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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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“STATE SOVEREIGNTY VS. HUMANITARIAN DUTIES: THE LEGAL CONFLICT DURING ARMED CONFLICTS”

AUTHORED BY - SANYUKTA RAY

School of Law, Galgotias University, Greater Noida, Uttar Pradesh

ABSTRACT:

State sovereignty refers to the exclusive authority of a state over their internal affairs and jurisdiction, without any external influence from any other power. This is an important concept as it creates certainty and stability as well as non-interference among nations. This is one of the key cornerstones of international law and is enshrined in many international legal instruments this concept if applied in traditional sense, often clashes with responsibility of international community to intervene and protect citizens during armed conflicts and human rights violations in the form of violent atrocities. State sovereignty often clashes with responsibility to protect civilians at times of armed conflicts. This research paper addresses the dilemma and legal conflict that arises due to ongoing tension between state sovereignty and humanitarian duties at times of war. It examines the evolution of IHL and IHRL, in relation to state autonomy. It also analyses legal instruments such as the Geneva Conventions and other additional protocols. It also examines doctrines and principles such as R2P and its role in tackling the conflict as well as lays down the landmark cases and case studies to better understand the central theme of the research paper. The research paper also explores the arguments supporting prevalence of state sovereignty as well as arguments that call humanitarian intervention superior to state sovereignty. It addresses the challenges in maintaining balance between both principles as well as concludes it by suggesting appropriate mechanisms.

KEYWORDS: State sovereignty, moral and legal obligation, humanitarian intervention, civilians, IHL, IHRL, R2P, dilemma, balance, armed conflicts.

INTRODUCTION

The concept of state sovereignty is a crucial concept in the international political landscape, it gives the states exclusive authority over their internal affairs and jurisdiction, within their territories. This principle is enshrined in many international legal instruments and forms the basis of the modern interstate system. It is considered an important concept as it promotes stability and ensures non-interference among nations. But, this principle of state autonomy, when understood and applied in traditional sense is often seen to clash with the international community's responsibility and consciousness to address violence and human suffering, especially during armed conflicts between nations. There is an ongoing and key dilemma in contemporary international law and relations between upholding principle of state autonomy or sovereignty and collective moral as well as legal obligation to protect population against mass atrocities during armed conflicts.

This research paper will discuss that, on one hand state sovereignty is considered as one of the foundations of the international system, but its absolute nature faces constant challenges due to the evolving demands of humanitarian protection. This conflict creates complex legal and ethical conflicts and thus demands that a constant re assessment of the traditional norms, pushing the limits of international law and governance. The concept of sovereignty has developed gradually, it is not an immutable right, instead it is a norm which has developed by way of adaptation over time, thus providing a legal and philosophical basis for its re-conceptualisation in the contemporary times of humanitarian crises, according to the present needs of the present international scenario.¹ This paper will also analyse the historical and legal basis of state sovereignty as well as international humanitarian law (IHL) and try to discover the central points of conflict between them. The paper will also cover analysis of the key doctrines and mechanisms present currently which has help in navigating this situation of conflict, such as the Responsibility to Protect (R2P) and humanitarian intervention and evaluate their real-life application through some case studies. This analysis is significant as it will help in understanding how the international community struggles to maintain a balance between respecting national autonomy and undertaking the moral and legal duty of intervening in order to protect populations from mass atrocities. A successful maintenance of this balance is crucial as it has a direct impact on international peace, security, human rights as well as shaping the legitimacy and effectiveness of global governance in contemporary world, which is

¹ Wikipedia contributors. (2025, July 12). *Westphalian system*. Wikipedia. https://en.wikipedia.org/wiki/Westphalian_system, accessed on 2 April, 2025

increasingly interconnected.

The persistent legal conflict between principle of state sovereignty and humanitarian duties at times of armed conflicts represents an ever changing and unresolved issue in international law, which demands that a re-assessment of traditional norms must be done continuously and innovation and stable approaches to global governance must be applied, which prioritises human protection without completely wrecking state sovereignty or autonomy.

FOUNDATIONS OF STATE SOVEREIGNTY

The Westphalian System: Historical Genesis and Core Principles

The Peace of Westphalia (1648) is a series of treaties that was the conclusion of Thirty Years' War and the Eighty Years' War, it is important in the context of state sovereignty as the modern concept finds its historical background or roots in this series of treaties. This treaty led to the establishment of the principle of exclusive autonomy over a state's territory, which is known as state sovereignty, which ensures freedom from any external interference in the internal matters of a state. This led to the establishment of an initial framework for the contemporary modern international system of sovereign states. This system was a phenomenal shift from the earlier European idea which supported a single Christian protectorate or empire, governed spiritually by the Pope and by the emperor. Instead, it emphasised that independent states should have sovereign power over its own domain, without any external interference in matters of domestic nature.

Core tenets of the system include the principle of non-interference in domestic affairs of a state; this concept was further developed by Swiss jurist Emer de Vattel in the mid-18th century. This principle saw most development in the 19th and 20th centuries, due to the rise of "classical" nationalism in this period. The concept of absolute sovereignty was a response to specific historical necessity and not a core principle that was unchangeable. Thus, understanding sovereignty as an evolving norm provides an important legal and philosophical basis for its re-conceptualization in the contemporary scenario and the rise of humanitarian duties as a restraint or limit on state power.

Concept of State sovereignty in the UN Charter

The UN Charter came into existence in 1945, after the World War II ended, it codified all the existing major principles of international relations, one of which is the principle of state

sovereignty of every individual state.

Article 2(4) is one of the foundations of non-intervention, as it prohibits the threat or use of force by any Member state against the territorial integrity or political independence of another state. This provision stresses on the maintenance of sanctity of state territory and the autonomy of domestic governments.

Article 2(7) explicitly provides that the United Nations possesses no authority to interfere in matters that are essentially within the domestic jurisdiction of a particular state. This article is a clear reflection of the Westphalian principle of non-interference, which safeguards a state's internal affairs from any kind of external interference.

Article 51 protects the inherent right of individual or collective self-defence in case an armed attack occurs against a member state, until the UN Security Council takes steps for the maintenance of international peace and security. This legitimises the use of reasonable force under specific conditions, thus providing a small exception to the general prohibition on use of force.

Thus, the UN Charter represents a deliberate duality. It upholds state sovereignty on one hand and establishes collective security mechanisms in the form of Chapter VII, Articles 39, 41, 42 and promotion of human rights, contained in Preamble, articles 55, 56.² This is an example of a conscious effort to create equilibrium between competing or distinct values in the post-World War II era. The aim was to prevent barbarities corresponding to the Holocaust, along with preventing a return to frequent, politically driven interventions as was the case in the pre-World War II era.³ This duality consists of his own seeds of conflict, as the interpretation of "threat to international peace and security", which serves as a legal battleground where there is meeting of sovereignty claims and humanitarian concern.

EVOLUTION OF SOVEREIGNTY FROM ABSOLUTE TO CONDITIONAL

There was concept of absolute sovereignty, as was evident in the Westphalian system also, which did not sustain for long, in either the domestic or international arena. As there was growth of democracy, certain limitations were imposed upon the power of the sovereign and

² *Purposes and Principles of the UN (Chapter I of UN Charter) | Security Council.* (n.d.). <https://main.un.org/securitycouncil/en/content/purposes-and-principles-un-chapter-i-un-charter>, accessed on 2 April, 2025

³ (<https://ijlmh.com/wp-content/uploads/The-Principle-of-State-Sovereignty-vs.-Humanitarian-Intervention-in-International-Law.pdf>), accessed on 2 April, 2025

ruling classes within nations. States started pooling their sovereignties to meet the needs of maintaining peace and prosperity, which is showcased by the formation of organizations like the North Atlantic Treaty Organization (NATO), the World Trade Organization (WTO) and the European Union (EU). This is a demonstration of the recognition among both citizens and policymakers that there is no existence of peace without law and that law makes it necessary to put certain limitations on sovereignty.⁴

International law is dynamic, the debate centres around whether sovereignty can be limited and if yes, then under which circumstances and by whom. There is recognition of the idea that states' legitimacy is also connected to their treatment of their own populations and it is not just limited to control over their territory. This progress has given emergence of a new concept of "contingent sovereignty", which proposes that a lack of democracy might lead to ignorance of humanitarian crises and that democracy is in itself a human right, which might lead to not condemning a "just war" by other states against states that don't follow democratic principles. Another related idea to this is "sovereignty as responsibility", propounded by Francis Deng as well as the later development of the doctrine of "Responsibility to Protect (R2P)". The central idea of this concept is that meaning of sovereignty is not limited to just protection from outside interference but also fulfilling all the positive responsibilities for the welfare of a state's population. If the state fails to fulfil its responsibility to protect its people, which is considered the primary responsibility of the state; or if there is active violation of this state responsibility by perpetrating mass atrocities and violence, then there is a subsidiary obligation of the international community to intervene with all legitimate and appropriate measures, which also includes military action as the last resort, however it requires the prior authorization of the UN Security Council.⁵ This is representative of the shift from an absolute to conditional sovereignty, which is dependent on how efficiently a state fulfils its duties towards its citizens.

PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW (IHL)

International Humanitarian Law (IHL), which is usually known as the law of armed conflict or the law of war, it is an important part of public international law. The main purpose of IHL is to regulate the minimise the human suffering during armed conflicts by regulating the acts of

⁴ The Editors of Encyclopaedia Britannica. (2025, July 8). *Sovereignty | Definition, Characteristics, Types, History, & Facts*. Encyclopaedia Britannica. <https://www.britannica.com/topic/sovereignty/Sovereignty-and-international-law>, accessed on 2 April 2025

⁵ United Nations. (n.d.). *About the responsibility to protect | United Nations*. <https://www.un.org/en/genocide-prevention/responsibility-protect/about>, accessed on 4 April, 2025

hostilities. IHL accomplishes this by formulating rules that are aimed at protecting persons who are not, or are no longer, directly a participant in hostilities and by limiting the means and methods of warfare that are used by belligerents.⁶

IHL has its roots in customary international law as well as international treaties. It includes four Geneva Conventions of 1949 along with their two additional protocols of 1977, third protocol of 2005.⁷ Modern IHL can be traced back to the first Geneva Convention. 1864, initiated by the International Committee of the Red Cross (ICRC), IHL aims at minimising the human suffering and regulating conflict but it acknowledges that it does not focus on prohibiting the use of violence explicitly nor it focuses on the purpose of any conflict. It has a general acceptance that destruction, death as well as harm can be legitimate during armed conflict.⁸ IHL rules are thus a delicate balance between necessities militarily and humanitarian concerns and considerations. The conflict with sovereignty arises when internal actions of a state, even if as part of a conflict, lead to the violation of fundamental humanitarian standards. Some of the core principles of International Humanitarian Law:

- Distinction: This principle requires the parties to an armed conflict to always distinguish between combatants and civilians as well as between civilian objects and military objectives. This implies that attacks must be directed only against military objectives, thus protecting civilians in armed conflict. Direct attacks against civilians or civilian objects are violations of IHL as well as grave breaches and war crimes,
- Prohibition to Attack Hors de Combat: This is a fundamental rule of IHL which prohibits attacks on those individuals who are no longer a direct participant in hostilities such as the wounded and sick soldiers, prisoners of war, or surrendered individuals.⁹
- Prohibition to inflict unnecessary suffering: IHL permits violence but it explicitly prohibits the use of weapons, projectiles and methods of warfare that are of such a nature that it can cause superfluous injury and thus unnecessary suffering.

⁶ International Committee of the Red Cross. (2014). *INTERNATIONAL HUMANITARIAN LAW ANSWERS TO YOUR QUESTIONS*. <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0703.pdf>, accessed on 4 April, 2025

⁷ Kkiernerm. (n.d.). *Counter-Terrorism Module 6 Key issues: Core Principles of IHL*. <https://www.unodc.org/e4j/en/terrorism/module-6/key-issues/core-principles-of-ihl.html>, accessed on 4 April 2025

⁸ *Basic principles of IHL - International Humanitarian Law Centre*. (n.d.). International Humanitarian Law Centre. <https://www.diakonia.se/ihl/resources/international-humanitarian-law/basic-principles-ihl/>, accessed on 4 April, 2025

⁹ International Committee of the Red Cross. (2002). *THE LAW OF ARMED CONFLICT [Lesson]*. In *Unit for Relations with Armed and Security Forces*. https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/law10_final.pdf (Original work published 2002), accessed on 4 April, 2025

- Military necessity: This principle lays down that military actions must be necessary in order to achieve a legitimate military aim, known as the complete or partial submission of the enemy as soon as possible with minimum loss of resources and life. It acknowledges that winning a battle is legitimate objective of the military, but it does not give freedom to the armed forces to disregard humanitarian considerations completely.
- Proportionality: The principle of proportionality aims to limit harm caused to civilians by necessitating that the expected military advantage exceeds the predicted incidental harm to civilians along with the civilian property. It necessitates that civilians suffer the minimal amount of harm and in cases where harm cannot be wholly avoided, it must be proportionate to the military advantage being caused to the concerned state.
- Humanity: This principle takes inspiration from the Henry Dunant's observations at the time of Battle of Solferino. This principle is based on the idea that all humans have the capacity and ability to show mutual respect and care for all, including the enemies. It aims at limiting suffering, injury and destruction during war as well as protect life and health and thus ensure respect towards every human being. This principle is central to fulfilling ambition of IHL to limit harm.
- Martens Clause: It was first introduced in the Preamble to the 1899 Hague Convention II; this clause has acquired status of customary international law. This clause states that even in situations which are not expressly covered by codified IHL instruments, the combatants as well as the civilians are given a minimum level of protection. It states that all hostilities must be regulated by principles applicable on law of nations, as they emerge from the usages of international law, from laws of humanity and from public conscience dictates. This clause generally, when interprets mean that "anything and everything not explicitly prohibited by IHL does not automatically becomes permissible."
- The Geneva Conventions and Additional Protocols: The Geneva Conventions, 1949 and the three additional protocols of 1977, 2005 provides a set of treaties which are formulated to establish minimum level of protection, standards of humane treatment and guarantee of basic respect for every individual who is a victim in an armed conflict. These conventions cover protected persons which includes civilians, prisoners of war (POWs), wounded and infirm soldiers as well as shipwrecked personnels.¹⁰ These

¹⁰ *Geneva Conventions and their additional protocols*. (n.d.). LII/Legal Information Institute. https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols, accessed on 4 April, 2025

conventions are applicable to all cases of war and armed conflict between signatory states, even in absence of a formal declaration of war and can be applicable on non-signatory nations also if they wilfully accept and apply its provisions. Common Article 3 in all the Geneva Conventions establishes fundamental rules which cannot be deviated from. It mandates a humane treatment for all individuals who are held hostage in custody of enemy without any kind of discrimination and expressly prohibits acts such as murder, mutilation, torture, unfair trials as well as cruel, degrading treatment. One of the key aspects of Geneva Convention's enforcement is the principle of "universal jurisdiction." The idea behind this doctrine is that certain heinous crimes such as genocide, crimes against humanity, torture and war crimes affect the fundamental interest of whole international community due to their grave nature. Universal jurisdiction facilitates the prosecution of individuals accused of such crimes by any of the signatory state, without prejudice to their nationality or location where crime happened. This principle goes beyond the traditional territorial limits of state sovereignty, emphasising that states have an obligation legally to search for and prosecute suspects in their territory or hand them over to the concerned state or international tribunal for prosecution.¹¹ This represents an erosion of absolute state sovereignty, mostly in cases when state fails in prosecuting its own citizens for committing any international crimes and demonstrates a tilt towards global accountability framework when human rights violations are a matter of concern for international community's universal interest.

THE LEGAL CONFLICT: SOVEREIGNTY VS. HUMANITARIAN IMPERATIVES

Humanitarian Intervention: A direct challenge to sovereignty:

Humanitarian intervention refers to those acts which typically involves military force or the threat of force, undertaken by either an organisation or coalition of states to eliminate extensive human suffering within territories of a sovereign state. Historically, humanitarian arguments have been used by states to justify armed interventions which are direct and infringe upon the sovereignty of other states, often disguised as protecting human rights, minorities and their nationals.

¹¹ *Doctors without borders | The Practical Guide to Humanitarian Law*. (n.d.). <https://guide-humanitarian-law.org/content/article/3/intervention/>, accessed on 4 April, 2025

Contemporary international law does not consider such intervention legitimate, when undertaken by a single state unilaterally. The UN Charter, 1945 replaced the “just wars” concept with a system of collective security, vesting the primary authority for the use of armed force in international arena in the UN Security Council (UNSC). The central tension exists between Article 51 of the UN Charter, that preserves the inherent right of individual or collective self-defence, and the provisions contained in Article 24(1) and Chapter VII, which gives powers to the Security Council to take appropriate measures for the reestablishment of international peace and security.¹² This creates a void in case any intervention is not explicitly authorised by the UNSC, even if it is due to humanitarian necessity, as was in the case of Kosovo.¹³ In the landmark case of *Nicaragua v. United States (1986)*, the International Court of Justice explained that although providing humanitarian aid is permitted, any armed intervention for human rights is not legally justified when undertaken by unilateral force. This is indicative of the gap between moral imperatives and legal authorization. The current system, which has its roots in Westphalian sovereignty, restricts military intervention to UNSC authorization or self-defence.

The Responsibility to Protect (R2P) Doctrine

This doctrine which has emerged in the early 21st century as a response to perceived failure of the international community in preventing mass atrocities in the 1990s, such as genocides in Rwanda and Bosnia. This principle is embodiment of the political commitment to end the violence including its worst forms which includes genocide, war crimes, ethnic cleansing, crimes against humanity. The principle upholds that sovereignty does not mean only protection from outside interference but more importantly, it is a positive responsibility of a state to ensure welfare and protection of its own population. This directly challenges the traditional notion of state sovereignty as in case a nation is unsuccessful in protecting its citizens from harm, then it is obligatory for the international community to intervene.

The R2P principle was formally adopted in paragraphs 138 and 139 of the 2005 World Summit Outcome Document (A/RES/601) by all the Heads of State and Government.¹⁴ There are three

¹² Bell, & Duncan. (2013, May 20). *Humanitarian intervention* / *International Law & Human Rights*. Encyclopedia Britannica. <https://www.britannica.com/topic/humanitarian-intervention>, accessed on 5 April, 2025

¹³ (https://www.researchgate.net/publication/387668073_The_Fragile_Equilibrium_Navigating_Sovereignty_and_Interventionism), accessed on 5 April, 2025

¹⁴ United Nations. (n.d.-b). *About the responsibility to protect* / *United Nations*. <https://www.un.org/en/genocide-prevention/responsibility-protect/about>, accessed on 8 April, 2025

independent pillars around which this doctrine is structured. The first pillar states that each individual state has the responsibility to protect its populations, it involves prevention and protection from crimes such as genocide, war crimes, ethnic cleansing and crimes against humanity. The second pillar states that international community has the responsibility to assist states in exercising their responsibility laid down under Pillar 1. This includes providing help to the states through capacity building, development of early warning mechanisms and other incidental preventive and protective measures. The third pillar relates to the responsibility of the international community to take collective action in situations where a state fails in protecting its population from violent and atrocity crimes. When peaceful means prove to be inefficient and inadequate, the international community possesses readiness to take timely and decisive action through the Security Council, according to Chapter VI and VII of the UN Charter, by cooperating with relevant regional organizations.

R2P has been codified in a UN General Assembly resolution, primarily as a political commitment and not as a standalone legally binding treaty. It is based on underlying body of international legal obligations for states which have been derived from international instruments, state practice and cases of international courts and tribunals. R2P showcases an attempt to reconcile sovereignty and humanity, by trying to bridge the gap between state sovereignty and humanitarian obligations. It aims at reframing sovereignty as responsibility and providing a basis for intervention within Chapter VII of the existing UN Charter. However, the effectiveness of this principle is attached to the political will of the Council and veto power held by its permanent members. The practical application is hindered by the geopolitical dynamics and power imbalances that it tries to overcome, thus resulting in inconsistent application and accusations such as “liberal imperialism” or “regime change.”

The role and limitations of the UN Security Council (Chapter VII)

The UN Security Council (UNSC) has the primary responsibility to maintain peace and security. Chapter VII of the UN Charter lays down the framework according to which it may take enforcement action. It gives powers to determine existence of any threat to the peace, breach of peace or act of aggression (Article 39) and suggest recommendations or resort to non-military (Article 41) or military action (Article 42) in order to secure maintenance of peace and security. This constitutes the only “right of intervention” which is internationally recognised, under which without consent of the concerned state, intervention into its internal affairs can be done.

But its effectiveness is limited due to the veto power possessed by five permanent members of UNSC, which are China, France, Russia, United Kingdom, United States. Any of these members can restrict a resolution, even when there is a need of action due to mass atrocities.¹⁵ This limitation has led to inconsistency in implementation of R2P and thus makes this doctrine stagnant in many instances, as veto power makes intervention a discretionary political tool, rather than a universal humanitarian responsibility.¹⁶ This supports the traditional view of sovereignty for powerful nations, as they can shield their allies or protect their own interests even when atrocities happen.

JUDICIAL INTERPRETATIONS: THE ICJ ON INTERVENTION AND STATE RESPONSIBILITY

The International Court of Justice (ICJ) is the principle judicial organ of the United Nations and plays a central role in settling legal issues between states and providing advisory opinions when question involves legality.

The *Nicaragua v. United States (1986)* is one of the landmark judgments, in which the ICJ reinforced the principle of non-intervention as part of customary international law and stated that “the principle of non-intervention involves the right of every sovereign State to conduct its affairs without external interference.”¹⁷ The court laid down that the provision of strictly humanitarian aid to persons or forces in another country, without regard to their political affiliations, cannot be considered unlawful intervention, armed intervention by one nation in the internal affairs of another, even if it’s done for human rights reasons, cannot be justified legally for the use of force. The judgment focused on the fact that humanitarian assistance must be impartial and no discrimination must exist to avoid being titled and condemned as intervention.

In the case of *Bosnia and Herzegovina v. Serbia and Montenegro (2007)*, the ICJ advanced the understanding of state responsibility with reference to mass atrocities. The ICJ founded that Serbia had no direct responsibility for the Srebernica genocide, nor it was complicit in it but,

¹⁵ *The limits of international law: the Responsibility to Protect (R2P), Israel and the International Court of Justice.* (2024, March 1). Elcano Royal Institute. <https://www.realinstitutoelcano.org/en/commentaries/the-limits-of-international-law-the-responsibility-to-protect-r2p-israel-and-the-international-court-of-justice/>, accessed on 8 April, 2025

¹⁶ (<https://www.clarku.edu/news/2025/02/20/why-has-the-world-retreated-from-humanitarian-intervention/>), accessed on 8 April, 2025

¹⁷ *Doctors without borders | The Practical Guide to Humanitarian Law.* (n.d.). <https://guide-humanitarian-law.org/content/article/3/intervention/>, accessed on 10 April, 2025

the Court ruled that Serbia still violated its obligation under Article I of the Genocide Convention in order to prevent the said genocide and to cooperate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY).¹⁸ The court emphasises on the obligation to prevent genocide and held that it requires states that are aware, or should have been aware normally, of the grave danger of genocide being committed, in order to employ all means reasonably available to them to prevent it, by acting within the limits permitted by international law.¹⁹ The Court also assessed Serbia's capacity to influence the perpetrators of the genocide, due to multiple links between them.

CASE STUDIES

- The Rwanda Genocide (1994): UNAMIR and UNSC Inaction

This is one of the examples of the devastating repercussions due to international inaction and choosing traditional state sovereignty over human lives. A UN Assistance Mission for Rwanda (UNAMIR) peacekeeping force, which consisted of 2500 soldiers, was present in Rwanda for the purpose of monitoring and assisting with a peace agreement. However, with commencement of genocide, there was confusion about UNAMIR's mandate and its authority to intervene in order to protect the civilian population. Due to torture and killing of 10 Belgian soldiers, Belgium withdrew its contingent, which was followed by other nations, which drastically reduced the strength to just 250 personnel. There were repeated orders to withdraw, but the UN commander General Roméo Dallaire refused and made limited efforts to prevent killings where possible. He later criticised the international response and orders he received and spoke "We have a responsibility to protect, we do not have the right to assess and to establish a priority within humanity, for all humans are human and not one of us is more human than the other".²⁰ The massacres continued but the UNSC refused to describe it as genocide until June 22, 1994, even after continuous debates and discussions. Arguments over funding and equipment also delayed the deployment of decided force of 6800 troops and policemen intended to protect civilians. This genocide is cited as the main catalyst for the development of the R2P doctrine as it highlighted the catastrophic

¹⁸ Wikipedia contributors. (2025, April 17). *Bosnian genocide case*. Wikipedia. https://en.wikipedia.org/wiki/Bosnian_genocide_case, accessed on 10 April, 2025

¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovin*. (n.d.). <https://www.icj-cij.org/case/91>, accessed on 15 April, 2025

²⁰ Holocaust Memorial Day Trust. (2024, May 14). *The International response - Holocaust Memorial Day Trust*. <https://hmd.org.uk/learn-about-the-holocaust-and-genocides/rwanda/the-international-response/>, accessed on 15 April, 2025

results of prioritizing traditional sovereignty over human lives

- Libya (2011): UNSC Resolution 1973 and NATO's Role

This intervention in 2011 marked an important moment related to the R2P doctrine as this was the first time that UNSC invoked R2P in order to authorise the use of military force.²¹ UNSC Resolution of 1973 authorised “all necessary measures” to protect civilians, which included establishing of a no-fly zone, as a response to Colonel Gaddafi's threat against civilians. Some call it the successful application of R2P, but critics argue that NATO, while leading the military intervention, exceeded its mandate and powers. The accusations stated that the mission transitioned from civilian protection to aim of regime change, which prolonged the conflict and lead to significant instability and a power vacuum in Libya.²² Many evidences suggest that NATO forces supported rebels and appeared to overthrow Gaddafi, attacked his hometown and supported r4ebels who rejected ceasefire offers. This influenced states like Russia and China, who became wary of giving support to future interventions under the banner of R2P doctrine. The Libyan intervention revoked R2P but also became a double-edged sword. It indicated the risk of powerful states pursuing strategic interests under a humanitarian guise. This led to situation of mistrust and political paralysis in succeeding crises and made R2P interventions more difficult to gather consensus for and reinforced traditional state sovereignty.

- The impact of Geopolitics: The Syrian Civil War and UNSC Vetoes

The Syrian civil war is an example of impact of geopolitics and the UNSC veto in application of humanitarian duties. The Assad regime committed mass atrocity, due to which civilian suffered severely but the UNSC failed to invoke R2P or authorise meaningful intervention. Russia and China used their veto power to restrict resolutions that would have successfully condemned human rights violations and authorised action, thus viewing R2P as a tool for western liberal imperialism or a pretext in relation to regime change. This use of veto power prevented action and led to increase in death

²¹ *Libya's Political crisis: A legacy of failed interventionism – PRISME.* (n.d.). <https://prismeinitiative.org/blog/libyas-political-crisis-dina-mansour-ille/>, accessed on 15 April, 2025

²² *The limits of international law: the Responsibility to Protect (R2P), Israel and the International Court of Justice.* (2024b, March 1). Elcano Royal Institute. <https://www.realinstitutoelcano.org/en/commentaries/the-limits-of-international-law-the-responsibility-to-protect-r2p-israel-and-the-international-court-of-justice/>, accessed on 15 April, 2025

toll.²³

The Syrian civil war is contrasting with the intervention in Libya as in Syria, there was consistent use of veto for strategic purposes by Russia and China. Thus, it demonstrated that R2P cannot overcome the established geopolitical power dynamics and the structural imitations existent in UNSC. Syria represents the power of traditional state sovereignty, especially for states which have veto power, the enforcement mechanism is thus politicised, which makes populations vulnerable, if interest of powerful states aligns with non-intervention.

LEGAL AND ETHICAL ARGUMENTS: PRIORITIZING COMPETING OBLIGATION

Arguments for prioritising state sovereignty:

The main argument for prioritization of state sovereignty is that it is the foundational principle of international legal system, which ensures the exclusive control of state over their internal affairs and territorial integrity. This perspective argues that sovereignty needs to be upheld as it is paramount for the maintenance of international order and stability, which prevents any kind of self-determination claims and calls for independence, which can result in widespread global fragmentation and conflict.²⁴ Another argument is that prioritization of sovereignty prevents the powerful states from forcefully imposing their will on others, thus avoiding “liberal imperialism”. Even when the interventions are framed as humanitarian, there is always a risk of abuse and unintended consequences, as it may be driven by political interventions disguised as humanitarian concerns. Such interventions can lead to prolonged conflicts, create power vacuums and multiply the human suffering. Also, there is a lack of consensus on when interventions are legitimate or effective, which creates further issues. Thus, while humanitarian intervention aims at preventing immediate suffering, it has the risk of undermining the legal framework that prevents more catastrophic conflicts between nations.

Arguments for prioritising humanitarian duties

The arguments in favour of prioritizing humanitarian duties are mainly based on profound moral imperative and the understanding that human rights are universal as well as inalienable.

²³ *Syria veto costs lives: UN Security Council members must uphold their “Responsibility to Protect”* - Global Centre for the Responsibility to Protect. (2023, January 10). Global Centre for the Responsibility to Protect. <https://www.globalr2p.org/publications/syria-veto-costs-lives/>, accessed on 16 April, 2025

²⁴ (<https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1346&context=djilp>), accessed on 16 April, 2025

There is an ethical duty to act when human suffering occurs extensively, thus affirming that the “laws of war” are a moral imperative which is essential for immediate humanitarian relief. Article 55, 56 and the Preamble of the UN Charter underscores the commitment of the Member States to promote and observe human rights and fundamental freedoms for all.²⁵ As per this view, sovereignty is not an absolute shield, instead it is a responsibility and not a license for governments to crush human rights and human dignity. The legitimacy of a state is now being viewed as conditional upon its ability and willingness to protect population of its nation from violence and mass atrocities.²⁶ In case, a state fails in protecting its citizens, the international community has a subsidiary obligation to intervene, as has been seen in many cases since years. This evolving idea represents a significant shift in international landscape, transcending a purely state-centric view. This view argues that the primary purpose of the state as well as the international system is ultimately to serve human dignity and protection. There is a need of collective intervention whenever there is a breach of human rights and human dignity as traditional sovereignty can lead to perpetration of violence and mass atrocities.

While as per UN Charter, priority has been given to state sovereignty and there is prohibition of any kind of unilateral intervention by individual states. There is only one recognised right of intervention, which is explicitly entrusted to the UN Security Council under Chapter VII, where use of force is also considered legitimate and this power can be used only when a situation threatens international peace and security. But, this power of UNSC is also limited and sometimes ineffective due to veto power held by its permanent members, as can be witnessed in the tragic Syrian War.

During times of mass atrocities, choice exists between either witnessing ongoing atrocities and resorting to inaction or individual states or coalitions may come together and undertake unilateral actions, which though morally compelling, may lead to violation of international law. Thus, the responsibility to act compels the international community to intervene and breach state sovereignty if the concerned state fails in upholding peace and security in its own state, as there is primacy of human rights and human dignity. Even if state sovereignty is one of the bed rocks of international law, mass atrocities or human rights violations cannot be justified on this ground. There is a moral imperative to protect which must prevail over state

²⁵ (<https://dsc.duq.edu/cgi/viewcontent.cgi?article=3374&context=dlr>), accessed on 16 April, 2025

²⁶ *Geneva Conventions and their additional protocols*. (n.d.-b). LII / Legal Information Institute. https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols, accessed on 20 May, 2025

sovereignty in the international law.

FRAMEWORKS FOR RECONCILIATION AND THE WAY FORWARD

There is a consistent legal conflict between state sovereignty and humanitarian duties and thus it requires that there is development of frameworks and approaches to international law and governance, including reconceptualising sovereignty in such a way that it allows for more strengthened human protection and does not lead to complete eradication of sovereignty.

- The traditional view of sovereignty is absolute and has proved to be insufficient in meeting the global challenges of the contemporary world. One step towards reconceptualization is development of the principle of “sovereignty as responsibility”, which affirms that primary duty of the state is to protect its own population from mass atrocities, which means it is a pre-condition for legitimate sovereignty. This is dynamic idea of sovereignty, which leads to greater adaptability within the international system. Another idea relates to “earned sovereignty” which propounds the systematic devolution of sovereign authority and functions from a state to a sub state entity, which may serve as a means to resolve complex disputes which can be classified as self-determined. The European Union devised the concept of shared sovereignty, in which external entities can influence and interfere in the internal affairs of its member states, this is also example of deviation from traditional sovereignty. All these instances clarify that sovereignty is not an unchangeable concept, it is flexible and highly mutable, thus legal conflict existent today is not a permanent barrier, it is a continuous process of normative adjustment.
- **UNSC REFORM- VETO RESTRAINT:**
There is also a need to strengthen R2P implementation, to make its application consistent and overcome inconsistencies due to geopolitical factors and structural limitations of the UNSC itself. This includes addressing the veto power which are entrusted to the five permanent members of UNSC, so that there is less inconsistency and fulfilment of political agendas. There is proposition to implement responsible veto restraint so that it does not prevent the application of R2P response actions.
- **ROLE OF UN GENERAL ASSEMBLY:**
In order to overcome paralysis of UNSC, there is a need to empower the UN General Assembly, which can act as an alternative agency for responding to situations involving mass atrocity. The “Uniting for Peace” resolution, which empowers the UNGA to

recommend some collective measures, which includes use of armed force, in case the Security Council fails to act, could be reinforced. A more robust role needs to be assigned to UNGA in R2P duty, when UNSC faces a situation of deadlock.

- REGIONAL MECHANISMS:

Giving more powers and role to regional bodies and integrating R2P principles within their framework may greatly enhanced timely localised responses, which may lead to greater legitimacy and effectiveness.²⁷ One such example is of the African Union (AU), which in its constitutive act provides a normative basis for intervention in cases of mass atrocities. This recognises that a centralised enforcement mechanism that is UNSC is insufficient in complex situations and in such cases, regional mechanism is steadier and more successful, which in turn can strengthen capacity of the international community to protect.

- ENHANCING IHL COMPLIANCE AND ACCOUNTABILITY MECHANISMS:

A major challenge to humanitarian duties is not the lack of IHL rules but its non-compliance, lack of political will, wrong interpretations of law etc. There is a need to strengthen and uphold the existing norms, rather than creating new norms, as there is no deficit in the rules. Compliance to IHL can be strengthened by robust training, monitoring and initiatives for advocacy etc. Under the principle of universal jurisdiction, states have obligations to prosecute and punish those who perpetrate grave breaches of IHL. The international tribunals such as the International Criminal Tribunal for Rwanda, International Criminal Court etc play an important role in adjudicating IHL violations and ensuring accountability, even if states take defence of sovereignty. Thus, enhancing IHL compliance is crucial in bridging the gap between norms and enforcement.

The current debate between state sovereignty and humanitarian intervention is indicative of the fragile equilibrium that needs to be maintained in the international system. Thus, future of international law truly is not about achieving a resolution to this conflict, but it is about continuous negotiation and adaptation of rules and norms. The rise of new threats requires collective responses that transcend beyond traditional notions of sovereignty. Thus, reconciliation is not permanent or final outcome, it is a continuous process of normative

²⁷ Webcurator, & Webcurator. (2025, May 12). 20 Years of R2P: Moral Responsibility through an African Lens - GLOBAL SOUTHS HUB. *GLOBAL SOUTHS HUB - A news and blog site for Global South Studies*. <https://globalsouth.org/2025/04/20-years-of-r2p-moral-responsibility-through-an-african-lens/>, accessed on 20 May, 2025

adjustment. Thus, there is a need to devise innovative frameworks and addresses contemporary global challenges. Maintaining balance between state sovereignty and humanitarian duties is a fragile issue but its management may lead to effectiveness of international law in upholding human dignity in contemporary world.

CONCLUSION

The legal conflict that exists between state sovereignty and humanitarian duties at times of armed conflict is one of the ongoing and debated challenges in contemporary international law. The concept of state sovereignty has its roots in the Westphalian system, but with time its interpretation has become conditional to modern situations, mainly influenced by the UN Charter and the Responsibility to Protect (R2P) doctrine. It has outlined core principles of IHL, laying down how these norms impose fundamental limitations on conduct of state during armed conflicts, without taking into account the causes of conflict. The core tension lies in a state's right to non-interference from external sources in its domestic matters and the moral and legal duty of international community to protect population from mass atrocities. Doctrines such as R2P and humanitarian intervention tries to bridge this gap but there is inconsistency in its application, due to multiple reasons. Case studies have been included to illustrate consequences of inaction and issues when political will is absent. The enduring issue is not due to lack of legal norms, but a result of gap in political will and efficient enforcement. There is a need to formulate innovative approach to maintain balance between sovereignty and humanity. Focus must be on strengthening multilateral institutions, responsible use of veto and giving more power to other UN organs such as UNGA, in cases where UNSC faces deadlock. Regional mechanisms must be strengthened to offer steady and more legitimate, context sensitive interventions.

The ultimate goal is not abolition of sovereignty but its reconceptualization as a responsibility, where protection of population of a state is prioritised and achieving this requires collective commitment from states to uphold human dignity as an inherent right universally, even if it challenges traditional notion of state sovereignty. Thus, international law is dynamic and continuous efforts are required to adapt notion of state sovereignty according to contemporary international scene requires, and in such a way that suffering of population within one state is not considered an exclusive domestic affair.