between conflicting parties. He contends that humanitarian intervention is justified only on purely humanitarian grounds, where intervention is a form of assistance, and the principle of state sovereignty partly loses its importance. This means that besides state's sovereignty is protected under international law, a human aspect of intervention is emphasized over other ones. Hence, in the absence of mechanisms to cease the abuse of human rights by states, groups, or regimes, international law needs to be capable of stimulating a military action. However, international law protects states from an external threat. To justify

⁶⁴ *Ibid.*, pp. 287-325.

⁶⁵ *Ibid.*, pp. 287-325.

⁶⁶ T. Nardin. From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention. -24 *The European Journal of International Law*. Oxford University Press 2013, pp. 67-82. Accessible at: <http://www.ejil.org/pdfs/24/1/2371.pdf> (16.10.2018)

Michael Walzer's position, Terry Nardin states that in most cases the armed nature of the intervention is not as disruptive as the civilians will already be involved in a 'sustained military struggle'.⁶⁷

In contrast, Devon Whittle argues for more restricted international legal order by giving a narrow definition in which the intervention is falling outside the scope of the international law. According to Devon Whittle, humanitarian intervention is defined strictly within the scope of the international law including judicial review of the ICJ and regulations enshrined in the UN Charter that protects states and other entities from external threats. In addition to the vulnerability of civilians, the author recognizes the state's vulnerability as well and the possibility to end the aggression within the state and without external intervention.⁶⁸

Devon Whittle tries to limit the right to intervene and emphasizes that intervention falls outside the scope of international law. Whittle views intervention as coercive and having negative consequences. He sees states as victims during the external intervention and recounts this action as a violation of international law and tries to prevent changes to the current international legal order. According to Devon Whittle, intervening authorities such as states, UN and NATO are holding responsibility, as they decided to intervene. Although during history, the unilateral humanitarian intervention had occurred only a few times, the author considers that interferences to the internal affairs of other states should be prevented.⁶⁹

Devon Whittle's idea is followed by Oren Gross, with some modifications. Oren Gross construes humanitarian intervention within the scope of the law that prohibits the use of force. However, he allows for an exception, mainly when there is a responsibility to protect. Protection, according to Oren Gross, is necessary for extreme, even exceptional circumstances, when the UNSC fails to respond. He implies that intervention may involve the threat and use of force and actors involved in it, should acknowledge that they act against international law.

⁶⁷ *Ibid.*, pp. 67-82.

⁶⁸ D. Whittle. The Limits of Legality and the United Nations Security Council: Applying the Extra-Legal Measures Model to Chapter VII Action. -26 *The European Journal of International Law*. Oxford University Press 2015, pp. 671-698. Accessible at: <http://ejil.org/pdfs/26/3/2600.pdf> (16.10.2018)

⁶⁹ *Ibid.*, pp. 671-698.

According to Oren Gross, states should inform the international community about their intention and get permission before implementation of the humanitarian intervention.⁷⁰

Further, he presupposes a joint agreement on what interventions are permissible and pardonable, although they fall outside the scope of principles of international law. In other words, he specified which circumstances are not tolerated, and accusations can be dropped for intervening state or organization.

Oren Gross also implies that exception should be in extreme circumstances; otherwise they could be used as a pretext. For instance, he views the situation of loss of lives of civilians in Syria during an ongoing war as an extreme circumstance that necessitates humanitarian intervention: ‘The government does not respect the own people, and in this case, Syria cannot be considered as a sovereign state, meriting protection from an international community and expanding the scope of the law. This is why Syria is not under the non-intervention rule’.⁷¹

Oren Gross expanded the scope of possible exceptions on the principle of non-interference to domestic affairs to the cases which lack reaction from the UNSC. According to Gross, one of the best ways to act against humanitarian crisis are the operations approved by the UNSC.⁷²

In the opinion of Gross, the main problem with humanitarian intervention is that international community does not take actions against intervening states whose purposes are not in line with international law, even those states’ actions are pardoned. Also, the veto right of the UNSC permanent member states might obstruct a consensus to implement a humanitarian intervention where it is necessary. Moreover, states could forgo the UNSC resolutions and rely on regional and bilateral treaties, as it happened in the case of Syria. Oren Gross makes it clear that humanitarian intervention can be legitimate without being legal, especially in cases of the non-action by the international community to stop the ongoing humanitarian crisis.⁷³

⁷⁰ O. Gross. Applying the Extra-Legal Measures Model to Humanitarian Interventions: A Reply to Devon Whittle. -26 *The European Journal of International Law*. Oxford University Press 2015, pp. 699-708. Accessible at: <http://www.ejil.org/pdfs/26/3/2601.pdf> (16.10.2018)

⁷¹ *Ibid.*, pp. 699-708.

⁷² *Ibid.*, pp. 699-708.

⁷³ *Ibid.*, pp. 699-708.

Ryan Goodman argues for an expanded definition of humanitarian intervention, where states forgo the UNSC decision in order to make a humanitarian intervention. He discusses the intervention to Kosovo with its successful settlement that helped to resolve numerous issues in the conflict, prevented the war at all fronts, and decreased the gravity of military conflict. In Kosovo, the rationale for humanitarian intervention was both humanitarian and political. NATO's motive was to end the conflict before it became real warfare. Ryan Goodman's thought is actionable because the mechanisms for intervention and peace-building are in place and have proven successful in the past, mainly in Kosovo. The definition is broad as it includes conflict resolution, cross-cultural negotiations, persuasion of rebel leaders or groups, mainly proving an example from NATO's intervention to Kosovo.⁷⁴

Scholars Derek Averre and Lance Davies present the variations of interpretations even among the world's superpowers and most developed nations. Individually, Derek Averre and Lance Davies note that Russia has recently reemerged as a dominating presence in the international community with both considerations for self-serving policies and sovereign interpretations of the responsibility to protect with an emphasis on the role of Russia in the Syrian crisis. Russia, as a superpower considering military capabilities and presence in the international community, interprets the both the role of the sovereign state in defining protection and the role of the international community in intervening differently than the Western world which, according to Derek Averre and Lance Davies, does not suggest that Russia is wrong but rather that Russia provides a different insight that should be considered. Scholars go on to present the Russian interpretation of international intervention as being a product of the Western world to expand its ideology and utilize the armed conflict under the pretense of humanitarian protection as a means to downplay the sovereignty of nations. In other words, Russia suggests that the UN provides support for the Western ideologies and demands from other states to conform to its standards or to be at risk of invasion by the Western superpowers. Russia's opinion asserts that there are no credible strategies relating to the Syrian crisis from the western states that can be identified separately from the desire for expansion of both western control and western ideologies.⁷⁵

⁷⁴ R. Goodman. *Humanitarian Intervention and Pretexts for War*. -100 *The American Journal of International Law*. Cambridge University Press 2006, pp. 116-135. Accessible at: <https://pdfs.semanticscholar.org/7030/7b7d81acc4f43d65e3b7141f7921a8abe4e3.pdf> (16.10.2018)

⁷⁵ D. Averre, L. Davies. *Russia, Humanitarian Intervention and the Responsibility to Protect: The Case of Syria*. -91 *International Affairs* 2015, pp. 820-821.

Ryan Goodman calls to extend the scope of Article 2(4) and Chapter VII of the UN Charter. The expanded international law would allow states and international organizations to implement a humanitarian intervention to stop severe violations of human rights. However, according to Ryan Goodman, the threat of armed intervention without a real action may stop escalated human rights violations as well. Furthermore, the author proposes that making a unilateral humanitarian intervention legal has the potential to stop states from waging wars for non-humanitarian purposes.⁷⁶

While the definition of the conventional humanitarian intervention prohibits the use of armed force out of the resolution of the UNSC, Ryan Goodman calls for legalization of the humanitarian intervention due to the principle of the responsibility to protect in order to prevent a large-scale war. Ryan Goodman explains his stance giving an example of regime changes ensued from wars and states that democratic regimes that do not violate human rights are the most peace-promoting states. For instance, the intervention of NATO to Kosovo was relatively short but resulted in the concession of Slobodan Milosevic. Kosovo Albanians were protected. Also, regional security was achieved resulting in building NATO's credibility. Moreover, the author addresses the intervention to Iraq as unsuccessful. He states that this intervention needs to be justified.⁷⁷

When considering the possibility that the international community will respond to a humanitarian crisis without consideration for latent implications, scholar Roland Paris raises another critical question. Even in the unlikely event that the intervention is both legal and unobstructed, Roland Paris explains that a humanitarian intervention which has ulterior motives and the pursuit of a modern state of colonization causes as many mass killings as it is intended to prevent.⁷⁸ This raises the question as to whether the responsibility to protect is not only potentially illegal in practice but also if it could be immoral in its application. Roland Paris goes on to explain that the international law aims to prevent mass atrocities by supporting the sovereign government and, when necessary, intervening on behalf of the citizens when the sovereign government is either unable or unwilling to stop the ongoing humanitarian crisis.

⁷⁶ *Ibid.*, pp. 111-116.

⁷⁷ R. Goodman. *op. cit.* pp. 116-135.

⁷⁸ R. Paris. The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention. -21 International Peacekeeping 2014. Accessible at:
<https://www.tandfonline.com/doi/full/10.1080/13533312.2014.963322?scroll=top&needAccess=true>
(16.10.2018)

Roland Paris explains that this can occur through humanitarian efforts and financial support for the sovereign government but that this element is often overlooked or bypassed when there are potential positive benefits to the international community or intervener. This moves to the potential or often a necessity for the use of armed forces as a method of intervention when humanitarian crisis, or the perception of humanitarian crisis, are present. Roland Paris argues that the main aim of the responsibility to protect is to prevent violations of human rights including mass losses of lives and war crimes. When the humanitarian intervention has taken in order to stop the humanitarian crisis also results in violations of human rights, then Roland Paris claims that the responsibility to protect has significantly failed.⁷⁹

According to Myra Williamson, the state of failure or success of the humanitarian intervention must be considered through the historical evolution of the doctrine as well as multiple perceptions of the outcomes when the responsibility to protect has been used as a justification for the use of armed forces. Myra Williamson goes on to explain that the expansion of globalization has led to more apparent differences in ideologies which increased the potential of conflicts. In other words, as the various ideologies transcend national borders, it leads to the manifestation of the internal conflicts. When it occurs, the role of the sovereign state to protect its people against the humanitarian crisis may be further complicated by the inability to do so as the conflicts are not necessarily related to the government but rather between internal groups which may or may not support the current government in its position. Myra Williamson explains that in this case, the international community should determine if the government is in need of assistance or not. Furthermore, the international community must determine if the internal conflict is in a position to create a humanitarian crisis. According to Myra Williamson, with so many different variables, the responsibility to protect falls not only on the international community but also on the dedication to ensure that the sovereignty of the state prevails.⁸⁰

Comparing the plight of citizens of the decolonized regions and states, Anne Orford suggests that the developed major powers of the world exhibit their power and masculinity by asserting

⁷⁹ R. Paris. *Ibid.*

⁸⁰ M. Williamson. *Terrorism, War and International Law: The Legality of the Use of Force Against Afghanistan in 2001*. Routledge 2016, pp. 330-332.

that weaker states not only cannot govern themselves but also they need an external aid of the international community.⁸¹

Specifically, Anne Orford provides the following assessment of the determination of needs when concerning weaker states:

‘The way in which humanitarian intervention was narrated had other less obvious ‘international’ effects. For example, the way in which international law portrayed the need to intervene in order to protect and look after the people of ‘failed states’, and the forms of dependence set up in post-conflict ‘peace-building’ situations, seemed to rehearse colonial fantasies about the need for benevolent tutelage of uncivilized people who were as yet unable to govern themselves’.⁸² This raises the question as to whether the undeveloped nations either need or want the external aid in times of humanitarian crisis or if the superpowers perceive the desire for aid and recognize that the exertion of their power as a form of expanding the indebtedness of the weaker states has only humanitarian motives.

Despite the explicit acceptance of the responsibility of the international community to ensure that each sovereign state can protect its citizens, there continue to be subjective and objective definitions of a humanitarian crisis that indicate the necessity for humanitarian intervention. While there is no absolute definition of the humanitarian crisis, the UNSC remains the primary authority in determining when and where to use humanitarian intervention to cease a humanitarian crisis. Notably, when the UN makes such a determination, this does not mean that all major powers should respond with armed force nor that all significant powers should agree on the decision as to whether a humanitarian crisis is occurring⁸³. One must then question if the decision of the UN and the associated interpretations of the responsibility to protect is more related to the interpretation with humanitarian motives or the potential for expansionism of political ideologies in decolonized states.⁸⁴

All in all, scholars approach the concept of humanitarian intervention with different standpoints. Michael Walzer and Terry Nardin conceptualize humanitarian intervention as a defense of civilians, reconciliation, and just war. For Terry Nardin, the legal prohibition of the use of armed force remains valid. Ryan Goodman prioritizes humanitarian concern irrespective of the

⁸¹ A. Orford. *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law. op. cit.* p. 11.

⁸² *Ibid.*, p. 11.

⁸³ *Ibid.*, pp. 4-5.

⁸⁴ A. Orford. *International Authority and the Responsibility to Protect.* Cambridge University Press 2011, pp. 189-212.

opinion of the UNSC. Conversely, Oren Gross agrees with the current legal system and the principle of the prohibition to use an armed force. However, he emphasizes the principle of the responsibility to protect civilians. Likewise, Devon Whittle claims that the humanitarian intervention is falling outside the scope of the international law and recognizes state's vulnerability and the possibility to end aggression without external intervention, considering intervening states responsibility for their actions.

Another difference between authors' viewpoints lies in the approach to legitimacy. Ryan Goodman views all necessary interventions on humanitarian grounds as legitimate because they help to deal with problems and stop massive violations of human rights, bringing the methods of conflict resolution, and preserving peace in the long-range. Similarly, Michael Walzer views pre-emptive interventions as legitimate. The opposing stance by Devon Whittle and Oren Gross shows humanitarian intervention to be non-permissible and illegitimate. Oren Gross considers that the intervening state or organization should admit the violation of international law.

Oren Gross and Devon Whittle state that the humanitarian pretext should be avoided as it leads to more risks. Michael Walzer offers historical precedent as a standard for intervention in order to promote just interventions and revise past failures and mistakes such as the intervention to Northern Iraq. Likewise, Ryan Goodman focuses on humanitarian motives such as the actions that prevent a full-scale war and provide security for conflict-affected civilians, as happened in the case of the intervention of NATO to Kosovo.

2.4. The Case of the Islamic Army of the Caucasus

The status of the humanitarian intervention was still imprecise at the beginning of the 20th century. The doctrine of humanitarian intervention was vague, and different contents were attributed to this 'right', as well as to its normative status. War itself was not prohibited by international law. Some scholars asserted a right of unilateral humanitarian intervention, who rejected it and those who held that international law should say more about the subject. Moreover, some held that if there is to be an exception to the general rule of non-intervention, collective action is more appropriate than unilateral interference.⁸⁵

⁸⁵ S. Chesterman. *op. cit.*, pp. 35-36.

In the opinion of Fernando Teson, humanitarian intervention is the international use of military force to defend persons from severe rights violations, in their territory, by their rulers or other groups.⁸⁶ The just cause in humanitarian intervention is saving persons from rights violations by their rulers or other groups in their territory.⁸⁷

Humanitarian intervention is defined by Ian Brownlie as ‘the threat or use of armed force by a state, a belligerent community, or an international organization, with the object of protecting human rights.’⁸⁸ Although aid may be needed or requested, the motives and latent effects must be considered when determining the morality of the decision to use an armed force as tools of humanitarian intervention.⁸⁹

According to Johann Caspar Bluntschli, a state has a legal right to intervene to ensure respect for human rights only if there is an internal conflict within another state and it constitutes a threat to peace and security.⁹⁰

The justification of humanitarian intervention is based on the ability of the international community to define humanitarian crisis and reach a consensus on the concepts of the legality of humanitarian interventions which involves the threat and use of military forces. While humanitarian crises exist in expanding context, there are concerns as to the justification of humanitarian interventions and the potential ulterior motives of colonization that can be later determined through the gains of the intervening states.⁹¹ If the interpretation of the humanitarian intervention is accurate, but the outcomes represent the potential for ulterior motives other than

⁸⁶ T. Fernando. Debating Humanitarian Intervention: Should We Try to Save Strangers? Introduction. *op. cit.*, p. 2.

⁸⁷ T. Fernando, B. Vossen. Debating Humanitarian Intervention: Should We Try to Save Strangers? Just Cause in Humanitarian Intervention. Oxford Scholarship Online 2017, p. 2. Accessible at: <http://www.oxfordscholarship.com/view/10.1093/oso/9780190202903.001.0001/oso-9780190202903-chapter-3?print=pdf> (25.11.2018)

⁸⁸ S. Chesterman. *op. cit.*, p.1.

⁸⁹ *Ibid.*, pp. 1-2.

⁹⁰ *Ibid.*, pp. 1-2.

⁹¹ A. Orford. Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law. Cambridge University Press 2003, pp. 13-14. Accessible at: <http://assets.cambridge.org/97805218/04646/sample/9780521804646ws.pdf> (15.10.2018)

protecting human rights of the civilians, then the initiation of the armed intervention can be viewed as an act of hostility rather than an act of peacekeeping. The interpretation of the humanitarian intervention requires an extensive review of the available literature and an analysis of the various perspectives, examples of earlier cases, and consideration of the threat and use of military forces in the incumbent state. This subchapter intends to present a comparison of the related concepts with the Ottoman intervention to Azerbaijan and analyze if the intervention could be justified and regarded as a humanitarian.

According to Gareth Evans and Mohamed Sahnoun, the responsibility to protect as one of the possible reasons for a humanitarian intervention can be interpreted both as the responsibility to react and the responsibility to prevent. It is questioned as to who has the right to determine if there is a potential for a humanitarian crisis that should be prevented, if there is a current humanitarian crisis that should be responded to, or if the sovereign state should determine the current conditions in the nations and request aid if necessary. In brief, who determines to react, respond, or protect the sovereignty of the state?⁹²

The principle of the responsibility to protect provides legal protection to those who implement a humanitarian intervention when there is a potential to justify this action as being an intervention to cease the humanitarian crisis. The definition of the humanitarian crisis should be founded in a concept that is recognized by the international community as being a severe violation of human rights, and the importance of the principle of the responsibility to protect in this case should be identified as well. According to Anne Orford, in practice, the legality is different from morality when the goal is to create a universal account of differences that support the rights of others to determine the protection of their rights. Anne Orford questions if the international community is not offering aid as a form of threat and fear to gain support for their political agendas. In other words, although aid may be needed or requested, the motives and latent effects must be considered when determining both the legality and the morality of the decision to use armed force as tools of humanitarian intervention.⁹³

⁹² G. Evans, M. Sahnoun. The Responsibility to Protect. Foreign Affairs 2002. Accessible at: <https://www.foreignaffairs.com/articles/2002-11-01/responsibility-protect> (16.10.2018)

⁹³ A. Orford. Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law. *op. cit.* pp. 17-18.

If we look at historical practice, there have been two aspects that justify forcible interventions. Firstly, the intervening state's interests in the light of self-defense, protection of its nationals; and secondly, protection of the rights of people in other states through implementation of humanitarian intervention.

To begin such an analysis, first it is necessary to consider the context of the responsibility to protect in international law. The lack of international support in some cases has resulted in mass violations of human rights and a significant loss of lives. According to scholars Gareth Evans and Ramesh Thakur the responsibility to protect can be defined as follows:

‘First, the responsibility of each sovereign state is to protect its population from the atrocity crimes in question; second, the responsibility of other states to assist it in doing so; and third, the responsibility of the wider international community to respond in a ‘timely and decisive’ fashion and by all appropriate means (not excluding coercive military action), if this becomes necessary because the state in question is ‘manifestly failing’ to protect its people’.⁹⁴

In case the of 1918 Azerbaijan, the state was established when the occupation and crimes already started to take place. As mentioned in previous chapters, the humanitarian condition began to degenerate at the end of March, while a new state was established at the end of May. The new state was not able to protect its population from severe violations of human rights and atrocity crimes, as it did not have an army to liberate the country from occupation and hostile military units. As maintained by Pat Walsh, in the Caucasus there were just peaceful Moslem villages, not involved in the Great War and not in insurrection against any state. The Moslem population had never been militarized and just wanted to live in peace and stability with its neighbours.⁹⁵ Also, the non-existence of an army in Azerbaijan could be explained with the Russian Empire’s policy not to include Muslims to the Russian Army, because of lack of trust. In this case, the responsibility to assist the state in the protection of its population and building sovereignty fell on other states, and first of all, on neighbouring states. As the occupation of Baku and destruction of the control in the country were caused by parties among which two of them were belonging to neighbouring states, and other neighboring countries such as Georgia was likewise a new state and did not have the power to help other states, and Iran was not

⁹⁴ G. Evans, R. Thakur. Correspondence: Humanitarian Intervention and the Responsibility to Protect. -37 International Security 2013, pp. 1-8. Accessible at: <http://www.gevans.org/opeds/PapeResponseEvansThakurReview2xi12edfin.pdf> (15.10.2018)

⁹⁵ P. Walsh. May 28 Centenary of Azerbaijan. *op. cit.*

interested in assistance to Azerbaijan because of political reasons, the Ottoman Empire was the only power who might help Azerbaijan in regulation of its internal problems, also because of ethnic, linguistic and cultural ties between two states. Consequently, the intervention made by the decision of the Ottoman State can be justified in the light of the responsibility to protect, as the outcome of an intervention resulted in the establishment of sovereignty, liberation from occupation and gaining full control over the country by the Azerbaijani government.

Based on the discussion on the responsibility to protect, researchers explain that the definition of ‘manifestly failing’ is often subjectively analyzed by the conditions within the states are. The responsibility of the international community, in this context, is not to determine the terms of protection but rather to assist the state to protect its population.⁹⁶

In the case of 1918 Azerbaijan, the state was manifestly failing to secure its sovereignty as there was the case of occupation and the state did not have full control within its borders. The fact of ‘manifestly failing’ could be found in the speech of the Minister of Finance of ADR Nasib Yusifbeyli. In one of the sessions, he stated as follows: ‘The time for our committee to go to Batum and ask for help from the Ottoman Government on behalf of our people has already come!’.⁹⁷

Moving forward in this frame of the responsibility to protect, scholars Jayshree Bajoria and Robert McMahon state that earlier notions of the responsibility to protect have evolved from the Genocide convention which determined that it was the role of the international community to prevent and punish perpetrators of such atrocities to the determination to remove the element of natural disasters as a reason for international intervention.⁹⁸

As mentioned above, the advance of the Nuri Pasha’s Army, its battles and final victory over the hostile armed groups prevented the continuation of the implementation of severe crimes against the civilian population and, consequently, removed the element of a natural disaster.

⁹⁶ *Ibid.*, pp. 1-8.

⁹⁷ S. Yel. *op. cit.* p. 568.

⁹⁸ J. Bajoria, R. McMahon. The Dilemma of Humanitarian Intervention. Council on Foreign Relations 2013, Accessible at: <https://www.cfr.org/backgroundunder/dilemma-humanitarian-intervention> (16.10.2018)

In the opinion of Fernando Teson, humanitarian intervention is a war characterized by a specific just cause: the defence of persons in a foreign territory attacked by their government or other groups in that territory. Adapting the above definition, the definition of justified humanitarian intervention is as follows:

1. A just cause for armed intervention is defending persons against attacks by their government or other groups in their territory.
2. The intervener intends to defend the victims either as an end (intention), or as a means to some other end, or (perhaps) as a foreseen side effect.
3. The intervention has a reasonable chance of succeeding by military means that do not breach jus in bello requirements.
4. The intervention is necessary to defend the victims while minimizing casualties.
5. The intervention is a proportionate response to the wrongs it seeks to remedy.
6. Neither the intervention nor the way it is fought should threaten the establishment of a just peace.⁹⁹

Analysis of the Ottoman Army's intervention according to Fernando Teson's justified humanitarian intervention requirements comes to the following conclusion:

In an analysis if the Ottoman Army defended people against attacks by groups in their territory, the reaction of the people towards the Turkish Army plays an important role. In fact, many sources state that people greeted the Nuri Pasha's Army with tears of love and gratitude. For example, the Azerbaijani poet Ahmed Cavad wrote a poem dedicated for the advance of the Islamic Army of the Caucasus to Azerbaijan as follows:

Şu qarşıkı duman çıxan bacadan
Sən gəlmədən iniltilər çıxardı
Geciksəydin məzlumların fəryadı.
Yeri, göyü, kainatı yaxardı!
Yürü, yürü batan günün izinə!
Gülümsəyir doğan günəş yüzünə!¹⁰⁰

From the smoke coming out the chimney
Groan would be coming out if you did not reach
If you be late, the wail of victims
Would destroy the earth, sky and the universe!
Move, move, to the imprint of a sunset!
Sunrise is smiling to your face!

⁹⁹ T. Fernando. Introduction. *op. cit.* p. 4.

¹⁰⁰ A. Məmmədli. Əhməd Cavad və Türkiyə. Bakı 2010, p. 53. Accessible:
<http://anl.az/el/Kitab/2013/258746.pdf> (20.11.2018)

Also, there is a common knowledge in Azerbaijan that the song ‘Lalələr’ (Tulips) was dedicated to the Ottoman Army. In fact, the Ottoman Army used to wear red hats (in the color of tulips) and they entered the territories of Azerbaijan from the valleys of Ganja in summer. Playing this song was banned during the Soviet period. Chorus of the song tells as follows:

Yazın əvvəlində Gəncə çölündə,	At the beginning of summer, in the valleys of Ganja,
Çıxıblar yenə də dizə lalələr	Tulips grown up till the knees again
Nə vaxtdır aşıqın gözü yoldadır,	Was longing for you for a long time,
Bir qonaq gələsiz bizə lalələr.	Was wishing you to come to visit us. ¹⁰¹

Based on people’s reaction to the Turkish Army, it is deduced that the Army defended civilians towards hostile armed groups; otherwise, populations would not greet an army with such gratitude. Also, according to the subchapter ‘General Portrayal of the Humanitarian Condition’, the crimes against humanity were continuing to take place in the regions and cities besides Baku until the advance of the Turkish Army to the territories of Azerbaijan. One of the evidence of ongoing mass murder in the regions of Azerbaijan during 1918 is the Quba mass grave which was unearthed during the building of a stadium in 1918.^{102 103}

The intentions of the Ottoman State’s officials are interpreted by different sources differently. The real intention of Enver Pasha is unknown. Therefore, regardless of a real motive, the study focuses on actions and outcomes of the Ottoman Army in the territories of Azerbaijan.

In examining whether the actions of an Army corresponded to the concept of *jus in bello*, the principle of proportionality comes to mind. In almost all situations, violation of human rights must be severe, because any military action must meet proportionality requirements. As there were mass killings and crimes against humanity during a long period in the country, the fight of the Caucasus Army of Islam against perpetrators of atrocities and occupation of a sovereign state were proportional.

¹⁰¹ Türk Askerinin Feslerine Yazılan Türkü: Laleler Türküsünü Hiç Böyle Dinlemiş Miydiniz? özçekim website 2018, Accessible at: <http://ozcekim.com.tr/kategoriler/muzik/turk-askerinin-feslerine-yazilan-turku-laleler-turkusunu-hic-boyle-dinlemis-miydiniz/> (30.11.2018)

¹⁰² The picture of the Mass Grave in Quba is included to the Appendix 2.

¹⁰³ R. Didavari. Mass Grave Found in Northern Azerbaijan. Visions of Azerbaijan 2007. Accessible: <http://www.visions.az/en/news/138/d5d60bab/> (02.12.2018)

However, the fact of a proportional response to the wrongs the Army was seeking to remedy, does not mean that all the actions were according to the principles of jus in bello. One of the most essential jus in bello principles is about the exemption of the civilian population from the military operations. The civilian population, unless they do not help the hostile army, cannot be legitimate targets in war. In the case of the fight of the Ottoman Army against the hostile military groups for the liberation of Baku, some sources refer to the death of Armenian inhabitants of Baku.¹⁰⁴ Even if these acts could be regarded as proportional with the mass murder of Azerbaijani civilians during the March Days, it is in violation of principles of jus in bello and just war.

One of the above-mentioned opinions of Fernando Teson is that in order for the intervention to be just, it should constitute the necessity to defend the victims while minimizing casualties. The casualties from the opposite side during the Ottoman fight in the territory of Azerbaijan is estimated around 10.000-30.000.¹⁰⁵ However, the number of casualties among Azerbaijani civilians only in Baku during the last three days of March is estimated around 12.000¹⁰⁶ and the fact that after the March days, the crimes were extended to a broader area determines that Ottoman intervention was necessary and minimized the number of total casualties in the country by final establishment of peace.

Noting that the principle of the responsibility to protect is not legally binding, even though it has been accepted, there is significant variations of interpretation of the context of the humanitarian intervention. These variations range from claiming that the interveners are doing so in order to benefit their political agendas to suggesting that the interpretation of the intervention became more complicated by the modern state of warfare and internalization of human rights. Such complications further create difficulty in determination of the real state of the crisis and the willingness or ability of the sovereign government to protect human rights against either those in support of the government or those who are coming against the government. It is assumed that, when the humanitarian crisis stems from foreign states that are against the government, then the government will ask for help to minimize these threats and restore sovereignty. However, when the internal conflict is fuelled by adversity across the

¹⁰⁴ R. Hovannisian. *op. cit.* p. 227.

¹⁰⁵ *Ibid.* p. 227.

¹⁰⁶ S. Michael. *op. cit.* p. 228.

different regimes, then the government cannot call in assistance as the aid may benefit the opposition making it harder to stabilize the government.

The international community agreed to the responsibility to uphold the sovereign states and provide support for governments to protect its population. However, the international community also determined that when the sovereign state severely violates human rights and creates the state of humanitarian crisis, it is international community's responsibility to carry out a humanitarian intervention with humanitarian and peaceful motives. When other possible methods are unsuccessful, then the international community has the responsibility to intervene on behalf of the population which suffer from the severe violations of human rights and international humanitarian law. However, there remain to be numerous questions as to how to understand the decisions of the governments, the role of internal conflicts, and the potential latent of the interveners when they successfully alter regimes in the states of inquiry. There are more controversies relating to the international agreement as the principle of the responsibility to protect is not legally binding. In other words, due to the lack of a legally binding status of the mentioned principle, states can decide whether they will make a humanitarian intervention and which side they will support. Given this scenario, the potential for superpowers to implement a humanitarian intervention when there are potential benefits to their state is significantly raised. Therefore, the justifiable humanitarian intervention can only be determined by the actual motivation to support people from mass violations of human rights and war crimes during the humanitarian crisis.

In the case of 1918 Azerbaijan, humanitarian crisis stemmed from foreign powers such as the Russian faction Bolsheviks, the British army of Dunsterforce and Armenian political party Dashnaktsutiun. Moreover, as stated in the chapters of 'Historical Background' and 'General Portrayal of the Humanitarian Condition', the armed conflict in Baku later degenerated in severe violations of human rights in the broader area. The fact that the humanitarian crisis in Azerbaijan stemmed from foreign states that were against the National Council makes the Ottoman intervention justifiable. Although, the latent intention of Enver Pasha is obscure. Also, the situation in the Caucasus constituted a direct threat to the interests of the intervening state. First of all, the Ottoman Empire was trying to establish its Eastern borders as they were before the Ottoman-Russian War at the end of the 19th century. It means that the situation in the Caucasus was necessary for the Ottoman policy regarding its Eastern borders. In case of an existence of the direct threat to the interests of the intervening state and unknown latent motive behind the intervention makes it clear that even the intervention resulted in the restoration of

peace and cessation of crimes against humanity, it cannot be regarded as a humanitarian intervention.

As mentioned above, the justification of the Ottoman intervention to Azerbaijan could be based on the notion of the responsibility to protect. Responsibility to protect determines that it is the role of the international community to prevent and punish atrocities in order to remove reasons for international intervention. However, if there are severe violations of human rights and the state of humanitarian crisis, it is the international community's responsibility to intervene with humanitarian and peace motives. When other possible methods are unsuccessful, then the international community has the responsibility to intervene on behalf of the population. If the results of an armed intervention have ulterior motives other than protecting human rights of the civilians, then the intervention can be viewed as an act of hostility rather than an act of peacekeeping.

As claimed by Firuz Kazemzadeh in 'The Struggle for Transcaucasia, 1917-1921', it was impossible for the Turks to wait forever for an answer to their peace proposal from Bolsheviks. In the territories which the Russian army had conquered, the Muslim population was persecuted bent on vengeance. Vehib Pasha called the attention of Generals Odishelidze and Przhevalskii to the cruelties inflicted on the Muslims. He cited cases of Muslims having been burned alive and of other such atrocities. Apparently, Odishelidze admitted that there had been atrocities, as in another letter Vehib Pasha thanked him for promising to protect the Muslims. However, the massacres continued as before.¹⁰⁷ As a matter of fact, Turkey made further complaints against the mass murder of civilians, declaring that the Turkish army could not remain a passive spectator of the massacres. Vehib Pasha already ordered his army to advance.¹⁰⁸

Different sources interpret the primary purpose of the Ottoman Army's advance to Azerbaijan differently. Some sources claim that the aim of the Ottoman military officer Enver Pasha was to reach natural resources, including the oil facilities and pipeline. Others state that the plan was to place Transcaucasia under Ottoman suzerainty as part of Enver Pasha's Pan-Turanian plan, or the goal was to take control over the railway lines from Batum to Baku. There are more ideas that the Ottoman's aimed to access and control the Caspian Sea for further expansion in Central Asia and possibly British India, or to break down the barrier between Anatolian Muslims and

¹⁰⁷ F. Kazemzadeh. *op. cit.* pp. 85-86.

¹⁰⁸ *Ibid.*, p. 86.

Caucasian Muslims and to ‘consolidate the unity between kindred nations’. Inspire of different opinions about the real motive of the Ottoman Empire in implementation of an intervention to Azerbaijan, as a matter of fact, after the total liberation of Azerbaijani territories from hostile powers in the mid of September, Ottomans left the city in October due to the Armistice of Mudros without taking any benefit from natural resources, oilfields, and without any territorial or suzerainty claims.

As a consequence of the intervention of the Islamic Army of the Caucasus to Azerbaijan in 1918, violence and atrocities taken place since the end of March all over the country had ceased to exist. The Ottoman Army’s interference had resulted in the promotion of peace and security, liberation of the country from hostile military units and taking control of Azerbaijani government over the state. Ottoman Empire had lost thousands of soldiers during the liberation war. Nuri Pasha’s Army had put an end to, as stated by George J. Andreopoulos, the last major massacre of WWI.¹⁰⁹

Although the intervention of the Caucasus Army of Islam to Azerbaijan in 1918 resulted in the liberation of the country from foreign occupation, as the real plans of the Ottoman State officials behind the decision of intervention is still unclear, and the situation in the Caucasus constituted a direct threat to the interests of the intervening state as the Ottoman Government were trying to establish its Eastern borders at that period of time, the research comes to the conclusion that the intervention of the Ottoman State to Azerbaijan cannot be regarded as a humanitarian intervention in international law.

Moreover, the statements in academic sources about the existence of civilian casualties during the liberation war of Baku, makes the research to be in doubt whether there were actual violations of principles of international humanitarian law. This topic needs to be studied more deeply.

However, as research also determined that the interference was necessary to minimize the number of casualties and to restore the peace and security, the study came to the conclusion that the intervention of the Ottoman Army to Azerbaijan is justifiable.

¹⁰⁹ G. J. Andreopoulos. *Genocide: Conceptual and Historical Dimensions*. University of Pennsylvania Press 1997, p. 236.

III. LEGALITY OF THE OTTOMAN INTERVENTION

In contemporary international law, no state can use force against another state, except in self-defense and cases of UNSC mandated actions. Additionally, the consent of the state is also considered as an exception in some cases. It is international law that asserts that the government of a state has the sovereign rights to invite another state to its territory for military intervention. It is a principle of customary international law. This principle proclaims that the consensual use of armed force is an exception to the rules on prohibition to use of armed forces among states. However, the doctrine of intervention upon invitation is not of uniform in all cases, many issues surrounding the notion are still of controversy (e.g. the case of internal conflicts and the governmental legitimacy). As both of these notions are of importance regarding the legality of the Ottoman intervention to Azerbaijan, both will be examined.

Intervention represents interference by one state to the affairs of another state. Oppenheim defines intervention as a forcible or dictatorial interference by a state in the affairs of another state calculated to impose certain conduct or consequences on that state.¹¹⁰ For the limited space, only military intervention is included in the thesis under this chapter.

The concept of intervention by invitation creates a nexus between states sovereignty, a rule of non-intervention in domestic issues of another state, the prohibition on the use of military force and protection of human rights. Scholars often argue that intervention upon invitation collides with the principle of non-intervention as the latter forbids any intervention into domestic matters of a state. It is a rule of customary international law.¹¹¹ However, the rule is about interventions of coercive or forcible nature, i.e. the idea of this principle is to protect states from unwanted external interventions into its domestic affairs rather than prohibiting all intervention utterly, whether it would be in collision with the principle of self-determination, autonomy and sovereignty of the state. Thus, a state has rights to give consent for intervention or invite other states to intervene. The element that potentially legalizes such interventions is the element of the state's consent.¹¹²

¹¹⁰ R. Jennings. A. Watts. Oppenheim's International Law, Vol. 1. 9th Edition. Longman 1992, p. 430

¹¹¹ *Ibid.*, pp. 430-435.

¹¹² E. Lieblich. Intervention and Consent: Consensual Forcible Interventions in Internal Armed Conflicts as International Agreements. Boston University International Law Journal 2010, Vol. 29. pp. 349-354. Accessible at: <https://www.bu.edu/ilj/files/2014/05/Lieblich-finalpdf.pdf> (28.11.2018)

As we are discussing the beginning of the 20th century, consent was understood rather narrowly (e.g. *ad hoc* invitation and/or a treaty). The thesis focuses on the clear expression of consent instead of an expanded understanding of it.

Consent is a principle that serves to preserve the autonomy of states. Even though, the phenomenon of obedience and meaning of sovereignty has varied over history and can have different explanations, types and approach,¹¹³ the core meaning of sovereignty is understandable to everyone – it represents the idea of the supreme authority within a territory.¹¹⁴ It is an elementary principle of international law. It was Bodin, who in the year 1576 saw that sovereignty was absolute and perpetual power, untrammled and undivided power to make laws. He was the first one propounding the legal theory of sovereignty. He proposed that the sovereign authority was the only and the ultimate law-making power and this would be the remedy for the social and political disorder.¹¹⁵ Sovereign power is supreme within a territory.¹¹⁶ The holder of sovereignty is superior to all, and everyone else subordinately gets their purpose. Empirical material also confirms that sovereign is not legally limited by someone else.¹¹⁷ Sovereignty being perpetual embodies the idea of not being limited by time. This means that the existence of sovereignty is irrelevant from the perspective of the holder of such power, sovereignty is unremitting and constant, and its existence cannot depend on one's possession of such power.¹¹⁸ Sovereignty in contemporary societies is still seen as supreme, absolute, indivisible and perpetual power over the state. Therefore, the State is the highest power and authority to decide its matters. However, it is clear that the paradox also contains the other end

¹¹³ C. E. Merriam. History of the Theory of Sovereignty since Rousseau. Columbia University Press 1900, no. 33. pp. 62-66. Accessible at:

<https://socialsciences.mcmaster.ca/econ/ugcm/3113/merriam/sovrou.pdf> (28.11.2018)

¹¹⁴ N. G. Onuf. Sovereignty: Outline of a Conceptual History. Alternatives: Global, Local, Political. Sage Publications 1991, Vol. 16. pp. 425-446. Accessible at: <https://vdocuments.mx/sovereignty-outline-of-a-conceptual-history.html> (28.11.2018)

¹¹⁵ *Ibid.*, pp. 425-446.

¹¹⁶ A. James. The Practice of Sovereign Statehood in Contemporary International Society. - 47 Political Studies 1999, no. 3, pp. 457-473.

¹¹⁷ A. L. Goodhart. The Definition of Law. Cambridge University Press 1958, pp. 720-725.

¹¹⁸ J. A. Pemberton. Sovereignty: Interpretations. Palgrave MacMillan 2008, pp. 125-130. Accessible at: <http://dlib.scu.ac.ir/bitstream/Ebook/35626/2/9781403935823.pdf> (28.11.2018)

of the sword - giving up their sovereignty in some matters for reaching the status of a sovereign state - accepting specific rules of international law, i.e. universal rules or *jus cogens* norms.

The principles of the sovereignty and autonomy of the states entail that states have the evident right and power to decide and govern activities carried out on its territory, this *prima facie* supports the notion that states have the right and the capacity to invite other states to intervene, as it would be one's exercise of sovereignty, since territorial integrity or political independence is not threatened by this act.¹¹⁹

The validity of the invitation encompasses two distinct notions. One is representing the external validity of the consent, i.e. giving out free and genuine consent; and the second one is dealing with internal validity, which means the legal power to give consent at all.¹²⁰ In this chapter, both of the notions will be examined among other aspects of the legality of the Ottoman intervention.

3.1. Legitimate Government

The central question of the internal validity of the invitation to intervene is the governmental legitimacy. The governmental legitimacy is sometimes overlooked by scholars and lawyers as it has often been referred to as more of political than of legal relevance. Nevertheless, for us to proclaim the legality of the intervention, we must establish what we consider as a legitimate government to conclude the legality of the invitation. This means that the government either has or do not have the material capacity to give consent to intervention.

Thus, let us look at the prerequisite principle for a legitimate government - the principal question is whether the government has control over the state. However, the question stays, whether it is *de facto* control or *de jure* legitimacy control. The loss of effective control over territory could, therefore, result in the loss of the consent power. That is why this is a relevant matter to analyse.

¹¹⁹ International Law Association. Washington Conference 2014. Report on Aggression and the Use of Force.

¹²⁰ E. Lieblich. *op.cit.* pp. 349-354.

During 19th and at the beginning of the 20th century, the legitimacy was not seen as a leading doctrine; instead, the effectiveness doctrine prevailed. Even Lauterpacht explained that the legitimist tests of sovereignty seemed irrational then since all governments were born from revolutionary events of a sort.¹²¹ The domination of the effective control idea was also supported by the 1933 Montevideo convention which laid down the standards of effective control in order for states being recognized. As it was the dominant doctrine during the time of the war in question, effective control idea over *de jure* government will be analyzed.

As to answer whether it is a *de facto* government of the state, it is necessary to evaluate the applicability of the effective control doctrine. The effective control doctrine establishes that the government must have *de facto* control over the territory and of the bulk of the population, the state practice of the 1900s supports the notion.¹²² The authority who is entitled to represent a state must be the one who has *de facto* control over the territory and its population.

Even though, there is no consensus in international law on how much territory the government ought to control to pass the effective control test. With Azerbaijan case, it is difficult since Baku was under occupation by the Bolsheviks and the Dashnak forces held somewhat control over some regions of the country. Also, as the Ottoman Army also fought in other cities besides Baku, e.g. Ganja and Goycay, it is possible that the government did not have such control over these cities. The ICTY has stated that each case is different with its distinct factual circumstances to establish the effective control threshold. It is also asserted that international law does not necessarily require a high threshold for the effective control test.¹²³ It is explained that under international law it is enough if the state has "overall control" over its territory.¹²⁴

Article 1 and 3 of the Montevideo Convention on Rights and Duties of States elaborates:

The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into

¹²¹ H. Lauterpacht, *Recognition in International Law*. Cambridge University Press 1947, p. 105

¹²² L. Doswald-Beck. *The Legal Validity of Military Intervention by Invitation of the Government*. British Yearbook of International Law. Vol. 86. Oxford University Press 1992. p. 194.

¹²³ *Prosecutor v. Duško Tadić* (Note 37), paragraph 117. Accessible:
<http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf> (29.10.2018)

¹²⁴ *Ibid.*, para 145.

relations with the other states.

The political existence of the state is independent of recognition by the other states. Even before recognition, the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.¹²⁵

The Convention clearly states four qualities for a State is a person under international law and independence of state's political existence towards recognition by the other states.

The key issue here is whether Azerbaijan was a person of international law and consequently held power to invite foreign states to intervene in its territory and use military force. Azerbaijan, proclaimed its independence by the National Council on 28th of May 1918, had a permanent population (majority of the population comprised of Azerbaijanis (in some sources referred as Muslims or Tatars (meaning Turks)) and other ethnic minorities such as Jews and Lezgins), a defined territory¹²⁶ (the southern and eastern parts of Transcaucasia), government (parliamentary republic) and also the capacity to enter into relations with the other states. Thus, there is no question of its sovereignty, autonomy, effective and overall control of its territory, furthermore its capacity to invite other states to intervene.

The proclamation of the Azerbaijani National Council in 1918 that a new state was born read as follows:

1. Azerbaijan is a fully sovereign state; it consists of the southern and eastern parts of Transcaucasia under the authority of the Azerbaijani people.
2. It is resolved that the form of government of the independent Azerbaijani state is a democratic republic.
3. The Azerbaijani Democratic Republic is determined to establish friendly relations with all, especially with the neighboring nations and states.
4. The Azerbaijani Democratic Republic guarantees to all its citizens within its borders full civil and political rights, regardless of ethnic origin, religion, class, profession, or sex.

¹²⁵ Montevideo Convention on Rights and Duties of States. Montevideo 26.12.1933, e.i.f. 26.12.1934.

¹²⁶ The map of Azerbaijan in 1918 is included to the Appendix 1.

5. Until the Azerbaijani Constituent Assembly is convened, the supreme authority over Azerbaijan is vested in a universally elected National Council and the provisional government responsible to this Council.¹²⁷

It is worth to note that the President and Ministers of the new state of Azerbaijan also were members of the National Council.

3.2. Legitimate Basis for the Invitation

The current states' practice is that in case if the territory is divided by civil wars, neither side has the right or authority to invite foreign states to intervene. However, as it is also accepted that the illegal operation of foreign military forces is prohibited in country's pursue to self-determination, the only exceptions lies in colonization and occupation context.¹²⁸ In other words, if the inter-state turbulence stems from foreign states that are against the government, then the government can ask for help to minimize threats and restore peace, security and sovereignty. This means that existence of the foreign military forces and occupation turns the tides to allows us to conclude that Azerbaijan had the right to invite foreign state for military assistance since it was a question of the occupation of the territory.

As stated by T. Swietochowski and mentioned in the Chapter 'Historical Background', on 6 June 1918, Grigory Korganov, People's Commissar of Military and Naval Affairs of the Baku Soviet, issued an order to the Red Army to begin offensive operations against Ganja. The Baku Soviet troops looted and killed Muslims as they moved towards Ganja. Being unable to defend the independence of the country on their own, the government of Azerbaijan asked the Ottoman Empire for military support under Article IV of the Treaty of Batum between the two countries.¹²⁹

The situation in Azerbaijan cannot be counted as a civil war, because the groups fighting against the proponents of the National Party of Azerbaijan take their roots from foreign states. For example, one of the main occupants of Baku, Dunsterforce was operating under the British

¹²⁷ T. Swietochowski. *op. cit.* p. 129.

¹²⁸ G. H. Fox. Ukraine Insta-Symposium: Intervention in the Ukraine by Invitation. Accessible at: <http://opiniojuris.org/2014/03/10/ukraine-insta-symposium-intervention-ukraine-invitation/> (28.11.2018)

¹²⁹ T. Swietochowski. *op. cit.* pp. 130-131.

commander and state; Red Army belonged to the Russian Soviet Federative Socialist Republic, and Dashnaktsutyun was an Armenian nationalist and socialist political party founded in Tiflis and Russian Empire. Consequently, the situation rather was about foreign occupation, than the civil war.

3.3. The Requisite Official

It is clear that not everyone can give consent on behalf of the State or the government. One must be established as a requisite official with the capacity to represent the government. Firstly, we must determine, who has the authority to consent on behalf of the government. As there are different approaches, one, for example, supports the contextual approach according to which different officials or agencies may have authority in different contexts.

Not any regime can be accepted as legitimate. For example, rebels or the opposition to a state's government, cannot give an authorization since they are incapable of speaking on behalf of the state. This principle was also proclaimed in the Nicaragua case in ICJ.¹³⁰

Article 7 (2) of the Vienna Convention on the Law of Treaties states:

In virtue of their functions and without having to produce full powers, the following are considered as representing their state:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty.¹³¹

As the Vienna Convention on the Law of Treaties implies that the officials who are considered to represent a state such as the heads of state, heads of the government and ministers of foreign affairs are considered as representing their state in performing all acts relating to the treaty, it is assumed that one of these officials can send out invitations based on the treaty on behalf of the government.

¹³⁰ ICJ. Nicaragua v. United States of America. 1986. Accessible at: <https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> (29.10.2018)

¹³¹ Vienna Convention on the Law of Treaties 1969, Article 7(2). San Francisco 26.06.1945, e.i.f. 24.10.1945

When we come back to the case of Azerbaijan, the official who gave out the consent was the Minister of Foreign Affairs of the ADR Mehmed Hasan Hacinski. He made an official request to the Minister of Justice and the head of the Ottoman delegation in Batum Halil Bey to liberate the country and rescue a civilian population in Baku, on June the 2nd based on the treaty signed between two states.¹³² If we analyze it in the context of the previous paragraph, the Minister of Foreign Affairs is one of the mentioned officials who would have the capacity and the authority to represent the state in all acts relating to the treaty. Hence, there is no doubt on whether the invitation was sent out by a requisite official.

3.4. The Validity of the Consent

The doctrine of the intervention upon invitation is not to be found in a single legal document. It is possible to imply to the elements of the consent, which are included in the commentary of the ILC. In this subchapter, the valid consent as a basis for the legality of an intervention will be analyzed.

As it is evident, a state is a nonphysical juridical entity, and incapable to give consent. Thus, it is the government representatives and state officials acting on behalf of the State who are legally capable of giving consent.

One of the aspects of an analysis whether the Ottoman intervention was legal under international law is the validity of a consent given in order to send an official invitation to the State. Article 20, para. 4 and 6 of the ILC's Report of the session A/56/10 read as follows:

‘In order to preclude wrongfulness, consent dispensing with the performance of an obligation in a particular case must be “valid”. Issues include whether the agent or person who gave the consent was authorized to do so on behalf of the State, or whether the consent was vitiated by coercion or some other factor.

¹³² M. Gasimov. Baku'nun Kurtarılması Uğruna Turk Diplomasisinin Mücadelesi: 1918 yılı. Ilkbahar 2001, p. 23. Accessible: <http://www.21yyte.org/assets/uploads/files/018-55%20musa.PDF> (24.11.2018)

Certain modalities need to be observed for consent to be considered valid. Consent must be freely given and established. It must be expressed by the State rather than merely presumed on the basis that the State would have consented if it had been asked'.¹³³

Thus, under international law, consent must be accurate, transparent and based on the voluntary intention of the state. Hence, the preconditions that can destroy external validity could be issues like when the consent is an expression of external coercion or other circumstances that negate the possibility to consent genuinely; or whether the genuine expression of consent even did not take place.

The issue about the authorization of a person to act on behalf of the State was discussed in the previous subchapter 'Requisite Official' and determined that the persons who sent an official invitation to the Ottoman State were authorized for that action. Clear expression by State officials about the necessity to invite the Ottoman State to intervene to the country was voiced during one of the sessions of the National Council of Azerbaijan. For example, Minister of Finance Nasib Yusifbeyli expressed his thoughts about the issue as follows:

'The time to ask for help on behalf of the nation from the Ottoman Government based on the has already come!'¹³⁴

Also, there is no evidence supporting the fact of the existence of coercion or circumstances negating a genuine expression of consent. The actual expressions and discussion about the necessity to ask the Ottoman Army for assistance on behalf of the nation in order to restore peace and security in the country and non-existence of the facts that the state officials were forced to send an invitation to the Ottoman Empire contributes to determination that the consent given in one of the sessions of the National Council was valid under international law.

¹³³ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries. Yearbook of the International Law Commission 2001, vol. II. p. 73. Accessible at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (29.11.2018)

¹³⁴ S. Yel. *op. cit.* p. 568.

3.5. Treaty-based Invitation

It has become clear throughout history, that some states, in order to survive, need the assistance of other states and organizations. Without external help, they might not be able to survive themselves. Many states have negotiated treaties authorizing external enforcement of domestic issues (e.g. Bosnia, Cambodia, Georgia¹³⁵). Still, there are different approaches when it comes to treaty-based interventions.

Firstly, some argue that inherent sovereignty entails the right to create such rights and obligations by a treaty. The second approach derives from *jus cogens* approach of sovereignty, i.e. an agreement that gives one state the right to enter into internal matters of another state forcibly is not in correlation with peremptory norms of international law and thus, is *ab initio* void.¹³⁶ As such treaties carry a substantial potential for abuse of power, the author is of the opinion that such treaties ought not to give more right for a country to forcibly interfere. A state should give the consent freely and genuinely in every particular situation; thus a treaty would give broader and abstract rights. To avoid coercive interventions, strict and coherent rules must be observed.

Also, it is important to note that treaty-based agreements do not give stronger validity of legitimacy on the consent part since these are contractual agreements, where the 'mild' coercion on the form of *pacta sunt servanda* would apply,¹³⁷ thus possibly negating the genuine and free consent in the situation.

In our case, suggestions and advice of Ottoman Government officials helped Azerbaijan to declare independence from the Transcaucasian Commissariat in May 1918. However, Azerbaijan needed help in order to continue its independence and liberate the capital Baku from occupation. He had to ask for assistance and support from the Ottoman Empire. According to the Treaty of Batum signed between two countries on 4 June 1918, Azerbaijan not only retained

¹³⁵ D. Wippman. Treaty-Based Intervention: Who Can Say No? Cornell Law School. p. 608.

Accessible at: <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4871&context=uclrev> (28.11.2018)

¹³⁶ *Ibid.*, p. 610.

¹³⁷ E. Lieblich. *op. cit.* p. 25.

all its territory but under Article IV of the treaty received the promise of Ottoman military assistance for restoration of security and order.¹³⁸

The terms of the agreement are as follows:

Article 1: The peace and friendship between Azerbaijan and Ottoman Empire will always long.

Article 2: The borders between Azerbaijan, Turkey, Georgia and Armenia are determined. The broad border between Azerbaijan and Ottoman Empire is established.

Article 3: The dispute about the border between Azerbaijan, Georgia and Armenia has to be solved. Ottoman Empire has to be informed about the outcome of the decision.

Article 4: Azerbaijan can ask for military support from the Ottoman Empire if he needs support to protect the peace, stability and security of the country.

Article 5: The responsibility to dispose of armed groups within the country lied upon Azerbaijan.¹³⁹

The agreement was signed by the commander of the Eastern Army Group Vehib Pasha from the Ottoman side and Minister of Foreign Affairs of Azerbaijan Mehmed Hasan Hacinski and the President of Azerbaijani National Council Mammad Amin Rasulzadeh from the Azerbaijani side. Another part of an agreement entailed articles regarding railways in the region, free trade, join of Azerbaijan to the Universal Postal Union, application of terms of the Treaty Brest-Litovsk between states, etc.¹⁴⁰

Firstly, if we interpret the literal meaning of an Article IV of the Treaty, it seems that there is no *prima facie* obligation set to intervene. It clearly states two things, firstly, that Azerbaijan can ask for military support from the Ottoman Empire; and secondly, the conditions when it can ask for support. Thus, the Article can be interpreted as a political agreement entailing that one state can ask for military support from another state in times of need support to protect the peace, stability and security of the country. The word 'can' itself is a rather soft term and does not seem to create a binding obligation there.

¹³⁸ T. Swietochowski. *op. cit.* p. 130.

¹³⁹ S. Yel. *op. cit.* p. 568.

¹⁴⁰ *Ibid.*, p. 568.

Secondly, as the invitation was sent out two days before the treaty was signed – June 2, the situation cannot be interpreted as a treaty-based invitation.¹⁴¹ Thus, it is obvious, that the invitation to intervene was already sent out and then, as the treaty was signed, the legal and political concepts of the intervention of the Ottoman Army to Azerbaijan were based and supported.

¹⁴¹ T. Swietochowski *op. cit.* p. 131.

CONCLUSION

Minister of Justice Halil Bey and Commander of the Ottoman Caucasian Armies Vehib Pasha representing the Ottoman side and Minister of Foreign Affairs Mehmed Hasan Hacinski and President of National Parliament Mehmed Emin Resulzade from the Azerbaijan side signed an agreement on June 4, 1918, covering issues of military, finance and trade. The Fourth Article of this agreement was highly vital because according to this article, Azerbaijan would have the right to request for Ottoman military support in order to guarantee her safety and order. The agreements made with Armenia and Georgia were in the form of the peace agreement, whereas the agreement signed with Azerbaijan was in the form of friendship and cooperation.¹⁴²

The Foreign Minister of the Republic of Azerbaijan, Mehmed Hasan Hacinski, asked the head of the Ottoman delegation in Batum – Halil Bey for help to save Baku and the Muslims living in Baku from atrocity crimes. By using their legal rights, the Musavatists had applied to the Ottoman State for help from the Ottoman Army against the Red Caucasus Army controlled by Bolsheviks from Baku. In the application, it was explained that Azerbaijani people had been put into a difficult position after Russian Revolution, that the Bolshevik bands had been keeping important economic regions in their hands in Baku and Caucasus, that they acted cruelly to the Muslim population, and that all sides of Azerbaijan were surrounded with the enemies. Moreover, they were requesting help from the Ottomans to cleanse Baku from Bolsheviks. The Ottoman State would accept this application and Azerbaijan would be the military base of the Ottoman operation towards Baku.¹⁴³

The purpose of this thesis was to find out whether operations carried out the Islamic Army of the Caucasus in Azerbaijan was legal under international law. The analysis entailed an examination of the customary international law, treaties and scholarly opinions of 20th and 21st centuries. Legality of the Ottoman intervention was examined based on the subjects such as the legitimate government, legitimate basis for the invitation, the requisite official, validity of the consent and treaty-based invitation.

An analysis detected that the intervention implemented by the Ottoman State to Azerbaijan was legal under international law as the Azerbaijani State was legitimate, there was a valid basis for

¹⁴² Y. Murgul. *op. cit.* pp. 67-68.

¹⁴³ *Ibid.*, p. 68.

an intervention such as the occupation by foreign powers, official who sent an invitation was authorized to act on behalf of the state and the expression of the consent was materialized. Coming to the topic of the treaty-based invitation, as it was sent out two days before the Treaty of Batum was signed, the invitation was not based on the treaty. The Treaty only supported the legal concept of the Ottoman intervention.

The reason why the author chose to write about this topic was the fact that the legality of the Ottoman intervention to Azerbaijan is indeterminate in international law. Also, it is not known whether the intervention had humanitarian motives and could be regarded as a humanitarian intervention carried out at the beginning of the 20th century. The origins of humanitarian intervention come from the wars against the infidel nations, especially in the Christian and Muslim worlds.¹⁴⁴ In literature, the Ottoman Empire is mentioned as a state whose actions resulted in humanitarian crises, especially in Balkans. For example, the first possible historical example of a state expressly intervening in the internal affairs of another on the grounds of humanitarian concern was during the Greek War of Independence in the early 19th century, when Britain, France and Russia decisively intervened in a naval engagement at Navarino in 1827 to secure for the Greeks independence from the Ottoman Empire.¹⁴⁵ However, there is almost no literature about Ottoman Empire's intervention to another state's internal affairs with humanitarian motives such as to save human lives and the state's sovereignty.

Another reason was the fact that the humanitarian condition as a corollary of the confrontations started in March 1918 in Azerbaijan is a forgotten history with no determined status yet. It is unclear whether the mentioned humanitarian condition was a humanitarian crisis, civil war or genocide. The thesis juxtaposed the humanitarian condition in Azerbaijan with the characteristics of the humanitarian crisis and did not touch the topics of civil war, war crimes or genocide. The idea that the events are to be considered as a humanitarian crisis is relatively new as this hypothesis is neither mentioned nor known among historians and international lawyers. Because of the similarities between the facts of the humanitarian condition in 1918 Azerbaijan and scholars' opinions about characteristics of a humanitarian crisis and its possible definitions, the author determined that the events taken place in 1918 in Azerbaijan can be regarded as a humanitarian crisis.

¹⁴⁴ S. Chesterman. *op. cit.* pp. 5-25.

¹⁴⁵ The Editors of Encyclopedia Britannica. War of Greek Independence. Accessible at: <https://www.britannica.com/event/War-of-Greek-Independence> (18.11.2018)

The analysis in the second chapter concluded that one of the hypotheses that intervention implemented by the Ottoman State is to be embodied as a humanitarian intervention was not proved to be correct. The first reason is the fact that the real intention of the Ottoman state officials, especially the Minister of War Enver Pasha, who is known with ideas of Turanism, is indeterminate. The second reason is the existence of direct interest of the intervening state in the region as to its border recovery policy.

However, the consequences of intervention are mainly coinciding with the outcomes of the humanitarian intervention. The main rationale is that after the liberation of the country, the Ottoman State left it without taking any benefits, but vice versa, in such a hard time when Turkey was fighting in all its fronts for survival and against its occupants, the Nuri Pasha's Army advanced to Azerbaijan and lost dozens of Turkish soldiers.

As maintained by Yalçın Murgul, the Ottoman Empire obtained no important gains but lost financial resources and human power as a result of this operation. However, the historical actions cannot be evaluated only by comparing the rate of success in the realization of aims. Historical actions may create both intended consequences and unintended ones. Within this framework when the unintended consequences are evaluated, the Baku expedition gave rise to several incidents. At first, further Dashnak atrocity towards Muslims was hindered. The Azerbaijanis also regained their capital city as a result of the Ottoman Army's Caucasian operation, and Baku has become the capital city of the Republic of Azerbaijan since September 1918.¹⁴⁶

However, the victory of the Army of Islam later proved to be hollow from other perspectives. On October 9, 1918, the Ottomans signed the Mudros Armistice with the Allies, an agreement that paved the way for the full British occupation of Baku, the city's demilitarization, and the establishment of Allied control over the petroleum industry and rail transport.¹⁴⁷

¹⁴⁶ Y. Murgul. *op. cit.* p. 219.

¹⁴⁷ C. King. *The Ghost of Freedom: A History of the Caucasus*. Oxford Scholarship Online 2008.

Accessible at:

<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780195177756.001.0001/acprof-9780195177756-chapter-5?print=pdf> (01.12.2018)

ABBREVIATIONS

ADR- Azerbaijan Democratic Republic

ICISS - International Commission on Intervention and State Sovereignty

ICJ – International Court of Justice

ICRC - International Committee of the Red Cross

ICTY – International Criminal Tribunal for the former Yugoslavia

ILC - International Law Commission

MP – Member of Parliament

NATO - The North Atlantic Treaty Organization

UDHR - Universal Declaration of Human Rights

UN - United Nations

UNGA - United Nations General Assembly

UNSC - United Nations Security Council

VCLT - Vienna Convention on the Law of Treaties

WWI - World War I

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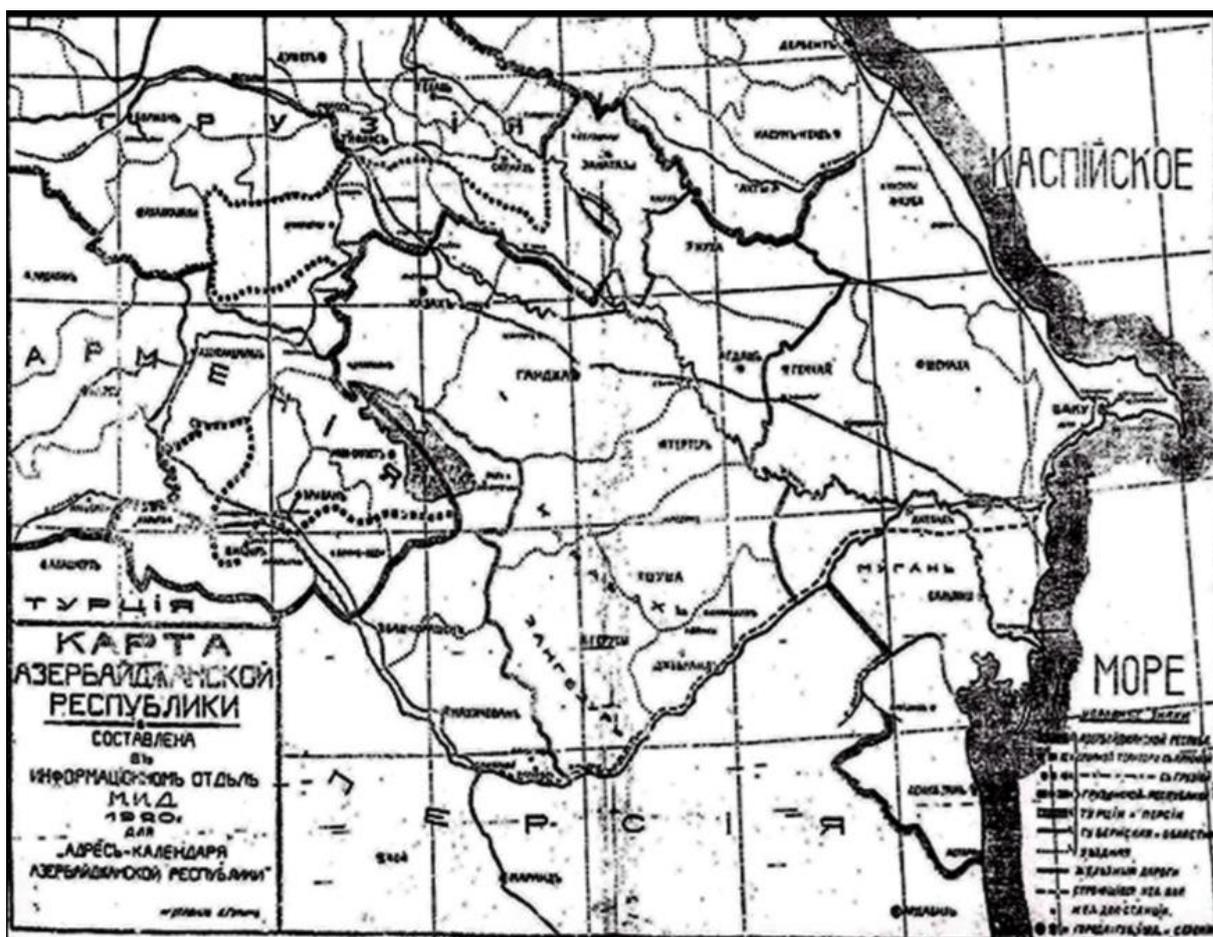
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Appendix 1. Map of the Republic of Azerbaijan (1918-1920)



Excerpt from Y. Murgul's 'Baku Expedition of 1917-1918: A Study of the Ottoman Policy towards the Caucasus'.

Appendix 2: Quba Mass Grave (1918)



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