

Legality of International Intervention in State's Sovereignty: A Critical Global Perspective

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ABSTRACT

Intervention is neither a new phenomenon, nor has the concept of sovereignty ever been absolute or unalterable. In the evolving landscape of global politics, the international system has entered an era marked by persistent conflict. This is often characterized by forcible military intervention in the internal affairs of sovereign states, frequently justified on the grounds of humanitarian crises and the need to ensure global security. Sovereignty, as a fundamental principle of statehood is increasingly threatened. This paper provides a comprehensive global perspective on the challenges, implications, and evolving dynamics of sovereignty in the context of international intervention. It examines the inherent tensions between state sovereignty and the responsibility to protect populations at risk. The concept of sovereignty and its sanctity have continually evolved in response to changing global political realities. Drawing upon theoretical frameworks, the paper explores the evolution of sovereignty norms and the legitimacy of external interventions. It analyzes the effectiveness of international mechanisms such as the United Nations Security Council, regional organizations, and humanitarian interventions in balancing sovereignty with the imperative to address global challenges. Additionally, the paper discusses legal and ethical challenges of interference in State sovereignty in the face of evolving norms of international law and human rights. It seeks to build upon existing literature on landmark instances of transformation in the global distribution of power, analyses the national attitude in traditional power transition paradigms and suggests theoretical strategies to preserve state's identity in the international geo-politics. The authors assess this delicate balance of existing threat to self-determination of victim states coupled with global politics.

Keywords: Sovereignty, International Intervention, Humanitarian, Legality, International Law

INTRODUCTION

Sovereignty of a country resides in its de-jure recognition in the international community and a constitutional status in the form of a legitimate Government. In its external expression, sovereignty refers to State's place in the international order interpreted by its sovereign independence in relation to other states. Sovereignty is widely recognized, but unfortunately the identity is undermined by States' capacity to abuse and terrorize other states.

In the face of increasing global interdependence and the rise of international interventions, sovereignty is being challenged and modified. Originating with the Treaty of Westphalia in 1648, the idea of state sovereignty has gradually developed over time, shaping historical events and affecting how states engage with one another. This treaty marked a significant turning point in international relations as it recognized the principle of territorial integrity and the right of states to govern them without external interference. It established the foundation for the concept of state sovereignty that we know today. Since then, state sovereignty has faced various challenges and transformations. The rise of colonialism and imperialism in the 19th century posed a threat to the sovereignty of many states as they were subjected to foreign rule and exploitation. However, with the wave of decolonization that swept across the world in the 20th century, many countries regained their sovereignty and asserted their independence. The concept of state sovereignty has also been influenced by globalization and the increasing interconnectedness of the world. As states become more interconnected through trade, communication, and technology, their ability to fully exercise sovereignty is being questioned. International organizations and agreements, such as the United Nations and the European Union, have sought to balance state sovereignty with collective decision-making and cooperation.

The present study employs qualitative and doctrinal approach to understand the impact of intervention on sovereignty. To examine legality of humanitarian intervention in the light of recognized international customary practices, doctrine of ‘responsibility to protect’ and other norms, the discussion incorporate some case studies and their analysis.

State Sovereignty

Sovereignty is the backbone of statehood and also is a quintessential principle of international law¹. It is a fundamental principle in international relations that addresses the autonomy and independence of states. It denotes full and autonomous power as regards a territory and all the persons from time to time therein². It is pertinent to note that sovereignty has not been accorded explicit definition³ but its meaning can be construed from various international laws and political science interpretations- a variable concept world over depending on circumstance⁴. Sovereignty originates from the “latin superanus”, originally meaning the equivalent of supreme power⁵. However, in the face of increasing global interdependence and the rise of international interventions, sovereignty is being challenged and modified.⁶

This concept has evolved over time, shaping the course of history and influencing the way nation-states interact with each other. The historical evolution of ‘state sovereignty’ can be traced back to the Treaty of Westphalia in 1648⁷. This treaty marked a significant turning point in international relations as it recognized the principle of ‘territorial integrity’ and the right of states to govern themselves without external interference⁸. It established the foundation for the concept of state sovereignty that we know today. Since then, state sovereignty has faced various challenges and transformations. The rise of colonialism and imperialism in the 19th century posed a threat to the sovereignty of many states as they were subjected to foreign rule and exploitation⁹. The 20th-century decolonization movement led to the emergence of many newly independent states that reasserted their sovereignty.

In the realm of modern geopolitical landscape, interconnectedness of economies and societies has made it difficult for any single nation to address global challenges on its own. In the ever evolving challenges of international relations, States are obliged to respect universal values towards securing democratic principles and humanitarian crisis beyond borders. Rising instances of rise of terrorism, internal conflicts, ethnic intolerance

¹ Ian Brownlie, *Principles of Public International Law* (Oxford University Press) (2008).

² Lassa Oppenheim. *International Law: A Treatise* (Green Longman And Co., 1905).

³ James Crawford, *The Creation Of States In International Law* (Oxford University Press), (2006).

⁴ Hans Kelson, *Principles of International Law* (The Lawbook Exchange, Ltd.) (2003).

⁵ Henry Campbell Black, *Black's Law Dictionary* (West Publishing Co.) (1990).

⁶ Thomas M. Franck, *The Power of Legitimacy Among Nations* (Oxford University Press) (1990).

⁷ Andreas Osiander, *Sovereignty, International Relations, and the Westphalian Myth*, *International Organization*, 55, 251-287 (2001).

⁸ Derek Croxton, *The Peace of Westphalia of 1648 and the Origins of the Sovereign State System.* *The International History Review*, 21(3), 569-591(1999).

⁹ Anghie, Antony, *Imperialism, Sovereignty And The Making Of International Law* (Cambridge University Press) (2005).

and allied transnational challenges (climate change etc.) established the need for collective action and cooperation among states. So, it becomes pertinent to evaluate ‘state dynamics’ in the parameters of “The Peace of Westphalia” which recognized equality states as a principle of modern international law.

Norms and principles around ‘state sovereignty’ have undergone significant changes over the years. From just being a “social contract’ theory and a Leviathan structure, States were seen as autonomous entities with de jure authority in their domestic as well as international affairs. Any attempt of breach of such status quo has been considered grave violation of international law. In the present day complexities of trade and political relations, sovereignty is no longer deemed ‘absolute’ or unlimited. Sovereignty has shifted from a ‘rigid’ and exclusive definition to a more ‘flexible’ and inclusive ideology. From being absolute (unqualified independence) to being ‘interdependent’ (relative sovereignty), the socio-political identity of nation-states is shifting.

Till today, internal sovereignty is a valid hypothesis, but the notion of external sovereignty is often subjected to dynamics of international politics. The traditional 16th century expression of sovereign of Jean Bodin in his work “Les Six Livres de République” although is absolute and perpetual, the threats and challenges of current times are re-defining sovereignty.¹⁰

Forms of Intervention

As a measure of diplomacy, nation-states envision to rule over world politics through facilitating balance of power. Nation-states since their evolution have tried to follow principles of good neighborliness and non-interference as a mark of respect towards the sovereign identity of an independent nation. However with the World War-II, the politics of power changed the course of international relations and concept of ‘intervention’ took shape as a popular weapon of dominance. Experts like Oppenheim observe that, “non-intervention is essential to ensure sovereignty, territorial integrity and political independence.”

It is in the principle of ‘non-intervention’ that, ‘intervention’ was re-shaped and modified. It developed as legal principle in the works of Vattel in 1758 titled “Le droit des gens ou principes de la loi naturelle” to be re-iterated later in 18th century by Kant in his work *Zum ewigen Frieden*.¹¹ As aptly pointed out by Hans Kelson, international law does not prohibit intervention in all circumstances and when one state interferes in another state’s affairs through force, then as a reaction international laws permits intervention. This dichotomy breeds confusion over the modes and procedures of intervention.

Intervention can have legal, political, and moral dimension. Also, instances of lawful and unlawful interventions are many. But, interventions especially on humanitarian grounds include diverse arguments and justifications like self-defense, protection of minority rights or even their own nationals. However, these in turn have been long associated with the doctrine of “Just War” as conceptualized by the work of St. Thomas Aquinas.¹²

Intervention per se is perceived to use “force”, yet there could be three distinct approaches to intervention. Internal Intervention resorts to interference by one state in the internal affairs of another state, either for protection of legitimate Government of insurgents e.g. intervention by People’s Republic of China (PRC) in the affairs of Republic of Korea in 1950 and role of Russian forces in the uprising of Hungarian People in 1956. On the other hand, external intervention tantamount to declaration of war wherein one state intervenes in the hostile

¹⁰ M.P. Ferreira-Snyman, *The evolution of state sovereignty: A Historical Overview*, *Fundamina: A Journal of Legal History*, 12(2), 1-28(2006).

¹¹ A. C Armstrong, *Kant’s Philosophy of Peace and War*. *The Journal of Philosophy*, 28(8), 197–204(1937).

¹² J Boyle, *Traditional Just War Theory And Humanitarian Intervention*. *Nomos*, 47, 31–57 (2006).

relation of other nation-states, like the entry of Italy in WW-II to support Germany against Great Britain¹³. Another facet of intervention is punitive in nature wherein the formalities although fall short of war, but takes the form of reprisal and retaliation.¹⁴

International intervention is potentially conducted either through armed/military or non-military means. It must be understood that, a wider characterization of intervention covers; the tradition of non-violent intervention as has been observed in case of Bosnia and Herzegovina involving by volunteering efforts by civilians in engineering resolutions to social conflict.

Other popular forms of intervention involve “humanitarian interventions” with use of military/ armed forces to protect civilians from mass atrocities, like genocide or ethnic cleansing. These interventions are often undertaken by coalitions of countries or under the authorization of the United Nations (UN) and are driven by moral imperative to protect human rights and prevent egregious violations.¹⁵

Other form of interference is “invitational intervention”, which is a request by lawful Government to intervene in its internal matters. Intervention of USA in Vietnam although was criticized to have been sponsored, aided and promoted by the USA, it is also called as a justifiable aid, not illegal¹⁶. Here, it invites a contentious issue, whether consent may be recognized as a valid basis for legality of intervention? On this experts observe that, the consent must be legal and can be granted by legal representative of the state alone. Moreover, consent to intervene accorded by a government in civil-conflict, looks unreliable because of the very fact that the identity of the representative itself is in question a doubt, hence internal rift¹⁷.”

India’s role in Sri Lanka’s struggle with the separatist “Liberation Tigers of Tamil Eelam (LTTE)” was different and often termed as lawful but, international perceptions depict otherwise.¹⁸ While, India was criticized to use armed forces against the norm of customary international law and the UN Charter, some supported this strategy of conflict management as “essentially a bilateral possibility” in absence of any multilateral security arrangement to maintain balance of power in the Asian region¹⁹. However, in 1989, there was a joint Communiqué announced on resumption of withdrawal of the Indian Peace Keeping Force (IPKF) from Sri Lanka.

¹³ M.P. Tondon, *Public International Law* 105 (19th Ed. 2024).

¹⁴ Malcolm N. Shaw, *International Law (South Asian Edition)* (Cambridge University Press)(2022)

¹⁵ Kenneth Watkin, *Humanitarian Intervention and the Responsibility to Protect: Where it Stands in 2020*. *SW. J. INT’L L.*, 26, 213 (2020).

¹⁶ R.A Falk, *International Law and the United States Role in the Viet Nam War*, *YALE LJ*, 75, 1122(1966).

¹⁷ Thomas & Thoma, *Non-Intervention* 93-94 (1956), in Brian K. Landsberg, *The United States in Vietnam: A Case Study in the Law of Intervention*, 50 *CAL. L. REV.* 515 (1962).

¹⁸ R. Wijesinha, *India and the Settlement of the Sri Lankan Crisis*, *Indian Foreign Affairs Journal*, 2(3), 31–46 (2007).

¹⁹ Kanti Bajpai, “Managing Conflict in South Asia,” in *Regional Conflict Management*, ed. Paul F. Diehl and Joseph Lepgold (Lanham: Rowman & Littlefield, 2003), p. 212.

All forms of intervention, be it on humanitarian purpose, is clearly ousted from purview of any forcible military action by external agent in the relevant political community with the predominant purpose of preventing, reducing or halting an ongoing or impending grievous suffering or loss of life.”²⁰

It is thus, an observed practice that military interventions could be either through peace keeping operations or full scale invasion non-military interventions usually appear in form of humanitarian assistance, economic or diplomatic sanctions.

Legality of Intervention

Legal frameworks provide the basis for justifying interventions by establishing a clear set of rules and guidelines which outline the expected outcomes and impacts. Justifications for interventions, on the other hand, provide the rationale for why these interventions are necessary and why they should be carried out within the bounds of the law.

International Framework

The legal foundation for interference in state’s sovereignty are evaluated through existing international customary law, norms of jus cogens, mandate of the UN and affirmations of the ICJ.

Intervention is otherwise equated with “use of force”, however subject to its purpose and intention. The broader interpretation of ‘intervention’ not only forbids any direct military force, but also indirect form of interference through diplomatic means. This dictate is an understanding under Article 2(4) of the UN charter which provides that, “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.” Also, for ‘use of force’ u/Article 2(4), there is no de minimis threshold, but that gravity of it is relevant to ascertain particular intent (either coercive or hostile).

The roots of this ‘non-interference’ ideology, was primarily founded by the United States declaration after the World War-I that any change in state borders achieved by forcible means would not be recognized by it. At the end of the War, the Covenant of the “League of Nations” (Article 15(8)) and the “Montevideo Convention on Rights and Duties of States”(Article 11) of 1933 were drafted to prohibit “interference with the freedom, the sovereignty or other internal affairs, or the processes of the Governments of other nations.” It is only after the Second World War that the principle of “non-intervention” adapted to a different strategy called as “indirect intervention” through political, economic, and diplomatic means. Also, the General Assembly Resolution 2625(XXV) of 24th October, 1970 warned nations states from using any means to obtain subordination of another state’s sovereign rights and any advantages. The resolution entitled “Declaration on Principles of international law concerning Friendly relations and Co-operation among States” mandated that, “no state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of regime of another state, or interfere in civil strife in another states” Even for the UN to intervene, it must act within the limits of Article 2(7), which asserts that UN charter does not authorize any intervention in matters which are essentially within domestic jurisdiction of any state. The general prohibition has some exceptions e.g.; a) self-defense; b) collective security system; and c) authorization of the United Nations Security Council (UNSC). The element of ‘self-defense’ and ‘self-preservation’ constitute a valid right of member state in case of armed attack under Article 51. But, such intervention shall be immediately reported to the UNSC. Moreover, intervention is broadly viewed as “legitimate” when it is authorized by the UNSC. Further, under Article 24, it is obligated to maintain international peace and security in accordance with the purposes and principles of the UN. And at the same time, can authorize ‘use of force’, where it perceives any threat. In other words, contemporary provision under chapter VII ensures that ‘non-intervention’ does not prejudice enforcement of measures under Chapter VII which include;

- a) complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations (Article 41).

²⁰ Pattison, J. *Humanitarian Intervention and the Responsibility to Protect* (Oxford, 2010) 28

b) demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations (Article 42).

As per Article 39, the Security Council has exclusive authority to determine existence of any threat to the peace, breach of peace, or act of aggression and suggest measures and sanctions which shall be imposed under Articles 41 and 42, so to maintain or restore international peace and security.

While the Council is mandated to submit special reports to the General Assembly as per Article 24 (3) when necessary, it however seems that there has not been any virtual referral by the SC especially since 1991.²¹ Also, as much as the UNSC reserves the potential to successfully reserve conflicting state's sovereignty, the misuse of Veto (pen-holding) by the 'Permanent Five' robbed off the peace across many regions. The 2023 failure of UNSC (due to Russian Veto) to renew a aid delivery program for Syria halted a nine-month extension of assistance to North Syria which left 4.1 million people with almost no access to food, water and medicine.²²

In addition to the UN Charter, humanitarian intervention is guided by the principles enumerated under the Geneva Conventions of 1949, two Additional Protocols of 1977 and the Additional Protocol of 2005 addressed as "Humanitarian Law of Armed Conflicts." However, caution must be observed in not invoking the old concept of "just war." Other international treaties may also prove relevant to cover issues of intervention e.g. the Genocide Convention (1948) which has criminalized genocide and implicitly permitted use of intervention against genocidal regimes. Under Article I, it states, "the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish."²³

Amidst these permissive guidelines for intervention, fundamental questions emerge whether state sovereignty is indisputable even in violations of human rights? Certainly 'No.' Hence, the UN members endorsed doctrine of "Responsibility to Protect" in the year 2005 for the first time which asserts that, when states fail to protect its population from genocide, war crimes, ethnic cleansing etc., then there is a collective responsibility on the member states to intervene".²⁴ This draws inspiration from Francis Deng's idea of "State sovereignty as a responsibility."

The development of R2P can be traced back to the end of cold wars and when intra-state wars were on the rise threatening international peace and security. Moreover, the reluctance of states to intervene in 'Rwandan genocide' (1994) which resulted in deaths of 800,000 Tutsis at the hand of violent Hutus glorified the failure of UN Charter and International Law²⁵. It was further fuelled by legal implications of NATO's unsanctioned intervention in Kosovo in 1999 which ultimately prompted the then Secretary General Kofi Annan towards setting up advocacy for new rules in support of interventions to prevent and/or halt human rights violations. This led to the launch of the International Commission for Intervention and State Sovereignty (ICISS).²⁶ Criticizing

²¹ Peters, Anne, 'Article 24', in Bruno Simma, and others (eds), Functions and Powers, in Bruno Simma, and others (eds), The Charter of the United Nations: A Commentary, 4th Edition (2024; online edn, Oxford Law Pro), <https://doi.org/10.1093/law/9780192864536.003.0035>

²² Cohen, M., Croome, A., & Nalbandian, E. (2024). Vetoing Humanity: How a few powerful nations hijacked global peace and why reform is needed at the UN Security Council.

²³ Ian Hurd, *Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World*, Ethics & International Affairs, 25(3), 293-313(2011).

²⁴ R Barber, *Reflections on the three pillars of the responsibility to protect, and a possible alternative approach*. AUSTRALIAN JOURNAL OF INTERNATIONAL AFFAIRS, 77(4), 415-422 (2023).

²⁵ OAU, International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events. (2000), *Rwanda: the preventable genocide*, IPEP.

²⁶ Rotmann, P., Kurtz, G., & Brockmeier, S. (2014). Major powers and the contested evolution of a responsibility to protect. Conflict, Security & Development, 14(4), 355-377.

these arguments in support of intervention, Kofi Annan in his 2000 Millennium Report²⁷ questions: “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?”²⁸ Further, he urged that member nations must resolve to find common solutions in upholding principles of the U.N Charter to act in defense of common humanity. As a clarion call, defense of national sovereignty should not be used as a shield for violations of people's rights, and the Security Council should not hesitate to consider armed intervention in cases of mass murder.²⁹

Furthermore, regional organizations may also have their own legal frameworks governing international intervention. For example, the African Union (AU) has established the principle of non-indifference, which allows for intervention in cases of genocide, war crimes, and crimes against humanity within its member states.³⁰ Similarly, the North Atlantic Treaty Organization (NATO) has its own legal framework that governs its interventions, including collective defense measures under Article 5 of the NATO Treaty³¹.

By analyzing these frameworks and justifications, policymakers and stakeholders can ensure that interventions are carried out in a legal and justified manner, leading to more informed decision-making and better outcomes for society as a whole.

International Court of Justice

Intervention is measured with its legal and moral parameters. But, the ultimate parameter to assess illegality of intervention is “use of force.” It is thus evident that, no form of intervention is permissible under international law. From the perspectives of Realists, intervention could result in geostrategic or political advantage for intervening states. On the other hand, neoliberals might emphasize economic or trade advantages for interveners.³²

The question of legality, legitimacy and its utility therefore, could vary on two variables; a) the intrusiveness of the intervention and; b) locus of jurisdiction over its target³³. It is obvious that, the Charter explicitly forbids the use of force “against the territorial integrity or political independence of any state”, it is left for the International Court of Justice (ICJ) to determine the extent of violation of sovereignty and impose sanctions.

In other words, the intervention could only be justified only on grounds of self-defense(against non-state actors), the traditional definition of which arose for the first time in Caroline case and later re-affirmed in 1949 in the Corfu Channel case. The interpretation of ‘self-defense’ was changed from being a ‘political excuse’ to a ‘legal doctrine’ and it was upheld that, “necessity of self-defense should be instant, overwhelming and leaving no choice of means and no moment for deliberation.” Further, it was asserted that, while respect for “territorial sovereignty” was asserted to be of utmost importance, simultaneously it was looked upon as a principle which may be violated upon a “strong, overpowering necessity.

²⁷ Gulati, J., & Khosa, I. (2013). Humanitarian Intervention: To Protect State Sovereignty. *Denver Journal of International Law & Policy*, 41(3), 4.

²⁸ Welsh, J., Thielking, C., & MacFarlane, S. N. (2002). The responsibility to protect: assessing the report of the International Commission on Intervention and State Sovereignty. *International Journal*, 57(4), 489-512.

²⁹ UN Press Release(GA/9704), “We the Peoples: The Role of the United Nations in the 21st Century,” April 2000.

³⁰ The Roles of the UN and the AU in The Operationalization of R2P in Africa: Towards Legal and Institutional Complementarity

³¹ NATO, Operations and missions: past and present, 10 July, 2023, https://www.nato.int/cps/en/natohq/topics_52060.htm

³² Martha Finnemore, Constructing Norms of Humanitarian Intervention, in *The Culture of National Security: Norms and Identity in World Politics*,319-325.

In Corfu Channel Case³⁴ a claim of right to intervention by U.K. on the instances of self-protection” or “self-help” by launching “Operation Retail” (mine sweeping activities) was rejected. The Court envisioned great threat on the use of “intervention” as a policy of force by powerful states, and observed that, it might easily lead to perverting the administration of international justice.³⁵ Also with growing times, it became evident that, although ‘self-defense’ is legitimate under customary law and Article 51 of the Charter, it calls for characterization of the threat and nature of response, for it to be proportionate. Although, Caroline case remained critical, it would be safe to conclude that the concept of self-defense extends to a response to an attack which is reasonably and evidentially perceived to be imminent.

It is only in the verdict of ICJ in Nicaragua v. United States of America³⁶ that, failure to follow principles of ‘non-intervention’ against the Republic of Nicaragua is a clear breach of its obligation under the “Treaty of Friendship, Commerce and Navigation”(Article XIX) between the United States of America and the Republic of Nicaragua as well their customary international law. On the issue whether, the USA by training, equipping, arming, financing, and supplying the contra rebels, had violated its obligation not to intervene into domestic affairs of Nicaragua?, the court categorically observed that, an intervention is prohibited, if it is exclusively bearing on matters where each State is permitted to decide freely, by virtue of principles of State sovereignty e.g. formulation of foreign policy etc. It is considered wrongful, when methods of coercion or force are used with regard to internal socio-economic and political affairs. In addition to usual criteria of “self-defense”, it emphasized on additional requirement of “collective self-defense”, having mandatory elements (pre-conditions) i.e. a) the ‘victim’ state must declare itself to be the victim of an armed attack; and b) the ‘victim’ state must request military aid in response³⁷. Hence, the USA was held guilty of violating the sovereignty of Republic of Nicaragua and was made liable to pay reparations for aiding e military and paramilitary activities in and against Nicaragua.

Later, in Democratic Republic of the Congo v. Uganda³⁸, the ICJ observed that, Uganda has breached the principles of non-intervention as well as human rights law by occupying the territory of Ituri and actively engaging military, economic support to irregular forces. Rejecting Uganda’s argument of self-defense, the ICJ declared its actions as unlawful military intervention declaring it “internationally responsible” for acts of killing and torture of civilian population, including plundering and exploitation. It re-iterated the settled norm that, where such an unlawful military intervention reaches a certain magnitude and duration; it would amount to a grave violation of the prohibition on the use of force expressed in Article 2(4) of the Charter.

On the viability of application of the Convention on “Prevention and Punishment of the Crime of Genocide, 2007” in the case of Bosnia & Herzegovina v. Serbia & Montenegro³⁹ the ICJ recognized that, states are legally obliged to take action to prevent acts of genocide⁴⁰ and this responsibility arises from the effect of Article 1 of the Convention which has evolved to be customary norm. Further, this responsibility is “normative and compelling” and extends beyond the responsibilities of competent UN agencies with due respect to guidelines of the Charter and decisions of other competent agencies. At the same time, it categorically stated that, “the

³⁴ [1949] ICJ Reports 4, 29

³⁵ Just War Or Just Peace? Humanitarian intervention and international law

³⁶ [1986] ICJ Rep 108

³⁷ Green, J. A. (2017). The ‘additional’ criteria for collective self-defence: request but not declaration. *Journal on the Use of Force and International Law*, 4(1), 4–13. <https://doi.org/10.1080/20531702.2017.1325992>

³⁸ ICJ Reports,2005, p.168.

³⁹ 2007 I.C.J. 43, 427 (Feb. 26).

⁴⁰ Matthew C. Cooper, A Note to States Defending Humanitarian Intervention: Examining Viable Arguments before the International Court of Justice, 40 *Denv. J. Int'l L. & Pol'y* 167 (2011).

decision does not, in this case, purport to establish a general jurisprudence applicable to all cases where a treaty instrument, or other binding legal norm, includes an obligation for States to prevent certain acts”⁴¹.

In the present day, intervention is limited to ‘self-defense’ and not self-preservation and in absence of any express mention of ‘self-preservation’ under Article 52, “self-defense” alone remains valid ground of intervention as per the continuing mandate of Article 51 of the UN Charter making the right of intervention still available.

Case Studies

The world community has a history of interdependence as well as interventions. At the same time, instances of military and non-military interference in sovereign affairs is on the rise and executed on different propositions and premises. Thus, it is often met with criticism and advocacy for formulation of ‘universal’ guideline for intervention. In the absence of strict measures by the United Nations, the world witnessed grave violations of human rights in the post war times both as internal civil strife and external conflicts.

Of all instances of intervention, case studies of Kosovo and Iraq serve as reminders that international intervention is a complex issue that requires careful consideration of both moral imperatives and respect for state sovereignty;

- a) **NATOs’ Intervention in Kosovo (1999)** : In response to the ethnic cleansing and human rights abuses committed by the Serbian government against Albanians in Kosovo, NATO launched an 78 day Air-campaign against Yugoslavia to stop the ethnic cleansing of Albanians by the Serbian forces.⁴² The intervention led under the belief that military action was necessary to protect the civilian population, was met with severe criticism for illegality due to lack of authorization of the Security Council. But, despite initial criticism, it is widely regarded as successful in achieving its objectives of stopping the violence and establishing an UN-led administration in Kosovo.
- b) **NATO’s intervention in Libya (2011)**: During the Libyan Civil War in 2011, the country witnessed outbreak of protests and armed conflict against the Gaddafi regime. NATO launched a military campaign (authorized by UN Security Council’s Resolution No.1973) with the aim of protecting civilians and supporting rebels. The intervention although led to the overthrow of Gaddafi's regime, but it was followed by a prolonged period of instability and conflict in the country.⁴³

Apart from an Agency’s intervention, states either in their individual capacity or collectively resorted to intervention. In the 19th century, it was largely considered lawful to use force to protect nations and property situated abroad. The military intervention of USA over Iraq in 2003 exemplifies such need when it launched the strategic mission with the support of coalition of countries, based on the belief that the country possessed weapons of mass destruction (WMDs).⁴⁴ This intervention had a profound impact on state sovereignty as it resulted in the overthrow of Saddam Hussein's regime and the subsequent occupation of Iraq by foreign forces. The invasion of Iraq sparked intense debate over the legitimacy and legality of international intervention, with critics arguing that it violated the principles of state sovereignty and non-interference.⁴⁵

Another variant of principle of humanitarian variant is the contention that, intervention in order to restore democracy is permitted. But this proposition too did not receive support under the UN charter. The USA’s

⁴¹ Zimmermann, Andreas, 'The Obligation to Prevent Genocide: Towards a General Responsibility to Protect?', in Ulrich Fastenrath, and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (Oxford, 2011; online edn, Oxford Academic, 1 May 2011), <https://doi.org/10.1093/acprof:oso/9780199588817.003.0040>

⁴² T Judah, *Kosovo: War And Revenge*. New Haven, Ct: Yale University Press (2002).

⁴³ CS Chivvis & J Martini, *Libya After Qaddafi: lessons and implications for the future*. Rand Corporation. 7–34(2014).

⁴⁴ F Pratto & A.R Pearson (2007). [Review of *Dying to Win: The Strategic Logic of Suicide Terrorism; Dying to Kill: The Allure of Suicide Terror; When States Kill: Latin America, the U.S., and Technologies of Terror*, by R. A. Pape, M. Bloom, C. Menjivar, & N. Rodríguez]. *POLITICAL PSYCHOLOGY*, 28(2), 262–266. <http://www.jstor.org/stable/20447037>

⁴⁵ Niom Chomsky, *Hegemony Or Survival: America's Quest For Global Dominance*, Metropolitan Books (New York, 2004).

intervention in Panama (1989) set on the premises that, interference by USA is a form of assistance to the lawful and democratically elected government in Panama, did not acquire legitimacy.

Other instances of intervention which surpassed all set Guidelines and moral principles of world peace, is the Syrian Crisis. The case of Syria presents a more complex and ongoing international intervention. The multifaceted conflict in Syria began in 2011 as a result of protests of belligerents against President Bashar al-Assad, which escalated into a full-scale civil war with multiple actors involved. The superpowers USA, U.K and France support the Syrian opposition, Russia supported Al Basad's regime. While, China rejected the idea of intervention, USA's involvement in 2014 was not until, use of chemical weapons by the Assad regime. Critics, however criticized USA's unilateral intervention (in absence of SC's approval) into the Syrian crisis as an inherent opportunity for maximizing energy resources⁴⁶ as well as a stepping stone for eliminating Russian (supported Al Basad's regime) allies in the Middle East.⁴⁷ Syria presented a scenario of international proxy wars⁴⁸ (between opposing powers of Saudi Arabia, Iran, the United States, and the Russian Federation) and witnessed weakened interventionism. Intervention took various forms, including military support from different actors, airstrikes against ISIS, and diplomatic efforts to find a political solution. Although it remained the most documented wards with egregious citizen journalist, the powerful members of the U.N. Security Council chose to abuse 'veto' and supported the Syrian opposition. Such uncoordinated international and regional interventions fuelled more violence. Example of Syrian crisis flouts the principle of national sovereignty, independence and equality of nations. These failures did not alleviate the humanitarian crisis, but rather made Syria remain volatile to continue to have devastating consequences for its people. This was the first time that an attempt of multilateral humanitarian intervention failed due to the weak structure of the Security Council and the U.N.⁴⁹ Further, experts are of the view of the "Responsibility to protect" doctrine which was primarily, championed by the developed nations of the West in the 1990s stood shattered and devastated in the matters of Syrian conflict.⁵⁰

In the recent violations of the U.N Charter, Russia's illegal war of aggression against Ukraine in 2022 has called for intervention from the U.N. General Assembly reprimanding Russia for violating the territorial integrity of Ukraine⁵¹. So, any form of intervention must be carried out in consonance with norms of international law including principles of necessity, proportionality, and legality.

CONCLUSION

The constant tension between sovereignty, permissible use of force, and the prevention of human rights violations is unavoidable. In the evolving world order, where there is power politics by veto powers in contrast to weakened international organizations, 'intervention' is bound to change its definition to be inevitable as well as 'new' every time there is interference. Criticism on grounds of legality in case of intervention is a popular subject of varying perceptions and interpretation. It not only serves as a political-strategy of dominance, but, raises speculations about their long-term impact on the independent status and sovereign identity of nations. While, military interventions (Kosovo, Libya, and Syria etc.) alone may not always lead to sustainable solutions

⁴⁶ A Alamailes & S Yurtsever, *Syrian crisis in scope of the US-Russian competition in Middle East*. International Journal of Entrepreneurship and Management Inquiries, 2(3), 33–48(2018).

⁴⁷ O.E Ogunnowo, & F. Chidozie, *International Law and Humanitarian Intervention in the Syrian Civil War: The Role of the United States*, SAGE OPEN 10(2) (2020).

⁴⁸ F Balanche, *Sectarianism in Syria's civil war*. The Washington Institute for Near East Policy (15th February, 2018).

⁴⁹ Philippe Droz-Vincent, *The renewed 'struggle for Syria': From the war 'in' Syria to the war 'over' Syria*. THE INTERNATIONAL SPECTATOR, 55(3), 115-131(2020).

⁵⁰ Diana Arlett, *Responsibility to Protect in Syria Why was it never enforced?* Economy and Politics (9 November 2023). <https://www.meer.com/en/75628-responsibility-to-protect-in-syria>

⁵¹ Heather Williams, et.al, *Russian Nuclear Calibration in the War in Ukraine*, CSIS, (February 23, 2024). <https://www.csis.org/analysis/russian-nuclear-calibration-war-ukraine>

or lasting peace, political negotiations, diplomacy and long-term reconstruction efforts are often necessary to address the root causes of conflicts to ensure stability in post-intervention scenarios. Instances like the Nicaragua Case significantly highlighted long-range implications for both the disputant states as well as the Court. It further evidences of greater difficulty in true separation between international law and international politics. It is an observed phenomenon that, prior to the UN Charter, international community accepted independent humanitarian intervention. However, only upon the establishment of the Charter that the nation-states resolved to refrain from the “use of force” and believed in the UN Security Council for guiding collective actions of member states and representation on their behalf. This expectation although does not often materialize owing to individualist interests of countries and power of veto, yet it continues to be a common practice against settled norms.

Thus, in the face of complex and multitude of international relations, it is difficult to distinguish between intervention, and pure and simple interference which does not fall under the non-intervention principle. While, it is justified as an inevitable response to protect vulnerable populations and uphold universal values, at the same time, it could be seen as violation of a state's right to ‘self-determination’ and an encroachment on its sovereignty. History of civil wars has revealed indifferent faces of humanity when agencies and nations chose to remain idle and unresponsive to requests for intervention, undermining the universality of human rights. The commitment to human rights seems to supersede the moral principles of ‘non-interference.’

Also, that the instrumentality of court although is the chief interpreter of international norms, is a delicate institution. Being a component of ‘international law’ which itself is a moldable template, the ICJ tend to inherit its non-specificity and lacks specific powers for "enforcement" outside the purview of Article 94, which only could urge parties(member-nations) to comply with the decision of ICJ and in default, a mere recommendation could be sought from the Security Council. Moreover, overall pressures of conflicting blocks, veto powers and willful attitude of noncompliant States conspire to make it vulnerable to failure. But, in the absence of a supreme international authority and collective consciousness, Sovereignty is in constant flux of being violated by powerful states and western coalition for geo-political interests which were frequent post 1945 and glorified in the ideology of the USA and Soviet Union.

In the light of shifting yet volatile dynamics of world politics, as dimensions of state intervention is evolving, there is need for holistic interpretation of scope and diplomatic limitations of ‘intervention’ and not merely as a tool of dominance. Thus, for legitimate interference on genuine humanitarian issues, collaborative measures must be ensured through stricter and binding international norms and on the guidelines of the International Court of Justice.

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