# Humanitarian Intervention: Pitfall or Precedence of the United Nations?

# Abstract

The principle of state sovereignty acts as a cornerstone of international law. States once had absolute sovereignty before the advent of non-interventionism, and even the current UN charter respects every sovereign state's sovereignty, non-interventionism, and territorial integrity. However, the critical aspect of international law, i.e., the principle of non-intervention, has been questioned with humanitarian intervention. Even though not entirely legitimised, the international community practiced several instances where there were authorised and unauthorised interventions. Many humanitarian interventions were criticised by the international community in the 1990s, leading to the development of the Responsibility to Protect doctrine.

Humanitarian Intervention was developed as part of the UN's primary objectives, which include maintaining international peace and security, removing threats to peace, and upholding human rights and fundamental freedoms. Throughout its history, the UN has intervened numerous times in humanitarian crises as the primary watchdog of the world. However, the idea of interfering in the territory of other states has not been generally lauded. Despite being promised to be used for peaceful purposes, Intervention by the United Nations, sanctioned by the Security Council, is often criticised on several grounds.

This thesis has explored whether humanitarian Intervention has successfully served its purpose or has been an illegitimate action through the assessment of different case studies. The paper has also addressed the idea of us ad Bellum to access the legality of using force. By doing this, the paper attempted to answer whether humanitarian Intervention acts as a boon or curse for the United Nations and the world. Consequently, this shall lead to the discussion on the areas where the doctrine of humanitarian Intervention requires reformation, and therefore, the paper also attempts to address it.

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Chapter No. 1 – Introduction

The rise of modern systems of states, often known as the "Westphalian System," instigated the idea of absolute sovereignty in the 17th century, in which a state had exclusive sovereignty over its territory. With the principle of non-interference and the exclusion of all external powers, the Westphalian model transformed the global system and eliminated the ability of any state to intervene in the domestic matters of the other. According to Farr, the Westphalian system is "the foundation for understanding the modern international relations because scholars view it as a turning point in history-making the transition from feudal principalities to sovereign states" (2005, p. 156). The success of this system is undebatable; hence it persists with almost equal legitimacy in the contemporary era: so much so that this concept of the principle of state sovereignty is also enshrined in the United Nations Charter. While this principle mitigates the chances of inter-state conflict by guaranteeing non-intervention, it also ties the international community's hand to protect Civilians under mass atrocities even by their state (Walling, 2015).

The claim that a state and its government would not go against its citizens' rights, freedom, and dignity malfunctioned, corroborating the multiple events of homicides, ethnic cleansing, and other atrocities worldwide. Even in recent decades, the problematic disconnects among the state government, its people, and the violent repercussions delineated the essence of the international realm to assess and take necessary commitments to guard humans and humanity (Finnemore, 2015). Therefore, the principles of non-intervention or even absolute sovereignty required revising to address these issues. As a result, these principles evolved to address the rights of individuals through the development of human rights within the states and the

emergence of popular and individual sovereignty. The focus of state sovereignty, intractable for Centuries, now became conditional upon specific prerequisites that a state must fulfil to earn its sovereignty.

This paper addresses the concept of human intervention, its essence, and evolution to elucidate how the conceptualisation of sovereignty has been reimagined. Furthermore, it focuses on the case study of coercive humanitarian interventions and their consequences. In connection to this, there is also a requirement to legally assess the use of force to identify the debates surrounding the concept of intervention. Consequently, this paper also entails the rise of the Responsibility to Protect (R2P) doctrine as a legal and legitimate basis for protecting the population against mass atrocities. Moreover, even though R2P was an ideal concept devised to prevent states from experiencing or practicing mass atrocities and homicides, it is not free from failures, resulting in criticisms. While the presence of such doctrine has instigated the concept of "sovereignty as responsibility," intervening in other states for the protection of humans has often been tactfully played. The paper, therefore, also focuses on the legacy of the responsibility to protect doctrine, one of its case studies, and the prospects of intervention. Ultimately, the paper attempts to analyse if this concept of intervention has served an unlawful purpose or has been an effective policy that reflects the firm foundation of the United Nations as a world government.

## 1.1. Background

### 1.1.1. What is IHL?

IHL – *International Humanitarian Law* – is the set of rules seeking to control the impact or devastation of armed conflict on objects and people (Sassòli, 2019). IHL is also known as law

of armed conflict or law of war where certain categories of individuals are protected while restricting the means and methods of warfare (Binder, 2016). The protection of IHL is for people who are no longer or not taking part in war – such as wounded, civilians, detainees, prisoners of war, the sick individuals, religious and medical military personnel, or shipwrecked. According to Sassòli (2019), the people falling into these categories are entitled for their lives' respect and assistance must be provided to them by the parties to a conflict while treating humanely without any biases. As an instance, the sick or wounded should be collected and cared for; the civilians should never be targeted or attacked; and detainees and prisoners should be treated humanitarianly and receive assistances from legal guarantees. The objects that are protected by IHL include ambulances, hospitals, and momentous pieces of cultural property entailing places of artworks, worship, or historic monuments. Destroying infrastructure essential for civilians' survival is also prohibited under international humanitarian law, which may include drinkable water supply. Moreover, Use of nuclear dams or power stations is also prohibited under IHL as it contains dangerous forces. According to IHL, there are different types of military tactics and weapons that are limited to be used during armed conflict. Moreover, use of such methods or weapons is also prohibited that do not differentiate between those that are not taking part in fighting, i.e., civilians, and those who are participating in war, i.e., combatants. Simply put, international humanitarian law does not permit using weapon that bring unnecessary suffering or superfluous injury along with prohibiting the tactics that originate long-term or severe damage to the environment. As identified, there are twofold key messages of international humanitarian law: the first message infers not to attack people who are no longer taking part in armed conflict or those who do not take part in armed conflicts while the second message infers not use weapons or tactics where no distinction is drawn

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between combatants and civilians, or bring preventable destruction or suffering (Walling, 2015).

### 1.1.2. What is R2P?

R2P – Responsibility to Protect – is the principle aiming at protecting the most vulnerable population of the world from the most atrocious world-wide delinquencies: war crimes, genocide, ethnic cleansing, and crimes against humanity. The report entitled "A Responsibility to Protect" by International Commission on Intervention and State Sovereignty (ICISS) originated the principle of R2P n 2001 with the aim of addressing difficult issues at one hand with respect to violations of human rights at gross level and principles of sovereignty and non-interference on the other hand.

The Commission concentrated on the duty of States to safeguard their own citizens, but acknowledged that the international community had a duty to step in when a State was unable or unwilling to do so. Since the publication of the Commission's findings, R2P has grown in popularity and acceptance. The obligation to protect populations against genocide, war crimes, crimes against humanity, and ethnic cleansing was unanimously approved by the General Assembly at the UN World Summit in 2005, which was the largest meeting of Heads of State and Government in history (Mingst et al., 2018). Since 2005, R2P has developed and gained popularity. Three crucial components of R2P were identified by Secretary General Ban Ki-moon in his 2009 Report to the General Assembly.

The first element infers that R2P must be taken as "an ally of sovereignty" instead of an adversary through seeking to fulfil the responsibility of protecting; it must be recognised by the states that they are reinforcing their own autonomy. Second, R2P should not be broadened

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to include less serious crimes or humanitarian catastrophes. The duty to protect principle is narrowly focused on the four crimes of war crimes, genocide, ethnic cleansing, and crimes against humanity. The 3rd component is that while R2P should have a limited scope, the answer should be comprehensive. The Secretary General makes reference to a wide range of possible support strategies and actions in this to carry out R2P.

Simply put, the threefold key messages of R2P include: states holding the responsibility of protecting populations under their rule from war crimes, genocide, crimes against humanity, and ethnic cleansing; the international community holds the responsibility of helping the state in fulfilling their responsibility to protect; and the international community holds the responsibility of protecting and may take collective actions in timely manner when the state is noticeably failing in offering protection to its own population.

The responsibility to protect (R2P) has been created by several countries and international organisations in an attempt to provide productive humanitarian assistance to countries facing difficulties. Events such as the Cold War crises in Bosnia and Somalia caused a great deal of concern around the globe and demonstrated that actions were to be taken to protect civilians. Once developed, the first real test of R2P was in Libya in 2011 (Binder, 2016). The massacre of a city caused the United Nations to allow actions to be taken in an effort to protect citizens. However, this was highly controversial, and many people argue that more regulations should have been in place to ensure that all actions taken against the Libyan government were truly with civilians' best interests at heart.

## 1.2. Thesis Statement & Purpose of the Study

The research argues against the existing structure of humanitarian intervention and the Responsibility to Protect (R2P). The research focuses on the case study of coercive humanitarian interventions and their consequences for the humanitarian intervention aspect. By referring to a case study and historical events, the research argues why humanitarian intervention, despite having a noble cause, has been a curse for the international system. Consequently, the paper also describes the rise of the Responsibility to Protect (R2P) doctrine as a legal and legitimate basis for protecting the population against mass atrocities. But, even though R2P was an ideal concept and was devised to prevent states from experiencing or practicing mass atrocities and homicides, it is not free from failures, resulting in criticisms. While the presence of such doctrine instigated the concept of sovereignty as responsibility, intervening in other states for the protection of humans has often been tactfully played. For this, the case study of War and Intervention in Iraq will be presented as the primary case study. The purpose of the work was to critically evaluate the successes, failures and challenges of interventionist humanitarianism as a conflict management tool.

## 1.3. Problem Statement

Over the last 20 years, humanitarian interventions have been a frequent topic of discussion in academic works. The context of this topic is not precise and is discussed in a wide variety of ways for instance as per the school of thought (realist vs. non-realist schools), as per disciplines such as political science vs. international law), etc. In this regard, an unconventional methodology by Norrie MacQueen states, that humanitarian intervention includes the intervention of armed forces who intervenes under the command or are just assigned to intervene by the UN. In other words in order to prevent conflicts to generalize UN-mandated

operations for peacekeeping are backed up by Human intervention. This context signifies the term that humanitarian agendas were involved in UN peacekeeping operations during the Cold war even before the understanding of humanitarianism. However, even if some humanitarian objectives have been partially fulfilled by those actions, there are few illusions about the true nature of the official reasons driving these operations. This is skeptical of claims that the emergence of humanitarian protection principles has altered the fundamental character of the international system.

It is said that some international communities are intervening too often while others it is not intervening much. On the other hand for some, the main concern is making sure coercive interventions are successful, for others concerns with legality, procedure, and potential precedent abuse emerge far greater. For some, it ushers in a world in which powerful nations bully less developed ones while manipulating the rhetoric of humanitarianism and human rights, while for others the new interventions herald a new era in which state sovereignty is subordinate to human rights. The dispute has exposed fundamental divisions in the global society. These disagreements must be settled and one side is chosen in the interest of all those victims who endure suffering and death when institutions and leadership fail. Either humanitarian intervention is the United Nations downfall or its precedent.

Potential incongruence is evident between the practice of human intervention and its theories. Humanitarian intervention promotes fairness, independence, humanity, and several other guiding principles, other factors can interfere with the intervention process. In some circumstances, it has further provoked the situation which increased people suffering and failed to achieve the envisioned goal of saving lives, while in other instances it has successfully

achieved its vision. Thus to minimize this gap, this study provides explanations and evaluates the success and failings of human intervention by determining the main factor which changes the outcomes. This study concludes and gives future recommendations on achieving appropriate humanitarian interventions.

## 1.4. Research Question

The main research question that is being answered in this study is:

How the notion of humanitarian intervention has played its role in transforming this world into a more peaceful place?

Despite its emergence for a noble cause of respecting the right to life of every human being, it has been unable to justify its purpose (Walling, 2015). This dissertation is, therefore, revisiting the legality of the use of force essentially along with using case study surrounding the humanitarian intervention to elucidate it as a pitfall of the United Nations. Thus, the sub-research questions of this thesis are:

➢ Has the concept of humanitarian intervention been a pitfall or the precedence of the United Nations?

➢ Is the concept of humanitarian intervention allowed when viewed though the legality of use of force?

➢ Though the humanitarian intervention is justified because of the moral responsibility of the international community to protect humanity, what are the criticisms that the UN has faced on the grounds of it?

➢ What areas do the doctrine of humanitarian intervention requires reformation?

## 1.5. Research Aim & Objectives

The aim of this research is to assess the success or failure of humanitarian intervention of United Nations. For this aim to be achieved, the objectives of this research include:

➢ To analyse the justification for employing humanitarian intervention in managing conflict

➢ To assess the case where humanitarian intervention has been succeed or failed in managing conflict

➢ To shed light on the challenges encountered by humanitarian intervention in managing conflict

## 1.6. Theoretical Framework

As the underpinning theory of this research, the study has adopted the Augustine's *Just War Theory* wherein two elements are highlighted for the justification of humanitarian intervention. The first element – *jus ad bellum* – implies the reasonableness of going to war offering the conditions to be met prior to going for a war. The second element – *jus in Bello* – implies the reasonableness in war offering the guiding principle regarding engagement during the war or intervention (Binder, 2016). The principles of *jus ad bellum* and *jus in Bello* indicate the criteria for using humanitarian intervention, i.e., legitimate authority, prospects of success, last resort, attainment of peace, and right intention. The study, guided by these principles, has critically analysed the humanitarian intervention as the pitfall or precedence of the United Nations as the tool to manage conflicts.

## 1.7. Research Outline

The research consists of six chapters that are closely linked or connected with each other. The first chapter has provided brief detail on the preliminary aspects of this study. For instance, the background information, problem statement, and the aim and objectives of the research. The theoretical framework is also provided in this chapter. The second chapter of the research offered a detail compare and contrast of various research papers that are published already in the literature relevant to the topic. The themes have been devised in this chapter according to the objectives and aim set in the prior chapter. Themes that are discussed in the second chapter of this research include human rights, sovereignty, humanitarian intervention, evolution of humanitarian intervention, UN charter, link between humanitarian intervention and state sovereignty, rationalisations for implementing humanitarian intervention, failures and successes of humanitarian intervention, and challenges of humanitarian intervention.

Afterwards, the third chapter of this work discussed the methodology used in this study. This chapter shed light on necessary aspects related to research methods of this work and provided the reasoning behind their selection. Once the methodology of the work has been discussed, the dissertation moves towards exploring the case. The war in Iraq has been used as the case for arguing whether humanitarian intervention is precedence or pitfall of the United Nations. From the arguments presented in the case study, reference to several official reports and news highlights has been performed. The fifth chapter of the research carried out discussion on legal basis for humanitarian intervention and responsibility to protect in the wake of findings delivered via case study discussed. In the end, the work has provided conclusion and recommendation related to the topic and dissertation to wrap the entire piece of information intact.

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Chapter No. 2 – Literature Review – 5000 words

### 2.1. Human Rights and Sovereignty

Human rights are the basic and universal rights by virtue of being a human. Similarly, sovereignty is a basic right of a state to be governed by itself. The Universal Declaration of Human Rights (UDHR), established and ratified in 1948, was very much successful m establishing the objective nature of human rights and that it was an essential part of international law. Rosas (1995) claims that the establishment of the UN charter, three years before adopting the UDHR, laid the basic foundation and the institutional structure for international human rights. "However, it provides a pragmatic challenge to the Hobbesian strand of the Westphalian legacy, which has been considered the horizontal intern-state system based on the sovereign equality of states" (Rosas, 1995, p. 62).

In terms of the Westphalian system of sovereignty, legal positivism is the governing concept of law, i.e., the law originates from the will of the states. In the absence of a state's recognition, values or laws fail to constitute legal norms. As Rosas puts it, "a law is not law because it is valuable or necessary but because it is anchored in the sovereign will of the states" (1995, p. 62). Even in terms of the UDHR, though the international community articulated it together, they cannot be the law of the land unless the state has recognized them as such. In terms of the conventional law, not only did the states select the law that they wanted to oblige by, but the extent and way through which they would be implemented were also under the will of the states. "For instance, during the universal adoption process of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDA W), the Kingdom of Saudi Arabia refrained from passing it as they thought it would be conflicting to the Islamic law, which they consider as their basic foundation of governance" (Smith, 2009. P. 28-37).

Therefore, it is uncontested that laws are often constructed and enforced by the states, which to some extent, reflect their sovereignty to govern themselves.

However, international human rights are articulated and constructed to make states accept a universal norm for respecting and protecting people's rights, irrespective of the will of the state. Therefore, scholars define it as something that undermines states' power to decide. For Wotipka and Tsutsui (2008), as international human rights laws interfere with states' domestic activities, even if the laws onen do not have enough teeth, they undermine state sovereignty. As the global call for the acceptance of universal values of human rights bolster, the contradiction between global human rights regimes and state sovereignty exacerbates.

Among all its underlying debates, the concept of humanitarian intervention is infamous for the challenge it poses to state sovereignty. There is a clear tension between the international protection of human rights, especially through humanitarian intervention and state sovereignty, as it provides the international community the right to trump state sovereignty to interfere into the domestic jurisdiction of another state.

In contrast, for Henkin, the notion of considering sovereignty as an unchanging phenomenon has created tension between human rights and state sovereignty, "as a social construct, sovereignty must be expected to change with changing circumstances" (1995, p. 21). In such a case, human rights and sovereignty no longer are in tension as human security is the essence of the 21$^{st}$ century, and therefore, sovereignty has been connected with responsibility. With the same attempt, Srinivasan defines sovereignty as "the living destiny of people in a country to

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be beneficently constructed, benevolently administered and responsibly interpreted by the arms of the government- Legislature, Executive and Judiciary" (2014, p. 12). If any state refuses to do so, it gets listed as an enemy of international law and betrays the faith of its people in its sovereignty. Therefore, the author claims that sovereignty and human rights complement one another as the protection of human rights retains people's belief in sovereignty.

## 2.2. Humanitarian intervention and its Evolution

While there is no legal definition of humanitarian intervention, it can be defined as a means (threat or use of force) to avert states from exercising heinous violations of human rights. Here, the state in which fundamental human rights are being violated might be either because of the incapability of the state or its unwillingness to safeguard its own citizens where the state is itself actively oppress or victimize them. The term Humanitarian intervention is formally used to refer to threat or actual use of force by a state or group of states in the territory of another state to avert or end grave human rights abuses (Wheeler, 2000, p. 52). In short; humanitarian intervention is the action taken by a state or state in coalition to mitigate human sufferings within the territory of another state. For instance, if State B is given the threat of force by State A, with or without the coalition with other states, it can be termed humanitarian intervention.

Even though the concept of the use of force or threat for the protection of human rights has been proliferating since the end of the Second World War, the emergence of humanitarian intervention dates back to the time of Hugo Grotius, also known as the father of modern International Law. In some of his works, humanitarian intervention was termed as an acceptable practice. "Grotius asserted that the intervention of states is permitted to provide natural rights to the oppressed population and also for self-defence on their behalf" (Criddle,

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2015, p. 483). This somewhat provided grounds for the concept of humanitarian intervention to be considered as customary international law.

Following this, the 9th century also experienced major instances of interventions such as the intervention in the Greek war of independence from 1827 to 1830 and the U.S. Intervention in Cuba in 1898. However, a substantial change in the principle of humanitarian intervention was instigated after the end of the Second World War. The customary practice of intervention was superseded by the UN Charter which prohibited the use of force except in certain instances. Furthermore, the principles of non-intervention, also considered to be fundamental law of the state, further eroded the concept and its existence since states focused more on their sovereignty and territorial integrity following the aftermath of WWII.

Although there is no state practise to support this argument, some scholars contend that a third basis for international law, the right to "humanitarian intervention," may be forming. An International Commission on Intervention and State Sovereignty (ICISS) was founded in the wake of NATO's intervention in Kosovo, which was conducted without permission from the UN Security Council. In 2001, the ICISS produced a report titled "The Responsibility to Protect." Some R2P-related terminology was included in the UN World Summit Outcome document and was initially hailed as "an emerging international standard," but the efforts to attain this consensus largely stripped the notion of its normative content. Few people were willing to let powerful states to assume the roles of judge, jury, and executioner in determining when such interventions could occur in the wake of the invasion of Iraq.

However, in recent years, more and more soldiers have been sent to UN peacekeeping missions, as permitted by the Chapter VII authorization to use force to protect people from imminent

physical harm. Currently, there are more than a hundred thousand soldiers serving in missions across the globe. This is a significant development in both international law and international relations because Chapter VII does not mention human rights, international humanitarian law (IHL), or the protection of civilians, and the UN Charter itself does not establish a legal foundation for peacekeeping.

There seem to be three justifications that could be offered for this practise. The first is that major human rights abuses, international humanitarian law, and dangers to international peace and security—such as the knock-on consequences of a conflict or cross-border refugee flows—necessarily go hand in hand. The second is that the Security Council's authority is so unrestricted that nothing can stop it from designating any circumstance as a "threat to world peace and security," invoking Chapter VII as a way to get around Article 2 of the Charter. The third option, which this author prefers, is that there is an emerging worldwide consensus that the UN increasingly views itself as subject to the positive and negative responsibilities of international law because of its established legal personality. The hierarchy of international legal standards in regard to Security Council decisions and the immunities that the UN has up until this point utilised to protect its peacekeeping missions would need to be seriously considered in order to fully accept this argument.

### 2.3. Humanitarian Intervention and State Sovereignty

In times of unrest and civil war, humanitarian agencies have intervened to put violence among the civilian population by military force. Humanitarian intervention has been an organized effort by a coalition of states to end the ensuing violence in the affected area. "Humanitarian intervention is a method of preventing or stopping a flagrant violation of human rights in a state

that is either incompetent or unwilling to defend its citizens or actively persecutes them" (Inbavijayan and Jayakumar, 2013). Suppose humanitarian intervention is intended to protect the territory from grave injustice due to violence and killings of people. In that case, a sovereign state is an idea of not being interfered with for internal matters. Any armed intervention by foreign parties can be a serious issue if sovereignty is challenged. Therefore, a dispute can arise for the legitimacy of the power being used by the foreign states. Thus, a debate between humanitarian intervention and sovereignty is hotly contested in the international arena. This section will discuss the debate between humanitarian intervention and state sovereignty.

Article 2(1) of the UN Charter specifies that the organization is founded on the sovereign equality of its parties, but it is also profoundly interwoven in world law conceptual framework (Koskenniemi and Kari, 2020). As is commonly recognized in international relations and the United Nations, a state is a sovereign entity that another country cannot rule. The sovereign right of nations stems from the fact that all independent states are equal and will reject to be dominated by another. Regardless of how conservatives dispute the friendly rule announcements, they did not acknowledge or express the content or reasoning of the Charter's essential ideas, nor did they serve as an official celebration of the Charter's 25-year existence. It was, however, part of an effort by the post-colonial nations, which made up the bulk of UN members who had not contributed in the Charter's formulation, to give its core sections a definition that more accurately represented their aspirations. "All members shall handle their international issues by diplomatic means so that global cooperation, security, and justice are not jeopardized," says Article 2 (3) (Skjelsbaek, 1986). The concept of amicably setting disputes is an essential part of prohibiting any role of force or coercion. Thus, this concept imposes special responsibilities on member nations and obligations on the UN's leading

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organizations. The Charter enumerates institutional mechanisms for supporting the pursuit of this concept, but states carry primary responsibility for the peaceful resolution of conflicts. In the context of global parties intervening in the internal matters of a sovereign states, peaceful means of resolving the issues would always suffice to be used instead of violent military intervention. However, talks of negotiation can occur in the first instance, but armed interventions have become common more often than not. The armed intervention by the military has taken place due to the failure of peaceful talks, and human lives have become more important than the sovereignty of the states.

Furthermore, any aggression shown in the pretext of humanitarian intervention on the existing violence in the sovereign states cannot be deemed correct. "The notion of sovereignty, formerly seen as relatively uncontroversial, has recently become a significant source of debate in international law and international relations theory" (Koskenniemi and Kari, 2020). On the other hand, international disputes are not limited to states but communities and organisations. For example de facto regimes or ethnic communities enjoy their internal state of affairs and might not need any intervention from external parties. "In their international dealings, all members should refrain from threatening or using force against any state's territorial integrity or political independence, or in any other way inconsistent with the United Nations purposes (Finnemore, 2015). The issue of why the meaning of this term evolves through time and space and under what conditions these changes spill over into large scale institutional change become the hot topic of discussion (Pholpott, 2001; Reus-Smit, 2009).

## 2.4. Humanitarian Intervention and UN Charter

After the Second World War, the rising tension among the great powers made the international community ponder upon the use of force and humanitarian intervention. Even through the creation of the League of Nations promised to settle international disputes and prevent any use of force or intervention from one state to another, it lacked implementation. However, the U.N. Charter, drafted in 1945, clearly prohibited the use of force in the international community, with some exceptions. Article 2(4) prohibited the use of force by stating: "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" (U.N. Charter article 2, para 4). This charter mostly talks about the inviolability of the territorial integrity of states, which is the fundamental consideration of the state. However, there are certain exceptions: Chapter VII where the U.N. Security Council is provided with the power to execute and under Article 51 on self-defence.

These exceptions to the principles of non-intervention have raised numerous controversies making humanitarian intervention a jus ad Bellum question. Here, there is no clear indication of when a state or a grown of state the right to exert force by hindering the sovereignty and territorial integrity of other states. Here, there is no clear indication of when a state or a group of states has the right for exerting force by hindering the sovereignty and territorial integrity of other states. However, there are certain exceptions: Chapter VII where the U.N. Security Council is provided with the power to execute and under Article 51 on self-defence.

## 2.5. Rationalisations for Humanitarian Intervention

It is clearly stated in the United Nations Charter that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state" (United Nations, 2004, p. 24). Irrespective of these provisions, it is only applicable to the scenarios where willingness is demonstrated by states to promote and protect fundamental rights of their people. Therefore, ruling out the application of enforcement measures cannot be done in the cases where states demonstrate lack of commitment on protecting its people from bellicosity. The non-intervention rule is also superseded by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in scenarios where evidence of systemic and gross damage to rights of human is found (United Nations, 2014 from Shapiro and Lampert, 2014).

International commission initiated the principle of Responsibility to Protect (R2P) in 2001 on Intervention and State Sovereignty (ICISS) and afterward the United Nations General Assembly endorsed it at the world 2005 summit highlighting the necessity of offering timely non-coercive and coercive intercessions for the international community against states where rights of people are violated. With this concept, the attention is drawn towards the notion that governments and state do not merely hold the sovereignty's right but they also have the responsibility of protecting the rights of their populations. Hence, when the states become incompetent in upholding this responsibility, it is obliged by the international community to take actions for averting further atrocities consistent with the principles of R2P (ICISS, 2001).

In the report of ICISS – International Commission on Intervention and State Sovereignty emphasised that mandate of R2P entails the responsibility to rebuild, the responsibility to react,

and the responsibility to prevent. This envisioning helps in ensuring the holistic concept that would respond to the needs of specific humanitarian crisis appropriately on the basis of unique circumstances on the ground as well as prevent the recursion of violation of human rights by means of enforcing such mechanisms in place that addresses the core reasons behind these abuses. Lastly, this envisioning also helps in ensuring the holistic concept that would promote the long-term efforts for building and sustaining peace within the affected communities (ICISS, 2001).

Another research study, considered from the literature, engaged with the question of considering sufficient enough level of violation of human rights that stimulate an international response followed by the selection of right intervention (Bellamy and Pape, 2013). It was proposed by Bellamy and Pape that a justifiable humanitarian intervention is one which is implemented after finding the evidence of extensive violations of human rights on civilians who are defenceless and the violation could possibly be reached to the level of genocide if not responded. In the similar manner, it has been argued by Pattison (2010) and Mingst et al. (2018) that a humanitarian intervention has a humanitarian outcome if it succeeds in ending human suffering. Therefore, a successful and effective humanitarian intervention must be guided by the need for protecting civilians and abating malevolent human suffering without causing additional nuisance to the already susceptible masses within the reasonable frame of time. The research of Pattison also made a strong case for the double effect doctrine in humanitarian intervention by noticing that "the doctrine of double effect allows room for an intervener to cause collateral damage, including civilian casualties, provided that the damage is unintended, not instrumental to the humanitarian end trying to be achieved, and disproportionate to the gains attained" (2010, p.155).

Clearly, it is emerging in the light of above argument that in any intervention, the possibility of positive consequences and negative consequences persists, however, to view an intervention as a success, the positive consequences must outweigh the negative consequences of the intervention. Hence, such humanitarian interventions that had negative impacts outweighing the positive impacts to the innocent lives are considered unsuccessful (Barash & Webel, 2014). A lot of anxiety was caused globally when uprisings in December 2010 broke up in Tunisia spreading across the region of Arab – recounted by Pape (2015). Consequently, the list of problematic concerns surfaced in the areas of unemployment, economy, social issues, and governance that have disrupted the achievement of sustainable peace in the region.

Long-standing presidents like Hosni Mubarak (Egypt) and Muammar Gaddafi (Libya) were overthrown by the revolution, which created anarchy, which is frequently a breeding ground for abuses of human rights and contempt for the rule of law. The use of the bare minimum of force in the form of military intervention is unavoidable in such situations of lawlessness and may be the only practical way to prevent a humanitarian catastrophe, thereby fostering an environment favourable to non-coercive intervention techniques. As noted correctly by Richard: *"the humanitarian rationale is sustained or undermined by the extent to which the tactics of warfare exhibit sensitivity to civilian harm and by the degree to which interveners avoid unduly shifting the risks of war to the supposed beneficiaries of intervention in order to avoid harm to themselves*" (cited in Kerr 2004, p. 862).

### 2.6. Successes and failures of Humanitarian Intervention

Researchers like MacFarlane, Thielking, and Weiss (2004) have taken an extreme stance, arguing that the world is no longer interested in humanitarian intervention and that its time has

passed. The following instances, where prompt humanitarian interventions have rescued desperate circumstances of flagrant human rights abuses and saved nations from the atrocities of war, demonstrate that this position is overly strong and without substance. In 2007, the successful and timely example of humanitarian intervention can be found in Kenyan post-election violence where further violations of human rights was managed to be averted alongside carrying out negotiation for the formula of sharing power that brought evident stabilisation to the country at some level. 300,000 people of Kenyan were internally displaced as a result of the violence that was stoked by the contentious presidential elections in 2007, which claimed more than 1,500 deaths. Only the contested elections served as a catalyst for the societal tensions that had been building due to perceived and actual historical injustices and ethnic political differences. The national government's lack of inclusivity, social and economic injustices, bad ethnicity, and historical land disputes, among other structural injustices, are substantially to blame for these social conflicts (Bekoe, 2008).

Invoking the African Union (AU) peace, security, and conflict prevention architecture pillar, the Kofi Annan-led African Union Panel of distinguished persons mediated a peace deal that saw the two principles. In 2008, Kibaki, Raila Odinga, the head of the Orange Democratic Movement (ODM), and the chairman of the Party of National Unity (PNU), came to a power-sharing agreement (Ramsbotham, Woodhouse & Miall, 2012). With the help of a negotiated deal, it was achieved and led towards the forming a coalition government in 2008 concluding in the passing of NARA – *National Accord and Reconciliation Agreement*. Due to the conglomerate, a prime minister's position and two deputies were created to serve the interests of both parties. This humanitarian had the positive impact that it was bidding accord of peace, i.e., NARA where pace for constitution's reforms were set and offered for reforms in public

service, judiciary, electoral institutions, security sector, and other public and governing institutions' reforms (National Accord and Reconciliation Act No. 4 of 2008). This intervention's effectiveness was largely ascribed to elements including prompt action, agreement from the combatants, regional capacity, and the availability of efficient procedures for conflict management (Ramsbotham, Woodhouse, & Miall, 2012).

In the similar manner, the 1999's intervention of NATO in Kosovo was a classic case of effective and timely humanitarian intervention to a large extent as to respond large scale violation of human rights (Finnemore, 2015). This action was sparked by the call to stop the needless loss of lives after softer, non-coercive measures failed to produce any noticeable results in this situation. Additionally, each of the three Kosovo-related Security Council resolutions enacted under Chapter VII endorsed the necessity of intervening in the escalating humanitarian catastrophe in Kosovo, which was in fact a threat to global security and peace (Greenwood, 2002). The excessive and indiscriminate use of force by the Yugoslav army and Serbian security forces made plain the abuses of human rights. It was no longer just a Federal Republic of Yugoslavia domestic issue because Kosovo was involved; it had become a humanitarian tragedy. In its consequent, the premise was built for moral obligation of NATO to intervene and protect the non-combatants from further suffering. Hence, the humanitarian intervention of NATO remain successful in narrowing any further distress in such state of affairs where no alternative is available for using the necessary force for achieving peace and thus action was within its mandate.

Several academics have disputed the applicability and efficacy of humanitarian interventions notwithstanding the substantial advantages obtained as a result of those efforts. According to

Pape (2012), the main alternative, the Responsibility to Protect (R2P) standard, is again too low, resulting in the interference of state sovereignty and is therefore vulnerable to abuse by those with vested interests in a particular fragile state. While the standards of humanitarian intervention are very high, which occasionally have resulted in achieving minimal impact during emergency situations, failing the timeliness test. In the similar manner, the research study by Jentleson (2013; p.277) has also exhibited the same sentiments arguing that "*the international community (the United States, the United Nations, the European Union) has continued too often to do too little too late*". It was also contended by Jentleson that the international community needs to contemplate emphasising on mechanism of prevention alongside adoption strategies of early intervene in place of waiting for the longer time before responding so that violation of human rights become full blown crisis complicating the situation and making it further complex to be managed in adequate time and achieve the desired results. The assertions of Branett and Finnemore (2004) concurred with Jentleson argument regarding the outcomes of delaying humanitarian intervention via the experience of Rwandan genocide which is known to be one of the most unquestionable failures of protection of international human rights to date. Here, the United Nations' role has been greatly challenges in the 1994's genocide that resulted in several Rwandans' deaths.

Despite the genocide in Rwanda, Wheeler, (2000) along with some other research studies discussed that the international world has come under heavy fire for its refusal to intervene in Cambodia during the 1970s, which led to the deaths of 2 million people. In response to human suffering and abuse, the international community has been compelled by these responses to act more pro-actively. By that way, there has been a paradigm shift in recent operations of peacekeeping, with attention given on the crucial necessity for ensuring the safety of the

civilians at the expense of, occasionally, not obtaining the parties' consent as stipulated by the principles humanitarian intervention of United Nations (e.g., Bosnia, Somalia, Rwanda). Apart from this, other critics on humanitarian intervention include the argument that in most of the cases, humanitarian intervention rarely exists as interveners are mostly driven by political, economic, or strategic interests at the stake of putting further human rights violations to end and abating human suffering (Pattison, 2010). This suggests that their motivations for intervening are not wholly humanitarian but rather misguided and motivated by personal interests. Because of this, the need to use armed force to save a people from the scourge of death brought on by the human rights violations they are prone to is not the driving force behind it. Instead, geopolitical dynamics such as the state's importance to the international community, business interests, regional stability, and the position of other major players—typically the western nations—are what motivate such use of force (Bajoria and McMahon 2013).

As an example, the work of Ryan (2014) observed that many countries deemed USA's unilateral intrusion in Iraq unjustified which fundamentally remain short of support from international community. Some scholars contend that the US only intervenes in nations where it has strategic interests, as in the situations of Libya, Iraq, and Afghanistan, despite the fact that most US-led operations continue to be the subject of controversy regarding their motivations (Choi and James, 2016). In a similar vein, Duffield (2007) casts doubt on the legitimacy and sincerity of contemporary interventions led by Western regions, contending that their goals do not appear to support the achievement of long-term sustainable peace but rather serve to concentrate their might and power in these weaker nations. As an instance, the research study of Bajoria and McMahon (2013) inferred, when Qaddafi was overthrown by western-led airstrikes, many countries, including Russia, felt that the doctrine of R2P was being invoked as

a smokescreen for a foreign-imposed regime change plan. Many academics believe that the military intervention in Libya contributed to the upheavals in the Arab region, which spread to numerous other nations and resulted in significant mayhem in the area (Capasso, 2014).

In line with this, it has also been argued by Chivvis and Martini (2014) that the interveners in Libyan case ought to have helped out on re-building it since they have supporting the change in regime as the sign of continued solidarity and goodwill towards the people of Libya. It was possible that withdrawing right away after Qaddafi's passing would be interpreted as a "negative" reason for the intervention in the first place. Any successful humanitarian effort must include post-conflict rebuilding because it brings all important actors together for a single goal, starts institutional development, and mobilises the necessary resources. These coordinated activities are intended to support post-conflict countries' healing, reconstruction, and reconciliation (UN Peace building Commission, 2010). Without doing so (for instance: in Libya's case), the interveners' motivations will remain murky, undermining any significant advances they may have made in terms of the morality and suitability of the operation. However, it has also been argued by some of the scholars (such as Teson 2005, as cited in Pattison, 2010, p.173) that contrarily the element of humanitarian intervention can still be present despite the operation was driven and motivated by personal interests. Using the war in Iraq in 2003, Teason provided an illustration where lead interveners, i.e., USA, had the sole motive of removing Saddam Hussein from power. Accordingly, even when the motivations are dubious, the overthrow of an oppressive and tyrannical regime has the humanitarian goal of fostering democracy. Once again, the present catastrophe in Syria calls for urgent involvement; the international community has failed to fulfil its responsibility under the global governance system to provide prompt humanitarian assistance. Human rights abuses, such as the use of

chemical weapons, hostage-taking, forcible evictions, sexual violence, and torture, are harming civilians in Syria as opinions on whether to help or not remain divided (Oliver, 2015). While the Syrian government protested to humanitarian aid delivered without their approval, describing it as an act of aggression, the International Coalition for the Responsibility to Protect report states that this is not uncommon. On its role, the United Nations Security Council considered this help or aid as the responsibility and distinguished that it has the fundamental duty of responding to the gross the systemic abuses to human rights where states failed in doing this (*ibid*).

In the study of Pape, a pragmatic standard of humanitarian intervention has been proposed that support evidence of enduring violations of human right by states along with showing the signs or possibilities of further killings (2012). Moreover, the feasible policy for intervention has also been advocated by Pape that consider the need for lowering the number of fatalities to the least intensities as well as a plan for the long term to build local capacity in resolving the conflict and building the peace in states that were affected. This argument seems plausible because it makes an effort to address the issue of humanitarian intervention beyond emergency operations and aid peace building and post-conflict reconstruction, which are essential to promote viable peace and prevent a degeneration of another situation of conflict.

## 2.7. Challenges of Humanitarian Intervention

Humanitarian intervention takes place in diverse situations that call for varied intervention strategies. As a result, various challenges are likely to be encountered in the process. The morality of supporting factions during a humanitarian crisis is still up for debate. The question at hand is whether or not this support will prolong the conflict or put a stop to it. For instance,

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Valentino (2016) notes that in Bosnia, the United States supported Muslim rebels in Croatia and Bosnia to defend themselves against attacks by Slobodan Milosevic, the president of Serbia. They were blamed for violating human rights even though they weren't as strong as the government forces. However, it might be claimed that arming these minorities reduces losses in comparison to a scenario where the party under siege is simply defenceless, vulnerable, and hence susceptible to harsh violence.

The morality of supporting factions during a humanitarian crisis is still up for debate. The question at hand is whether or not this support will prolong the conflict or put a stop to it. For instance, Valentino (2016) notes that in Bosnia, the United States supported Muslim rebels in Croatia and Bosnia to defend themselves against attacks by Slobodan Milosevic, the president of Serbia. They were blamed for violating human rights even though they weren't as strong as the government forces. However, it might be claimed that arming these minorities reduces losses in comparison to a scenario where the party under siege is simply defenceless, vulnerable, and hence susceptible to harsh violence. According to Pape (2012), there is no standard in R2P that defines assertion of humanitarian military interventions against the level of abomination. Therefore, the lacking in standards can lead towards destruction in two different ways: firstly, an interferer can misuse it in the areas that have negative ambitions based on personal interests, using R2P standards to hide behind. Secondly, clarified explanation about the extent of human rights violation that guarantees interventions are missing in the principle, and is rather declared as a humongous loss of lives. This uncertainty can result in delay and hindrance of efforts for interventions that is immediately needed in some cases to rescue humanitarian crisis. Identification of perfect time and implementation of intervention according to the needs is the most important aspect to be considered for successful

humanitarian interventions. Considering the Rwandan example, the scholar focuses on the importance of taking actions on time that it would have not lost so many lives if timely actions were taken by the international communities (Straus, 2006). Moreover, facing conflicts at lower stages is much easier than having conflicts at a larger scale where more parties get involved and adopt militant positions. However, (Pape, 2012) emphasizes on adopting right intervention policies, according to him the use of air strikes during the Rwandan genocide would have been a better option for saving lives.

In the study of Verwey (1985), an additional challenge is argued in line with the statement that risking the lives of interveners is linked with no moral grounds in the attempt to save others. Kant further drawn attention towards the fact that during the intervention, interveners need to keep their words humanitarian. This emphasis is linked with achieving the balance between saving the lives of civilians and risking the lives of interveners – though it appears to be conflicting. This emphasises the necessity of a timely, practical humanitarian intervention mechanism that is based on evidence of widespread human rights violations, a workable plan to ensure minimal harm to civilians, and a strategic plan to improve security on the ground with local and international assistance. One of the main causes of unsuccessful interventions, such as the Darfur crisis in Sudan and the Democratic Republic of the Congo, is the absence of crucial individuals from the intervention (Pavel, 2010; Jentleson, 2013). It is clear from the foregoing discussions that the success of any humanitarian intervention is largely dependent on stakeholder participation; however, in some cases, intervention can make a conflict situation worse than they found it (Oliver, 2015). This is particularly common in cases where the intervention is not properly planned with the full involvement of both local and international actors.

## Chapter No. 3 – Methodology

Chapter three of this work deals with its methodological elements wherein the research philosophy, approach, choices, strategy, time horizon, and techniques used in the study are discussed thoroughly along with offering insight to justifications or rationale behind choosing particular philosophy, approach, choices, strategy, time horizon, and technique. As found in the research of Walliman (2010), methodology directly play role in answering the research question appropriately. Hence, selecting the right approaches and methods is very crucial in determining if the answer to the research question is effective enough or not. In this regard, the work of Harris et al., (2019) has also shed light on the fact that considering the aim and objectives of the research is also very important when making decision to select particular approach or method over other. In order to achieve a goal and to find a solution to a problem - the research objective(s) and the research question - the way in which research is conducted can be thought of in terms of the research philosophy adhered to, the research strategy used, and consequently the research instruments utilised (and perhaps developed). Chapter One provides a summary of the research question and aim. This chapter's goal is to introduce the research instruments that researchers have created and used in the pursuit of our objectives. It will do this by first discussing the research philosophy in relation to other philosophies, then by elaborating on research strategy, including the research methodologies adopted.

### 3.1. Research Philosophy

A research philosophy is a viewpoint on the methods that should be utilised to collect, analyse, and apply data regarding a topic. In contrast to doxology, which refers to what is thought to be true, the term "epistemology" refers to what is recognised to be true. So, the process of changing what is believed into what is known—from doxa to episteme—is the goal of science.

In the Western tradition of science, there are two main research ideologies that have been identified: positivist (also known as scientific) and interpretivist (also known as antipositivist) (Galliers, 1991).

According to interpretivists, reality can only be fully grasped by the subjective interpretation of and intervention in it. The interpretivist philosophy emphasises the importance of studying phenomena in their natural settings and the fact that scientists cannot avoid having an impact on the phenomena they research. However, according to positivists, reality is stable and can be viewed and described objectively, that is, without interfering with the phenomena being researched (Levin, 1988). In order to find patterns in and establish connections between some of the components of the social environment, this frequently entails manipulating reality with variations in just one independent variable. However, there has been substantial discussion about whether or not this positivist paradigm is completely appropriate for the social sciences (Hirschheim, 1985). Both research traditions have their roots in the anti-positivist Sophists and the positivists Plato and Aristotle of Classical Greece. Choosing the right philosophy for this research study is linked with recalling the research objectives or aim of the study, i.e., to assess the success or failure of humanitarian intervention of United Nations. For this reason, there is need to look at the phenomena objectively while not manipulating the events taken place in the history. Hence, the final choice of this research study for philosophy is positivism since the research needs to viewed and described objectively.

## 3.2. Research Approach

According to Teherani et al. (2015), the study's methodologies offer a process or plan for specific ways of gathering, analysing, and interpreting data using steps based on broad

hypotheses. In this sense, the choice of approach in the research is mostly determined by the type of research issue that the study is attempting to solve. Deductive research approach or inductive research approach is categorically employed in research studies depending on the goal and purpose of the investigation (Cavaye, 1996). The inductive method uses a bottom-up strategy, moving from the specific to the general aspect of the material. Using an inductive technique is appropriate, according to Greenfield and Greener (2016), in situations when preliminary observations must be made. Simple steps are taken in this research approach, starting with individual observations and ending with a general conclusion after pattern identification. When finding trends, revealing links between study variables, and theorising the phenomena for a larger context are the primary goals of the research, inductive approach-based research is typically used (Halcomb and Hickman, 2015).

Whereas, the research generally employs a deductive strategy in studies where examination begins with the formulation of a hypothesis and the utilisation of fundamental theories pertinent to the research topic. In the cases when the researcher wants to go from top to bottom, or from a broad perspective to a narrow perspective (Stokes and Wall, 2017). When the authors decides to conduct research using the deductive method, they always begin by using theories and then test those theories. Therefore, the deductive approach's drawback is that the researcher cannot perform deductive approach-based study if there is no theory that has already been provided in the literature. Survey questionnaires are the most popular research tool employed by researchers that conduct studies using a deductive approach, as mentioned in the study by Doyle, Brady, and Byrne (2016). When choosing between the two research approaches, it is important to keep in mind that the deductive approach is used when trying to test an existing hypothesis and the inductive technique is used when trying to establish a theory. Referring back

to the aim of the study which is linked with establishing if humanitarian intervention is pitfall or precedence of the United Nations, it is rationale to employ inductive approach.

### 3.3. Methodological Choices

The research's methodological choice is crucial in determining the approach it should take to systematically solve the research topic (Wilson, 2016). Choosing it tends to have a significant role in the research's entire process, given its importance. For researchers, there are generally two options for methodologies: qualitative research methodology or quantitative research methodology. Two methodological options are in contrast to one another, just like the two categories of research approaches that were previously described; hence, they are appropriate for various situations. Along with these two methodological choices combined—commonly referred to as "mixed methods"—there are several subcategories within these broad categories of methodological choices.

The authors of the study choose their approaches from multi, mono, or a combinational of these based on the requirements of the research. Mixed-method (a mix of qualitative and quantitative methods) is employed when more than one sort of methodological choice, or a combination of methodological choices, is required. Mono-method (either a qualitative or a quantitative method) is used when just one methodological option needs to be made. Last but not least, multi-method (more than one method from either qualitative or quantitative) is selected when more than one research method from one of the methodological choices is required.

It is advised to employ a qualitative methodological approach when the purpose for the research is only related to narrative, that is, a thorough and full description of the occurrences – according to Doyle, Brady, and Byrne's (2016) study. On the other hand, it is advised to utilise a quantitative methodological approach if statistical investigation of the phenomena is required. In this wake, the objectives of the study is indicating towards a rather descriptive approach than statistics-based choice. Therefore, the methodological choice of this study is qualitative.

### 3.4. Research Strategy

The strategy in the study provides broad guidance for the study, including the research's process. Experiment, interviews, case studies, grounded theory, surveys, ethnography, and action research are just a few examples of research strategies. The research strategy is described as the "overall plan of how the researcher will go about addressing the research questions" in Saunders et al. (2009; p. 600). A related study that defined strategy as the "general attitude to the conduct of research" offered light on the idea of strategy inside the methodology (Bryman, 2008; p.698). Saunders et al. (2009) highlight that choosing a certain research strategy must depend on the goals and research questions. Additionally, the research strategy is chosen in accordance with the degree of accessibility to the body of current knowledge on the issue, philosophical foundations, time constraints, and availability of resources. The research of Yin (2003), on the other hand, shows a very different approach to the adoption of a research strategy and is based on three conditions, including the degree of control an investigator has over actual behavioural events, the type/nature of research question, and the degree of focus on contemporary or historical events. The researchers can select a research strategy that best fits the unique aspects of their study on the basis of this criterion. Since the answer required in this research is for the question that is exploring: How the notion of humanitarian intervention has

played its role in transforming this world into a more peaceful place, it is intrinsic that exploring past cases is the only helpful, logical, and valid way. Therefore, case study has been chosen as the research strategy in this study. The case study is taken into account for the three reasons listed below. The phenomenon must be studied in its natural environment; the researcher must have the ability to ask "why" and "how" questions in order to comprehend the nature and complexity of the processes occurring; and the research must be done in a field where few, if any, previous studies have been done.

## 3.5. Time Horizon

The research onion states that the study's temporal frame can be either longitudinal or cross-sectional (Saunders et al., 2009). Using a longitudinal time horizon is chosen when a research project needs to gather data from various points in time since it enables researchers to get information from the same sample throughout the course of a particular amount of time but in various timeframes. On the other hand, the study's cross-sectional horizon is useful for simultaneously assessing and analysing several factors. Cross-sectional time horizon is taken into consideration in research where there is a time constraint or insufficient data available to account for various time periods. Additionally, creating a connection between several variables at a specific moment. Without conducting numerous case studies over a long period of time, the current study also aimed to evaluate the UN's shortcomings or precedents after humanitarian intervention. It can be said that choosing a cross-sectional time horizon was the best option for this research study because it allows comparison and the creation of links between study's variables at the same time.

### 3.6. Ethical Considerations

While conducting any research, certain ethical consideration must be kept in view so as to ensure that the research is valid and authentic for its readers. Moreover, research studies that do not consider ethical aspects while conducting the study, cannot make significant contribution in the literature. When it comes to ethical consideration in qualitative study, the researcher initially has to ensure that the arguments present in the study are objective by nature and no influence of personal views have been integrated into the study. In order to ensure that study remain unbiased, the research has extensively studies and cited research articles in support of claims made throughout the work.

## Chapter No. 4 – Case Study

### 4.1. War in Iraq – Was it a Humanitarian Intervention or not?

It was assumed that the humanitarian intervention would be eradicated in the era of 1990s. An era in which taking military actions across the border to minimize mass murder, less consternation of higher authorities regarding security concerns of the state and centralizing human security concerns seemed to be most important (Roth, 2004). The diverse humanitarian interventional approaches of Somalia, Haiti, Bosnia, Kosovo, and East Timor, Sierra Leone were abandoned and declared as a threat for triggering Cold war and terrorism. It was heard that September 11, 2001 has fixed it all and has brought more prominent security challenges. Even after acknowledgment of the active actions taken against terrorism, four humanitarian defined military interventions were seen within the past years (Roth, 2006).

One can accept this amended concernment only in the situation concerning about the lives of overseas victims. The most righteous act is to save the lives of faraway people by risking own lives. But unfortunately the frequent use of the term 'humanitarian' has lost its real meaning and has reflected different meanings of interventions. The agenda of ending man slaughtering was proposed by the French intervention in the Democratic Republic of Congo which was later supported by the U.N. peacekeeping cabinet. West African and French forces introduced a peace plan in Liberia and Côte d'Ivoire meanwhile performing humanitarian duties. The active involvement of United Nations in the Liberian interventions was affected a bit by the placement of soldiers and forces (Roth, 2004). The UN Security Council approved all the African interventions. Each case was allowed intervention by the concerned authorities despite of having high pressure.

In a variety of justifications for the invasion of Iraq, only a minor justification was declared humanitarian by the coalition forces of United States. The Security Council dismissed the approval for invasion, which was opposed by the Iraqi government which was defenceless at the time. Furthermore, as the African interventions were a minor problem, the conflict in Iraq was a severe matter; it added substantial bombing and 150,000 military ground forces.

The complexity and severity of invasion of Iraq, the arguments circulating around the world about the war and major engagement of high level powers and authorities of the world, the Iraq war took the limelight over all other military affairs (Roth, 2006). For good or for bad, it could be said that concentrating and centralizing of Iraqi conflict around the world has greatly influenced the perception of people regarding military interventions that were justified as humanitarian interventions by the defenders (Roth, 2004). The Iraq war and other military interventions have resulted in concealing and defaming the real means of humanitarian interventions among the people. This imitation of wrong reflection of military operations for humanitarian approach could raise a major problem in future for the people who will be in need of rescue.

The Human Rights Watch usually gives no views for a country to go to a war. The concerns usually go beyond the directions and the neutrality enables us to pressurize the parties to conflict in order to resist hurting the non-combatants. The only condition of not following this rule is the immediate need of humanitarian interventions around the world. Moreover, human Rights Watch at the time of the Iraq War took no position for or against the war. A humanitarian rationale was occasionally offered for the war, but it was so subsidiary to other reasons that we felt no need to address it (Roth, 2006). The risk that wars guided by non-humanitarian goals

will endanger human rights keeps us from adopting that position. The difficulty of establishing stable institutions in Iraq is making the country an unlikely staging ground for promoting democracy in the Middle East. The Bush administration's dominant remaining justification for the war is that Saddam Hussein was a tyrant who deserved to be overthrown - an argument of humanitarian intervention (Roth, 2004). Does that claim hold up to scrutiny? If not, it risks tainting a principle whose viability might be essential to save countless lives. Our goal is to evaluate this claim made by those who support the Iraq War on the basis of the humanitarian justification for the conflict. We come to the conclusion that the U.S.-led invasion of Iraq cannot be justified as a humanitarian intervention, despite the atrocities of Saddam Hussein's rule.

### 4.1.1. *Humanitarian Intervention Standards*

Unlike human rights groups, Human Right Watch contains a longstanding policy on humanitarian intervention. War is not the only reason that brings enormous human costs, systematic slaughtering is also a cause needed to prevent which might contribute to justifying the use of military force. To serve this cause, Human Right Watch advocated humanitarian intervention on rare occasions (Kinsella and Mantilla, 2020). For example, to stop the ongoing genocide in Rwanda and Bosnia.

Military actions even for humanity's purpose must not be taken lightly. Though, in case of territory attack in terms of serious abuses, one might use military force in the emergence and might invite military assistance from others for help (Jemirade, 2021). For example, - as in the cases of the three recent African interventions. However, if government consent is not involved then the military invention needs to be used with extreme caution. To reach the accepted

standards use in such non-consensual military action, principles must be set and experiences must be applied that could manifest the territory's own policy on humanitarian intervention (Hjorthen, 2020). Other relevant literature for guidance can be considered including the report of the Canadian government-sponsored International Commission on Intervention and State Sovereignty as well (Farer, 2019).

Governmental non-consensual humanitarian intervention is justifiable only in the face of ongoing or imminent genocide, or comparable mass slaughter or loss of life. Based on theory, war is surgical that brings deaths, destruction and disorder so often are inherent in war and its aftermath (DeVillers, 2019). On the other side of the coin, other forms of tyranny are dreadful and have not given deserved consideration, and are neglected but worth working intensively to end and demand extraordinary response of military force. Out of these forms of tyranny, only mass slaughtering is given consideration and involves the use of military force for humanitarian rescue purposes due to the deliberate taking of lives (Kinsella and Mantilla, 2020).

The capacity to use military force is infinite, but, what retrains a country to use them only when atrocities are most severe without the approval of the U.N. Security Council the international legal order gets disturbed which itself is important to protect rights. This is why, countries believe to reserve humanitarian intervention for mass killing situations (Kartashkin, 2019).

To level of killing's interpretation by human rights organizations might differ from the level that a government might set. But, the common area for both of them focuses on the preservation of military force for the most dire circumstances (Jemirade, 2021). Five other factors can determine in the evaluation of whether the use of military force is characterized or not. First, if effective alternatives are available to safeguard slaughter then the use of military force should

be avoided. Second, the intervention must contain humanitarianism purpose. Third, international humanitarian law and rights must be respected while using any means of intervention. Forth, avoid using military actions that bring less good and more harm. Finally, endorsement of humanitarian intervention by the U.N. Security Council should be preferred, however, emergency contexts do not require it necessarily (Hjorthen, 2020).

### 4.1.2. Two Unconnected Contemplations

Two factors are not relevant when considering the justification of humanitarian use of the military, before applying these criteria to Iraq. One is intentional ignorance of humanitarian intervention needed in equally or more needy places. Undoubtedly, Iraqi repression was severe, but possibly repression elsewhere was worse (Farer, 2019). For example, the conflict in the eastern Democratic Republic of Congo (DRC) took three million lives and lost lives to violence, disease, and exposure. The intervention in DRC was late as compared to Iraq. Despite this, ignorance of warranted Iraq military intervention is also not justifiable. Thus, intervention should be encouraged in both places and not rejected in one because it was weak or non-existent in the other (DeVillers, 2019).

Second, encouraging ruthless suppression by helping a country with an intervention does not justify humanitarianism. Spiritually, past U.S. complicity in Iraqi repression should preclude U.S. intervention in Iraq on humanitarian grounds. The Iraqi government was using chemical weapons against troops of Iran in 1980. In 1991, The Iraqi government's ruthless suppression was upraised by President Bush and facilitated Iraq's use of helicopters. Washington considered it more important to defeat Iran which destabilized Iraq as well. Contrary, there was a need to discourage or prevent large-scale slaughter (Wallace, 2019).

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### 4.1.3. The Extent of Homicide

Has the genocide and mass slaughter underway or imminent? Answering this question can justify humanitarian intervention while noting the level of killings. The brutality of Saddam Hussein is not an illusion, but, the last 25 years of the Ba`th Party ruled the Iraqi government that murdered and "disappeared" millions of Iraqis (Montgomery and Hennerbichler, 2020). Moreover. Iraq's use of chemical weapons against Iranian soldiers is also considered abuse. Somehow, by the 2003 invasion, Saddam Hussein's killing had ebbed. In 1988 Anfal genocide slaughtering of 100,000 Kurds justified humanitarian intervention (DeVillers, 2019). Human Rights Watch was not in action before Iraq was addressed in 1991 for Saddam Hussein's brutal repression of the post-Gulf War's fleeing of Iraqi Kurds that died in winter weather on Turkey's mountainous border. Human Rights Watch advocated the creation of a no-fly zone in northern Iraq so they could return home without facing renewed genocide (Alhakim et al., 2021). "Better late than never" is not a proper justification for humanitarian intervention to stop mass murder, perpetrators needed to be punished.

Saddam Hussein's mass atrocities in the past were not the guaranteed aspect that he would prevention to slaughtering in future. Whilst, Human Rights Watch emphasized military intervention of ongoing as well as prevention of future slaughtering as well. Considerably, there must be evidence that large-scale slaughter is imminent unless militarily stop it. No one claimed seriously in the case of Saddam Hussein's government's mass killing. Even though there were no pieces of evidence but just claims that Saddam Hussein with Kurds was delivering weapons of mass destruction through terrorist networks. There were possibilities that the Iraqi government might respond even against its own people, but one seriously suggested the imminent possibility in the absence of an invasion. This does not suggest that

past atrocities should be ignored, however, perpetrators should be punished (Alhakim et al., 2021).

Human Rights Watch investigated the Iraqi government's atrocities after the Anfal genocide against Iraqi Kurds. They contributed to instituting legal proceedings against Iraq for genocide after collecting enough pieces of evidence. The mid-1990s brought fear that if Iraq would be charged, then it was possible that the charge could invite terrorist retaliation in future. There can be humanitarian intervention to encourage justice by arresting culprits and Indictments should be issued, however, extraordinary remedies of humanitarian intervention should not be used for past crimes (Alhakim et al., 2021). Humanitarian intervention should be taken only to stop the current slaughter, not to punish past abuse

Saddam Hussein's rule should be met with public, diplomatic, and economic pressure, as well as prosecution. But before execution of substantial risk to life mass slaughter should be taking place which was not the case in Saddam Hussein's Iraq in March 2003 (Wallace, 2019).

### 4.1.4.   The Ultimate Rational Choice

The lack of ongoing slaughter apparently disqualifies the humanitarian intervention in Iraq. However, alternatives for humanitarian intervention are useful in light of the ruthlessness of Saddam Hussein's rule. Only substantial risk demands humanitarian intervention when no option is left to stop mass killings (Kartashkin, 2019). Before 2003, there were no ongoing mass killings in Iraq. Technically, mass killings did not arise. However, it is useful to assess whether military intervention was the last reasonable option to stop what Iraqi abuses were ongoing. If it was the last option then was the purpose of the intervention primarily humanitarian? At least one alternative like prosecution should have been tried before the

military invasion. The prosecution does not guarantee outcomes but in the case of the Iraqi government's more routine abuses, this alternative should have been tried (Montgomery and Hennerbichler, 2020).

Indeed, an indictment will not stop the mass slaughter but can be an effective long-term approach to Iraq because justice held some promise. The experiences of former Liberian President Charles Taylor and former Yugoslav President Slobodan Milosevic suggested that an international indictment would discredit a dictatorial leader (even a ruthless one). This was the stigma that supported a leader both locals and internationals as well. This ignorance of the international community allowed Saddam Hussein without fear of indictment for genocide and crimes against humanity (Hjorthen, 2020).

The case study advocated that U.N. Security Council did not concern with prosecution for more than a decade of attention to Iraq. However, in 1991, this council commenced a resolution to condemn "the repression of the Iraqi civilian population" and treated such repression as a threat to international peace and security. However, the council never followed to deploy the obvious tool of the prosecution to curtail that repression. Still, the council is responsible as compared to the US government which showed devotion toward justice by pressing for war (Jemirade, 2021).

### 4.1.5. Humanitarian Drive

A dominant humanitarian motive is important before applying humanitarian intervention because it affects numerous decisions made in the course of an intervention and its aftermath. Humanitarianism, for the welfare of the Iraqi people, was at best a subsidiary motive (Jemirade, 2021). The principal justification can be that the Iraqi government was alleged with possessing

weapons of mass destruction by several U.N. Security Council resolutions, and its alleged connection with terrorist networks as well. Saddam Hussein's cruelty toward his own people was prominent for Iraq during its transformation into the Middle East as spoken by U.S. officials. If invading forces were stopped Iraq would have been better prepared to reserve security. The probation of civil disorder was high after the downfall of Saddam Hussein (Farer, 2019). 1991's uprisings in Iraq demanded immediate executions. On one side, the Arabization government policy raised the prospect of clashes regarding Kurds reclaiming their old homes and Arabs who had moved into them. On the other side, concerns were raised regarding Bosnian Serb withdrawal from the Sarajevo suburbs in 1996, which resulted in widespread violence, looting, and arson (Montgomery and Hennerbichler, 2020).

Eric K. Shinseki US army chief of staff predicted thousands of troops to be required in war, but, civilian leaders launched the war with some 150,000. The backup of US high-tech weaponry troops was supporting that took no time to deploy war. The result was unfavourable since coalition troops were quickly overwhelmed by the horror of the task of maintaining public order in Iraq. This resulted in looting, arms caches were raided and emptied. Violence was rampant. The problem was untrained and understaffed resulting in failure, however, Regular troops are trained to fight and meet threats with lethal forces (Farer, 2019). The consequence resulted in civilians killed when coalition troops during resistance attacks, mistakenly fired on civilians. This provoked resentment among Iraqis and fueled further attacks. Trained Troops in policing to use lethal force as a last resort would have been to conduct occupation duties humanely (Hjorthen, 2020).

Eventually, L. Paul Bremer III, the U.S. administrator in Iraq, disbanded the entire Iraqi police and army forces leaving occupied authorities without a large pool of native forces that could have helped to establish the rule of law (Kinsella and Mantilla, 2020). The case study provides a recommendation to disbanded intelligence agencies (the Special Republican Guard or the Mukhabarat) and their members to be prosecuted as well. Moreover, those Iraqi army and police members who were also complicit in atrocities needed to be disbanded. However, inefficient dismissal took a toll on Iraqi security (Montgomery and Hennerbichler, 2020).

Washington's attitude toward the system of justice lacks overriding humanitarian purpose International Criminal Court (ICC) has prevented seeing those responsible for atrocities in Iraq (Hjorthen, 2020). The administration insisted that accused Iraqi officials were on trial before an "Iraqi-led process." Theory preferred Iraq to try its own offenders. But after three-and-a-half decades of Ba`th Party rule, the Iraqi judicial system was ruined in terms of respect and lost the capacity to organize genocide or crimes against humanity (Alhakim et al., 2021).

The solution to this problem demands international criminal tribunals for Iraq such as those established for Rwanda and former Yugoslavia, or the special court created for Sierra Leone. Although the Bush administration has supported pre-existing tribunals but opposed an international tribunal for Iraq because he lied to ICC, even though ICC to this task would be largely irrelevant because it is the matter before 2002. The administration detests the ICC that it opposes the creation of any international tribunal for Iraq with a fear that such a new tribunal would lend credibility to the international justice project and thus indirectly bolster the ICC (Jemirade, 2021).

### 4.1.6. *Compliance with Humanitarian Law – 250 words*

Compliance with international human rights must be advocated to carry out humanitarian intervention. The invasion of Iraq largely met the compliance of humanitarian law, but not entirely. Coalition forces were prepared to avoid harming civilians during attacking, however, their record in attacking mobile targets of opportunity was mixed (Farer, 2019). For Yugoslavia, Human Rights Watch reported that the U.S. faced awful failure to bomb leadership targets. The 0-for-50 record reflected allowing bombs to be dropped on the basis of evidence that the leader was somewhere in a community. U.S. Army used cluster munitions near populated areas, with a predictable loss of civilian life. After a quarter of civilians' death, the U.S. Air Force substantially curtailed the practice. However, the U.S. Army never absorbed this lesson (Kartashkin, 2019). The same applied in Iraq, Army troops regularly used cluster munitions in populated areas, causing substantial loss of life. Such a disregard for common people's life is incompatible with a genuine humanitarian intervention (Jemirade, 2021).

### 4.1.7. *Rather than worse, it's better*

The factor for assessing the humanitarian nature of an intervention embraces reasonably calculations to make things better rather than worse in the country intervention is to be invaded. In the sight of a common man, anything can be better than living under the tyranny of Saddam Hussein, however, the situation might be even worse if thinking of other possible scenarios. Possibly, violence might still emerge in Iraq (Farer, 2019). In March 2003, U.S. and U.K. governments clearly hoped Iraq to soon come on the path to democracy. Iraq's failure to equip itself needed to be stabilized, however, considerations advocates that before the war, Iraq would be better off if Saddam Hussein's ruthless reign were ended. Just one factor in light of

the failure to meet the other criteria does not make the intervention humanitarian (Kartashkin, 2019).

### 4.1.8. *Approval of United Nations*

Receiving the endorsement of the U.N. Security Council contains the considerable value, which emphasizes the need to convince others by proposed intervention is a good way to safeguard against unjustified action. Excluding extreme situations, an international commitment approval by the Security Council to an intervention contains the likelihood that adequate resources and personnel will be devoted to the intervention and its aftermath as well. Large-scale slaughter can't be handled through the council since the council is not highly perfect (Alhakim et al., 2021). Since in 2003 no urgency was needed in Iraq, the failure of council approval let the other multilateral body weighs heavily in assessing the intervenors' claim to humanitarianism. However, approval might have considered some factors to stand in the way of the invasion being genuinely humanitarian. A council-approved invasion might call some troops to join American and British forces, and might situation would have been better (Kinsella and Mantilla, 2020).

## Chapter No. 5 – Discussion

### 5.1. Legal basis of IHL from Case study and Literature

The pitfall or precedence of United Nations in the wake of humanitarian intervention mainly resides on the legal basis of legalisation of humanitarian intervention. IHL was found in international conventions of treaties along with rules that establish over the course of time because of stable practice of State in consort with confidence that there is legal requirement of the practice, i.e., customary law. The 1949's Four Geneva Conventions and the additional protocols of 1977 contained the major elements of IHL. Yet there are number of other treaties dealing with this issue that may include, but not limited to, prosecution of war criminals or regulation of specific weapons.

In this wake it is also crucial to reflect back on the scenarios where application of IHL is justified and if justified then who can apply this. As found in the literature and arguments, IHL is application in such circumstances where armed conflict is evident either international level or non-international level. The application of IHL is equal for all sides once the conflict has commenced, irrespective of the reasons behind the conflict or the source starting the conflict. Hence, violating IHL is likely to bring unthinkable destructions.

States that have ratified IHL treaties are obligated by law to abide by the regulations and must take all reasonable steps to maintain and guarantee IHL is upheld. Those individuals, who commit serious violation of international humanitarian law, are liable for war crime, irrespective of their social status. Regardless of where the crimes were committed, the State is responsible to prosecute individuals who are accused of committing war crimes. The Geneva

Conventions and Protocol I contain a list of particular crimes that must be punished. These crimes include rape, deliberate killing, torture, and other inhumane treatment of others.

It is also required by IHL that State must search individuals who are suspects in breaching the principles of IHL while bringing them in their courts. The States, however, has the choice to hand the accused individual for grave breaches to another State for trial. Meanwhile, military commanders are the crucial need of States in preventing the commission of war crimes as well as taking measures against individual who commit severe violation of IHL under control is also important. The international community, in addition to domestic prosecution, has also formed two provisional tribunals dealing particularly with wrongdoings and criminalities taken place in the earlier humanitarian intervention in Yugoslavia and Rwanda correspondingly.

The establishment and authorisation of ICC – International Criminal Court – surfaced in 2002 as the first permanent body having jurisdiction on severe crimes taking place internationally that included war crimes; no matter if those war crimes or any other international crimes were committed during armed conflict at international or non-international level. Hence, breaching or violating the IHL is likely to being ICC into force, however, its operation is dependent on the ability or willingness of State to prosecute those individual, who commit crimes (Binder, 2016). A number of countries, at an increasing rate, are involved in creating war crimes prosecution mechanisms that are not only the part of jurisdiction domestically but also have international support.

## 5.2. Legal basis of R2P from Case Study and Literature

R2P is itself not a legally binding framework, but a principle that is often documented in the present international law. During the crime of genocide, the responsibilities of states are

mentioned in the Genocide Convention which reveals that the State is responsible for preventing and punishing the crime of genocide. Within the Geneva Convention and additional materials, the obligations of States to international humanitarian law as well as their responsibilities under IHL are documented. These obligations are also considered relevant for war crimes under R2P. Even though crime against humanity is a well-understood and international crime as demonstrated in the Rome Statute of the International Criminal Court, it does not possess its own treaty or convention that defines States responsibilities with regard to this kind of crime. However, other elements of crime, involving slavery and torture, possess their own convention. On the other hand, ethnic cleansing, though mentioned as a specific crime under R2P, does not possess its own legal guidelines in international law. Both a crime against humanity and a war crime can be constituted in ethnic cleansing.

As far as the responsibility under R2P is concerned, the major duty bearers are States. Firstly, it is the responsibility of the States to protect communities within their control and jurisdiction. Additionally, they are also responsible to help other States in accomplishing their duties of protecting their populations. It has been noted by Secretary-General that this can be accomplished with the help of four ways: 1) to encourage States fulfilling their responsibilities under pillar one, 2) to assist them in exercising their responsibility, 3) to aid them in building their capacity for protection and 4) to help States "under stress before crises and conflicts break out".

Moreover, International Community also has the responsibility via United Nations to implement suitable humanitarian, diplomatic, and peaceful measures for protecting populations and make collaborative actions with the help of the Security Council (Walling, 2015). Within

this context, it can be observed that States working with United Nations are referred to as the international community. However, there is no definite and agreed definition present for the international community. While it is commonly applied to States, it is also the possibility that it may also use to indicate the ways states utilise for implementing their responsibilities, involving non-government organisations, non-state actors, and civil society in a more general manner. Though the non-state actors have no legal responsibility to protect the population under international law, a strong argument for moral responsibility has still existed.

The application of R2P is carried out at all times, both during the events of armed conflicts (all kinds of R2P crimes) as well as during peace time (crimes against humanity, genocide, and ethnic cleansing). It is observed by Secretary Genera that R2P is found to be narrow but deep. In simple words, R2P is majorly followed in those situations where populations are either suffering from or threat of a particular crime. On the contrary, violent situations, such as conflict or civil strife, do not follow the principle of R2Pa s these situations do not fulfill the required threshold of serious crimes.

There are often some situations when States fail to protect the population and avoid the commission of R2P crimes. When such kinds of international crimes have been committed in States, then it is their responsibility to punish those who are responsible with the help of domestic legal systems or through international mechanisms that have been formulated like the International Criminal Court. In order to prosecute R2P crimes, the principle of R2P majorly depends on current international law. A separate regime is not outlined for the perpetrator prosecution. The humanitarian intervention debate conceived the concept of R2P, humanitarian intervention, and the use of force R2P and developed with a motive to resolve significant

contradictions of humanitarian need along with the principle of non-interference and state sovereignty. It is often considered synonymous with the humanitarian intervention concept which reveals that States or groups of States intervene in a military and ostensible manner for humanitarian reason as well as the protection of communities. However, the R2P significantly differs from humanitarian intervention. It is allowed by R2P to utilise force as a last measure when a State fails to protect its populations and communities. R2P contrast to humanitarian intervention only relates to four kinds of crimes that are specified in the concept and do not associate with other humanitarian disasters and emergencies. Notably, R2P also considers establishing state capacity for the protection of populations from any kind of heinous crimes; however, humanitarian intervention was quite on such matters. Hence, R2P should not be considered a humanitarian intervention but does permit the utilisation of force under Chapter VII of the UN Charter to protect populations from crimes against humanity, genocide, war crimes, and ethnic cleansing.

## 5.3. Use of Force authorised by UNSC

As per Article 39 of UN Charter, it is within the Security Council's mandate to 'determine the existence of any threat to the peace, [...] or act of aggression' as well as to 'make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42'of  Charter. Article 41 provides for 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. In case of failure of such measures, Article 42 allows for demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations to maintain international peace and security.

Under these provisions, a state (or group of states) does not act unilaterally (as in the case of self-defence which we will discuss in a while), but rather states act collectively by resorting to force acting under the authority of the international organizations (e.g. the UN Security Council). Now, in assessing the provisions under Article 41 and 42 of the Charter, a major question that arises is regarding the definition of threat to peace and the elements that SC considers when using force?

The concept under Article 39 has been criticized to be very broad and indistinct (Cryer, 1996). It originally referred to threats of inter-state conflicts but was soon seen to be broadened by the SC in its application (Harris and Kassimeris, 2010, p. 796-797). In 1990, the authorization of member states to repel the Iraqi invasion of Kuwait following economic sanctions against Iraq was one of the interventions in inter-state conflicts. However, the 1948 Palestine Conflict was not a definite instance of inter-state war. In I 96 I, the war in Congo that was predominantly internal in character was deemed threat to peace by the SC ("Resolution 161 (1961) / (adopted by the Security Council at its 942nd meeting], of 21 February I 96 I, S/RES/16 I (I 961)", I 96 I). Based on these instances, in the post-cold war era, the case of extreme violence within a State has also been recognized as falling within threat to peace (Harris and Kassimeris, 2010, p. 797). The decision of Security Council in Libya, Liberia, Angola, Rwanda, Burundi, and Somalia are some examples of the same.

Following this development, threats to international peace and security moved from transnational peace and security claims to human rights and magnitude of human suffering. In Somalia, SC stated that magnitude of human suffering was threat to international peace. Whereas in Rwanda, SC used the phrase, 'threat to peace in the magnitude of humanitarian

crisis'. The development of the concept of Humanitarian Intervention and Responsibility to Protect occurred within this ambit. The passing of resolution in UNSC for use of force in Libya in 17 March 2011 is one of the outstanding examples of use of force under the doctrine of Responsibility to Protect. Prior to this, concept of use of force has been seen used indirectly in case of Iraq in 1991 where US-led coalition provided humanitarian assistance to the ethnic Kurds by restricting the flight zone in order to thwart attack by Iraqi forces. Similarly, in 1992, USA and UN intervened to ensure the delivery of international humanitarian aid in the region. Kosovo (1999), Sierra Leone (2000), Sudan (2004) are some other examples of it.

# Chapter No. 6 – Conclusion & Recommendations

## 6.1. Conclusion

Communities and people, since the earliest times, have rules in place for minimising the distress war causes. However, there are limitations that can be found in every culture with respect to how the conflict can be fought since the rules set are most of the time agreed upon by particularly involved parties. This research attempts to analyse whether the concept of humanitarian intervention and responsibility to protect has served its purpose. It is primarily an investigation into the manifestation of the cases of responsibility to protect and humanitarian intervention. Referring to Iraq war case study and literature, the paper concludes that there are more downsides to these concepts than pros. In terms of humanitarian intervention, the unilateral action in Iraq, which spurred condemnation from the United Nations and the international community, showed how rudimentary the concept was. However, despite resolving the military aspect, the world community went towards further legitimizing it through the Responsibility to Protect (R2P), which was articulated for a noble cause but resulted otherwise.

More than protecting and securing human rights, the bodies that have the authority to decide to have more inclination towards their national interest and ideals. In several instances of proposing R2P for Syria in the Security Council – as viewed in the literature review chapter, states have vetoed on the grounds of their alliance, similar governmental ideology, or even to protect their investments abroad. Therefore, an apparent reformation of this, along with other aspects, seems more than necessary if the noble cause of Annan is to exist. States would not have much problem giving off a certain share of their sovereignty for their international

obligation; however, they need to be assured that the obligating body would only act in favor of human rights and nothing more.

Furthermore, the legal assessment of the UN Charter rearguing the use of force also presents numerous conditions and questions. This has made the process of intervention open to interpretation because there are multiple loopholes and points where one can play the game of 'between the lines. As the interpretations are enormous, there is an immense chance of dissatisfaction and conflict during decision-making. Even though there are certain acceptable conditions for intervention and also some successful implementation of the concept, there are a lot of questions that are left to be answered. There are myriad grey areas of humanitarian intervention and the responsibility to protect that are yet to be experienced and answered. Scholars define intervention as a troubled but necessary concept. From the analysis of the case studies, this research also walks on the same line but posits that a significant reformation is required before moving on to implementing it again.

In sum, the invasion of Iraq failed to meet the test for a humanitarian intervention. Most important, the killing in Iraq at the time was not of the exceptional nature that would justify such intervention. In addition, intervention was not the last reasonable option to stop Iraqi atrocities. Intervention was not motivated primarily by humanitarian concerns. It was not conducted in a way that maximized compliance with international humanitarian law. It was not approved by the Security Council. And while at the time it was launched it was reasonable to believe that the Iraqi people would be better off, it was not designed or carried out with the needs of Iraqis foremost in mind.

In opening this essay, we noted that the controversial invasion of Iraq stood in contrast to the three African interventions. In making that point, we do not suggest that the African interventions were without problems. All suffered to one degree or another from a mixture of motives, inadequate staffing, insufficient efforts to disarm and demobilize abusive forces, and little attention to securing justice and the rule of law. All of the African interventions, however, ultimately confronted ongoing slaughter, were motivated in significant part by humanitarian concerns, were conducted with apparent respect for international humanitarian law, arguably left the country somewhat better off, and received the approval of the U.N. Security Council. Significantly, all were welcomed by the relevant government, meaning that the standards for assessing them are more permissive than for a nonconsensual intervention.

However, even in light of the problems of the African interventions, the extraordinarily high profile of the Iraq war gives it far more potential to affect the public view of future interventions. If its defenders continue to try to justify it as humanitarian when it was not, they risk undermining an institution that, despite all odds, has managed to maintain its viability in this new century as a tool for rescuing people from slaughter.

The Iraq war highlights the need for a better understanding of when military intervention can be justified in humanitarian terms. The above-noted International Commission on Intervention and State Sovereignty was one important effort to define these parameters. Human Rights Watch has periodically contributed to this debate as well, including with this essay, and various academic writers have offered their own views. But no intergovernmental body has put forth criteria for humanitarian intervention.

This official reticence is not surprising, since governments do not like to contemplate uninvited intrusions in their country. But humanitarian intervention appears to be here to stay - an important and appropriate response to people facing mass slaughter. In the absence of international consensus on the conditions for such intervention, governments inevitably are going to abuse the concept, as the United States has done in its after-the-fact efforts to justify the Iraq war. Human Rights Watch calls on intergovernmental organizations, particularly the political bodies of the United Nations, to end the taboo on discussing the conditions for humanitarian intervention. Some consensus on these conditions, in addition to promoting appropriate use of humanitarian intervention, would help deter abuse of the concept and thus assist in preserving a tool that some of the world's most vulnerable victims need.

## 6.2. Recommendations

Before moving on to the recommendation section, one needs to clearly understand that in no way this research paper rests on the ground that humanitarian intervention is entirely illegitimate or unwise, or wrong. Even though there is a myriad debate on whether the means to prevent or stop gross violation of human rights should cross state boundaries, the research believes, through the legal assessment of the UN charter and the case studies that under specific circumstances, the collective security can be protected through the compromise of one's sovereignty. However, through the case studies, one can explicitly see that the practice of the intervention has not been justified, neither morally nor legally. Often, humanitarian intervention has been a failed practice, whether it be the intervention at Kosovo or the use of the third pillar in Libya. The international community, especially the authorizing body, has faced immense criticism following these events because the aftern1ath of the intervention did not justify its purpose of protecting human lives and human rights. "Humanitarian intervention

is a political act that must be judged by its consequences, not its motivation" (Seybolt, 2007). And looking at the consequences, the entire structuring of the process of decision-making for intervention seems to be the problem. Kofi Annan once stated that "the impossibility of gaining authorization from the Security Council for the intervention in some cases suggested a disturbing conflict between two core values of the international legal system: the respect for state sovereignty and a commitment to peaceful relations among states on the one hand, and the protection of basic human rights on the other" (Buchanan, 2003, p. 131). Furthermore, there also seems to be a widening gap between international law and moral principles regarding intervention. This paper has segregated the recommendation section into several sub-headings, depending upon the nature of the proposed recommendation. These directions and suggestions are backed by relevant literature to add credibility to the proposal.

### 6.2.1. *Reformation of the Decision-Making Body (The Security Council)*

The term 'humanitarian intervention', also 'humanitarian war' has been criticized in its fundamental definitional elements. For instance, it incorporates 'use of force', that is prohibited by the UN Charter in its article 2(4) (Charter of the United Nations, 1945).. Secondly, it relies on the premise that a State failed to protect its citizens' human rights, among others. However, as was premised in the preceding paragraphs, the fact that (i) humanitarian intervention involves a moral justification of protection; (ii) the erga omnes nature of human rights which obliges the international community to act in case of grave breaches of human rights and (iii) Article I of UN charter (Charter of the United Nations, 1945)., that has mentioned protection of human rights and fundamental freedom as one of the very purpose of United Nations,

humanitarian intervention was regarded as a necessary evil. In light of the Rwanda crisis that global community could not prevent, the doctrine of Responsibility to Protect originated in 2005 in World Summit. However, the very structure of UN, was a hindrance in selfless pursuit of Responsibility to Protect and any form of legitimate humanitarian intervention. The provision of veto, the limited number of permanent members in UN, the organization of the military involved in such operation has invited plethora of issues such as:

(i)     reliance of global action for human protection on the Veto countries

(ii)    non-continuation of humanitarian intervention leading to unstable governance in the affected country

(iii)   humanitarian intervention or lack thereof for selfish purpose of the some or all permanent SC members.

In this light, researcher concludes that reformation of UNSC as a whole and particularly the permanent members and veto powers is crucial for just humanitarian intervention.

### 6.2.2. *Reformation of the UNSC*

The membership of Security Council whose purpose was to act as the watchdog for threats to peace, use of force, acts of aggression, among others is limiting. Owing to this exclusivity, the permanent members with veto powers, have been observed to have use the intervention principle as per their advantage.

Directing our attention to the Syrian crisis, Russia and China have repeatedly vetoed any humanitarian principle on the ground that 'national sovereignty shall be protected at all costs' (Murusidze, 2020). ft even vetoed the aid extension deal allowing humanitarian assistance to Syria through Turkey ("Syria: Russia and China veto last-ditch aid extension deal", 2020). This

prohibited any support or protection to Syrian nationals. [f we are to note the surrounding facts, Russia had been an avid supporter of Syrian President Bashar al-Assad and had continued supported the president's quest in gaining control of the conflicted Syria through deployment of Russian military troops (Murusidze, 2020). Russia claims its use of military to be at the invitation of Syrian government and thus legal and legitimate. However, if one is to note the principle of humanitarian intervention, it is activated when a country does not or is not able to protect its citizens from genocide, crimes against humanity, war crime, among others (Nations, n.d.). Reports estimate that there have been hundreds of death and thousands of displaces Syrians each year since Russian engagement started, thus, showcasing that intervention is in fact, legitimate in this case. Similar steps were taken in Libya in 2011 too ("Libya - Global Centre for the Responsibility to Protect", 2021). However, as Russia held vested interest in the protection of the President, it vetoed intervention and thus, the story of Rwanda repeated itself. This exclusivity of UNSC, absence of other permanent balancing powers as members and the accompanying veto power, thus, needs to be reformed in order to make humanitarian intervention effective and just.

### 6.2.2.1. Model proposed by Kofi Annan

Recognizing this exclusivity and its inability to represent the interest of the entire globe, former Secretary General Kofi Annan proposed models on reformation of the Council and its membership ("Kofi Annan's reform plan", 2005). In the report in Larger Freedom, 'to make Security Council more broadly representative of the international community as a whole, as well as of the geopolitical realities of today' ("Secretary-General Presents Report In Larger Freedom To General Assembly, Outlining Ambitious Plan For United Nations Reform I Meetings Coverage and Press Releases", 2005), Annan, proposed two models for reform.

1.      Model A which stipulated creating six new permanent members but without the veto power. This model also called for 3 non-permanent members, thus, amounting to total 24 members.

2.      Model B also suggested 24 members with new class of members who would serve for 4 years, with provision of renewal and one additional non-permanent member.

This model was a practical proposition, as the PS would not be open to giving up their veto power, or allocating someone new a veto power. Without veto, the increase in member states, and potentially of significant stature like India, Brazil, Germany, South Korea, among others, would balance the interest of non PS members in the SC. Further, Annan's model was inclusive of regions so any new seat would be equally divided for. Asia-Pacific, Africa, and other underrepresented nations.

### 6.2.2.2.    *Positions of blocs and countries*

The Group of Fou.r (G4), Brazil, Japan, India and Germany have proposed similar reform of 25 member council, including 6 new permanent members, namely, Germany, Japan, Brazil, India and 2 African nations) which would be representative of their region. Further, there would be three new elected seats ("United Nations Security Council Reform - Our World", 2014). Secondly, United For Consensus (UfC) also proposed a 25 members SC which in lieu of permanent members in UN would create permanent seats in each regions. The tenure of such membership were to be defined by the regional group itself ("United Nations Security Council Reform - Our World", 2014). Third proposal was from Ezulwini consensus which is representative of the African bloc. It proposes 2 permanent and 2 additional elected seats for

Africa with the permanent members attaining veto power as well ("United Nations Security Council Reform - Our World", 2014).

The "nonaligned movement" (NAM), also insists on extending the membership of SC with proper representation of African, Asian and Latin American countries (Benoit, 2018). They do not, however, insist on a veto (Benoit, 2018). The United States is also in favour of expansion of membership to its allies, Germany, Japan and even India. It is also seen as most willing to share veto rights, if needed (Benoit, 2018). China, Russia, France and the UK are also in favour of widening the membership, however, they are against sharing the veto power with these members. All the countries incline towards giving membership to other countries, specially their allies (Benoit, 2018).

### 6.2.2.3. *Procedure of reform*

As observed, most PS are in favour of expansion of members, however, they share individual views in deciding who gets the membership and for how long. Disagreements among the PS can also play a huge role in failure of UN reform, owing to the procedural measures enshrined in the Charter, articles 108 and 109 (Charter of the United Nations, 1945). The Charter exclaims that such reform in its provision is possible, however, they need to be passed by the PS as PS have the power to veto any amendments on Charter. This provision, again brings us to our starting point. Reform is required because PS have been selfishly exploiting veto, however, to ensure that such reform is passed, the PS need to not cast a veto on such arrangements. This provision, catered to PS, has been a prominent barrier in UNSC reform.

In the light of the anarchic world, the possibility of reform of UN in terms of removing Veto power is naive, to say the least. Countries, bloc and even experts, recognizing this, have pushed

towards the expansion of the membership of UNSC so that that the PS can be balanced by emerging powers and so that the UNSC is more inclusive and representative of all the regions. Currently, there are no Latin American or African representative and the representation of Asia is limited to China. So, in line with the aforementioned proposal of Kofi Annan, that has gained a degree of acceptance from the PS, this research recommends expanding the permanent members of UNSC to include major emerging powers li.ke Brazil, India, Germany, Italy, Japan, among others and non-permanent members, regardless of their resource for inclusion, specifically from Africa. If such a reform is made, humanitarian intervention and associated resolutions will meet with proper representation from the regions and UNSC might be more empathetic to grave human rights violations around the world.

### 6.2.3. *Defining the Role of Regional Organizations*

One of the unfortunate provisions of humanitarian intervention is the ignorance of the country's geographical position that is going to be interfered. States that are thousands of miles farther away, with no cultural and political sharing, are the ones deciding upon the fate of the state. They often neither have ample understanding nor emotional attachment with the country going through human rights crisis. Therefore, regional groups should also be encouraged to participate and cooperate. Ct's because they'd be able to intervene quickly and would have felt the effects of the internal crises to some level. Rather than intervening from countries that have no common culture, differ in political beliefs, and are hundreds of miles away from the victim state, neighbouring countries could make beneficial decisions because the entire stability of the region would be dependent upon the decision they take. In such cases, regional entities would successfully make choices related to the humanitarian intervention, may it be military.

### 6.2.4. Re-thinking the Military Aspect

The military aspect of both humanitarian interventions as well as the doctrine of the Responsibility to Protect has a military component in it. And with the inclusion of a military component, the protection of civilian lives sometimes experiences more threat than the actual violation of human rights. According to a report from the Human Rights Watch, "during the seventy-eight-day bombing event, there were around ninety separate incidents involving civilian deaths and around 500 innocent Yugoslavian citizens were killed in these incidents" (Human Rights Watch, 2000). There might be a counter-argument that innocent lives are nothing compared to the lives saved. However, losing fewer lives on one side could never justify the probable loss of comparatively more lives on the other.

Furthermore, misusing the concept of the customary law of military humanitarian intervention, since past several decades, there have been multiple unilateral actors from one state to the other, mainly from the powerful states to the less powerful ones. "Related examples of military action ostensibly taken in defence of foreign nationals in the countries concerned include the US invasion of the Dominican Republic and the US-Belgian action in the Congo, both in 1964, and on these interventions, the international community has often refused to recognize these actions as legitimate" (De Waal and Omaar, 1994). Therefore, one can clearly see the misuse of the military aspect, and therefore, recommendations and rethinking need to be done.

One of the recommendations could be creating and using the UN's own military personnel. In the present global context, UN, with the army of NATO, are the institutions that carry out humanitarian interventions. But there should be equal share of all countries for the creation of armies for intervention- only then those forces would not be inclined towards a single side.

Therefore, establishing a standing UN army seems apparent. The UN has achieved commendable praise from the international community regarding their peacekeeping missions, given that they entirely work under the umbrella of the UN and no specific country, making unilateral action almost impossible. While peacekeeping forces might not be able to work on violent and war-like grounds, an organized and well-equipped military might be the solution.

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