



## THREAT TO 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

*This article examined the threat to international peace and security as an exception to the doctrine of non-intervention under international law. The article 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. This article explored the exception to the doctrine of non-intervention during armed conflict, focusing on the conditions under which the UN, under Chapter VII of its Charter, can authorize intervention. The UN Charter was established in 1945, and it 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. Firstly, the determination of what constitutes a “threat to international peace and security” is often subjective and politically charged. 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 co-operation of the international community, particularly the permanent members of the Security Council. The article recommended amongst others that there should be a clearer, more objective framework for determining what constitutes a threat to international peace and security in order to reduce political subjectivity. Secondly, reforming the Security Council to limit the use of the veto in cases involving mass atrocities could prevent political deadlock and ensure timely intervention. 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

The United Nations (UN) Charter of 1945 established a framework for maintaining international peace and security while upholding the principle of non-intervention in the domestic affairs of sovereign states. Article 2(4) of the Charter explicitly prohibits the threat or use of force against the territorial integrity or political independence of any state, reinforcing the doctrine of non-intervention. However,

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the Charter also acknowledges situations where intervention may be necessary to maintain or restore international peace and security.<sup>2</sup>

One of the primary exceptions to the doctrine of non-intervention is outlined under Chapter VII of the UN Charter. The exception grants the UN Security Council the authority to determine the existence of any threat to the peace, breach of the peace, or an act of aggression.<sup>3</sup> If such a determination is made, the Security Council has the power to take both non-military and military measures to address the threat. These include economic sanctions, blockades, and military intervention.<sup>4</sup> 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.<sup>5</sup>

Also, Article 42 allows the Security Council to take military action if it considers that non-military measures would be inadequate.<sup>6</sup> This is a significant departure from the doctrine of non-intervention, because it permits the use of force in certain circumstances in order to uphold international peace and security.<sup>7</sup>

In cases of threats to international peace and security the intervention is often justified on humanitarian grounds, such as preventing genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>8</sup> However, the invocation of the powers in 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).<sup>9</sup> 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

### 2.1 Armed Conflict

International tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), have further refined these definitions. For instance, the ICTY in the *Tadić case* defined an armed conflict:

“An armed conflict exists whenever there is resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within

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<sup>2</sup> UN Charter, 1945, article 2(4).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> UN Charter, 1945.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> UN Charter, 1945

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).<sup>10</sup> A non-international armed Conflict involves armed confrontations occurring within the territory of a state between its governmental forces and non-governmental armed groups, or between such groups themselves. Common Article 3 provides minimal protection in non-international armed conflicts, by prohibiting certain acts such as murder, torture, and hostage-taking. The distinction between international and non-international armed conflicts is crucial for determining the applicable legal framework and protection under International Humanitarian Law. While IACs involve direct conflict between states, NIACs encompass internal conflicts with organized non-state actors. The evolving nature of warfare, with increasingly complex and hybrid forms of conflict, continues to challenge these traditional classifications and necessitates ongoing legal and normative developments.<sup>11</sup>

## **2.2 Peace**

Peace generally refers to the absence of conflict and violence, as well as the presence of conditions conducive to justice, harmony, and stability within and among nations.<sup>12</sup> In the context of the United Nations (UN) Charter of 1945, peace is conceptualized as a state of international relations characterized by the absence of armed conflict, the protection of human rights, respect for international law, and the promotion of social and economic development.<sup>13</sup> Thus, article 2(1) of the UN Charter emphasizes the principle of sovereign equality of all member states, while Chapter VII allows the Security Council to take collective action against threats to peace, sometimes necessitating intervention in domestic affairs.

## **2.3 Non-Intervention**

Non-intervention is a fundamental principle of international law. It prohibits states from intervening, directly or indirectly, in the internal or external affairs of other states.<sup>14</sup> This principle is grounded in respect for sovereignty and the territorial integrity of states, and ensuring that each state has the right to conduct its own affairs without outside interference. Respecting the independent and sovereign status of states, recognizing their right to self-governance without external influence, ensuring that a state's borders are inviolable and that no state can use force to alter another state's territory and upholding a state's autonomy in making its own political, economic, social, and cultural decisions.<sup>15</sup> Expressly, article 2(4), prohibits the threat or use of force against the territorial integrity or political independence of any state, whilst article 2(7), states that nothing in the Charter authorizes the UN to intervene in matters that are essentially within the domestic jurisdiction of any state, without prejudice to the application of enforcement measures under Chapter VII.<sup>16</sup>

## **2.4 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

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<sup>10</sup> IT-94-I-AR72, Appeals Chamber, 2, October 1995.

<sup>11</sup> Geneva Convention and Additional Protocol, 1949 and 1977.

<sup>12</sup> I Johnstone, 'Security Council Deliberations: The Power of the better Argument' [2003] (14) (3) *Journal of International Law* 437-480.

<sup>13</sup> UN Charter, 1945.

<sup>14</sup> 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.

<sup>15</sup> UN Resolution 1965.

<sup>16</sup> UN Resolution 1970.

widespread and severe human rights violations, such as genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>17</sup> This concept is highly contentious and intersects with the principles of state sovereignty, non-intervention, and the responsibility to protect (R2P).<sup>18</sup> 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.<sup>19</sup>

## **2.5 Challenges**

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. 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 raises 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), and whose geopolitical interests often influence their decisions. This can lead to inconsistent and selective applications of the principle, likely to undermine 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. This may range 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.

Thirdly, there is a risk that the exception to non-intervention could be misused or manipulated for political or strategic purposes, rather than for genuine efforts to maintain international peace and security. Such misuse can erode trust in international institutions and norms. States may perceive interventions as driven by the interests of powerful nations rather than by a commitment to global stability and humanitarian principles.

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 to 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

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<sup>17</sup> W M Reisman, ‘Article 2(4): The Use of Force in Contemporary International Law’ [1984] *Faculty Scholarship Series* 741.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

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 challenge. It involves navigating political biases, defining clear thresholds for action, preventing the 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 Analysis of the United Nations Charter 1945 Legal Regime**

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 co-operation 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.<sup>20</sup>

Article 1 sets forth the purposes of the United Nations, which include maintaining international peace and security, promoting respect for human rights, fostering co-operation 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.<sup>21</sup> Also, 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 an act of aggression, and to decide on measures, including sanctions and military intervention, to maintain or restore international peace and security.<sup>22</sup> Furthermore, article 51 recognizes the inherent right of individuals for 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.<sup>23</sup>

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

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<sup>20</sup> UN Charter, 1945.

<sup>21</sup> *Ibid.*

<sup>22</sup> UN Charter, 1945.

<sup>23</sup> *Ibid.*

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), which 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. Furthermore, 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 the 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.

#### **4.0 Discussion on Threat to International Peace and Security as an Exception**

Chapter VII of the UN Charter outlines the powers and responsibilities of the UNSC in addressing threats to international peace and security.<sup>24</sup> 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 acts of aggression. This determination serves as the basis for subsequent actions under Chapter VII.<sup>25</sup> 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.<sup>26</sup> 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, act 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.<sup>27</sup>

Under Chapter VII, the UNSC can authorize peacekeeping operations (PKOs) to deploy military and civilian personnel to conflict zones. PKOs help maintain ceasefires, protect civilians, facilitate humanitarian assistance, and support political processes to resolve conflicts peacefully.<sup>28</sup> The UNSC can impose economic and diplomatic sanctions (Article 41) on states or non-state actors responsible for threats to peace. Sanctions may target arms embargoes, travel bans, asset freezes, and other measures designed to put pressure on parties into compliance with international norms and cease the hostilities. In extreme cases, if non-military measures prove inadequate, the UNSC may authorize military action

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<sup>24</sup> UN Charter, 1945.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> P Kooijmans, *International Law* (Cambridge University Press 1968) 30-45.





(Article 42) to restore international peace and security. This can include collective military operations undertaken by member states or UN forces to counter aggression or respond to humanitarian crises.<sup>29</sup>

However, the effectiveness of Chapter VII actions can be undermined by political divisions among UNSC permanent members (P5) and the use of veto power. Veto-wielding states may block Resolutions that would authorize intervention in conflicts where they have strategic interests or alliances. States may resist or fail to comply with UNSC Resolutions, undermining the enforcement of sanctions or military mandates. Non-state actors may also defy UNSC decisions, posing challenges to the implementation of Chapter VII measures. Military interventions authorized under Chapter VII can be controversial, raising questions about their legality, legitimacy, and long-term consequences. Concerns include civilian casualties, unintended escalation, and the potential for interventions to exacerbate rather than resolve conflicts. Chapter VII of the UN Charter provides a legal framework for the UNSC to respond decisively to threats to international peace and security. While it empowers the international community to take collective action through sanctions, peacekeeping operations, and military interventions, its application is complex and subject to political considerations and challenges.

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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> The interconnectedness of global issues underscores the need for collective responses under Article 39.

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<sup>29</sup> *Ibid.*

<sup>30</sup> M N Shaw, *International Law* (7<sup>th</sup> Cambridge University Press 2014) 40-50.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> J Karlsrud, ‘United Nations Stabilization Operations: Chapter Seven and a Half’ [2019] (18) (5) *Journal of Ethnopolitics* 494-508.

The UNSC frequently addresses armed conflicts that threaten regional stability and have international repercussions.<sup>35</sup> 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 peace.<sup>36</sup> 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.<sup>37</sup> 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 the UNSC members, particularly the veto-wielding permanent members. This can lead to disagreements over which situations constitute a threat worthy of the UNSC's action.<sup>38</sup>

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 a 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.<sup>39</sup>

### **5.0 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 21<sup>st</sup> century as a significant normative development in international law, seeking to reconcile the principles of state sovereignty and humanitarian intervention.<sup>40</sup> 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.<sup>41</sup> The international community has a responsibility to assist states in fulfilling this duty. If a state is manifestly failing to protect its

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<sup>35</sup> J Karlsrud, ‘United Nations Stabilization Operations: Chapter Seven and a Half’ [2019] (18) (5) *Journal of Ethnopolitics* 494-508.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> UN Charter, 1945.

<sup>40</sup> M Finnemore, ‘The Purpose of Intervention: Changing Beliefs about the Use of Force’ [2004] (66) (2) *Cornell University Press Publications* 152-178.

<sup>41</sup> M Finnemore, ‘The Purpose of Intervention: Changing Beliefs about the Use of Force’ [2004] (66) (2) *Cornell University Press Publications* 152-178.



population, the international community must be prepared to take collective action, in accordance with the UN Charter, including the use of force if necessary.<sup>42</sup> In Libya, the UNSC authorized military intervention in Libya through Resolution 1973, in 2011 citing its responsibility to protect civilians from Gaddafi's regime's violent crackdown. NATO-led forces intervened to enforce a no-fly zone and to protect civilians. Also, in Ivory Coast, following a disputed presidential election, violence erupted, leading the UNSC to authorize intervention under R2P to protect civilians.<sup>43</sup> This resulted in the eventual capture of former President Laurent Gbagbo.<sup>44</sup> In 2013, in the 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.<sup>45</sup>

R2P has significantly influenced international norms, establishing that sovereignty is not a shield for governments to commit mass atrocities against their populations.<sup>46</sup> The unanimous endorsement of R2P at the 2005 World Summit reflects broad international consensus on the need to prevent and respond to mass atrocities.<sup>47</sup> 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.<sup>48</sup> 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. However, 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.<sup>49</sup>

The Responsibility to Protect doctrine represents a profound shift in the international community's approach to sovereignty and humanitarian intervention.<sup>50</sup> By establishing that the protection of populations from mass atrocities is a fundamental responsibility, R2P has provided a normative framework for justifying international interventions. Nonetheless, the doctrine's implementation has faced significant challenges, particularly related to the political dynamics within the UNSC's, selective application, and the unintended consequences of interventions.<sup>51</sup>

The Responsibility to Protect (R2P) doctrine seeks to align with the protection of populations from mass atrocities and 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

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> 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.

<sup>47</sup> *Ibid.*

<sup>48</sup> 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.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *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.<sup>52</sup>

[Sovereignty and Non-Intervention] in Arts 2(1) and 2(7)), the Charter emphasizes the sovereignty of states and the principle of non-intervention in domestic affairs, and the prohibition of the Use of Force. In 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 for the maintenance of international peace and security. Under 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.<sup>53</sup>

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. It encourages states to build the capacity to prevent and respond to these crimes, with international assistance where needed. Arts 55-56 reflect the Charter's principles of international co-operation by promoting assistance to states in fulfilling their protective responsibilities. Also, it involves providing technical, financial, and logistical support to states to enhance their capabilities to protect populations.<sup>54</sup> 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.<sup>55</sup> 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 that it is consistent with the Charter's prohibition on the use of force and respect for state sovereignty.<sup>56</sup>

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 in article 33.<sup>57</sup> 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 the root causes of the 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

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<sup>52</sup> C Gray, *International Law* (Oxford University Press 2008) 145-173.

<sup>53</sup> C Gray, *International Law* (Oxford University Press 2008) 145-173.

<sup>54</sup> C Gray, *International Law* (Oxford University Press 2008) 145-173.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup>

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.<sup>62</sup> 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 acts 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.<sup>63</sup>

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.<sup>64</sup> 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 under 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.<sup>65</sup> While some unilateral interventions

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<sup>58</sup> 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.

<sup>59</sup> 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.

<sup>60</sup> UN Charter, 1945.

<sup>61</sup> A J Bellamy, 'Just Wars: From Cicero to Iraq' [2006] (4) (1) *Journal of Political Studies Review* 139-141.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> 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.

<sup>65</sup> *Ibid.*

are justified on humanitarian grounds, for instance, in 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 of maintaining international peace and security under the UN Charter.<sup>66</sup> The power provided within Chapter VII, authorizes 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 clads them with international legitimacy. In Resolutions and Actions and successful interventions in Kuwait (1991) and Liberia (2003) where the UNSC authorized military action restored peace and security.<sup>67</sup>

The veto power held by the five permanent members (P5) often leads to deadlock, thus preventing timely and necessary interventions.<sup>68</sup> The UNSC has been criticized for inconsistency and selectivity, intervening in some crises while ignoring others due to geopolitical interests.<sup>69</sup> 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. The prosecution of leaders such as Thomas Lubanga (DRC) and ongoing investigations in several conflict zones establish legal precedents and contribute 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 co-operation for arrests and enforcement, which can be problematic when states are unwilling or unable to comply.<sup>70</sup>

Furthermore, the AU also 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) assist in 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 through the ECOWAS Monitoring Group, which is 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.<sup>71</sup>

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<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> M Byers and G Nolte, 'United States Hegemony and the Foundations of International Law' [2003] (47) (3) *Cambridge University Press Publications* 561-584.

<sup>69</sup> *Ibid.*

<sup>70</sup> M Byers and G Nolte, 'United States Hegemony and the Foundations of International Law' [2003] (47) (3) *Cambridge University Press Publications* 561-584.

<sup>71</sup> M Byers and G Nolte, 'United States Hegemony and the Foundations of International Law' [2003] (47) (3) *Cambridge University Press Publications* 561-584.

The European Union (EU) and NATO, have inbuilt 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.<sup>72</sup>

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 acts 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 thereby restoring Kuwait's sovereignty and demonstrating its capacity to mobilize collective action against aggression. Authorized interventions helped carried out in Liberia and Sierra Leone in the 1990s -2000s to stabilize these countries and ended prolonged civil conflicts, and by extension contributed 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).<sup>73</sup> This has led to a 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, which are 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 peace-keeping missions, the sustainability of peace, and long-term reconstruction, as seen in the cases of Libya and South Sudan.<sup>74</sup>

## 6.0 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

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<sup>72</sup> M Byers and G Nolte, 'United States Hegemony and the Foundations of International Law' [2003] (47) (3) *Cambridge University Press Publications* 561-584.

<sup>73</sup> 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.

<sup>74</sup> 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.

the broader goal of international peace. Challenges such as political biases, the selective nature of 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.

## **7.0 Recommendations**

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

### **7.1 Enhancing Regional Cooperation and Capacity Building**

Nigeria should strengthen its collaboration with regional organizations like the African Union (AU) and the Economic Community of West African States (ECOWAS) to address conflicts in West Africa. This can be achieved by investing in regional peace-keeping 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.

### **7.2 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 the consistent application of international norms.

### **7.3 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.