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The Principle of State Sovereignty vs. Humanitarian Intervention in International Law

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ABSTRACT

This paper offers a critical analysis of the ongoing conflict between state sovereignty and the need for humanitarian intervention in the area of international relations. embedded in the Westphalian idea of state sovereignty, which indicates that states have absolute control over their internal affairs, this principle has evolved and formed the backbone of the international legal system. Moreover, it confronts challenges when states are involved in severe human rights abuses, leading to the need for outside intervention.

Closely analysing legal structures such as the United Nations Charter and the Responsibility to Protect (R2P) doctrine, this paper will investigate the evolving norms linked to humanitarian intervention. examining case studies, including NATO's intervention in Kosovo (1999), the Libyan intervention (2011), and the situation in Syria, by evaluating the real-world practical implications and aftermath of interventionist approaches, underscoring the ethical and legal intricacy that rise when combined with the attempt to restore state sovereignty with the moral duty to prevent atrocities.

Furthermore, exploring the impact of international organizations, regional entities, and influential nations in shaping intervention actions. integrating perspectives from international law, political theory, and global governance, advocating for a balanced outlook that regards human rights while also maintaining the legitimate state authority. Finally, this paper offers policy suggestions pursued at improving the efficacy of interventions while conserving sovereignty and non-interference of states. This contributes to the existing discourse concerning the future of humanitarian intervention in an progressively interconnected and ever-changing world, reiterating the need for a more answerable and clear UN framework to address humanitarian crises.

Keywords: *international law, state sovereignty, United nations, Genocide, Ethnic Cleansing, Intervention.*

I. INTRODUCTION

The principle of state sovereignty has been the heart of international law, ensuring that states

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maintain control over their internal affairs without external interference. The ever-evolving concept of humanitarian intervention questions this notion, disputing that states surrender their sovereignty when they fail to protect their citizens from grave and dangerous human rights violations, such as genocide, ethnic cleansing, and crimes against humanity, which, in turn, call for the need to interfere. The dichotomy of these principles raises legal and ethical questions concerning the legality of intervention and the protection of fundamental human rights. Can the UN interfere? Does it violate their sovereignty and their right to make their own decision? When, if ever, should humanitarian concerns be prioritized over state sovereignty?

This paper will examine the development of state sovereignty and humanitarian intervention, their contemporary relevance, the ethical backlash, and possible legal frameworks for balancing these conflicting principles. This debate concerning sovereignty versus humanitarian intervention highlights the delicate challenge of restoring a nation's independence with the ethical duty to stop human rights violations and maintain peace among citizens. This ongoing debate reflects the challenge of finding the appropriate balance between honoring sovereignty and safeguarding human rights in a constantly evolving global landscape, which can be challenging when there are many conflicting opinions.

II. LEGAL HISTORY

The concept of state sovereignty has its roots in the 1648 Treaty of Westphalia, which established the principle of non-interference in domestic affairs as a fundamental rule of international relations. The United Nations emerged after World War II, moved by a growing global desire for peace and collaboration among nations. The 1943 Declaration of the Four Nations on General Security inspired its foundation and Charter. The aim was to unite four significant powers—the United States, Great Britain, the Soviet Union, and China—to create an international body dedicated to fostering peace and preventing the horrors witnessed during the World Wars. This principle was solidified in the United Nations Charter (1945), particularly under Article 2(1)², which recognizes the sovereignty of states, and Article 2(7), which prohibits external intervention in matters within a state's domestic jurisdiction.

In the post-World War II era, the UN's primary mission as a cooperative organization was to uphold international peace and security while honoring the autonomy of nations. This was executed through various provisions in its Charter, establishing a framework for maintaining the global balance of power. However, in theory, it is a perfect organization, but not in practice. Article 2(4) of the Charter explicitly prohibits the use of force against another state, stating, "All

² UN CHARTER art. 2, para. 1-4

Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."³ There are two notable exceptions to this rule. The first is outlined in Article 51⁴, which allows for "individual or collective self-defense" in response to an attack on a Member state. The second exception is in ⁵Article 39 (Chapter VII) empowers the Security Council to take necessary action if it identifies a breach or threat to peace. Furthermore, ⁶Article 42 magnifies the Security Council's authority by authorizing the use of force to "maintain or restore international peace and security."

Despite this strong emphasis on sovereignty, humanitarian intervention has historical precedence. In the 19th century, European powers brought out humanitarian concerns to interfere in the Ottoman Empire to protect Christian minorities. These interventions were sometimes driven by political motives rather than genuine humanitarian concerns. The early 20th century saw increased calls for intervention in human rights concerns after World War II, as the international community recognized the need to prevent barbarities similar to the Holocaust. The creation of the United Nations and adopting the Universal Declaration of Human Rights (1948) further fortified the idea that autonomy should not justify human rights abuses.

The Preamble of the Charter contains a statement affirming that the members of the UN are "committed to reaffirming faith in fundamental human rights, the dignity and worth of every individual, and the equal rights of both men and women, as well as nations of all sizes." Additionally, the Charter outlines one of the UN's key objectives as promoting "respect for human rights and fundamental freedoms for everyone, regardless of race, gender, language, or religion." The UN Charter emphasizes the importance of promoting and safeguarding "human rights and fundamental freedoms for all." Notably, ⁷Article 55 reiterates that all Member States

³ Ibid, para 4

⁴UN CHARTER art. 51. Article 51 of the UN Charter reads: Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council. They shall not affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary to maintain or restore international peace and security.

⁵Article 39, Chapter VII: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken under Articles 41 and 42, to maintain or restore international peace and security."

⁶ Article 42: Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be insufficient, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations.

⁷ Article 55, para (c) "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-

must uphold a "universal respect for, and observance of, human rights and fundamental freedoms for all." In contrast, ⁸Article 56 establishes it as a binding obligation for Members to implement these protections.

However, the Charter also contradicts itself and acknowledges the significant principle of state sovereignty, as highlighted in ⁹Article 2(7) states, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matter to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."¹⁰

The post-Cold War era saw a change in international legal discourse, with the United Nations Security Council (UNSC) authorizing humanitarian interventions, such as in Somalia (1992), Bosnia (1995), and Kosovo (1999). The ¹¹2005 adoption of the Responsibility to Protect (R2P) doctrine made a notable shift in international law by stating that sovereignty necessitates a responsibility to protect populations from mass killings. When states fail to uphold this responsibility, the international community, through the UNSC, may intervene as a last resort, but the source of the conflict is very evident. The Charter guarantees protections for human rights, and when international peace and security are at risk, the Security Council has the authority to take military action as they see fit. Nations are unwilling to have their sovereignty compromised and interfered with. This dubious opinion of the UN's function leads to ongoing legal discourse and debates.

III. LEGAL CHALLENGES

Many legal challenges become evident in humanitarian intervention; International law forbids the use of force, permitting it only in cases of self-defense or with sanction from the UNSC. This raises questions about the legality of interventions, which often occur without the authorization of the state in question. Sovereignty is the root principle of international law. Therefore, many view humanitarian intervention as a breach of sovereignty. Even when the objective is safeguarding human rights, they see it interfering in a state's internal affairs.

determination of peoples, the United Nations shall promote: universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

⁸ Supra, see art 55

⁹ Ibid

¹⁰ The UN CHARTER art 2, para 7

¹¹ Responsibility to Protect Doctrine Clause (1) (A) State sovereignty implies responsibility, and the primary responsibility for protecting its people lies with the state itself.

(B) Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

Exemplifying the necessity of humanitarian intervention and the presence of a genuine threat to human rights can be problematic. This ordeal can lead to the abuse of the humanitarian intervention doctrine and be used as some power play between states, leading to the abuse of power between states.

IV. PRESENT RELEVANCE

The present-day proceedings at the ¹²International Court of Justice (ICJ), begun by South Africa's contentions of genocide against Israel concerning its actions in Gaza, illustrates the current tension between state sovereignty and the necessity for humanitarian intervention as it shows the interplay of powers and the need to protect citizens. South Africa argues that Israel's military conduct breaches international humanitarian law, specifically. ¹³ The Genocide Convention targeted civilians and resulted in extensive displacement of citizens. Contrarily, Israel supports its actions as a fair act of self-defense, stating that its military efforts are aimed at combating terrorism and safeguarding national security, not as a means of genocide.

There are reasons why Israel's conduct in Gaza may be considered genocide on the plausibility standard. First is the vast number of ¹⁴Casualties in Gaza, and the second is the many terrible statements made by Israeli officials, which come to relevance concerning showcasing the genocidal intent. These two factors led the Court to conclude in ¹⁵ In paragraph 54, the Court stated that some of the rights South Africans claimed were plausible. The Court also stated that South Africa had *prima facie* to bring this issue to the International Court of Justice with the genocide convention, as it states that states have *erga omnes*: they concern the international community as a whole, not just individually.¹⁶

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (no date) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (Sou. Available at: <https://www.icj-cij.org/case/192> (Accessed: Mar. 6, 2025).

¹³ Convention on the Prevention and Punishment of the Crime of Genocide, see art I-IV.

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (no date) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (Sou. Available at: <https://www.icj-cij.org/case/192> (Accessed: Mar. 6, 2025).

¹⁵ 'In the Court's view, the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case concerning the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III, and the right of South Africa to seek Israel's compliance with the latter's obligations under the Convention.' *Application of the Convention on the prevention and punishment of the crime of genocide in the Gaza Strip (South Africa v. Israel)* (Jan. 31) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (Sou. Available at: <https://www.icj-cij.org/case/192> (Accessed: Mar. 6, 2025).

¹⁶ [Latin: towards all] (in international law) Obligations in whose fulfillment all states have a legal interest because their subject matter is important to the global community. It follows from this that the breach of such an obligation is of concern not only to the victimized state but also to all the other members of the international community. Thus, in the event of a breach of these obligations, every state must be considered justified in invoking (probably through judicial channels) the responsibility of the guilty state committing the internationally wrongful act. *erga omnes* obligations. *Oxford Reference*. Retrieved Mar. 12, 2025, from <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095756413>.

"The provisional measures are legally binding on Israel, and there is no right of appeal. There is, of course, no international police force to enforce rulings of the ICJ."

This case underlines the complex nature of applying international legal standards to real-life conflicts. It stresses the vital function of international courts in handling claims of human rights abuses and cases of genocide in a way that does not violate both principles. The outcome of the ICJ proceedings could establish a pivotal precedent for future humanitarian interventions; a ruling against Israel might strengthen the legal framework for international action in other instances of alleged genocide or crimes against humanity, helping other cases to refer to this as a means for their case. Contrarily, a ruling favoring Israel could strengthen the principle of state sovereignty, potentially limiting external intervention unless it receives explicit approval from the UN Security Council on interference based on humanitarian concerns. The allegations included indiscriminate bombings, restrictions on humanitarian assistance, and the forced displacement of Palestinians, all of which South Africa argued were violations of international law.

On ¹⁷Jan. 26, 2024, the ICJ issued a provisional ruling that did not explicitly label the actions as genocide but mandated provisional measures. This ruling allows Israel to take necessary actions to prevent genocide and to ensure the flow of humanitarian aid. The ¹⁸R2P doctrine, signed at the 2005 UN World Summit, emphasizes that the international community must take action if a state fails to safeguard its citizens from such atrocities. Various states and international organizations have taken different standpoints complicating the decisions, some supporting South Africa's legal challenge and others reinforcing Israel's sovereignty claims, leading to perplexity. The case exemplifies the difficulties in achieving a unified international response to alleged human rights violations and the complex interplay between law, politics, and state sovereignty.

The dispute between state sovereignty and humanitarian intervention remains a critical issue in contemporary international law, which remains controversial; while the legal system is evolving, the UN must address many unresolved issues. Several key areas highlight this debate:

- United Nations and Security Council Interventions: The UNSC plays a crucial role in authorizing interventions, but political dynamics often halt timely action.

¹⁹In Syria, despite clear evidence of war crimes and crimes against humanity,

¹⁷ Application Of The Convention On The Prevention And Punishment Of The Crime Of Genocide In The Gaza Strip (South Africa V. Israel), <https://www.icj-cij.org/node/204091>

¹⁸Responsibility to Protect (R2P) doctrine, <https://r2pasiapacific.org/files/292/ICISS%20Report.pdf>

¹⁹ AVERRE, D., & DAVIES, L. (2015). Russia, humanitarian intervention and the Responsibility to Protect: the case of Syria. *International Affairs (Royal Institute of International Affairs 1944-)*, 91(4), 813–834.

geopolitical rivalries among permanent UNSC members (such as the US and Russia) prevented decisive intervention. Interventions frequently lack consistency, swayed more by strategic motives than genuine humanitarian needs. For instance, decisive measures were implemented in Libya in 2011, while minimal action was taken.²⁰ Yemen or Myanmar, despite severe attacks and violations of human rights occurring there.

- ²¹State Consent vs. International Responsibility: Numerous nations oppose interventions, claiming they infringe upon their sovereignty. Governments facing accusations of human rights violations often assert that outside interventions threaten their territorial integrity and political autonomy. When the UNSC fails to act, states or coalitions sometimes intervene unilaterally, raising questions about legality and legitimacy.²² The 1999 NATO intervention in Kosovo, conducted without UNSC authorization, was justified on humanitarian grounds but remains legally problematic for NATO as it brought rise to many controversies.
- Legal Standards for Intervention: A universally acknowledged legal framework that distinctly summarises the conditions for justified intervention is lacking. Although the UN Security Council holds authority under Chapter VII of the UN Charter, the veto power exerted by permanent members frequently hinders essential actions that are needed due to conflicts of interest.
- The R2P Doctrine in Practice:²³ The Libyan intervention in 2011 is cited as a successful application of R2P, as the UNSC authorized military action to prevent mass casualties. Nevertheless, this intervention led to authority change, raising concerns that humanitarian motives were motivated by political and selfish purposes. This weakened the confidence in forthcoming interventions by the UNSC, making it a contentious issue.
- Non-Military Humanitarian Assistance: In many cases, states and global organizations give non-military assistance to the aggrieved, such as

<http://www.jstor.org/stable/24539206>

²⁰ See Atrocity Alert No. 26: Burma/Myanmar, Syria, and Yemen, Global Centre for the Responsibility to Protect

²¹ Abbas, A. (2004). Consent Precluding State Responsibility: A Critical Analysis. *The International and Comparative Law Quarterly*, 53(1), 211–225. <http://www.jstor.org/stable/3663142>

²² 'Operation Allied Force': NATO in Kosovo, 10 years later: thematic bibliography nr. 8 / 2009, 175.61 KB

²³ Saba, A., & Akbarzadeh, S. (2017). The Responsibility to Protect and the Use of Force: An Assessment of the Just Cause and Last Resort Criteria in the Case of Libya. *International Peacekeeping*, 25(2), 242–265. <https://doi.org/10.1080/13533312.2017.1404908>

humanitarian aid and sanctions, to handle human rights violations. The effectiveness of these measures remains debated, as seen in the mixed outcomes of incremental sanctions imposed on Myanmar and North Korea by the US made to target the administration's sources of revenue, which support defense acts against civilians.

South Africa's challenge against Israel is rooted in this principle, claiming that Israel's behavior in Gaza requires instant international legal action to protect the displacements and atrocities that happened during the war. The International Court of Justice's order for Israel to put a stop to genocide exaggerates the shift in international law towards prioritizing humanitarian concerns over absolute state sovereignty and despotic rule; there is an urgency for the ICJ to prioritize sacred human rights. The directive given by the International Court of Justice in the case of South Africa versus Israel accentuates the rising tensions between the state's hegemony and the need for humanitarian intervention and how the Court should address these complex issues. The decision reached in this case establishes a strong precedent on how the international legal framework addresses humanitarian emergencies occurring within sovereign nations.

V. SUGGESTIONS

The UN Security Council faces a significant threat to its credibility and significance if it does not seriously consider a "renewed" Charter with amendments to support its claims and address serious issues rather than looking the other way. The ongoing objection to its humanitarian intervention approvals stems from their inconsistencies and obscurities that fail to address the evolving concerns of states and the battle between sovereignty and humanitarian concerns, as no uniform charter addresses these issues. Some interventions, like in Iraq and Haiti, have strengthened the Council's credibility due to their humanitarian focus. However, interventions or the lack thereof in Somalia and Rwanda have been mainly considered ineffective and lacking credibility. This inconsistency, rooted in an imprecise Charter, could damage the Security Council's future credibility across all territories, not just humanitarian efforts.

To address these issues, several legal and institutional reforms should be explored:

- **R2P Guidelines:** International law should define more precise points for humanitarian intervention, appointing specific criteria that explain external actions while containing their misuse for political ends and imposing limitations on using states' absolute power while protecting human rights.
- **Security Council Reform:** The current structure of the UNSC, mainly the veto power, often delays timely humanitarian responses due to the power-play of members

prioritizing politics over human rights. Enforcing mechanisms to avoid vetoes in cases of mass atrocities could help make more prompt interventions in times of crisis.

- **Regional Organisations' Role:** Enhancing the authority of regional organizations, like the African Union and the European Union, and giving them autonomy in sanctioning and executing humanitarian interventions could improve their responsiveness and legitimacy.
- **Preventive Diplomacy and Mediation:** Investing more in early conflict prevention strategies, including diplomatic mediation and economic incentives, can help minimize the necessity for military interventions and resolve territorial disputes through positive discourse rather than mass killings and atrocities.
- **Accountability for Intervening States:** Legal frameworks should mandate accountability for states intervening, ensuring they take responsibility for the long-term stability and reconstruction of affected areas. This would avoid scenarios like the ²⁴Aftermath of intervention in Libya.

VI. CONCLUSION

The case of South Africa vs. Israel at the International Court of Justice (ICJ) marks a consequential landmark in international law, signifying the complexity between state sovereignty and the need for humanitarian intervention. South Africa's allegations of genocide, based on the 1948 Genocide Convention, challenge traditional absolute notions of sovereignty by asserting that Israel's military actions in Gaza necessitate international judicial oversight. (*HC Türk Opens the Human Rights Council: "We Need the Politics of Wisdom, rooted in Facts, the Law, and Compassion."* 2025) The ICJ's provisional ruling, which includes directions to ensure humanitarian aid and end military operations in Rafah, underlines a shifting legal framework in which human rights considerations increasingly limit sovereign authority.

While sovereignty is a fundamental tenet of international law, as outlined in Articles 2(1) and 2(7) of the UN Charter, it is no longer an impassable barrier against inspection and scrutiny. The emergence of humanitarian intervention doctrines, notably the R2P, has strengthened the international community's obligation to prevent genocide, war crimes, and crimes against humanity, even within the boundaries of sovereign nations.

Past interventions, like those in Kosovo (1999) and Libya (2011), have established precedents

²⁴ Gargoum, T. (2022). Post-international Intervention Libya: The Challenges Against State-Building. *Lectio Socialis*.

for restoring sovereignty with human rights obligations. The discriminatory application of these principles, often influenced by political agendas and scheming, complicates their enforcement. The ICJ's approach to the South Africa vs. Israel case is made to shape future legal understandings of humanitarian intervention, state responsibility, and the limitations of sovereignty in times of conflict. Eventually, this case stresses the growing importance of international courts in addressing human rights abuses—even when executed by powerful sovereign entities, as stated in the words of Secretary-General Kofi A. Annan as he confirms that the UN Charter was made to ²⁵ *"protect individual human beings, not those who abuse them."*

This case signifies a turning point in the ongoing legal and ethical discussions around sovereignty, self-defense, and international justice in the current 21st century. Looking ahead, the international community must strengthen its legal obligations, prioritizing human dignity over political deliberations and conflicts of interest. The value of international law depends on its ability to evolve, ensuring that state sovereignty does not interfere at the expense of human lives.

²⁵ Kofi A. Annan, Two Concepts of Sovereignty, (THE ECONOMIST, Sept. 18, 1999), available at <http://www.un.org/Overview/SG/kaecon.htm>. Annan declares, "When we read the Charter today, we are more than ever conscious that it aims to protect individual human beings, not to protect those who abuse them."

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