

LEGAL APPRAISAL OF INTERNATIONAL PEACE AND SECURITY AS AN EXCEPTION TO THE APPLICATION OF THE DOCTRINE OF NON-INTERVENTION DURING ARMED CONFLICT: FOCUS ON THE UN CHARTER, 1945

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Abstract

The authors examined the threat to international peace and security as an exception to the doctrine of non-intervention under international law. The authors adopted the doctrinal method of research, with primary sources of law derived from the United Nations Charter, while the secondary sources of information were derived from journal articles and internet sources. The principle of non-intervention, enshrined in Article 2(7) of the United Nations (UN) Charter, 1945, asserts that no state or group of states has the right to intervene in the internal or external affairs of another sovereign state. However, this principle is not absolute, particularly when a threat to international peace and security arises. The UN Charter, established in 1945, aimed to prevent the scourge of war, promote human rights, and foster international cooperation. Article 2(7) delineates the principle of non-intervention, which has been a cornerstone of international law. The implementation of the exception to non-intervention presents several challenges. The UN Security Council, comprising five permanent members with veto power, must reach a consensus, which can be impeded by differing national interests and geopolitical rivalries. Secondly, the principle of state sovereignty, a fundamental tenet of international relations, often conflicts with the humanitarian need to intervene, especially in cases of gross human rights violations or genocide. Thirdly, there is the issue of consistency and selectivity in the application of intervention policies, where some conflicts receive swift international attention while others are neglected. While the principle of state sovereignty remains paramount, the international community, through the UN, recognizes the need to intervene in certain circumstances to maintain global peace and security. The effectiveness of such interventions is contingent upon the political will and cooperation of the international community, particularly the permanent members of the Security Council. The authors recommend amongst others that there should be a clearer, more objective framework for determining what constitutes a threat to international peace and security to reduce political subjectivity. These measures could collectively enhance the UN's ability to uphold international peace and security while respecting the fundamental principle of state sovereignty.

Keywords: Armed Conflict, Threat, Peace, and Non-Intervention

1.0 Introduction

One of the primary exceptions to the doctrine of non-intervention is outlined in Chapter VII of the UN Charter, which grants the UN Security Council the authority to determine the existence of any threat to the peace, breach of the peace, or act of aggression.³ If such a determination is made, the Security Council has the power to take both non-military and military measures to address the threat. This can

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³ UN Charter, 1945.

include economic sanctions, blockades, and military intervention.⁴ Article 39 of the UN Charter specifically empowers the Security Council to “determine the existence of any threat to the peace, breach of the peace, or act of aggression” and to decide upon measures to be taken “to maintain or restore international peace and security.” This provision forms the legal basis for the Security Council’s ability to intervene in situations that might otherwise be protected by the principle of non-intervention.⁵ The intervention in cases of threats to international peace and security is often justified on humanitarian grounds, such as preventing genocide, war crimes, ethnic cleansing, and crimes against humanity.⁶ However, the invocation of Chapter VII powers must be authorized by a Security Council resolution, requiring at least nine affirmative votes and no vetoes from the five permanent members (China, France, Russia, the United Kingdom, and the United States).⁷ Thus, while the UN Charter upholds the principle of non-intervention as a cornerstone of international law, it also provides for exceptions in cases where there is a threat to international peace and security. The Security Council’s authority under Chapter VII of the Charter to determine such threats and take appropriate measures, including military intervention, represents a significant mechanism for balancing state sovereignty with the need to address serious threats to global stability.

2.0 Conceptual Framework

a. Armed Conflict

For instance, the ICTY in the *Tadić case* defined an armed conflict as: “An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” Armed conflicts can be broadly categorized into two main types under international humanitarian law (IHL): international armed conflicts (IACs) and non-international armed conflicts (NIACs).⁸

b. Humanitarian Intervention

Humanitarian intervention under international law refers to the use of force by a state or group of states in the territory of another state without its consent, with the primary aim of preventing or stopping widespread and severe human rights violations, such as genocide, war crimes, ethnic cleansing, and crimes against humanity.⁹ This concept is highly contentious and intersects with principles of state sovereignty, non-intervention, and the responsibility to protect (R2P).¹⁰ Humanitarian intervention under international law involves the use of force by states or coalitions to prevent or stop severe human rights abuses in another state without its consent.¹¹

c. Highlighting the Issues

The doctrine of non-intervention is a foundational principle of international law, enshrined in the United Nations (UN) Charter of 1945, which protects the sovereignty and territorial integrity of states.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ IT-94-1-AR72, Appeals Chamber, 2, October 1995.

⁹ W M Reisman, ‘Article 2(4): The Use of Force in Contemporary International Law’ [1984] *Faculty Scholarship Series* 741.

¹⁰ *Ibid.*

¹¹ *Ibid.*

However, the UN Charter also provides exceptions to this principle, particularly under Chapter VII, allowing for intervention in situations where there is a threat to international peace and security. This duality creates several critical challenges and dilemmas in contemporary international relations and conflict management.

Firstly, the determination of what constitutes a “threat to international peace and security” is inherently subjective and politically charged. The UN Security Council, the body authorized to make such determinations, is composed of five permanent members with veto power (China, France, Russia, the United Kingdom, and the United States), whose geopolitical interests often influence their decisions. This can lead to inconsistent and selective applications of the principle, undermining the legitimacy and perceived fairness of the UN’s actions. Secondly, the threshold for intervention under Chapter VII remains ambiguous. Situations that may or may not justify intervention can vary widely, ranging from large-scale armed conflicts and humanitarian crises to political instability and economic sanctions. This ambiguity can lead to debates and disagreements within the international community, potentially delaying or preventing timely and necessary interventions. Additionally, the effectiveness of the Security Council’s interventions is often hindered by practical and logistical challenges. Even when a threat is identified and action is authorized, the implementation of measures whether sanctions or military intervention can be complex, resource-intensive, and fraught with unintended consequences. This can result in prolonged conflicts and suffering, questioning the efficacy of the intervention itself.

Lastly, the tension between state sovereignty and the need to address threats to international peace and security raises fundamental questions about the evolution of international law and governance. Balancing these competing priorities remains a significant challenge for the UN and its member states, necessitating continuous dialogue and reforms to enhance the credibility and functionality of the international system. Thus, the invocation of threats to international peace and security as an exception to the doctrine of non-intervention under the UN Charter presents a multifaceted problem. It involves navigating political biases, defining clear thresholds for action, preventing misuse of the principle, ensuring effective implementation of interventions, and reconciling the protection of state sovereignty with the imperative of maintaining global peace and security.

3.0 United Nations Charter 1945 Legal Regime: An Evaluation

The UN Charter, adopted in 1945, serves as the foundational document of the United Nations, outlining its purposes, principles, and functions. It establishes the framework for collective security and international cooperation aimed at maintaining peace and security globally. Key articles of the UN Charter are particularly relevant when considering exceptions to the doctrine of non-intervention during armed conflicts and addressing threats to international peace and security.¹²

Article 1 sets forth the purposes of the United Nations, which include maintaining international peace and security, promoting respect for human rights, fostering cooperation in solving international problems, and harmonizing the actions of nations to achieve these common goals. These purposes underpin the UN’s efforts to prevent armed conflicts and mitigate threats to peace globally.¹³ Also,

¹² UN Charter, 1945.

¹³ *Ibid.*

article 2(4) states that all UN members shall refrain 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. This principle forms the cornerstone of the doctrine of non-intervention, emphasizing the sovereignty and non-interference in the internal affairs of states. Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Chapter VII provides the legal basis for the UN Security Council to act in response to threats to international peace and security. It authorizes the Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and to decide on measures, including sanctions and military intervention, to maintain or restore international peace and security.¹⁴ Furthermore, article 51 recognizes the inherent right of individual or collective self-defence in the event of an armed attack against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. This article provides a legal basis for states to use force in self-defence or collective defence against armed attacks, which can be justified as exceptions to the general prohibition on the use of force.¹⁵

The UN Charter's provisions are directly relevant to addressing threats to international peace and security by providing a legal framework for collective action and intervention when necessary. The Security Council's authority under Chapter VII allows for responses to situations that threaten international peace, such as armed conflicts, genocide, and crimes against humanity, which may justify exceptions to the doctrine of non-intervention. These provisions enable the international community to take decisive measures, including diplomatic, economic, and military actions, to prevent and resolve conflicts that pose risks to global stability. Political divisions among the permanent members of the Security Council, particularly the veto powers of the P5 (Permanent Five), can hinder timely and effective responses to threats to peace and security. Disagreements over the interpretation of international law and conflicting national interests may prevent consensus on appropriate actions, leading to inaction or ineffective measures. The selective application of principles such as sovereignty and non-intervention can undermine the credibility and legitimacy of UN interventions. Concerns over double standards and accusations of politicization may complicate efforts to garner broad international support for collective security measures.

The UN Charter provides a comprehensive framework for addressing threats to international peace and security, including exceptions to the doctrine of non-intervention during armed conflicts. By upholding principles of collective security, self-defence, and respect for sovereignty, the Charter guides the international community in responding to crises and promoting stability worldwide. Overcoming challenges related to political divisions, selective application of principles, complexities of armed conflicts, and resource constraints is crucial for strengthening the UN's capacity to maintain peace and security in accordance with its founding principles under the UN Charter 1945.

¹⁴ UNC Charter, 1945.

¹⁵ *Ibid.*

4.0 Assessing Threat to International Peace and Security as an Exception to the

Chapter VII of the UN Charter outlines the powers and responsibilities of the UNSC in addressing threats to international peace and security.¹⁶ It distinguishes between two main types of actions: non-military measures under Article 41 and military measures under Article 42. Article 39 empowers the UNSC to determine the existence of any threat to the peace, breach of the peace, or act of aggression. This determination serves as the basis for subsequent actions under Chapter VII.¹⁷ Article 41 authorizes the UNSC to decide on measures not involving the use of armed force, such as economic sanctions, diplomatic measures, trade embargoes, and severance of diplomatic relations.¹⁸ These measures are aimed at maintaining or restoring international peace and security. Article 42 authorizes the UNSC to take military action against threats to peace, acts of aggression, or breaches of the peace. Such action may include air, sea, or land forces as necessary to maintain or restore international peace and security. Article 43 outlines the principles for forming military forces and their command.¹⁹

Under Article 39 of the UN Charter, the interpretation of “threat to international peace and security” is pivotal as it triggers the authority of the United Nations Security Council (UNSC) to take actions to maintain or restore peace.²⁰ The term “threat to international peace and security” is not explicitly defined in the UN Charter, allowing the UNSC flexibility in its interpretation. It encompasses a wide range of situations that could jeopardize stability and security on a global scale, including armed conflicts, acts of aggression, terrorism, proliferation of weapons of mass destruction, humanitarian crises, and serious violations of human rights.²¹ Over the decades, the UNSC has interpreted the concept broadly to adapt to changing geopolitical dynamics and emerging threats. This includes recognizing new forms of threats such as cyber warfare, transnational organized crime, and environmental degradation that have implications for international peace and security.

The UNSC assesses whether a situation poses an imminent or likely threat to international peace and security.²² This involves evaluating the severity, scale, and potential impact of the threat on regional stability and global peace. The nature of the threat is crucial in determining UNSC action.²³ Threats that involve armed conflict, aggression against states, terrorism, or large-scale humanitarian crises are typically seen as warranting immediate attention and potential intervention. The UNSC considers the international implications of a threat, including its potential to spill over borders, destabilize neighbouring regions, or undermine global peace and security.²⁴ The interconnectedness of global issues underscores the need for collective responses under Article 39.

The UNSC frequently addresses armed conflicts that threaten regional stability and have international repercussions.²⁵ Resolutions authorizing peacekeeping missions, sanctions, or even military interventions under Chapter VII are often based on the determination of armed conflict as a threat to

¹⁶ UN Charter, 1945.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ M N Shaw, *International Law* (7th Cambridge University Press 2014) 40-50.

²¹ *Ibid.*

²² M N Shaw, *International Law* (7th Cambridge University Press 2014) 40-50.

²³ *Ibid.*

²⁴ J Karlsrud, ‘United Nations Stabilization Operations: Chapter Seven and a Half’ [2019] (18) (5) *Journal of Ethnopolitics* 494-508.

²⁵ *Ibid.*

peace.²⁶ Humanitarian crises such as large-scale refugee flows, famine, or genocide are interpreted as threats to international peace and security. The UNSC may authorize humanitarian interventions, establish protection mandates, or impose sanctions to address these crises and protect civilian populations. Terrorism and the activities of non-state actors that pose significant security threats globally are also interpreted under Article 39.²⁷ The UNSC may adopt counter-terrorism measures, sanctions regimes, or support collective efforts to combat terrorist organizations threatening international stability. The interpretation of threats to international peace and security is often influenced by political considerations among UNSC members, particularly the veto-wielding permanent members. This can lead to disagreements over which situations constitute a threat worthy of UNSC action.²⁸

The interpretation of “threat to international peace and security” under Article 39 of the UN Charter is a critical aspect of international law and diplomacy. It provides the UNSC with the authority to address a wide range of global challenges affecting stability and security. While the concept allows for flexibility in responding to evolving threats, its application is subject to political dynamics and interpretations that influence the effectiveness and legitimacy of UNSC actions. Maintaining a balanced approach to interpreting threats and ensuring consensus among member states are essential for upholding the principles of the UN Charter and promoting international peace and security globally. The expansion of the provision of Article 39 of the UN Charter to include non-state actors such as terrorist groups and transnational criminal organizations reflects the evolving nature of threats to international peace and security in the contemporary world.²⁹

The reconciliation of international law with state sovereignty and territorial integrity, particularly in the context of threats to peace as exceptions to the doctrine of non-intervention during armed conflicts under the UN Charter of 1945, presents a complex legal and diplomatic challenge.³⁰ This involves balancing the principles of state sovereignty and territorial integrity with the need for international intervention to maintain or restore peace and security. A fundamental principle of international law, enshrined in Article 2(1) of the UN Charter, asserts that states have supreme authority within their own territories and are free from external interference in their domestic affairs. Article 2(4) of the UN Charter prohibits the threat or use of force against the territorial integrity or political independence of any state, underscoring the importance of respecting national borders and sovereignty. Closely related to sovereignty, the doctrine of non-intervention prohibits external interference in the internal affairs of states, including in matters of governance, policy, and conflict.³¹

Furthermore, article 39 of the UN Charter allows the UNSC to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to take measures, accordingly, including intervention.³² Under Chapter VII, the UNSC can authorize actions ranging from sanctions to military

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ UN Charter, 1945.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

intervention articles 41 and 42 to maintain or restore international peace and security. Interventions must be authorized by the UNSC under Chapter VII, providing a legal basis that aligns with international law and mitigates concerns over unilateral actions. The UNSC has intervened in cases of severe humanitarian crises, such as genocide or widespread atrocities, where state failure or unwillingness to protect its population justifies external action to prevent further harm.³³ Interventions must have a legitimate objective, such as stopping mass atrocities, preventing genocide, or addressing grave threats to international peace. Actions taken must be proportional to the threat and necessary to achieve the intended security objectives.³⁴ They should also minimize harm to civilians and respect the principle of proportionality.³⁵ After intervention, efforts must focus on restoring and respecting the sovereignty and territorial integrity of the affected state. This includes supporting post-conflict reconstruction, political stability, and self-determination. Involvement of international and regional organizations ensures broader legitimacy and compliance with international norms, reducing the perception of imperialistic or hegemonic interventions.³⁶

The UNSC's decision-making process, particularly the veto power of permanent members (P5), can hinder timely and effective responses to threats.³⁷ Political interests often influence decisions on interventions, leading to selective enforcement of international norms. Interventions justified on humanitarian grounds can be viewed with suspicion, especially if perceived as serving the strategic interests of intervening states. Ensuring transparency and genuine humanitarian intent is crucial for maintaining credibility. Interventions, particularly military ones, can lead to unintended consequences, such as prolonged conflict, regional destabilization, or civilian casualties. Ensuring careful planning, clear objectives, and post-conflict strategies is essential to mitigate such risks.³⁸

Furthermore, internal conflicts often result in severe humanitarian crises, such as genocide, war crimes, ethnic cleansing, and crimes against humanity.³⁹ The international community, under the R2P doctrine, has a responsibility to protect populations from such atrocities when the state is unwilling or unable to do so.⁴⁰ Any intervention must be authorized by the UNSC under Chapter VII to ensure it is legitimate and in line with international law. This authorization is intended to provide a legal and moral basis for intervention, balancing sovereignty with the need to address severe humanitarian crises. The UNSC must determine that there is a legitimate threat to international peace and security, such as large-scale loss of life or widespread atrocities.⁴¹ All non-military measures should be exhausted before resorting to intervention. Diplomatic efforts, sanctions, and negotiations should precede any decision to use force. The scale, duration, and intensity of the intervention should be proportionate to the threat and necessary to achieve the objective of protecting civilians and restoring peace.⁴² However, the use of veto power

³³ T Daniel, The Papers of Daniel Webster: Diplomatic Papers' [1983] (1) *Dartmouth College Journal* 200-215.

³⁴ T Daniel, The Papers of Daniel Webster: Diplomatic Papers' [1983] (1) *Dartmouth College Journal* 200-215.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ N J Wheeler, 'Saving Strangers: Humanitarian Intervention in International Society' [2000] (76) (1) *Oxford University Press Publications* 123-145.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² N J Wheeler, 'Saving Strangers: Humanitarian Intervention in International Society' [2000] (76) (1) *Oxford University Press Publications* 123-145.

by permanent members of the UNSC can hinder collective action, particularly when geopolitical interests are at stake. This can lead to inaction in the face of severe humanitarian crises. Interventions can be perceived as violations of state sovereignty, especially when driven by humanitarian motives. Balancing respect for sovereignty with the imperative to prevent mass atrocities requires careful diplomatic handling and broad international consensus.⁴³

Several major international interventions authorized by the United Nations Security Council (UNSC) serve as legal precedents and illustrate the international community's responses to threats to international peace and security.⁴⁴ These interventions highlight how the UNSC has interpreted and applied its mandate under Chapter VII of the UN Charter. Korean War 1950-1953, North Korea invaded South Korea in June 1950, triggering a significant international conflict. The UNSC adopted Resolution 82, which called for an immediate cessation of hostilities and withdrawal of North Korean forces. Subsequently, Resolution 83 recommended that member states assist South Korea in repelling the armed attack. This intervention set a precedent for collective military action under the auspices of the UN to repel aggression and restore peace and security.⁴⁵ Gulf War 1990-1991, Iraq's invasion and annexation of Kuwait in August 1990 posed a direct threat to international peace and stability in the region. The UNSC adopted Resolution 660, condemning the invasion and demanding Iraq's immediate withdrawal from Kuwait.⁴⁶ Resolution 678 authorized member states to use "all necessary means" to uphold and implement Resolution 660 and restore international peace and security in the area.⁴⁷ The Gulf War intervention reinforced the principle that the UNSC can authorize collective military action to reverse acts of aggression and restore the territorial integrity of member states.⁴⁸

Bosnia and Herzegovina 1992-1995, the breakup of Yugoslavia led to a violent conflict in Bosnia and Herzegovina, characterized by ethnic cleansing and severe humanitarian crises. The UNSC passed several resolutions, including Resolution 770, which authorized member states to take "all measures necessary" to facilitate the delivery of humanitarian aid. Resolution 816 authorized the establishment of a no-fly zone, and Resolution 819 declared Srebrenica a "safe area." The Bosnia intervention established the precedent for UN-authorized humanitarian interventions, even within the context of internal conflicts, to prevent gross human rights violations and provide humanitarian assistance.⁴⁹

Rwanda 1994, the Rwandan Genocide saw the mass slaughter of the Tutsi population by the Hutu majority government.⁵⁰ The initial response was limited, with the UNSC establishing the United Nations Assistance Mission for Rwanda (UNAMIR) through Resolution 872. After the genocide began, Resolution 918 expanded UNAMIR's mandate and increased troop strength to protect civilians and

⁴³ S Cheesterman, 'Just War or Just Peace? Humanitarian Intervention and International Law' [2002] (15) (2) *Oxford University Press Publications* 205-230.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ A. Orford, 'Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law' [2003] (22) (4) *Cambridge University Press Publications* 367-399.

⁴⁹ A. Orford, 'Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law' [2003] (22) (4) *Cambridge University Press Publications* 367-399.

⁵⁰ *Ibid.*

humanitarian operations. The failure to effectively intervene in Rwanda highlighted the challenges and limitations of international responses to prevent genocide. It underscored the need for timely and decisive action under the R2P (Responsibility to Protect) doctrine.⁵¹

Kosovo 1999, the conflict in Kosovo between Yugoslav forces and ethnic Albanians led to significant human rights abuses and a humanitarian crisis. Resolution 1199 called for a ceasefire and negotiations, while Resolution 1244 authorized the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the deployment of an international security presence.⁵² The Kosovo intervention, although primarily conducted by NATO, was later legitimized by UNSC Resolution 1244, demonstrating the UNSC's role in authorizing post-conflict reconstruction and administration.

Libya 2011, the Libyan Civil War saw the Gaddafi regime violently suppressing uprisings, leading to widespread atrocities against civilians. Resolution 1973 authorized member states to take "all necessary measures" to protect civilians and establish a no-fly zone over Libya. The intervention in Libya is a key example of the application of the R2P doctrine, where the international community intervened to protect civilians from state-led atrocities. However, it also sparked debate over the scope and consequences of such interventions.⁵³ The decision-making process within the UNSC is often influenced by the political interests of its permanent members, which can lead to selective or inconsistent applications of Chapter VII.⁵⁴

The legal precedents set by these major international interventions demonstrate the UNSC's evolving role in responding to threats to international peace and security. These cases highlight the flexibility and authority granted under Chapter VII of the UN Charter to address a wide range of threats, from traditional state aggression to internal conflicts and humanitarian crises. However, they also underscore the ongoing challenges in reconciling the principles of state sovereignty and non-intervention with the imperative to protect human rights and maintain global stability.⁵⁵

Appraisal of the Responsibility to Protect Doctrine in Justification of International Intervention by Sovereign States

The Responsibility to Protect (R2P) doctrine emerged in the early 21st century as a significant normative development in international law, seeking to reconcile the principles of state sovereignty and humanitarian intervention.⁵⁶ It was formally endorsed by all member states of the United Nations at the 2005 World Summit and has since played a crucial role in justifying international interventions by sovereign states. States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.⁵⁷ The international community has a

⁵¹ *Ibid.*

⁵² F R Teson, 'The Liberal Case for Humanitarian Intervention' [2005] (57) (1) *Cambridge University Press Publications* 93-119.

⁵³ F R Teson, 'The Liberal Case for Humanitarian Intervention' [2005] (57) (1) *Cambridge University Press Publications* 93-119.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ M Finnemore, 'The Purpose of Intervention: Changing Beliefs about the Use of Force' [2004] (66) (2) *Cornell University Press Publications* 152-178.

⁵⁷ *Ibid.*

responsibility to assist states in fulfilling this duty. If a state is manifestly failing to protect its population, the international community must be prepared to take collective action, in accordance with the UN Charter, including the use of force if necessary.⁵⁸ In 2011, in Libya the UNSC authorized military intervention in Libya through Resolution 1973, citing the responsibility to protect civilians from the Gaddafi regime's violent crackdown. NATO-led forces intervened to enforce a no-fly zone and protect civilians. Also, in Ivory Coast, following a disputed presidential election, violence erupted, leading the UNSC to authorize intervention under R2P to protect civilians.⁵⁹ This resulted in the eventual capture of former President Laurent Gbagbo.⁶⁰ In 2013, in Central African Republic, the UNSC authorized an African-led mission to stabilize the country and protect civilians amid escalating sectarian violence, under the auspices of R2P.⁶¹

R2P has significantly influenced international norms, establishing that sovereignty is not a shield for governments to commit mass atrocities against their populations.⁶² The unanimous endorsement of R2P at the 2005 World Summit reflects broad international consensus on the need to prevent and respond to mass atrocities.⁶³ The UNSC has operationalized R2P in specific cases, demonstrating its practical applicability in international law and politics. The intervention in Libya, while initially successful in protecting civilians, led to prolonged instability and conflict, raising questions about the long-term consequences of such interventions and the need for comprehensive post-intervention strategies.⁶⁴ The UNSC's decision-making process, particularly the veto power held by its permanent members, can obstruct timely and decisive action, undermining the effectiveness of R2P. Some states remain wary of R2P, viewing it as a potential tool for powerful countries to justify interventions that serve their own interests rather than genuinely protecting vulnerable populations.⁶⁵

The Responsibility to Protect doctrine represents a profound shift in the international community's approach to sovereignty and humanitarian intervention.⁶⁶ By establishing that the protection of populations from mass atrocities is a fundamental responsibility, R2P has provided a normative framework for justifying international interventions. However, the doctrine's implementation has faced significant challenges, particularly related to political dynamics within the UNSC, selective application, and the unintended consequences of interventions.⁶⁷

The Responsibility to Protect (R2P) doctrine seeks to align the protection of populations from mass atrocities with the principles and mandates established under the UN Charter. The UN Charter, adopted in 1945, lays the foundation for international peace and security, respect for human rights, and the

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ M Finnemore, 'The Purpose of Intervention: Changing Beliefs about the Use of Force' [2004] (66) (2) *Cornell University Press Publications* 152-178.

⁶¹ *Ibid.*

⁶² I Hurd, 'Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World' [2011] (25) (3) *Journal of Ethics and International Affairs* 293-313.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

sovereignty of states. Implementing R2P involves a careful balancing act to ensure that actions taken under its framework are consistent with the Charter's principles.⁶⁸

Sovereignty and Non-Intervention article 2(1) and 2(7)), the Charter emphasizes the sovereignty of states and the principle of non-intervention in domestic affairs, prohibition of the Use of Force (Article 2(4) States are prohibited from using force against the territorial integrity or political independence of any state, except in cases of self-defence or when authorized by the UNSC, maintenance of International Peace and Security (Chapter VII), the UNSC is empowered to determine threats to peace, breaches of peace, and acts of aggression, and to take collective measures, including the use of force, to maintain or restore international peace and security.⁶⁹

The pillar of State Responsibility reinforces the Charter's emphasis on state sovereignty by recognizing that states have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Encourages states to build the capacity to prevent and respond to these crimes, with international assistance where needed. Reflects the Charter's principles of international cooperation articles 55-56 by promoting assistance to states in fulfilling their protective responsibilities. Involves providing technical, financial, and logistical support to states to enhance their capabilities to protect populations.⁷⁰ The pillar of timely and decisive response aligns with Chapter VII of the Charter, which allows the UNSC to take collective action in response to threats to international peace and security.⁷¹ When a state fails to protect its population, the international community, through the UNSC, can authorize measures ranging from diplomatic pressure and sanctions to military intervention to prevent or halt mass atrocities. Any use of force under R2P must be authorized by the UNSC to ensure it is consistent with the Charter's prohibition on the use of force and respect for state sovereignty.⁷²

The UNSC must determine that there is a threat to international peace and security under Article 39 and authorize appropriate measures under Articles 41 and 42. Interventions must be proportional to the threat and necessary to achieve the protection of civilians. This ensures that actions taken are the minimum required to address the specific threat and are in line with international humanitarian law. The Charter emphasizes the peaceful resolution of disputes article 33.⁷³ R2P implementation should prioritize diplomatic, economic, and political measures before resorting to military action. This includes mediation, sanctions, and peacekeeping missions aimed at preventing escalation and addressing root causes of conflict. Interventions should include comprehensive post-conflict strategies to rebuild governance structures, promote reconciliation, and ensure sustainable peace. Long-term support from the international community is essential to stabilize the affected state and prevent a relapse into conflict. The need for UNSC authorization can be impeded by political interests and the use of veto power by permanent members, potentially stalling necessary interventions. The perception of selective application of R2P undermines its legitimacy. Consistent and impartial application is crucial to

⁶⁸ C Gray, *International Law* (Oxford University Press 2008) 145-173.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ UN Charter, 1945.

maintaining credibility and support for the doctrine. The implementation of the Responsibility to Protect doctrine requires careful alignment with the principles of the UN Charter to balance state sovereignty with the imperative to prevent and respond to mass atrocities.

The interaction between the principles of humanitarian intervention, the protection of human rights, and the doctrine of non-intervention during armed conflict is a complex and evolving area of international law.⁷⁴ These principles often conflict and overlap, requiring careful navigation to balance state sovereignty with the imperative to protect human rights. Rooted in the Westphalian system, state sovereignty is a fundamental principle of international law, asserting that states have supreme authority within their territories and are free from external interference.⁷⁵ As stipulated in Article 2(7) of the UN Charter, no state or group of states has the right to intervene in the internal affairs of another state. This principle protects states from external coercion and upholds their political independence and territorial integrity.⁷⁶ Also, humanitarian intervention is based on the premise that the international community has a moral and legal obligation to intervene in situations where a state is perpetrating or failing to prevent widespread and grave violations of human rights, such as genocide, war crimes, ethnic cleansing, and crimes against humanity. Such interventions may involve the use of force, which must be authorized by the UNSC under Chapter VII of the UN Charter to be considered lawful.⁷⁷

Furthermore, article 2(4) of the UN Charter prohibits the use of force against the territorial integrity or political independence of any state, except in cases of self-defence or when authorized by the UNSC.⁷⁸ Chapter VII allows the UNSC to act, including military intervention, to maintain or restore international peace and security when there is a threat to peace, a breach of peace, or an act of aggression. The interaction between humanitarian intervention, human rights protection, and the doctrine of non-intervention is marked by a dynamic and sometimes contentious balance. While the principle of non-intervention protects state sovereignty and promotes international stability, humanitarian intervention and R2P emphasize the protection of human rights and the international community's responsibility to prevent mass atrocities.⁷⁹

Unilateral interventions often violate the UN Charter, specifically Article 2(4), which prohibits the use of force against the territorial integrity or political independence of any state.⁸⁰ Without UNSC authorization or a self-defence claim, unilateral interventions are generally considered illegal. Unilateral actions undermine the principle of state sovereignty and non-intervention article 2(7) of the UN Charter, which are foundational to international law. Unilateral interventions can set dangerous precedents, leading to the erosion of established norms, and encouraging other states to undertake similar actions, potentially destabilizing international relations.⁸¹ While some unilateral interventions are justified on

⁷⁴ N Krisch, 'The Rise and Fall of Collective Security: Terrorism, US Hegemony, and the Plight of the Security Council' [2003] (18) (2) *European Journal of International Law* 229-256.

⁷⁵ *Ibid.*

⁷⁶ UN Charter, 1945.

⁷⁷ A J Bellamy, 'Just Wars: From Cicero to Iraq' [2006] (4) (1) *Journal of Political Studies Review* 139-141.

⁷⁸ Bellamy (n 77).

⁷⁹ *Ibid.*

⁸⁰ R Thakur, 'The United Nations, Peace, and Security: From Collective Security to the Responsibility to Protect' [2006] (23) (1) Cambridge University Press Publications 104-126.

⁸¹ *Ibid.*

humanitarian grounds, for instance, preventing genocide, they are often driven by the intervening state's political, strategic, or economic interests, raising questions about the true motives behind the intervention.

The UNSC has the primary responsibility for maintaining international peace and security under the UN Charter.⁸² Chapter VII powers, it can authorize interventions, including the use of force, in situations where there is a threat to peace, a breach of peace, or an act of aggression. The UNSC's authority to sanction interventions gives them international legitimacy. Resolutions and Actions, successful interventions in Kuwait (1991) and Liberia (2003) where the UNSC authorized military action to restore peace and security.⁸³

The veto power held by the five permanent members (P5) often leads to deadlock, preventing timely and necessary interventions.⁸⁴ The UNSC has been criticized for inconsistency and selectivity, intervening in some crises while ignoring others due to geopolitical interests.⁸⁵ The ICC prosecutes individuals for genocide, war crimes, crimes against humanity, and aggression. Its role in holding perpetrators accountable serves as a deterrent to committing mass atrocities. Prosecution of leaders such as Thomas Lubanga (DRC) and ongoing investigations in several conflict zones. Establishing legal precedents and contributing to the development of international criminal law. However, territory of state parties to the Rome Statute, or those referred by the UNSC. This limits its reach and effectiveness, particularly when major powers are not party to the ICC. The ICC relies on state cooperation for arrests and enforcement, which can be problematic when states are unwilling or unable to comply.⁸⁶

Furthermore, the AU plays a significant role in regional peacekeeping and conflict resolution, with a mandate to intervene in member states in cases of genocide, war crimes, and crimes against humanity. Successful peacekeeping missions in Burundi (AMIB), Darfur (AMIS), and Somalia (AMISOM). Establishing norms and frameworks for regional intervention, including the African Standby Force (ASF). However, limited financial and logistical resources hinder the AU's ability to sustain long-term interventions. Diverging political interests among member states can delay or complicate decision-making and intervention efforts. ECOWAS has a mandate to promote economic integration and regional stability, including intervention in conflicts. ECOWAS Monitoring Group, the military arm for peacekeeping and enforcement missions. Successful interventions in Liberia (1990), Sierra Leone (1997), and The Gambia (2017) demonstrate ECOWAS's ability to respond swiftly to regional crises. ECOWAS has played a key role in mediating and resolving conflicts through diplomatic efforts and peace agreements. Similar, to the AU, ECOWAS faces challenges related to limited resources and logistical capabilities.⁸⁷

⁸² *Ibid.*

⁸³ R Thakur, *The United Nations, Peace, and Security: From Collective Security to the Responsibility to Protect* [2006] (23) (1) Cambridge University Press Publications 104-126.

⁸⁴ M Byers and G Nolte, 'United States Hegemony and the Foundations of International Law' [2003] (47) (3) *Cambridge University Press Publications* 561-584.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ M Byers and G Nolte, 'United States Hegemony and the Foundations of International Law' [2003] (47) (3) *Cambridge University Press Publications* 561-584.

European Union (EU) and NATO, both organizations have mechanisms for crisis management, including military and civilian missions to stabilize regions and protect human rights. NATO has conducted humanitarian interventions, most notably in the Balkans during the 1990s. The EU's involvement in post-conflict reconstruction in the Balkans and NATO's intervention in Kosovo (1999) are examples of effective multilateral actions. Combining military, political, and developmental tools to address conflicts holistically. The efficacy of international institutions in enforcing exceptions to the doctrine of non-intervention to maintain global peace and security is mixed. While multilateral interventions with UNSC authorization are generally more legitimate and effective, political dynamics and resource constraints often limit the success of these interventions.⁸⁸

The UNSC is tasked with maintaining international peace and security under the UN Charter. It has the authority to determine the existence of any threat to peace, breach of peace, or act of aggression and to take military and non-military actions to restore international peace and security (Chapter VII of the UN Charter). The UNSC can authorize collective military interventions, impose sanctions, and mandate peacekeeping missions to enforce exceptions to non-intervention when there are severe threats to peace. The UNSC authorized the use of force to expel Iraqi forces from Kuwait, successfully restoring Kuwait's sovereignty and demonstrating its capacity to mobilize collective action against aggression. Liberia and Sierra Leone 1990s-2000s, authorized interventions helped to stabilize these countries and end prolonged civil conflicts, contributing to regional stability in West Africa. The UNSC's authorization of a no-fly zone and measures to protect civilians during the Libyan Civil War exemplified a proactive stance in humanitarian intervention. The UNSC's effectiveness is often compromised by the veto power held by its five permanent members (P5).⁸⁹ This has led to paralysis in the face of crises, such as in Syria, where vetoes have prevented collective action. The UNSC has been criticized for inconsistency in its interventions, influenced by the geopolitical interests of the P5. This selective application undermines its credibility and the principle of impartiality. Even when interventions are authorized, there are often challenges related to the effectiveness of peacekeeping missions, the sustainability of peace, and long-term reconstruction, as seen in the cases of Libya and South Sudan.⁹⁰

5.0 Conclusion

The threat to international peace and security serves as a significant exception to the doctrine of non-intervention under the United Nations Charter of 1945. This exception, primarily articulated through Chapter VII of the Charter, empowers the UN Security Council to take collective action, including military intervention, when a conflict poses a substantial risk to global stability. While this mechanism aims to prevent and mitigate severe humanitarian crises and widespread violence, it also navigates the delicate balance between respecting state sovereignty and fulfilling the international community's responsibility to maintain peace and security. The effective application of this exception requires a consistent, principled approach to ensure that interventions are justified, proportionate, and focused on the broader goal of international peace. Challenges such as political biases, the selective nature of

⁸⁸ M Byers and G Nolte, 'United States Hegemony and the Foundations of International Law' [2003] (47) (3) *Cambridge University Press Publications* 561-584.

⁸⁹ R Thakur, 'The United Nations, Peace, and Security: From Collective Security to the Responsibility to Protect' [2006] (23) (1) *Cambridge University Press Publications* 104-126.

⁹⁰ *Ibid.*

interventions, and the need for adherence to international law continue to shape the discourse around this critical aspect of international relations. Ultimately, the UN's ability to address threats to peace while upholding the Charter's principles remains pivotal in fostering a stable and just global order.

6.0 Recommendations

Recommendations on the Application of the Threat to International Peace and Security as an Exception to the Doctrine of Non-Intervention

1. Enhancing Regional Cooperation and Capacity Building

Nigeria should strengthen its collaboration with regional organizations like the African Union (AU) and Economic Community of West African States (ECOWAS) to address conflicts in West Africa. This can be achieved by investing in regional peacekeeping forces and conflict resolution mechanisms. Globally, enhancing the capacity of regional organizations to manage conflicts will enable more effective and timely interventions. The UN should support these organizations through training, funding, and logistical assistance to ensure they can operate effectively within the framework of Chapter VIII of the UN Charter.

2. Strengthening Legal and Ethical Frameworks

Nigeria should ensure that its domestic laws align with international humanitarian laws and the principles of the UN Charter. This includes adopting clear guidelines on when and how to intervene in internal conflicts to protect human rights while respecting state sovereignty. The international community should work towards developing more robust legal frameworks that clarify the conditions under which the UN Security Council can authorize interventions. This will help mitigate accusations of bias or illegality and promote consistent application of international norms.

3. Promoting Inclusive Dialogue and Diplomacy

Nigeria can foster inclusive national dialogue involving all stakeholders, including marginalized groups, to address underlying issues that lead to conflicts. This proactive approach can prevent situations from escalating to the point where international intervention is considered. On a global scale, the UN should prioritize diplomatic efforts and conflict prevention strategies. This includes deploying special envoys, facilitating peace talks, and supporting mediation efforts before resorting to intervention under Chapter VII of the UN Charter.

By adopting these recommendations, both Nigeria and the global community can better address threats to international peace and security while respecting the principles of state sovereignty and non-intervention. These measures will help create a more stable and just international order, capable of effectively managing and resolving conflicts.