

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

*Ian Hurd**

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

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

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Table of Contents Is Humanitarian Intervention Legal The Rule Of Law In An

1. Understanding the eBook Is Humanitarian Intervention Legal The Rule Of Law In An
 - The Rise of Digital Reading Is Humanitarian Intervention Legal The Rule Of Law In An
 - Advantages of eBooks Over Traditional Books
2. Identifying Is Humanitarian Intervention Legal The Rule Of Law In An
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Is Humanitarian Intervention Legal The Rule Of Law In An
 - User-Friendly Interface
4. Exploring eBook Recommendations from Is Humanitarian Intervention Legal The Rule Of Law In An
 - Personalized Recommendations
 - Is Humanitarian Intervention Legal The Rule Of Law In An User Reviews and Ratings
 - Is Humanitarian Intervention Legal The Rule Of Law In An and Bestseller Lists
5. Accessing Is Humanitarian Intervention Legal The Rule Of Law In An Free and Paid eBooks
 - Is Humanitarian Intervention Legal The Rule Of Law In An Public Domain eBooks
 - Is Humanitarian Intervention Legal The Rule Of Law In An eBook Subscription Services
 - Is Humanitarian Intervention Legal The Rule Of Law In An Budget-Friendly Options
6. Navigating Is Humanitarian Intervention Legal The Rule Of Law In An eBook Formats
 - ePub, PDF, MOBI, and More
 - Is Humanitarian Intervention Legal The Rule Of Law In An Compatibility with Devices
 - Is Humanitarian Intervention Legal The Rule Of Law In An Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Is Humanitarian Intervention Legal The Rule Of Law In An
 - Highlighting and Note-Taking Is Humanitarian Intervention Legal The Rule Of Law In An
 - Interactive Elements Is Humanitarian Intervention Legal The Rule Of Law In An
8. Staying Engaged with Is Humanitarian Intervention Legal The Rule Of Law In An

- Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Is Humanitarian Intervention Legal The Rule Of Law In An
9. Balancing eBooks and Physical Books Is Humanitarian Intervention Legal The Rule Of Law In An
- Benefits of a Digital Library
 - Creating a Diverse Reading Collection Is Humanitarian Intervention Legal The Rule Of Law In An
10. Overcoming Reading Challenges
- Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Is Humanitarian Intervention Legal The Rule Of Law In An
- Setting Reading Goals Is Humanitarian Intervention Legal The Rule Of Law In An
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Is Humanitarian Intervention Legal The Rule Of Law In An
- Fact-Checking eBook Content of Is Humanitarian Intervention Legal The Rule Of Law In An
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
- Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
- Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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