

**Royal University of Law and Economics**

**Final Report on**

**Protection of Human Rights in the UN: A  
Special Focus on Collective Humanitarian  
Intervention**

**(Case studies: East Timor & Rwanda)**

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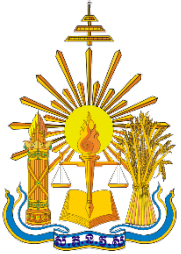
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**International Program**

**Bachelor's Degree of International Relations**

**Cohort 7**

**Year of Submission: 2019**



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## **ABSTRACT**

As a human being, every people inherit their own universal and inalienable rights. These rights include the fundamental human rights such as the right to life, the right to education, freedom from racial discrimination, freedom from slavery, freedom of movement, freedom of expression and so on. Still, the violation of Human Rights has occurred in many parts of the world, which demands the international communities such as the United Nations to take action to protect the innocent people. Under international law, a state has the primary responsibility in safeguarding the lives of its own citizens from mass atrocities and crimes. These include Genocide, Crime against humanities, War Crimes, Crimes of Aggression, torture that is committed on large scale, causing human suffering both physically and mentally. Consequently, when a state is unwilling or unable to carry out its primary responsibility, the international communities, with the UN Security Council's authorization, has the secondary responsibility to protect those citizens by intervening collectively in the internal affairs of a sovereign state to respond to the gross humanitarian atrocities.

This research paper aims to bring out the protection of human rights in the United Nations by specifically focus on the collective humanitarian intervention, the act of intervening in other sovereign states' affair by using military force in order to end the human rights violation in the violating country so that the peace and stability of the world are ensured. This paper will be divided into 6 parts: (1) The first part of our thesis will be the introduction which provides the general background, research problem, research objectives and questions, scope and limitation, research methodology and the research significance. (2) Chapter one will be the literature review from scholars and legal experts who have raised out the problems regarding the history of humanitarian intervention, the legal conduct of the intervention, the legal authorization and implementation of the intervention. (3) Chapter two

will explain about the concept of Humanitarian Intervention consisting of the protection of human rights under the UN, the definition and types of humanitarian intervention, the peacekeeping versus humanitarian intervention, and its benefits and drawbacks. (4) Chapter 3 will examine the legality and legitimacy of Collective Humanitarian Intervention within the security council mandate (Collective Intervention) and without the security council mandate (Unilateral Intervention). (5) Chapter 4 will focus on the reflection of two cases studies: East Timor and Rwanda on the practice of collective humanitarian intervention. (6) Finally, the last part will conclude and provide some recommendation regarding the more effective collective humanitarian intervention.

**KEYWORD: Collective Humanitarian Intervention**

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## **LIST OF ABBREVIATIONS**

CHI	:	Collective Humanitarian Intervention
DPKO	:	Department of Peacekeeping Operations
IAC	:	International Armed Conflict
ICC	:	The International Criminal Court
ICISS	:	The International Commission on Intervention and State Sovereignty
ICJ	:	The International Court of Justice
IHL	:	International Humanitarian Law
NATO	:	The North Atlantic Treaty Organization
NIAC	:	Non-International Armed Conflicts
R2P	:	Responsibility to Protect
RPF	:	Rwandan Patriotic Front
UDHR	:	Universal Declaration of Human Rights
UN	:	United Nations
UNAMIR	:	United Nations Assistance Mission for Rwanda
UNSC	:	United Nation Security Council
ICISS	:	The International Commission on Intervention and State Sovereignty
UNAMET	:	United Nations Mission in East Timor
INTERFET	:	The International Force for East Timor
UNTAET	:	United Nations Transitional Administration in East Timor
UNMISSET	:	United Nations Mission of Support in East Timor
UNOTIL	:	United Nations Office in Timor-Leste
UNMIT	:	United Nations Integrated Mission in Timor-Leste

# INTRODUCTION

## 1. General Background

International Human rights are universal and inalienable that every human being deserves all rights equally with dignity to fulfill their desire and practice of their freedom regardless of their gender, ethnicity, religion, race, language, region, or political view. That is no matter what they are, who they are, where they come from, what skin tone they have, what religion they believe in, what their sexual orientations are; they are all human beings and they deserve to have their own rights.<sup>1</sup> All these rights are ensured and protected by Human Rights Law, the law that protects human of all time. Universal Declaration of Human Rights was created three years after the creation of the United Nations after the Second World War in 1945 known as the world's historical record that destroyed most of the world's infrastructures and humanities. "On 10 December 1948, The Universal Declaration of Human Rights was adopted by the United Nations General Assembly."<sup>2</sup> This document was recorded by an international committee chaired by Eleanor Roosevelt. It contains the basis of Thirty Human Rights Law based on the principles stating everyone is born equal with dignity and rights such as the right to life, right to education, freedom from racial discrimination, freedom from slavery, freedom of movement, freedom of expression and so on.<sup>3</sup> The creation of UDHR was to reaffirm the fundamental human rights and despite its core values of protecting human-beings.<sup>4</sup> However, Human Rights have been seriously violated for centuries or worse for millenniums in many parts of the world. Human rights violation is a global concern as it involves many serious human rights violations such as the International or Non-international

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<sup>1</sup> "Universal Declaration of Human Rights," UNITED NATIONS, last modified December 31, 2018, <https://www.un.org/en/universal-declaration-human-rights/> (accessed on May 28, 2019).

<sup>2</sup> "History of the Document," UNITED NATIONS, last modified October 31, 2017, <https://www.un.org/en/sections/universal-declaration/history-document/index.html> (accessed on June 2, 2019).

<sup>3</sup> Supra note 1

<sup>4</sup> Supra note 2

Armed Conflicts, Wars of Aggression, War Crimes, Crimes Against Humanity, and Genocide.<sup>5</sup> These are the serious violations of human rights, which are the wrongful acts against the International Human Rights Law and International Humanitarian Law. These serious violations have been the major concern for the world as well as the most famous Intergovernmental Organization like the United Nations to step in to protect human rights, world peace, and order. The United Nations has been playing a major role in the protection of Human Rights. “The United Nations has two main types of bodies to promote and protect human rights: Charter Bodies and Treaty Bodies.”<sup>6</sup> The Charter Bodies are also known as Charter-based Bodies is working on global peace such as sustainable development, social development, environment, refugees’ protection, disaster relief, terrorism, and others. This body is focusing on promoting human rights activities to maintain international peace and security.<sup>7</sup> On the other hand, the Treaty Bodies also known as Treaty-based Bodies is a group of experts that are working on collecting data and checking up with the government of each state party to regulate whether or not they are doing their jobs to protect human rights.<sup>8</sup>

International Human Rights Law is not the only law that protects human rights. International Humanitarian Law, a part of International Law, also known as the law of wars, likewise regulates and ensures the protection of human rights in and during armed conflict situations. Besides, IHL is also a body of international law governing the parties of conflicts on what to do and what not to do during wars or armed conflicts. Furthermore, IHL also adjusts the soldiers on how the war should be fought, which people or places that are protected from wars or armed conflicts such as civilians, wounded soldiers, shipwrecked

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<sup>5</sup>Michelle Maiese, "Human Rights Violations," Beyond Intractability, last modified July 5, 2016, [https://www.beyondintractability.org/essay/human\\_rights\\_violations%20](https://www.beyondintractability.org/essay/human_rights_violations%20) (accessed on May 11, 2019).

<sup>6</sup> "Human Rights Explained: Fact Sheet 8: Promoting and Protecting Human Rights in the UN System," Australian Human Rights Commission, last modified February 14, 2012, <https://www.humanrights.gov.au/our-work/education/human-rights-explained-fact-sheet-8promoting-and-protecting-human-rights-un> (accessed on April 28, 2019).

<sup>7</sup> "Introductory Note," UNITED NATIONS, last modified October 25, 2017, <https://www.un.org/en/sections/un-charter/introductory-note/index.html> (accessed on May 25, 2019).

<sup>8</sup>"OHCHR Treaty Bodies," UNITED NATIONS HUMAN RIGHTS, accessed June 1, 2019, <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

troops, prisoners of war, medical workers, schools, hospitals, historical or religious places regulated by the law of war. These are the examples which are based on a branch of public international law called “Jus ad Bellum and Jus in Bello.”<sup>9</sup> However, even there are many international laws established to protect Human Rights; still, Human Rights Violations could occasionally occur and sometimes even worse. Therefore, when states fail to protect their civilians during the war or armed conflicts or commit atrocities crimes against their civilians; it is sure that human rights are being at risk or even being violated in those states during that time. In this case, there are several ways and solutions to settle these issues such as Diplomatic Negotiations, Economic Sanctions, Peacekeeping Mission and the last resort is to use Humanitarian Intervention. In addition, Humanitarian Intervention is an option that the international community can do to help those civilians who are at risk and in need. Humanitarian Intervention might sometimes happen during natural disasters as well as during armed conflicts.<sup>10</sup> Military Humanitarian Intervention is needed when the civilians are under distress, starving, or under attack; the military could be there for the logistic or for protection.<sup>11</sup> Moreover, many scholars defined Humanitarian Intervention as the use of military force or non-military force to enter into a state that is having human rights violations; this can be during wars, armed conflicts, and mass atrocities such as genocide, crimes against humanity, war crimes and so on.<sup>12</sup> There are two main types of Humanitarian Intervention: Unilateral Humanitarian Intervention and Collective Humanitarian Intervention. Even though there are laws and regulations that responsible for keeping human rights safe for everyone; still, there are some flaws that could lead to atrocities and mass violations of human rights. That is why the Collective Humanitarian Intervention can play a significant role in eradicating

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<sup>9</sup> ICRC “International Humanitarian Law”

<sup>10</sup> "Humanitarian Intervention in South Sudan," Council on Foreign Relations: Model Diplomacy, last modified August 27, 2018, <https://modeldiplomacy.cfr.org/#/cases/48> (accessed on June 6, 2019).

<sup>11</sup> Ibid

<sup>12</sup> Ibid

those internal conflicts with gross humanitarian consequences to ensure peace and security to the world as a whole.

## **2. Research Problem**

When the world is faced with the serious humanitarian crisis, such as in East Timor 1999, Rwanda 1994, Kosovo 1999, Somalia in 1992, was there any military intervention undertaken to help the people who suffer? Since the collective humanitarian intervention had been brought to eradicate those severe violations of Human Rights, not all these interventions are carried out successfully. Even though every country has the obligations to protect Human Rights when one state fails to, still there is the lack of agreement that the intervention itself especially those which involve with the use of force cannot happen for it would violate the sovereignty of one state.<sup>13</sup> A state has a responsibility to protect its citizen. However, if the state is unwilling or unable to carry out this responsibility, for example in the case of Rwanda, in which these states failed to protect the human rights, and committed genocide, mass killing of people, racial discrimination contradicting to the purpose of the Human Rights Convention; the concept of sovereignty, in this case, would not be applicable for such mass violation of Human Rights. Its sovereignty is suspended for the time being.

It is true that the United Nations Charter states the banning of the organization which acts on behalf of its members from interfering or intervening "in matters which are essentially within the domestic jurisdiction of any state."<sup>14</sup> The concept of sovereignty deals with the non-intervention principle written in Article 2 (4) of the UN Charter stating, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the

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<sup>13</sup>Ersun N. Kurtulus, "The Problem of Juridical State Sovereignty," *State Sovereignty*, 2005, 43, doi:10.1057/9781403977083\_6.

<sup>14</sup> UN Charter, art. 2(7)

Purposes of the United Nations.”<sup>15</sup> However, the enforcement measures which is taken by the United Nation Security Council under Chapter VII of the UN charter are not applied to this limitation.<sup>16</sup>

Finding someone who entirely supports the non-intervention is not an easy way; for example, in the Rwanda Case, which lacked the practical actions from the international community to solve its massive human rights violations, had a significant impact on the practice and theory of the intervention. .<sup>17</sup>

The lack of effective action in Rwanda Case and the subsequent genocide has had a massive impact on the theory and practice of intervention.<sup>18</sup> Even those who are deeply suspicious of armed humanitarian intervention and deeply skeptical about its prospects of success may still admit that it might, in theory, be justified when a humanitarian crisis is sufficiently severe.<sup>19</sup> In the exceptional case, the justification of humanitarian intervention is made to respond to a large scale of humanitarian atrocities. The issue is who is the right one to undertake humanitarian intervention or when the intervention is justifiable for them to do so. The problem is whether a humanitarian intervention justifiable only when undertaken by a multinational force with the authorization of the UN Security Council and in response to genocide or mass killing? Or, can the humanitarian intervention be justified when undertaken by a single state without Security Council support and in response to severe oppression?

### **3. Research Objectives and Questions**

Human rights violation has been one of the major issues concerned the world. There are millions and millions of people suffering from the crimes committed to them by their own government, as the mass violation of their rights, punishment, torture, genocide, and so on.

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<sup>15</sup> UN Charter, art. 2(4)

<sup>16</sup> UN Charter, Chapter VII

<sup>17</sup> James Pattison, *Humanitarian Intervention and the Responsibility To Protect: Who Should Intervene?* (Oxford Scholarship, 2010), DOI:10.1093/acprof:oso/9780199561049.001.0001.

<sup>18</sup> Ibid

<sup>19</sup> Ibid

Because of the violating governments are incapable of protecting their own civilians, and violate the international law such as the International Human Rights Law that is when the international community like the United Nations has to step in and protect those people.

As a result, this research aims to bring out the protection of human rights in the United Nations and specifically focus on the collective humanitarian intervention, the act of intervening in other sovereign states' affair by using military force in order to end the human rights violation in the violating country so that the peace and stability of the world are ensured.

Initially, this paper will explain the differences between the Peacekeeping Mission and Humanitarian Intervention. Secondly, this paper will introduce and discuss the legality and legitimacy of collective humanitarian intervention with the authorization from the UN versus unilateral humanitarian intervention without the approval from the UN, because whether the collective humanitarian intervention is legal or legitimate or not will rely on these two types of intervention. This paper will then argue that state sovereignty should not be applied when a state is unable or unwilling to take responsibility to uphold its citizens' human rights, such as in the case of mass killing. Besides, this research will address the collective humanitarian intervention authorized by the United Nation Security Council in the case of East Timor and Rwanda, in which it will mainly describe the brief background of the two cases and the international response to such atrocities committed within the internal borders. To sum up, this research paper will work on finding the answer to these 3 Research Questions:

1. What are the differences between the peacekeeping mission and Humanitarian Intervention?
2. How can Collective Humanitarian Intervention be legal and legitimate?

3. When a state is unable or unwilling to take responsibility to uphold its citizens' human rights, such as in the case of mass killing, does the state sovereignty still being applied?

#### **4. Scope and Limitation**

This research will be covering only on the protection of human rights under the intergovernmental organization, the United Nations, in which this will primarily focus on Collective Humanitarian Intervention with prior authorization from the UN. The exploration on legality and legitimacy of the Intervention will be attempted to examine the role of the UN Security Council which has the primary responsibility to maintain international peace and security, while left the issue of the legality of unilateral humanitarian intervention to the other side. Therefore, this report will only provide some common basic ideas regarding the unilateral intervention as this type of intervention is still ambiguous and debated among scholars and legal expert. Furthermore, the report will not delve into the political aspects of the intervention for it would be a complicated and time-consuming case that needs to be studied further. Last but not least, this research report only selects two cases to study, including East Timor Case and Rwanda Case. Last but not least, for the difficulty in obtaining resources, and data through the primary data, this research will be conducted based upon the secondary data.

#### **5. Research Methodology**

This final report is typically conducted based on secondary data, which is obtained from many reliable sources ranging from the legal documents such as the UN charter, official documents from the United Nations, Human Rights Law, Humanitarian law, Law of War, reports from legal experts, ICC official website, the NGOs and IGOs websites, government websites, reports, journals, dissertation, prior studies, book publication, debates, case studies



of East Timor and Rwanda specifically, and other electronic sources. By researching based upon these secondary data and consulting with the supervisor as well as other lecturers who are expert in International law, and Humanitarian law, our research will be proceeding to find the effective answer to our research objectives.

## **6. Significance of Research**

The finding of this research will play a significant contribution to the knowledge of Collective Humanitarian Intervention like how the international communities (the UN) do to counter the mass human rights violation in the violating states. This paper will demonstrate effectively to help the readers to understand and evaluate the prior case of mass human rights violation for example in East Timor and Rwanda, and present how the international communities do to respond to the crisis occurred within the boundary of the state. It will also be helpful to understand the different concept of Humanitarian Intervention and Peacekeeping force formed by the UN so that the misunderstanding of these two concepts should not have occurred. Besides, it will be useful for other researchers who will be having the same interests in conducting further research on the same topic. This study can help us to get the idea about protection of Human Rights led by the UN with the use of Collective Humanitarian Intervention to eradicate or cease the atrocities crimes committed by the government of the state, how the concept of sovereignty being applied, and how effective the intervention could be. We believe that our research study will provide some basis and understandable ground regarding the intervention to the younger generations, political experts, researchers, especially Cambodian people to obtain knowledge about this topic for them to further explore and contribute more to raise and spread the idea of this topic widely.

## CHAPTER I: LITERATURE REVIEW

Kyrre Grimstad explained Humanitarian intervention as “the interference of one or more states in the domestic affairs of another state by means of armed force, with the intention of making that state adopt a humanitarian policy.”<sup>20</sup> There is the necessary issue regarding the violation of the state sovereignty aiming to intervene in other country’s internal affair for the humanitarian purpose. Among many writers, who have raised about the problems regarding the history of the humanitarian intervention, and the legal conduct of the intervention, the legal authorization as well as the implementation of the intervention itself, are Vladimir Kurishev and Oyeniyi Ajigboye, Eva Maria Jellinek, Okeke and Okoronye, and Daniele Archibugi.

Conducting a study on humanitarian intervention, Eva Maria Jellinek reckons that the origin of the humanitarian intervention doctrine has been firmly established in morality as represented by Grotius’s Theory of Just War stating that “a war is lawful when fought for a just purpose by just means.”<sup>21</sup> She asserted that humanitarian intervention was the norm born even before the UN Charter came into force, and the Charter then placed restriction on the use of force. The restriction did not allow the unilateral intervention by the individual state without prior authorization from the UN Security Council; hence, the intervention for humanitarian purposes was not legal unless the UN Security Council authorize the act.<sup>22</sup> She claims out that the 1990s catastrophes such as the ethnic cleaning in Srebrenica in 1995 and Rwanda in 1994 are the typical example of the immanent issues created by the UN Security Council requirement of collective intervention. She points out that the decision of some

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<sup>20</sup> Kyrre Grimstad, *Humanitarian Intervention: Historical, Legal and Moral Perspectives* (LLM thesis: University of Cape Town, 2001). pp1-3.

<sup>21</sup> Eva Maria Jellinek, *The Impact of the Responsibility to Protect on State Behaviour: An Analysis* (PhD thesis, University of Toronto 2012). pp5-6.

<sup>22</sup> *ibid* 10

member states disregarded the firm framework, stating that humanitarian intervention needs prior authorization from the UNSC, when there was the occurrence of the next humanitarian atrocities in Kosovo.<sup>23</sup> Those member states believe that protecting human life was the essential priority than respecting the international legal system; consequently, the status of humanitarian intervention under the international law lead to a revival of the debate, and there was the establishment of legal framework to support the Humanitarian Intervention in collective action and to legalize the norm in response to humanitarian crises.<sup>24</sup> She asserts that this led to the establishment of the Responsibility to Protect (R2P) principle, which requires the international communities to take responsibility to prevent, react, and rebuild; additionally, this principle encourages more states to take action in addressing the humanitarian crisis and notable decline of the Pick and Choose policy.<sup>25</sup> She also further claims that the new framework has made states unwilling to call on unilateral intervention like in the case of Syria compare to that of Kosovo case. However, she also claims that the doctrine of Responsibility to protect has some negativities for the misapplication of R2P concerning the prevention strategies, policymakers' attempt to broaden the application to include the proactive use of force, in which it does not just threat the acceptability of the R2P concept, but also weaken its reputation.<sup>26</sup>

Daniele Archibugi, in his *Cosmopolitan Guidelines for Humanitarian Intervention* looked at how military humanitarian intervention took place during the post-cold war era.<sup>27</sup> Concerning this, he suggests four proposals including “a) the development of guidelines on when military intervention in sovereign states is needed, b) empowerment of a non-

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<sup>23</sup> *ibid* 12-15

<sup>24</sup> *ibid*

<sup>25</sup> *ibid* 16

<sup>26</sup> *ibid* 34-36

<sup>27</sup> Daniele Archibugi, 'Cosmopolitan Guidelines for Humanitarian Intervention'. *Alternatives* (2004). Available online at [http://humanitarianlibrary.org/sites/default/files/2014/02/Humanitarian\\_intervention.PDF](http://humanitarianlibrary.org/sites/default/files/2014/02/Humanitarian_intervention.PDF)

governmental institution such as the World Court with the task of deciding when a humanitarian crisis requires external military intervention, c) appointment of a mixed military-civilian committee to establish whether intervention is feasible and how it should be carried out, d) creation of a permanent Rescue Army with soldiers and civilians from a large number of countries to be deployed in real time, whenever needed.”<sup>28</sup> Daniele Archibugi accepts that these proposals will assist in changing the intellectual agenda from allowing unilateral intervention to plan out establishing multilateral institutions in response to allow intervention in emergencies to designing new institutions which can make the humanitarian intervention more effective.<sup>29</sup> Criticizing the historical justifications for intervention, he states that the intervention at that time was only the method used to hide the violence committed by their employers such as the state with a semblance of legality.<sup>30</sup> He believes that humanitarian intervention is a medicine worse than the disease as states are more concerned and only cared about the protection of their soldiers than the rescue of the target’s state population.<sup>31</sup> Archibugi draws more attention to a case study of Kosovo and Somalia amongst others; nevertheless, he did not examine the effect of humanitarian intervention on the sovereignty of target states.

Okoronye and Okeke look at the legal basis of intervention claiming that it is recognized by classical international law as written in the works of Hugo Grotius who perceives the intervention as one of the just causes for war, and John Stuart Mills who takes it as an exception to the non-intervention doctrine.<sup>32</sup> They insist that the right to humanitarian intervention has remained and aligned with the UN Charter; their justification on their

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<sup>28</sup> *ibid*

<sup>29</sup> *ibid*

<sup>30</sup> *ibid* 3

<sup>31</sup> *ibid* 17

<sup>32</sup> I. Okoronye and V. O. S. Okeke, ‘An Appraisal of Humanitarian Intervention under International Law’ (2011). *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, p2

position depend on the dicta of the International Court of Justice (ICJ) in the Nicaragua case<sup>33</sup> which it stated that the Charter does not cover the field concerning the use of force in international law.<sup>34</sup> They point out that the right to territorial integrity and political independence that states enjoy and have is to protect the fundamental freedom of the constituent of these states not only for their own benefits.<sup>35</sup> Okoronye and Okeke even further argue that when states have agreed to guarantee and respect certain fundamental rights of their people, they have already recognized that these rights exceed the national competency and correspondingly waived the invocation of the principle of non- intervention.<sup>36</sup> In order to justify the intervention, they point out the important conditions to intervene in another state.<sup>37</sup> They raise that based on humanitarian purposes; the other states have the right to intervene in the territorial integrity and political independence of a state even though there is no proper framework for authorizing it.<sup>38</sup> They protest that even though the UN Charter gives the UN Security Council to authorize the humanitarian intervention collectively, no provision in the UN Charter clearly states that the Security Council may authorize humanitarian intervention.<sup>39</sup> Even so, it is said by many scholars as well as provided in the UN Charter itself that the UN Security Council can authorize humanitarian intervention when the humanitarian crisis does threaten international peace and security. So the UNSC has the power to do so. Moreover, different theories have developed concerning the state practice and justification to embark on humanitarian intervention, Okoronye and Okeke demand a Universal Declaration on Humanitarian Intervention to modernize this process.<sup>40</sup>

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<sup>33</sup> *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua V. United States of America) (Merits)*, ICJ Rep. (1986) 14 para 176.

<sup>34</sup> *ibid* 138-139

<sup>35</sup> *ibid* 140

<sup>36</sup> *ibid*

<sup>37</sup> *ibid* 142-146

<sup>38</sup> *ibid* 146-147

<sup>39</sup> *ibid* 147

<sup>40</sup> *ibid*

Having argued in the same thought, Oyeniyi Ajigboye in his work *International Law and the Responsibility to Protect* viewed the theoretical and legal basis for intervention with particular application to Nigeria.<sup>41</sup> He asserts that the fundamental purpose of international law is to strengthen international cooperation, peace, security, and friendly relations between the states and states.<sup>42</sup> He observes that by the concept of sovereignty, states are protected from the use of force and the interference with internal issues by other states. Nevertheless, he puts forward that the domestic conflicts will pose a threat to the world when those violating states are protected by their sovereignty because they believe they can do whatever they want and may have the tendency to destabilize the world order and peace. The Responsibility to Protect aims at enjoining the international communities to carry out the humanitarian intervention when states are unable or unwilling to protect their civilian, their own population from the mass atrocities crimes such as Genocide, Crime against humanity, war crimes, armed of conflict, act of aggression, such as what happened in Kosovo, Libya, East Timor, Rwanda, Somalia, and recently Nigeria.<sup>43</sup> Regardless of this framework, when states intervene in the domestic armed conflict of another state, the intervention itself contributes to more complicated issues across the different regulation and disciplines.<sup>44</sup> Among all the other controversies, he recognizes the importance of humanitarian intervention, and claims that states do things within their own interests for their own benefits, not purely intervene for humanitarian purposes. As a result, whether the humanitarian intervention by an individual state or collectively by groups of states is purely for the humanitarian in its goal and motivation will still further carry on spurring arguments especially from the less developed

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<sup>41</sup> Oyeniyi Ajigboye, 'International Law and the Responsibility to Protect: The Legal and Theoretical Basis for International Intervention in Nigeria' (2014) *The Journal of Sustainable Development Law and Policy* Volume 3 Issue 1 Spring. Available online at <http://ssrn.com/abstract=2480527>

<sup>42</sup> *ibid* 1

<sup>43</sup> *ibid* 7-9

<sup>44</sup> *ibid*

countries' perspectives.<sup>45</sup> He believes that even the intervention is praiseworthy, the target state will encounter the economic cost of the action.<sup>46</sup> As a consequence, he recommends that putting sufficient legal framework in place will reduce the exploitation experienced by target states who may be unable to recover after the intervention.<sup>47</sup> He also concludes that the regulation will make sure that the target state's sustainable development is protected.<sup>48</sup>

Conducting his own study of humanitarian intervention, Vladimir Kirushev looks at how the concept of Responsibility to Protect has impacted the concept of state sovereignty.<sup>49</sup> He determines the concept of sovereignty within its ongoing legal concept demonstrated in formal and legal documents of the international realm.<sup>50</sup> He argues that the goal for the adoption of Responsibility to Protect in 2005 aimed to reunite intervention and sovereignty. The concept of R2P states clearly that each state has the responsibility to protect its own people from humanitarian atrocities within the realm of sovereignty; similarly, the international community also has the responsibility to respond to protect the target state's population when that state is unable or unwilling to do so.<sup>51</sup> To examine the R2P framework implementation, he conducts two cases studies on Syria and Libya. He claims that the application of the framework to Libyan crises compromised the Libyan state's sovereignty while it strengthened Syria's sovereignty.<sup>52</sup> Lacking its objectivity in its application, he deduces that Responsibility to Protect framework does not comply with its objective of

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<sup>45</sup> *ibid*

<sup>46</sup> *ibid* 19

<sup>47</sup> *ibid*

<sup>48</sup> *ibid*

<sup>49</sup> Vladimir Kirushev, 'State Sovereignty and Intervention in the Age of Responsibility to Protect: Analysis of Libya and Syria' (PhD thesis: George Mason University, 2014)

<sup>50</sup> *ibid* 13-38

<sup>51</sup> *ibid* 39-63

<sup>52</sup> *ibid* 90

reconciling sovereignty and intervention.<sup>53</sup>

In his study of humanitarian intervention, Kyrre Grimstad analyzes the R2P as the legal basis for the use of force against the sovereign state.<sup>54</sup> He looks at the historical evolution of R2P doctrine and claims that the doctrine has its origin in early Christian Philosophy. He investigates the legal basis and content of a possible right to conduct humanitarian intervention, in which he examines the UN Charter and its prohibition against the use of force on other states; he intends to further find out if the charter contains any exception to the use of force for humanitarian intervention's purpose. Additionally, he examined the state practice in respect of humanitarian intervention to decide if the intervention formed a new customary law allowing the use of force on humanitarian grounds. Observing that the contemporary legal basis for carrying out the humanitarian intervention is undetermined and debatable, he argues that the international community should not ignore this crisis as it is a moral necessity to allow the right to intervention in which he justifies as:

*“Every human being has the moral capacity to see that a Pol Pot or an Idi Amin cannot be allowed to operate freely. When the regime of international law does not correspond with such a realization, there is more likely something wrong with international law than with basic instincts common to the human race.”<sup>55</sup>*

Kerry Tetzlaff, in her study of Humanitarian Intervention Post Kosovo states that a right to humanitarian intervention does not exist at Customary International Law.<sup>56</sup> She investigates the elements of customary international law, the state practice and the opinio juris related to Kosovo which she divided into three classes “a) State practice and opinion Juris of NATO and its members b) State practice and opinio juris of United Nations Security Council

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<sup>53</sup> ibid 118

<sup>54</sup> Supra Note 20

<sup>55</sup> ibid, p66

<sup>56</sup> Kerry Tetzlaff, ‘Humanitarian Intervention Post Kosovo: Does a Right to Humanitarian Intervention Exist In Customary International Law after Kosovo? If Not, Is There A Trend Towards The Creation Of A Right To Humanitarian Intervention In Customary International Law?’. *The New Zealand Postgraduate Law e-journal*.



non-NATO members c) State practice and opinio juris of other states”<sup>57</sup>

In her study, she acquires that there are different perspectives among states concerning the right of humanitarian intervention. It can be seen that the existence of the right of humanitarian intervention cannot be regarded as customary international law because it does not meet the required criteria even if there are the state practice and opinio juris to support the right to intervene.<sup>58</sup> However, she points out that the acceptance of a right of humanitarian intervention is an increasing trend among the western states.<sup>59</sup>

Evans and Sanhoun examine that the vital point is to consider whether or not a state can fulfill their responsibility to protect their own population, or else the international community has the obligation to conduct humanitarian intervention.<sup>60</sup> Six principles are identified as the justification of military intervention such as “1) Just cause, 2) Right intention, 3) Last resort, 4) Proportional means, 5) Reasonable prospects, 6) Right authority”<sup>61</sup>. He includes that if the intervention itself does not meet the 6 mentioned criteria, that intervention should not be conducted for it would bring out many consequences and complexity.

Nicholas J Wheeler also looks further into how the use of force is legitimate in international law when it comes to the responsibility of the international communities to interfere within a state domestic affair to stop the human rights violation, genocide, torture, mass atrocities or in other words for the humanitarian purpose.<sup>62</sup> He points out the six substantive just war principles, which Evans and Sahoun have identified as the justification of

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<sup>57</sup> ibid 6-17

<sup>58</sup> ibid 17

<sup>59</sup> ibid 23-24

<sup>60</sup> Gareth Evans & Mohammed Sahnoun, ‘The Responsibility to Protect’. *Foreign Affairs* (2002) 81: 99-110

<sup>61</sup> Ibid

<sup>62</sup> Nicholas J Wheeler, ‘Legitimizing Humanitarian Intervention: Principles And Procedures’ (2001) *Melbourne Journal of International Law* 2

military intervention, to be applied in judging the legitimacy of the intervention for the humanitarian purpose; those principles include: “1). Just Cause, 2). Last Resort, 3). Good over Harm, 4). Proportionality, 5). Right Intention, 6). Reasonable Prospect”<sup>63</sup>

Along the same line, Asian C UDoh points out the criteria to allow the legal conduct of military intervention for humanitarian purposes:

- “i. The use of humanitarian intervention must be immediate and only occur during the actual commission of the human rights violation or immediate threat of an offense.*
- ii. Authorization for intervention must be by a competent body within the United Nations.*
- iii. Humanitarian Intervention must be a collective effort executed by more than one Nation.*
- iv. Humanitarian Intervention must be used as a last resort when all other means have failed.*
- v. Humanitarian Intervention must only be used for grave and large- scale violations of human rights.*
- vi. All military forces involved in the intervention must respect the principles and spirit of the Geneva Conventions and all other applicable International Humanitarian Laws.”<sup>64</sup>*

In addition to the study of humanitarian intervention, Mohammed Ayoob, in his study raises about the contrasting principles in authorizing and conducting humanitarian intervention.<sup>65</sup> It is asserted that states, mostly the major powers would do things according to their national interests; therefore, for the decision regarding why they carry out humanitarian intervention is obviously because they want to enhance and protect their economic and strategic interests. Moreover, among the veto power members themselves, they need each other for example in support of humanitarian intervention. To illustrate, the collective humanitarian intervention can be conducted with the consent of the UN Security Council (the consent of the 5 veto powers). If one of the veto does not agree, then the intervention itself

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<sup>63</sup> Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (2000).

<sup>64</sup> Asian C Udoh ‘When is Humanitarian Intervention Legal?’ 33-Mar L.A. Law.44. Cited in Anthonia Omoze Ndubuisi, ‘Evaluating The Effectiveness of Humanitarian Intervention as A Tool for Enforcing Human Rights’ (LLB thesis University of Pretoria, 2012)

<sup>65</sup> Mohammed Ayoob, ‘Humanitarian Intervention and State Sovereignty’ (2002) *The International Journal of Human Rights* 6, no. 1. 89

cannot be conducted. For these, it is assumed that they make decision to exchange vote for the intervention of the other to get the support of its own intervention. He states that,

*“The impression that the national interests of major powers determine decisions regarding humanitarian interventions is strengthened by the fact that Military operations under chapter VII [undertaken for humanitarian purposes are agreed largely on the basis of calculus of shared interests or of trade-offs among the five permanent members of the Security Council. In June 1994, for example, disparate interests resulted in separate council decisions to authorize interventions by the French in Rwanda, the Americans in Haiti, and the Russians in Georgia. Each of the three permanent members traded its vote for the favored intervention of the other in return for support of its own favored operation.”<sup>66</sup>*

Vilem Kolin, on the other hand, poses a question regarding the legitimacy of the intervention, and he views the humanitarian intervention differently from Thomas Aquinas’ Just War theory.<sup>67</sup> He argues that even though the notion of humanitarian intervention is familiar to the Just War Theory for the Humanitarian Intervention shares similar requirements with the Just War theory, the two concepts are not the same.<sup>68</sup> Nonetheless, he does not put forward the norm for proving the legitimacy of humanitarian intervention like other scholars.

All in all, at the beginning of our literature study, we have brought out the addressed issue of the inherent violation of state sovereignty by Okoronye and Okeke, as well as Vladimir Kirushev. Regarding the sovereignty of a state, Okoronye and Okeke assert that according to the international law especially in human rights and humanitarian law, every state has the responsibility protect the lives of their citizens or civilians within their own territories. However, if they fail to, that means they lose their state sovereignty, and the international communities have to step in like the United Nations.

Agreeing to the same position, Vladimir Kirushev asserts that state has no absolute sovereignty, because the international law has stated clearly about the situation when states

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<sup>66</sup> ibid

<sup>67</sup> Vilem Kolin, ‘The Legitimacy of Humanitarian Intervention: A Moral Perspective’. *OBRANA A STRATEGIE*, available Online at <https://www.obranaastrategie.cz/cs/aktualni-cislo-1-2007/clanky/the-legitimacy-of-humanitarian-intervention-a-moral-perspective.html> (accessed 19 June 2019).

<sup>68</sup> ibid

are unable to protect their own people from humanitarian atrocities, they already lose their state sovereignty. He looked at how the concepts of R2P impact on state sovereignty by raising two cases studies on Syria and Libya to examine the application of the R2P framework implementation, and deduced that the reconciliation of the concepts sovereignty and intervention does not comply with the R2P's objective.

The legality of humanitarian intervention is studied and analyzed by Okoronye and Okeke, and Eva Maria Jellinek. Through the historical point of views, the three share the same thoughts that the origin of humanitarian intervention had existed even before the UN Charter came into force; they state that the norm of humanitarian intervention had existed since the born of classical international law which had been written in Grotius's Theory of Just War. In addition, Eva Maria Jellinek considers that the creation of the UN Charter has prohibited the use of force in carrying out humanitarian intervention without the authorization from the UNSC, and it is unfair that Unilateral Intervention cannot be carried out even it is for humanitarian purposes. However, Okoronye and Okeke assert that the right to carry out the humanitarian intervention has remained and aligned with the UN Charter because they stated that the Charter does not cover the field concerning the use of force in international law.

The literature review above also discuss the issue regarding the legitimacy of Humanitarian Intervention. In a legal perspective, the illegal act of intervention is prohibited under international law as it involves the use of force. However, some scholars such as Nicholas J Wheeler, Gareth Evans and Mohammed Sahnoun examine and claim that for the intervention to be legitimate, it must meet the six criteria such as Just cause, Last resort, Good over harm (Right authority), Proportionality, Right intention, and Reasonable prospect. In addition to this, even though Vilem Kolin in his own study poses questions regarding the legitimacy, he fails to suggest a standard for proving the humanitarian intervention unlike

Nicolas J Wheeler, Gareth Evans and Mohammed Sahnoun, as well as Asian C Udoh.

Kerry Tetzlaff and Kyrre Grimstad otherwise investigate on the right to the intervention on humanitarian ground. Kyrre Grimstad claims that during and after the cold war, the state practice of conducting the intervention is unclear but allow the conduct of the intervention based on the moral ground – the intervention to help the people suffering from the humanitarian atrocities. In contrast, Kerry Tetzlaff asserts that a right to humanitarian intervention does not exist at Customary International Law although there is a trend in the creation of the right to intervention. Additionally, she analyzes the state practice regarding the intervention only in the Kosovo case.

For the authorization of humanitarian intervention, Daniele Archibugi tends to be more inclined to unilateral intervention. He thinks that the UNSC is not just the only proper body to make decision whether the intervention can be carried out or not, but also the unilateral or other regional bodies like the NATO that should play an important role in the intervention as well.

Furthermore, Oyeniya Ajigboye asserts his recommendation on creating a legal framework in which it would reduce the exploitation experienced by target states who may be unable to recover after the intervention to make sure that their sustainable development is protected.

This research study will explore further regarding to the existing literature studies by these scholars and authors by examining the protection of human rights in the UN which will be focusing on the collective humanitarian intervention by differentiating the peacekeeping mission and the collective humanitarian intervention, discussing the legality and legitimacy of collective humanitarian intervention with and without the UNSC authorization as well as

exploring more about the issue regarding the sovereignty on humanitarian grounds, and bringing up two cases studies to illustrate the intervention.

## CHAPTER II: THE CONCEPT OF HUMANITARIAN INTERVENTION

### 2.1. Human Rights Protection under the UN

#### 2.1.1. The Brief History of Human Rights Violations

Thousands of years ago, there was no such thing as human rights. Those times where slaves were treated like animals; they were sold from one master to another.<sup>69</sup> In the very beginning, only a few wealthy people who are lucky enough to have rights; until people became more understanding and decided that other people should have some rights also.<sup>70</sup> However, it was not so easy to get everybody to have the same opinion; there were not so many people who believed in human rights, especially those who were powerful and wealthy. Along with this, there were conflicts, wars, and invasions; that killed so many lives, including mass killing. Talking about human rights violations; in 1914 the First World War erupted in Europe known as the “Great War”<sup>71</sup> many soldiers died, and many places were destroyed. After the First World War, there was the creation of an International Organization called The League of Nations; the purpose of this creation was to stop and to prevent conflicts in the future.<sup>72</sup> However, the world was in peace for about twenty years, and The League of Nations came to an end in 1939. The Second World War broke out in 1939; during this war, Hitler invaded Europe and killed millions of people, including 1.32 million Jewish people under the Holocaust.<sup>73</sup> Japanese invaded and almost swallowed the whole of Asia.<sup>74</sup> This major World

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<sup>69</sup> Steven Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (New York: Oxford University Press, 2005), 55.

<sup>70</sup> "WHAT ARE HUMAN RIGHTS? Video - Human Rights Definition : Youth For Human Rights Video," Youth for Human Rights, accessed June 11, 2019, <https://www.youthforhumanrights.org/what-are-human-rights/>.

<sup>71</sup> A Guide to the Western Front WW1 Battlefields of 1914-1918 accessed June 6, 2019, <http://www.greatwar.co.uk/>.

<sup>72</sup> Rhona K. M. Smith, *International Human Rights: Historical Background* (New York: Oxford University Press Inc., 2012), p19.

<sup>73</sup> Laura Geggel and Senior Writer, "1.32 Million Jews Were Killed in Just Three Months During the Holocaust," Live Science, last modified January 4, 2019, <https://www.livescience.com/64420-holocaust-jewish-deaths.html>.

<sup>74</sup> "Japan's Quest for Power and World War II in Asia," Asia for Educators | Columbia University, accessed July 3, 2019, [http://afe.easia.columbia.edu/special/japan\\_1900\\_power.htm](http://afe.easia.columbia.edu/special/japan_1900_power.htm).

War has come to an end after six years of mass killing, war crimes and crimes against humanity and, genocide; it ended in 1945.<sup>75</sup>

### **2.1.2. The UN's Organs and Bodies dealing with Human Rights**

After the two major world wars have erupted, there was the creation of an Intergovernmental organization known as The United Nations.<sup>76</sup> On October 24 1945, this date marked as the day that the United Nations was officially born; it was originated with 51 countries and followed by many more countries not long after that, and the number increased to almost 200 members.<sup>77</sup> This intergovernmental organization has its purpose on Human Rights' upholding international laws, promoting and protecting human rights as well as ensuring worldwide security, world peace, economic development, and social advancement. This International Organization has its duty to protect and promote Human Rights. There is almost every organ of the United Nations entailed in the protection of Human Rights; there are several bodies of The UN's structures that focus on human rights protection. There are organs of the UN that support and take responsibility for Human Rights, such as:

- The Security Council
- The General Assembly
- The International Courts
- The Economic and Social Council
- The Human Rights Council
- The High Commissioner for Human Rights
- Treaty monitoring bodies

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<sup>75</sup> Supra note 71

<sup>76</sup> "History of the UN," UNITED NATIONS, accessed July 1, 2019, <https://www.un.org/un70/en/content/history/index.html>.

<sup>77</sup> Ibid



First of all, The Security Council; this organ of the UN is responsible for keeping the world in peace and security. Besides, if there are any mass human rights violations and treat to peace situations occurred in many states in the world. However not every human rights violation is a threat to peace or a destroyer of the world's security; so the Security Council do not always deal with these issues, but sometimes Security Council could help to reinstall the peace that threatens state has lost. The Security Council can also put an economic sanction on countries that threat to world security or violated to world peace. Sometimes, when there are conflicts within the internal affair of a state, and there is a call from the government asking for help from the UN; take the UN Peacekeeping Mission to help Afghanistan in 2002 for example.<sup>78</sup> This organ also uses of the military force known as an intervention in response to the big scale of mass violation of human rights such as acts of aggression, civil wars, crimes against humanity, and genocide; as these crimes are considered as a threat to world peace and security.<sup>79</sup>

Second is the General Assembly. This UN organ is known for its capability to deal with human rights issues. Since its establishment, the General Assembly has numerous success with its adoption of various declarations. As an example, the General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948; this was one of the most achievements.<sup>80</sup> There are many more declarations that were successfully adopted by the General Assembly, such as:

*“ The Declaration on the Rights of the Child 1959, the Declaration on the Elimination of all Forms of Racial Discrimination 1963, the Declaration on the Elimination of Discrimination Against Women 1967, the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief 1981, the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities 1992 and the Declaration on the Protection of All Persons from Enforced Disappearances 1992.”<sup>81</sup>*

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<sup>78</sup> "Afghanistan (UNAMA)," Better World Campaign, accessed July 5, 2019, <https://betterworldcampaign.org/u-n-peacekeeping/afghanistan-unama/>.

<sup>79</sup> Supra note 72, p.54

<sup>80</sup> Supra note 2

<sup>81</sup> Supra note 72, p.57

Moreover, the General Assembly also gives support to the member states by approving and sending both logistic and technical support. Also, the General Assembly could sometimes make a recommendation and authorize the UN specialized agencies for training and sending services during special events such as national elections. This UN organ also has the responsibility to receive and analyze the reports from all of the UN Bodies as well as to investigate whether or not the member states of the UN turn in their periodic reports. The General Assembly also hosts numerous debates to raise awareness and promoting universal human rights.<sup>82</sup>

The third is the International Courts; the United Nations has two main courts one is the International Court of Justice and the International Criminal Court. The International Court of Justice was created by Art 92 of the UN Charter in 1946; this international court has fifteen judges from different states that were elected by the General Assembly and the Security Council. The purpose of establishing this international court was to settle the dispute between member states, for example, the government and on cases such as sovereignty, trade, territory issues, human rights, and violations of treaties; it also gives an advisory opinion to other UN organs.<sup>83</sup> On the other hand, the International Criminal Court. This international court was established in 2002, unlike the ICJ that was created by the UN Charter; the ICC was established under the Rome Statute, and it has jurisdiction over individuals. The purpose of determining the ICC was to investigate and prosecute individuals who committed the atrocity of my mass killing or human rights violations such as war crimes, crimes of

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<sup>82</sup>Ibid

<sup>83</sup> Renee Dopplick, "Comparison of the ICJ and the ICC," Inside Justice, last modified January 28, 2009, [http://www.insidejustice.com/intl/2009/01/28/differences\\_icc\\_icj/](http://www.insidejustice.com/intl/2009/01/28/differences_icc_icj/).

aggression, crimes against humanity and genocides.<sup>84</sup> Overall, both the ICJ and ICC are taking responsibilities on protecting and promoting human rights.

The fourth is the Economic and Social Council (ECOSOC), this UN's organ has fifty-four members elected by the General Assembly every three years; the purpose of this organ is to deal with the sustainable development of economic, social and environmental. This organ also deals with human rights issues by promoting respect for universal human rights and everyone's freedoms. Since ECOSOC is coping with many development programs under the UN; this organ help with a higher amount of human rights protections, take women and children rights as an example.<sup>85</sup>

The fifth is the Human Rights Council (HRC); this body of the UN is focusing mainly on dealing with the protection and promotion of human rights. This UN's Body "was created by Resolution 60/251 of the UN General Assembly on March 15, 2006. It began its work on June 19, 2006."<sup>86</sup> The HRC was established as a subsidiary organ by the General Assembly to replace the former Commission on Human Rights. This UN's Body has forty-seven member states. In case of a member state violated human rights or committed any atrocity to their citizens; that member state can be removed by a two-thirds majority vote of the General Assembly. Take Libya in March 2011 as an example.<sup>87</sup> Human Rights Council also has special procedures to investigate and monitor the human rights situation in the areas that have vulnerable groups; as well as monitoring the Universal Periodic Review for each member states to present their improvements and achievement. Moreover, HRC also consists of member states, which assert the international human rights standards. Overall, the HRC as its

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<sup>84</sup> "About the International Criminal Court," International Criminal Court, accessed July 11, 2019, <https://www.icc-cpi.int/about>.

<sup>85</sup> Supra note 72, p.59-60

<sup>86</sup> Coen , "Human Rights Council," UN Watch, last modified February 14, 2018, <https://unwatch.org/human-rights-council/>.

<sup>87</sup> Supra note 72, p.61-62

name has stated; it focuses mainly on working to bring universal human rights for all the people and improving human rights standards.<sup>88</sup>

The sixth is the High Commissioner for Human Rights (OHCHR), was created on 20 December, 1993, by the General Assembly. The purpose of creating this was to take responsibility for UN human rights activities. The OHCHR is mainly focused on replying to major human rights violations. Moreover, the OHCHR also promote universal ratification and implementation of international standards; it provides education and supports human rights organ and treaty monitoring bodies.

Finally, the Treaty-monitoring bodies, also known as Human Rights Treaty Bodies are committees of expertise that monitor instruments of core international human rights treaties. The Treaty-monitoring bodies have some core treaties that protect people's rights; those are: the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Migrant Workers Committee, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, and the Subcommittee on Prevention of Torture. Furthermore, since it is hard to check up on the state's government whether or not they are doing their jobs to protect human rights; the Human Rights Treaty-monitoring bodies are the one who will be checking up on them.

## **2.2. Definition and Types of Humanitarian Intervention (Unilateral and Collective)**

### **2.2.1. Definition of Humanitarian Intervention**

Humanitarian Intervention has a lot of definitions as scholars defined it to be. This chapter will give some of the descriptions that scholars gave to Humanitarian Intervention.

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<sup>88</sup>Ibid, p.62-65

According to one of those is from a scholar name Kyrre Grimstad; he stated that: Humanitarian Intervention is the “interference by one or several states in the internal affairs of another state [...] to prevent a situation where the most basic rights of the people of that state [are] being violated.”<sup>89</sup> In this term, Humanitarian Intervention is known, as Humanitarian Intervention is the conduct of involvement inter into a target state and its personal affairs to stop or block any further atrocity as well as human rights violations.

According to Daniel Archiburgi, the term Humanitarian Intervention is: “A military intervention in an area to save people from democide or other major violations of human rights occurring and carried out by foreign institutions without the consent of a legitimate government.”<sup>90</sup> According to this theory, shows us that Humanitarian Intervention is the use of arm forced to intervene inside the territory to save people’s lives from a breach of human rights; this action is carried out by another state and without the consent from the target’s government.

According to J.L. Holzgreffe, Humanitarian Intervention is “ the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.”<sup>91</sup> In this term Humanitarian Intervention is known as the use of military force to enter into a territory of a county; by one individual state or more without the consent of the targeted country to stop severe human rights violations in a big scale could conduct this action.

According to Saban Kardas, Humanitarian Intervention is “Forcible action by states to prevent or end gross violations of human rights on behalf of people other than their own nationals, through the use of armed force without the consent of the target government and

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<sup>89</sup> Supra Note 73, p2

<sup>90</sup> Ibid

<sup>91</sup> Jeff L. Holzgreffe, ‘The Humanitarian Debate in Jeff L. Holzgreffe, and Robert O. Keohane, (eds.) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. (Cambridge University Press 2003) 18.

with or without UN authorization.”<sup>92</sup> In this term Humanitarian Intervention was described as the act of using armed force to help prevent more violations of human rights occur into future; this action might be authorized by the UNSC or non-authorized and without the consent of the state’s government.

According to Sean Murphy, defines Humanitarian Intervention is “the threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights.”<sup>93</sup> In this term Humanitarian Intervention is defined as the use of armed force against a state, such action is made by an individual state or a group of states and sometimes including international organization; this action is mainly focusing on preventing and stopping serious human rights violations in the target state.

All in all, according to the definitions of the scholars above; we have gained the insight that Humanitarian Intervention is an action taken by a state or a group of states using military force to enter into a state without the consent of its government and with or without the authorized from UNSC. Furthermore, the purpose of conducting a Humanitarian Intervention is primarily to prevent and stop the widespread of atrocities and mass violations of human rights.

### **2.2.2. Types of Humanitarian Intervention**

Humanitarian Interventions, as has mentioned above, is known for its definitions and purposes. Besides, this part will be showing the types of Humanitarian Intervention. Humanitarian Intervention has two main types: Unilateral Humanitarian Intervention and Collective Humanitarian Intervention.

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<sup>92</sup> Saban Kardas, ‘Humanitarian Intervention: The evolution of the idea and practice’ *Journal of International Affairs* 6, no.2 (2001).1

<sup>93</sup> Sean D. Murphy, *Humanitarian intervention: the United Nations in an evolving world order* (Vol. 21, University of Pennsylvania Press, 1996). 11-12

Unilateral Humanitarian Intervention is the act of using the military force of a state or a group of countries enter into a state's territory to stop the human rights violations; this action does not approve or authorized by the United Nations Security Council. Unilateral Humanitarian Intervention could sometimes also be conducted by regional organizations or multi-state organizations such as NATO, ASEAN, the African Union, and the European Union. Take NATO's Intervention in Kosovo in 1999 as an example.<sup>94</sup> Moreover, NATO's Intervention in Libya once again on 19 March, 2011.<sup>95</sup>

On the other hand, Collective or Multilateral Humanitarian Intervention is the opposite; it is the act of using the military force of a state or a group of states enter into a state's territory together in order to stop the human rights violations as well as to protect those vulnerable people whom their rights are being overstepped. Collective Humanitarian Intervention can also be carried out by an international organization such as The United Nations. Take the Gulf War from August 2, 1990, to February 28, 1991, as an example.<sup>96</sup> Furthermore, Both Unilateral Humanitarian Intervention and Collective Humanitarian Intervention are a last resort to deal with the atrocity as well as mass human rights violations. Therefore, there are several steps and ways to deal with human rights issues such as diplomatic negotiations, economic sanctions, and peacekeeping missions to those states which human rights violations occurred.

### **2.3. Peacekeeping Mission Versus Humanitarian Intervention**

Many people tend to mistake between Peacekeeping Mission and Humanitarian Intervention. They view both of these terms and its purpose as the same; however, this is not scientifically a right visualization. Also, there are some sources that lead people to this

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<sup>94</sup> "NATO & Kosovo: Historical Overview," NATO, last modified July 15, 1999, <https://www.nato.int/kosovo/history.htm>.

<sup>95</sup> Alan J. Kuperman, "Obama's Libya Debacle," Foreign Affairs, last modified April 15, 2019, <https://www.foreignaffairs.com/articles/libya/2019-02-18/obamas-libya-debacle>.

<sup>96</sup> "The First Gulf War - Short History - Department History," Office of the Historian, accessed July 4, 2019, <https://history.state.gov/departmenthistory/short-history/firstgulf>.

confusion; for the reason that Peacekeeping Mission and Humanitarian Intervention shared some similarities, such as involving in other state territory and intervene in internal affairs.

Peacekeeping Mission involves the act of entering across the boundary of another state to bring and preserve peace into that state. Peacekeeping Mission also “promote the termination of armed conflict or the resolution of long standing-disputes.”<sup>97</sup> Peacekeeping Mission initially has its purpose of maintaining the peace a ceasefire or a resolution was established in international conflicts. Also, Peacekeeping Mission can only enter into a state with the consent from the host state to send the troops to preserve as well as keeping the peace. Peacekeeping Mission also has to remain neutral, especially during the cold war; since it is necessary to avoid the minor conflicts that could lead to wars. Peacekeeping Mission even restores the function of social and political institutions as well as support daily living such as providing logistic aids and medical team. The first Peacekeeping Mission “began in 1948 when the Security Council authorized the deployment of UN military observers to the Middle East.”<sup>98</sup> Moreover, the UN also established a Peacekeeping Mission during the civil war in Cambodia called The United Nations Transitional Authority in Cambodia (UNTAC) from March 1992 until September 1993.<sup>99</sup> On the other hand, Humanitarian Intervention has a different vision on its purpose; unlike the Peacekeeping Mission that intervenes by permission from state’s government to maintain peace and prevent further violation during conflicts, the Humanitarian Intervention uses military force to intervene in a state without the consent of its government.

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<sup>97</sup>Paul F. Diehl, *International Peacekeeping* (Baltimore, MD: Johns Hopkins University Press, 1993), 4.

<sup>98</sup> "Our History," United Nations Peacekeeping, accessed July 6, 2019, <https://peacekeeping.un.org/en/our-history>.

<sup>99</sup> "The UN in Cambodia," United Nations in Cambodia, accessed July 5, 2019, <http://kh.one.un.org/content/unct/cambodia/en/home/who-we-are/the-un-in-cambodia.html>.



## **2.4. The Benefits and Drawbacks of Humanitarian Intervention**

Humanitarian Interventions are just like any other things; they do have benefits and drawbacks. As mentioned in the above about the definitions, types, and the similarities and differences between Humanitarian Intervention and other similar force such as Peacekeeping Missions. This point of the chapter will be focusing on the benefits and drawbacks of Humanitarian Interventions.

### **2.4.1. The Benefits of Humanitarian Intervention**

Humanitarian Intervention, as the positive side of its term; the beneficial feature is that Humanitarian Intervention provides supports and protections to people who are in need. The concept also involves in the role as a peacekeeper to maintain peace within the parties of the conflict.<sup>100</sup> Furthermore, Humanitarian Intervention sometimes also acts as a protector to protect civilians during armed conflicts and save civilians' lives from the war or conflict zone. Moreover, Humanitarian Intervention also provides aids such as food, medical team, shelter, and economical; it also offers ways to stop hostilities.<sup>101</sup> Humanitarian Intervention can help rebuild the areas, which were demolished by the conflicts.

### **2.4.2. The Drawbacks of Humanitarian Intervention**

Humanitarian Intervention, as mentioned above, does have its drawbacks. Since Humanitarian Intervention involves military intervention; it intervenes a state without the consent of the host state's government. In addition, the obvious drawback here is that the state loses its sovereignty.<sup>102</sup> Humanitarian Intervention sometimes carries with the risk of losing the lives of both civilians and troops; it sometimes can lead to having poor results such as

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<sup>100</sup> U.N. CHARTER art. 33

<sup>101</sup> "Pros," You Decide: Humanitarian Aid, accessed July 6, 2019, <https://humanitarianaid.weebly.com/pros.html>.

<sup>102</sup> "GENERAL DEBATE SURVEYED PROS AND CONS OF HUMANITARIAN INTERVENTION, GLOBALIZATION, POVERTY, UN REFORM, OBSERVES ASSEMBLY PRESIDENT," UNITED NATIONS, last modified October 2, 1999, <https://www.un.org/press/en/1999/19991002.gasm105.doc.html>.

more lives are being killed, and worsen the conflict's situation.<sup>103</sup> Moreover, some scholars and many people have been talking about Humanitarian Intervention as a breach of world peace that could lead to a "Domino Theory" that state would follow or got influenced from other states and have to desire to conduct Humanitarian Intervention for their benefits.<sup>104</sup> All in all, Humanitarian Interventions have both benefits and drawbacks.

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<sup>103</sup> REBECCA MORTON, "Humanitarian Intervention: Advantages and Disadvantages in East Timor and Kosovo," E-International Relations, last modified March 29, 2014, <https://www.e-ir.info/2014/03/29/humanitarian-intervention-advantages-and-disadvantages-in-east-timor-and-kosovo/>.

<sup>104</sup>Supra note 47

### **CHAPTER III: THE LEGALITY AND LEGITIMACY OF COLLECTIVE HUMANITARIAN INTERVENTION**

Before this research steps further to explore the legality and legitimacy of the Humanitarian Intervention, these two concepts: Legality and Legitimacy must be properly defined. The concept of legality is defined as the fact or state of being allowed by law or according to what is already written in the law and demanded by it.<sup>105</sup> On the other hand, the concept of legitimacy “is far less objective, and it is often used as synonymous with morality and justice.”<sup>106</sup> Deciding on which action is lawful and which is legitimate can be a complicated question; as when some issues occur, the legality and legitimacy come into conflict. For instance, the humanitarian intervention that is conducted and authorized by the UNSC (collective intervention) is regarded as the legal and legitimate intervention. The intervention itself is accorded to the law (the UN Charter) which allows the UNSC to take action in response to the breach of international peace and security, as well as to take responsibility in safeguarding the people from mass atrocities and violation of their rights by their own government. However, when it comes to the conduct of humanitarian intervention by individual state or regional organizations such as the NATO’s intervention in KOSOVO, this is deemed as the illegal intervention as it is not conducted by the authorization from the UNSC. Also it is not accorded to the law; though this kind of intervention or we can call it unilateral intervention is legitimate since its purpose is to save people’s lives from the atrocities. It has moral purpose, because the intervention is carried out based on morality even it has no legal ground.

In the following, this research paper will discuss the legality and legitimacy of humanitarian intervention led by the UN. Firstly, it will describe the legal framework

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<sup>105</sup> Cambridge Dictionary, “Legality”

<sup>106</sup> Supra note 67

enforcement under Chapter VII of the UN Charter. Secondly, it will talk about UN Security Council enforcement and its authorization. Thirdly, it will give out the role of the General Assembly as the subsidiary responsibility in response to the threat of peace. Forth, it will then examine the Internal conflicts as a threat to Peace and the UN practice. Fifth, The UN's solutions to remedy humanitarian emergency and its limitations will be pointed out and will be followed by State Sovereignty and Non-intervention principle in the UN system, the Prohibition on the Use of force, lastly the Responsibility to Protect Doctrine in response to humanitarian crises.

Following the legality and legitimacy of humanitarian intervention under UNSC's authorization, the research paper will then move on to raise some points regarding the conduct of humanitarian intervention without the UNSC's authorization, but not to go further in examining its legality.

### **3.1. Humanitarian Intervention with a security mandate (Under the UN Charter)**

When it comes to the occurrence of the humanitarian crisis which constitutes a threat to the international peace and security, the UN Security Council under Chapter VII of the UN Charter is capable of undertaking any methods especially the conduct of humanitarian intervention (involved with the use of force) in response to those crises.

#### **3.1.1. The Legal Framework enforcement under Chapter VII of UN Charter**

The United Nations is governed by its foundational treaty, the UN Charter, which is based on the collective security system. Based on article 24(1) of the charter, it states that, "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council

acts on their behalf.”<sup>107</sup> So basically, the member states have agreed upon this article to give the Security Council the power to maintain security and peace in the world on their behalf. These broad power has given the UNSC a supreme position in international law. The UNSC as described has the primary responsibility while the General Assembly has the subsidiary responsibility to take action to ensure peace and security, especially when the UNSC fails to act for example as a result of the negative vote of the permanent members to carry out the intervention.<sup>108</sup>

According to Article 25 of the UN Charter, the member states agree to be legally bound to the decisions that are made by the UNSC to carry out its responsibilities. Regarding the voting, article 27(3) states that for the UNSC to carry out its decision, it must receive an affirmative vote of at least nine of its fifteen members.<sup>109</sup> It means that five votes must be from the five permanent members China, Russia, United States, United Kingdom, and France, and the other four votes or more from the non-permanent members.

Under Chapter VII of the UN Charter, it gives the Security Council a legal ground to act in maintaining and restoring international peace and security, especially in the conducting of humanitarian intervention which is the act of intervening in the state’s affairs through the use of force to stop humanitarian atrocities by those violating states. Besides, the Security Council has condemned the mass human rights violation on the violating states and has founded the International Criminal Tribunals to prosecute those who responsible of

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<sup>107</sup> UN Charter, art 24(1)

<sup>108</sup> *Acronym Institute for Disarmament Diplomacy*. UN Security Council & UN General Assembly (2011). Available on <http://www.acronym.org.uk/old/directory/building-security/united-nations-conference-disarmament/un-security-council-un-general-assembly>

<sup>109</sup> UN Charter, art 27(3)

committing such crimes including Genocide, Crime against humanity, ethnic cleansing, war crimes and so on.<sup>110</sup>

### 3.1.2. The UN Security Council enforcement and its authorization

Based on the Article 39 of the Charter, it states “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” to ensure international peace and security.<sup>111</sup> Those measures made by the UNSC should not be involved with military force but rather the economic sanctions, or diplomatic sanctions.<sup>112</sup> However, if the measures are not proved sufficient or effective to respond to such issues, the Security Council may take its action with the use of force.<sup>113</sup>

In article 47, it states that a Military Staff Committee, consisting of the Chiefs of staff of the five permanent members, is established to assist and advise the UNSC on the enforcement of military action.<sup>114</sup> Based on article 43, it states about the member states’ obligation to offer assistance (such as providing armed forces or troops) to the Security Council to maintain peace and security in accordance with the special agreement; however, such agreements between the UNSC and the member states have never been concluded,

*“The obligation for United Nations members to undertake to make armed forces available to the Security Council, render assistance and accord relief as necessary for the maintenance of international peace and security exists only in accordance with one or more special agreements. Nevertheless, such agreements were never concluded and no State is obligated to make troops available to the Council in a particular situation. Consequently, the United Nations has to enter into negotiations every time a situation calls for the establishment of an operation.”<sup>115</sup>*

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<sup>110</sup> United Nations Human Rights Office of the High Commissioner. Statute of the International Tribunal for the Former Yugoslavia (2000). Available on <https://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalTribunalForTheFormerYugoslavia.aspx>

<sup>111</sup> UN Charter, art 39

<sup>112</sup> UN Charter, art 41

<sup>113</sup> UN Charter, art 42

<sup>114</sup> UN Charter, art 47

<sup>115</sup> UN Charter, art 43

By looking at the article 43, some scholars may interpret that this will leave the UNSC incompetence to authorize the use of force if the UNSC finds out that there is the occurrence of activities that cause threat to peace under Chapter VII. However, it is widely known that the UNSC is dependent upon the voluntary cooperation of member states regarding the provision of forces to conduct any type of enforcement action.<sup>116</sup> Therefore, the UNSC under Chapter VII is competent to authorize its enforcement which includes particularly the use of force.

As the UNSC plays the primary role for the maintenance of international peace and security, Chapter VIII of the UN Charter also enables and gives the regional organizations as well as agencies the legal basis to involve with maintaining peace and security; unfortunately, the enforcement action by these regional mechanisms is dependent upon the authorization of the UNSC.<sup>117</sup> According to article 53(1) of the Charter, it states that,

*“The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council...”*<sup>118</sup>

Under the international law, the use of force is legal when it is conducted with the authorization from the UNSC under Chapter VII, given that the enforcement of the use of force complies with the rules of international humanitarian law. When the military intervention is decided, the Security Council shall determine who will carry out the intervention; it can be the UN forces, selected states to operate the intervention or the regional bodies.<sup>119</sup> Even though the intervention is usually conducted by states, the intervention is under the responsibility and control of the UNSC. It means that states who are appointed to

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<sup>116</sup> Terry D. Gill, Dieter Fleck (2015), “The Handbook of the International Law of Military Operations”. Oxford University Press, P106.

<sup>117</sup> Luk Van Langenhove (2014), Chapter VIII of the UN Charter: What it is and Why it Matters. *United Nations University*. Available online at <https://unu.edu/publications/articles/chapter-viii-of-the-un-charter-what-it-is-and-why-it-matters.html> (accessed on 27 June 2019).

<sup>118</sup> UN Charter, art 53(1)

<sup>119</sup> Anne Ryniker, The ICRC’s position on “humanitarian intervention” (2001). Vol 83, P531. Available online: [https://www.icrc.org/en/doc/assets/files/other/527-532\\_ryniker-ang.pdf](https://www.icrc.org/en/doc/assets/files/other/527-532_ryniker-ang.pdf) (accessed on 27 June 2019).

carry out the intervention shall do according to the law, and what has already been determined. However, those authorized states or regional organization are not required to conduct the UNSC's authorization; they have the obligations only if they agree to be bound to the authorization.<sup>120</sup> The conduct of humanitarian intervention must be according to the law, and the use of force must not be exceeding the UNSC's authorization; otherwise, it would violate the international law. Additionally, the UNSC may remove its authorization at any time when it has a reasonable ground to believe that the conduct of the intervention is useless.<sup>121</sup> Consequently, the enforcement of military intervention under Chapter VII of the Charter shall be determined by the UNSC's authorization.

In between the 1990s, the use of force could be seen to be authorized by the UNSC under the Chapter VII of the Charter to respond to the mass atrocities and serious human rights violation that cause a threat to international peace and security. Although those atrocities arise within the state's boundary, the authorization of the military intervention in those violating states is lawful to be conducted on humanitarian grounds.

### **3.1.3. General Assembly as the subsidiary responsibility in response to the threat of peace**

The intervention in an Emergency Special Session of the General Assembly under a resolution 377 (V) or the Uniting for Peace Resolution was adopted in 1950 by the General Assembly, a subsidiary responsible mechanism to maintain peace and security after the UNSC as well as to make recommendation on measures safeguarding and restoring peace.<sup>122</sup>

This resolution asserts that,

*“if the Security Council, because of lack of unanimity of the Permanent Members, fails to exercise its primary responsibility for the maintenance of international peace*

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<sup>120</sup> Ibid

<sup>121</sup> Ibid

<sup>122</sup> International Commission on Intervention and State Sovereignty, *The responsibility to protect*. (Ottawa: 2001). p53



*and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Member States for collective measures, including in the case of a breach to the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.*"<sup>123</sup>

In article 10 of the Charter, the General Assembly shall make recommendation on humanitarian intervention to the members of the UN, to the UNSC itself, or both. It states that, "The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."<sup>124</sup>

However, the General Assembly is prohibited from making its recommendation when the UNSC is dealing with the same issue unless the Security Council requests for the recommendation, "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests."<sup>125</sup>

In addition to the authorization of humanitarian intervention, the Uniting for Peace Resolution has no legal basis.<sup>126</sup> The General Assembly may recommend military force when there is an act of aggression and breach of peace, but when it comes to a threat to peace, the General Assembly may only make recommendation on the use of non-military action.<sup>127</sup> Consequently, General Assembly's recommendation under the Uniting for Peace Resolution

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<sup>123</sup> General Assembly Emergency Special Sessions. *Resolution 377A(V), "Uniting for peace"*

<sup>124</sup> UN Charter, art 10

<sup>125</sup> UN Charter, art 12

<sup>126</sup> Anna Bergh, *The Legal Status of Humanitarian Intervention* (LUNDS UNIVERSITET: 2007). p25

<sup>127</sup> Ibid

has no legal basis in regards to the use of force, only the UNSC can deal with the issue regarding the use of force in the protection of peace and security.

### **3.1.4. Internal conflicts as Threat to Peace and the UN practice**

According to article 39 of the UN Charter, the UNSC has to determine which acts constitute the threat of peace, in which its determination opens the door for the enforcement of humanitarian intervention under Chapter VII.<sup>128</sup> The report by the Danish Institute of International affairs asserts that the notion of a threat to peace refers to the international peace; it claims that, “It was hardly the intention of the framers of the Charter that internal conflicts and human rights violations should be regarded as a threat to international peace.”<sup>129</sup>

As it is pointed out that the UNSC has regarded the internal conflicts through UN Chapter VII as the threat to international peace such as the case in Rwanda and Somalia. They assert that even though these 2 crises have led to the international repercussion (such as cross-frontier refugee flows, and destabilization in the region), the UNSC still has regarded internal conflict or war with massive human rights violation or mass atrocities in such a very large scale in which it causes human suffering, casualty, and fatality as a threat to international peace regardless of whether or not it leads to international consequences.<sup>130</sup>

To illustrate the UN practice of the notion of threat to peace, it can be seen that in Somalia 1992, the UNSC authorized the military humanitarian intervention in order to respond to the mass atrocities occurred in the territory of Somalia. The UNSC examines the humanitarian crisis resulting from internal conflict or civil war and anarchy as a threat to the international peace and security. Furthermore, for the Rwanda Case 1994, the UNSC considered the humanitarian crisis resulting from genocide, civil war, the breach of human

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<sup>128</sup> Danish Institute of International Affairs, *Humanitarian Intervention* (Legal and Political Aspects: Copenhagen, 1999). p61

<sup>129</sup> *ibid*

<sup>130</sup> *ibid*, 69

rights and international humanitarian law as a threat to international peace and security. They even established the International Criminal Tribunal for Rwanda to prosecute those who responsible for the crime they had committed within their own sovereign state.

The internal conflict has become a threat to the international peace when there is the occurrence of civil war, other forms of civil unrest, gross violations of human rights by the violating state like the genocide, war crime, crime against humanity, ethnic cleansing and other crime that are on large scale causing human suffering and death.<sup>131</sup> Moreover, this internal conflict has led further not only to the matter within the domestic country but also to the international consequences like the illegal refugee flows, destabilization in the neighbor countries as well as in the region and far more.<sup>132</sup> The UNSC determines that the gross violation of human suffering on a large scale is a threat to peace, and that whether or not the international repercussion occurs, does not matter anymore. It is pointed out that for what constitute the internal conflicts as the threat to international peace involve with the international repercussions, the civil war with mass human suffering, massive violation of human rights law and humanitarian law, and violation of democracy as the threat to peace.<sup>133</sup> Practically, the UN Security Council within the framework of the United Nations must act on humanitarian grounds in response to the systematic mass violation of human rights or international humanitarian law that threaten the lives of innocent civilian of a state.

### **3.1.5. The UN's solutions to remedy humanitarian emergency and its limitations**

In maintaining peace and security, the UNSC has made a great deal of effort and has taken many actions based on Chapter VII to respond to humanitarian atrocities and emergencies in the violating states. With the use of non-military force measure which is based

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<sup>131</sup> *Repertoire of the Practice of the Security Council*. Part VII: Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Chapter VII of the Charter). 20th Supplement (2016-2017)

<sup>132</sup> Ibid

<sup>133</sup> Ibid

upon Chapter VII, the UNSC in response to such atrocities against human, has conventionally imposed arms embargo, and economic sanctions before authorize its decision in carrying out the military intervention (collective humanitarian intervention).<sup>134</sup> In the Cold War period, The UNSC never went further than to carry out the measures involved with the non-use of force.<sup>135</sup>

In addition to the non-military measure, the UNSC has authorized the use of force under Chapter VII of the UN to deal with the internal conflicts that have the intense humanitarian consequences like in the 1990s cases of Somalia, Rwanda, Haiti, Albania and so on. For instance, the case which happened in Rwanda, Somalia, East Timor, the UNSC had authorized the carry out of military force under Chapter VII (basically the humanitarian intervention). Moreover, in Bosnia the enforcement of military force did not require the authorization by the UNSC at all as the target government had asked for the international community, like the UN for help. Consequently, in ensuring the protection of civilians and humanitarian assistance, the UNSC has authorized the conduct of humanitarian intervention collectively with the use of military force for humanitarian grounds.<sup>136</sup> In a traditional sense, humanitarian intervention and the enforcement action to maintain peace are different. The protection of international peace in traditional sense indicates about the international tension rather than protecting the people in the states. The Humanitarian intervention otherwise involves with the undertaking of military force that may result in less international peace, but it is thought that this protection of the individual people with the intervention, lays out better condition in a long term to maintain peace and security.

Even though the UNSC is given authority regarding the use of force to carry out the

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<sup>134</sup> UN Charter, Chapter VII

<sup>135</sup> Resolution 221 (1966) on Southern Rhodesia Case

<sup>136</sup> Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure*, (OXFORD UNIVERSITY PRESS: 2008)

intervention, there are still limitations on its authorization. Initially, the UNSC has the power to authorize collective humanitarian intervention only if none of the Permanent members use their veto and choose to provide it with. The UNSC is the political organ consisting of representatives of states from different interests, and its rule of decision has been laid out in article 27 stating that,

*“1). Each member of the Security Council shall have one vote. 2). Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members. 3). Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.”<sup>137</sup>*

Therefore, according to the UN Charter, the UNSC may not be able to carry out humanitarian intervention when it should. This UNSC’s inaction is due to the veto from the 5 permanent members like the US, Russia, China, UK, and France; this is often led to the lack of legitimacy – which often deals with the intervention based on morality in eradicating human’s suffering that the permanent members choose to ignore and use veto, rather than its legality.

Secondly, the UNSC has only the measure for military enforcement when the member states grant the power to it. As mentioned above, the UNSC is not the one who actually intervene only the selected states or regional bodies who instead go to intervene in the violating state, but the intervention itself is under responsibility and control of the UNSC. Basically, the collective humanitarian intervention will not be conducted only if the appointed individual state or group of states are intended to carry out the intervention. Among some failure cases, Rwanda can be an example. The UNSC failed to undertake humanitarian intervention. The international community

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<sup>137</sup> UN Charter, art 27

was reluctant to respond to such crisis which led to the failure of the UNSC to authorize the intervention to help those civilians who are suffering under such genocide and atrocities committed in their own countries by their own government.

### **3.1.6. State Sovereignty and Non-intervention principle in the UN system**

Since the cold war periods until the current days, most conflicts have occurred internally within one state's boundary; and that is why the concept of state sovereignty has been brought into discussion by many scholars, debaters, and others legal experts. The concept of state sovereignty was established in the Treaties of Westphalia 1648 by the European states. This treaty has allowed the state to legally exercise total and exclusive jurisdiction within the internal boundary of a target state.<sup>138</sup> Based on the Westphalia treaty, state sovereignty is "the ability of a state to have sovereignty (or absolute control) over its own territory. All states, despite their size or relative power, have control of their own territory. Thus, one state cannot demand that another state take any particular action as regards its territory."<sup>139</sup>

As the state sovereignty's principle requires states to respect the sovereignty of other states, the non-intervention principle is also the key principle of customary international law and is claimed to be reflective with the state sovereignty principle.<sup>140</sup> The non-intervention principle is stated strongly in many declarations which are passed by the General Assembly<sup>141</sup> and validated by the ICC as the part of Customary International Law.<sup>142</sup>

The UN Charter was created in 1945 after the end of World War II, and it has stated out the principle of equality among every states as well as the non-intervention principle in

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<sup>138</sup> Supra note 122, p12

<sup>139</sup> *Westphalian Sovereignty*. Available [http://historyofthought.as.uky.edu/index.php/Westphalian\\_Sovereignty](http://historyofthought.as.uky.edu/index.php/Westphalian_Sovereignty) (accessed 2 July 2019).

<sup>140</sup> Ibid

<sup>141</sup> Declaration on the Inadmissibility of Intervention (1965) and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (1970).

<sup>142</sup> Corfu Channel case, *ICJ Reports* 1949, p. 35

article 2(1) which states “The Organization is based upon the principle of the sovereign equality of all its Members.”<sup>143</sup>, and in article 2(7) stating that “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”<sup>144</sup>

Nevertheless, the notion of state sovereignty still has some limitations in international law. The UN Charter sets forth the challenges regarding the state sovereignty, independence and equality in the states at the same time upholds the obligation to maintain peace and security of the world. With the Chapter VII of the UN Charter, the UNSC is given the authority to the use of force and interfere within the internal affairs of each target state, and the notion of sovereignty is put aside as the UNSC determines the occurrence of “the threat to peace, breach of peace, or an act of aggression.”<sup>145</sup> Furthermore, state sovereignty may be limited and also put aside when it comes to the mass violation of human rights. Those rights are endowed in the treaty and customary obligations in international law.<sup>146</sup> There is the Human Rights Law; this law or convention is established and signed by almost all the UN member states to draw the attention to the protection of the rights of individuals. Moreover, after the sign of the UN Charter, the Universal Declaration of Human Rights was adopted by the General Assembly to indicate that justice, freedom, and peace is “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human

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<sup>143</sup> UN Charter, art 2(1)

<sup>144</sup> UN Charter, art 2(7)

<sup>145</sup> UN Charter, art 39

<sup>146</sup> Supra note 128, p49

family.”<sup>147</sup> There are also the four Geneva Convention 1949 with its Additional Protocols I and II 1977 that protect people in time of arms conflicts:<sup>148</sup>

- Geneva convention on 1949 (4 Convention):
  - The first Geneva Convention protects wounded and sick soldiers, members of armed force on land during war: To improve the conditions of the sick and wounded, members of the armed forces in the field.
  - The Second Geneva convention protects wounded, sick and shipwrecked military personnel at sea during war: To improve the conditions of shipwrecked sailors, members of arms forces at sea
  - The third Geneva convention applies to the prisoners of war: Treatment of prisoners of war (POW) includes the restriction that applies to prisoners of war. Example: capture soldiers from other countries ‘armies.
  - The fourth Geneva convention affords protection to civilians, including in occupied territory: The protection of civilian in wartime of war
- Two additional protocols added: 8 June 1977
  - Additional protocol I: Relating to the protection of victims of international armed conflicts: add explicit protection to prohibit attacks on civilian and civilian target
  - Additional protocol II: add explicit civilian during a civil war

Every state has the legal responsibility under the international law to honor international commitment to protect human rights. As being the member states of the UN, they have the obligations by virtue of their membership. They shall be act according to the UN Charter, or their state sovereignty would be put aside for example in the case of the large

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<sup>147</sup> Universal Declaration of Human Rights, (1948), preamble

<sup>148</sup> The Geneva Conventions of 1949 and their Additional Protocols (2014). *International Committee of the Red Cross*. Available online <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>, accessed on 02 July 2019



scale of humanitarian atrocities. Based on Article 1(2) of the UN Charter, it states “All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.”<sup>149</sup>

Furthermore, the article also states about the purpose of achieving international cooperation to solve international issue in the area social, economic, cultural, and humanitarian character; it also contributes to the protection and respect of human rights and fundamental freedom for all the people equally without discrimination on their races, sexes, languages, or religions.<sup>150</sup> The United Nations, an intergovernmental organization, is recognized as the forum to bring all the member states together in achieving these objectives. The UN Charter also refers the human rights violations in the domestic affairs as the international issue concerned the international community like the UN to step in; whether it is within one state’s boundary, the international should not ignore this problem.<sup>151</sup> In article 55(c), it states that the UN shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”<sup>152</sup>, and article 56, “All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”<sup>153</sup>, which refers to achieving the purpose of protecting human rights. The ICJ in 1970 concluded that a state has the obligation to protect “the principles and rules concerning basic rights of the human person.”<sup>154</sup> Nowadays, the norms established in international human

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<sup>149</sup> UN Charter, art 2(2)

<sup>150</sup> UN Charter, art 1(3)

<sup>151</sup> Supra note 128, p46

<sup>152</sup> UN Charter, art 55(c)

<sup>153</sup> UN Chart, art 56

<sup>154</sup> Barcelona Traction case, ICJ Reports 1970, para. 33-34.

rights law and humanitarian laws are regarded as part of Customary International Law, and are all states are bound to.<sup>155</sup>

It can be seen that there is the increasing involvement of the UN's organs, the individual states as well as the regional organizations committing to protect the fundamental human rights and asserting this protection into their objectives. These have paved the way for a more effective protection of human rights, and further given the insights that these rights are the concern for the international community as a whole despite the legal obligation. Moreover, the provision in the UN Charter has given the UN's organ, especially the UNSC, the legal basis to intervene in the domestic affairs of the violating state when there is the existence of mass and systematic violation of human rights.

The international community generally recognized the international norm supported the collective action in response to humanitarian atrocities. Consequently, whether the crisis occurs in the domestic borders or not, the notion of state sovereignty may not be the hindrance to the collective intervention at all. As it is argued by the former UN Secretary General Kofi Annan, he raised his concern that “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica- to gross and systematic violations of human rights that affect every perception of our common humanity?”<sup>156</sup> He also asserted on the issue of state sovereignty by providing two notions: one is bestowed on to the state itself, and the other is vested on the people and individuals.<sup>157</sup>

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<sup>155</sup> Supra note 128, p51

<sup>156</sup> We the Peoples: The Role of the United Nations in the 21st Century, Millennium Report of the Secretary- General of the United Nations 48 (September 2000).

<sup>157</sup> Supra note 122, p13

### 3.1.7. Prohibition on the Use of force

Under international law, there is the prohibition on the use of force which is stated in the provision of the UN Charter. In article 2(4) states, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>158</sup>

This article is generally accepted and acknowledged by the international community, and is binding on all individual states or as members of the international organizations or on the (regional) organizations. Hence, a derogation on this article is not allowed, and cannot be set aside by contract at the regional level.<sup>159</sup> For the exceptions on the prohibition on the use of force in the UN Charter are the use of force for self-defense, article 51 which states that,

*“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 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 and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”<sup>160</sup>*

and the legal use of force under Chapter VII on the enforcement action (like the conduct of collective humanitarian intervention) in maintaining international peace and security. Nevertheless, there are still many debates among legal experts and scholars regarding the interpreting of article 2(4) on the use of force. Some may argue that collective humanitarian should not be carried out as it violates the article 2(4) of the UN Charter, and hence there is still no specific provision to allow the military intervention for the humanitarian purpose under the UN Charter. The provision under Chapter VII only states about the legal use of

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<sup>158</sup> UN Charter, art 2(4)

<sup>159</sup> Bruno Simma, “NATO, the UN and the use of force: Legal Aspects”, (1999) 10 EJIL, p1

<sup>160</sup> UN Charter, art 51

force by the UNSC for the maintenance of peace and security, but do not clearly state about the intervention.

However, for those who support the ideas of humanitarian intervention, they propose that the intervention for humanitarian purpose is the exception to the prohibition under article 2(4) as the intervention itself is aligned with the purpose of the UN Charter, which is to promote and protect human rights. The purpose of collective humanitarian intervention authorized by the UNSC is to help the civilians who are suffering on a large scale both physically and mentally within their own territories from such atrocities like the genocide, crime against humanity, act of aggression, but not to use force against the territory or may not intend to change the regime of the target state.<sup>161</sup>

### **3.1.8. Duty to Intervene: Responsibility to Protect Doctrine**

The International Commission on Intervention and State Sovereignty (ICISS) was established in 2000 by the government of Canada to address the responsibility of the international community to respond to the gross human rights violation while also respect the State Sovereignty.<sup>162</sup> This commission has allowed the international community to intervene when the state failed to fulfill their responsibilities in protecting its own people, and it also allowed the intervention by the international to deal with the environmental problems and natural disasters. In 2005, the environmental and natural disasters ground for intervention had been declined as the doctrine of responsibility to protect is embodied in the UN outcome document. This document has permitted the international community, especially the UNSC under Chapter VII of the UN Charter, to carry out military intervention to protect the

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<sup>161</sup> Fernando R. Tésou, *Humanitarian Intervention: an Inquiry into Law and Morality*, 2nd ed. (Irvington-On-Hudson, N.Y: Transnational 1988), p131

<sup>162</sup> Supra note 122, VIII

population of the state when it fails to carry out its primary responsibility to protect its own citizen from genocide, crime against humanity, ethnic cleansing, and war crime.<sup>163</sup>

According to the ICISS legal document, there are 4 core principles of the responsibility to protect which includes:

*“(1) **Basic Principles:** A). State sovereignty implies responsibility, and the primary responsibility for the protection of 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.*

*(2) **Foundations:** The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in: A). obligations inherent in the concept of sovereignty; B). the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security; C). specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law; D). the developing practice of states, regional organizations and the Security Council itself.*

*(3) **Elements The responsibility to protect embraces three specific responsibilities:** A). The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. B). The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. C). The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.*

*(4) **Priorities:** A). Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it. B). The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.”<sup>164</sup>*

The ICSS also provides the 4 principles to take into consideration before carrying out military intervention in the notion of responsibility to protect including the Just Cause Threshold which lays out that the intervention must be in response to the violation of human rights on a large scale; the Precautionary principles which asserts that the intervention must have the right intention, last resort, proportional means, and reasonable prospects; Right

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<sup>163</sup> Ibid

<sup>164</sup> Supra note 122, XI

authority that deals with the appropriate body to carry out the intervention (UNSC); and Operational principles of the intervention.<sup>165</sup>

### **3.2. Humanitarian Intervention without a security mandate (Unilateral Intervention)**

States have no legal rights under the current international law to carry out humanitarian intervention in another state's affairs without prior authorization from the UNSC. The relations between human rights and international peace in the UNSC practice was broadly recognized by the international community and humanitarian intervention with a mandate of the Security Council.<sup>166</sup> However, the states intervening with force and without advanced authorization by the Security Council, its legality under the Charter is still being debated.<sup>167</sup>

Under article 2(4) of the UN Charter states about the legality of humanitarian intervention that does not allow the use of force. However, the interpretation of the provision was made in different ways. Some interpret that the use of force is prohibited with only two exceptions: authorized by the UNSC under chapter VII and under article 51 in the exercise of the right of self-defense.<sup>168</sup> While others oppose the article 2(4) by arguing that the unauthorized humanitarian intervention or unilateral intervention is allowed under this provision if it:

- “1. Does not constitute the use of force against territorial integrity;*
- 2. Does not constitute the use of force against political independence; and*
- 3. Is not otherwise inconsistent with the purposes of the United Nations.”<sup>169</sup>*

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<sup>165</sup> Supra note 122, XII-XIII

<sup>166</sup> Newman, Edward, Review Article-Humanitarian Intervention Legality and Legitimacy. *The International Journal of Human Rights* (2010), vol.6. Available online at <http://dx.doi.org/10.1080/714003777>, p104

<sup>167</sup> Ibid

<sup>168</sup> Schachter Oscar, *International Law in Theory and Practice* (Kluwer: 1991). p.128

<sup>169</sup> D'Amato Anthony. *International Law: Process and Prospect*. (Irvington, NY: Transnational Publishers, 1995). pp56-72

The first one means that a state violates it only if it seizes part of the other state's territory. The second simply means that a state's political independence is violated when interveners change its political path in any way. The third point refers to the use of force that is not consistent with the purpose of article 1 of the UN Charter, but in that case they believe that the use of force is to be allowed in the situation when there is the need in maintaining peace and security, the primary purpose of the UN and the promoting of human rights. Still and still, under the article 2(4), it prohibits all defensive use of force that is not authorized by the UNSC; and under the UN Charter, there is no legal ground for the unilateral humanitarian intervention.

Through the evolvement of state practice in a new customary international law, the conduct of unilateral humanitarian intervention is asserted as the exceptional violation on the prohibition on the use of force in article 2(4) for humanitarian purpose in which the unilateral is not justified as the legal right of humanitarian intervention, but as more on the moral grounds (to save the civilians in their violating countries from the mass atrocities committed in their own countries).<sup>170</sup> Even though this type of intervention is regarded as illegal under the international law, it is legitimate as its purpose is to protect human rights and save people's lives suffering under the humanitarian atrocities, which is served to confirm with the customary international law rather than erode it.<sup>171</sup> However, it is still vague to examine whether the unilateral intervention is right or wrong as this type of intervention is still being debated among scholars and other legal experts as well as there is still yet specific law stating about the legality of this intervention. Consequently, humanitarian intervention is lawful if it is authorized by the UNSC in cases of terrible and large-scale violations of fundamental human rights; however, the unilateral intervention has no legal basis under the UN Charter.

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<sup>170</sup> Barry M. Benjamin, *Unilateral Humanitarian Intervention: Legalizing the Use of Force to Prevent Human Rights Atrocities*. 1992. *Fordham International Law Journal*. Vol.16(1), art 4

<sup>171</sup> *Ibid*

## **CHAPTER IV: COLLECTIVE HUMANITARIAN INTERVENTION (CASE STUDIES)**

The results define the determination of a successful or failure of a Humanitarian Intervention after the intervention. Additionally, it determines that the case was a success or not when the results of the intervention shows how many lives were saved and how many were lost during the crisis.<sup>172</sup> All in all, Collective Humanitarian Intervention considered as successful when it saves lives; this means that Collective Humanitarian Intervention saves those who would have died if they had not received help. This Chapter will show about success and failure of Collective Humanitarian Intervention by escalating two cases: the case of East Timor, and the case the Rwanda Genocide.

### **4.1. The Intervention for the Independence of East Timor**

#### **4.1.1. Background**

East Timor or Timor Leste is located on an island in South East Asia; it is also known as the East half of a small island called Timor in the Indonesian archipelago, northwest of Australia. The Democratic Republic of Timor Leste, also known as East Timor is half an island county and is divided into thirteen municipalities with the capital Dili that is also the largest port.<sup>173</sup> In addition, this island country also has an exclave municipality called Oecussi that is surrounded by the Indonesian's half of Timor Island; the county also contains two islands called Atauro and Jaco. This country had more atrocities and violence as well as colonization than any other part of Asia. In the past, it had gone through numbers of human right violations, invasion, and colonization for many centuries.

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<sup>172</sup> Hansch, S. et al., *Lives Lost, Lives Saved: Excess Mortality and the Impact of Health Intervention in the Somalia Emergency* (Refugee Policy Group: Washington, DC, 1994), p.25.

<sup>173</sup> John Pike, "Timor - Geography," GlobalSecurity.org, last modified 9, 2016, <https://www.globalsecurity.org/military/world/timor/geography.htm>.



Initial colonization was by Portugal in the sixteenth century on the purpose of getting to use the island's resource of sandalwood; this colonization also brought this island a belief of Catholicism. The Dutch came in and took control over the island. Both of Portuguese and Dutch fought against each other for over two centuries; then in 1749, the island split into two.<sup>174</sup> Dutch took control over the west side, and the Portuguese controlled the east.<sup>175</sup> Fast forward to the Second World War when the Japanese occupied the whole island of Timor. Japanese forced the population of Timor to grow food as well as force them to be troops for Japanese and fighting during the Second World War. Additionally, at the end of WWII, approximately about sixty thousand Timorese died which about thirteen per cent of its population.<sup>176</sup> In 1949 West Timor became part of the post-colonial Indonesian Republic, and Portugal continued to have East Timor for its oil field.

Furthermore, in August of 1975, the Portuguese began to withdraw the colonization, and East Timor claimed for its independence. However, in the same year of 1975 on December 7, the Indonesian invasion started to launch an air, land, and sea campaign and took over the whole island as well as declared it as the Indonesian's twenty-seventh province, but the claim did not get recognition by the UN in 1976.<sup>177</sup> This Indonesia's invasion is also known as the East Timor Genocide that referred to pacification campaigns; the estimation death of Timorese during this invasion or genocide was approximately two hundred thousand people.<sup>178</sup> The violence had continued throughout the 1970s, 1980s and 1990s.

The East Timor Genocide was not the only massacre that this territory had; there are few more bloodbath and violence mostly in the capital of Dili, including The Santa Cruz

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<sup>174</sup> "East Timor Profile," BBC News, last modified February 26, 2018, <https://www.bbc.com/news/world-asia-pacific-14952883>.

<sup>175</sup> John Taylor, "Simply... A Brief History Of East Timor," New Internationalist, last modified July 5, 2017, <https://newint.org/features/1994/03/05/simply>.

<sup>176</sup> Ibid

<sup>177</sup> "UNMISSET: United Nations Mission of Support in East Timor - Background," United Nations Peacekeeping, accessed July 10, 2019, <https://peacekeeping.un.org/mission/past/unmiset/background.html>.

<sup>178</sup> Supra note 174

Massacre on 12<sup>th</sup> November 1991. In addition to the Santa Cruz Massacre, also known as the Dili Massacre, there were at least 250 of East Timorese was shot to death.<sup>179</sup> This attack widely condemned throughout the world. Thus, this was when the international communities started to notice what was happening inside of East Timor and decided to step in.

#### **4.1.2. International response**

Indonesia's invasion and brutal mass atrocity in East Timor got both of the Security Council, and the General Assembly of the UN called for Indonesia's withdrawal.<sup>180</sup> On January of 1999, Indonesia stated that it would consider independence for East Timor if Timorese people refused to be governed by Indonesian control.<sup>181</sup> Additionally in the same year on 5 May 1999, Indonesia and Portugal agreed and signed an agreement that declared by the UN to allow East Timor to vote for their independence.<sup>182</sup>

On 11 June 1999, the UN Secretary-General with organizing and conducting a consultation called the United Nations Mission in East Timor (UNAMET) to carry out the meeting for the poll. Furthermore, the ballot had two options, which was to accept or reject the proposed special autonomy within Indonesia.<sup>183</sup> On 30 August 1999, approximately about ninety-nine per cent of registered East Timorese electors went to vote. Furthermore, the result of the ballot was from "a margin of 21.5 per cent to 78.5 per cent to reject the proposed autonomy and begin a process of transition towards independence."<sup>184</sup> Subsequently, after the result was announced the anti-independence militants with the support from the Indonesian security forces had launched a violence movement and attacked the East Timorese civilians.

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<sup>179</sup> Supra note 174

<sup>180</sup> Supra note 177

<sup>181</sup> Supra note 174

<sup>182</sup> "The 1999 Popular Consultation," Popular Consultation in East Timor Information Center, last modified September 23, 2014, <https://easttimor.georgetown.edu/about/consultation/>.

<sup>183</sup> "The Power of the Vote: Timor-Leste's Election History," Democracy Speaks | The International Republican Institute's Blog About Advancing Democracy Worldwide, accessed July 10, 2019, <https://www.democracyspeaks.org/blog/power-vote-timor-leste-election-history>.

<sup>184</sup> Supra note 177

Furthermore, the violence spread out across the territory leading to the death of more than a thousand East Timorese; also, there was about a quarter of the population runaway, and some fled to West Timor.

The Secretary-General and Security Council communicated diplomatically with Indonesia to face its responsibility for the atrocity that it had created. On 12 September 1999, the Indonesian Government agreed with the UN to accept the assistance from the international community. Then the Security Council authorized the multinational force called The International Force for East Timor (INTERFET) by Australia to restore peace and security in the territory of East Timor; as well as to protect and support UNAMET in carrying out its tasks to facilitate humanitarian assistance operations.<sup>185</sup>

After the atrocity caused by the anti-independence, the UN Security Council authorized another operation called United Nations Transitional Administration in East Timor (UNTAET) on 25 October 1999. UNTAET was a peacekeeping operation responsible for the administration of East Timor during the transition to its independence, also to provide security and peace throughout the territory. Aside from the UN, on December of 1999 there were international donors at a Tokyo conference agreed to provide 520 million US dollars in aid to help rebuild East Timor.<sup>186</sup>

The transition between humanitarian interventions (INTERFET) was successfully switched to the peacekeeping operation (UNTAET) in February 2000. UNTAET also started to work closely with the future government of East Timor and contributed to more activities to improve the situations in the territory. On 30 August 2001, more than ninety-one per cent of the East Timorese elector when to the poll again but this time was for the parliamentary

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<sup>185</sup> Supra note 177

<sup>186</sup> Supra note 174

election. Furthermore, on 14 April 2002 after the presidential election, Mr Xanana Gusmao was elected to be president of East Timor.<sup>187</sup>

The Democratic Republic of Timor-Leste or East Timor is finally got independence on the morning of 20 May 2002. Subsequently, East Timor's Parliament held the first session, and President Xanana Gusmao requested the Secretary-General to join the United Nations. On May 17 2002, the Security Council adopted a new mission called the United Nations Mission of Support in East Timor (UNMISET) to ensure the security and stability of Timor-Leste after its independence. UNMISET also assisted in helping the newly formed administrative as well as provided laws and regulations. Furthermore, UNMISET also had other special missions such as training the civilian police and increase the strength of military troop.

Moreover, UNMISET also provided civilians with initial education related to health and human rights. Despite all the things that UNMISET had provided; it was successfully completed in May 2005. The successor that was the UN political mission called the United Nations Office in Timor-Leste (UNOTIL). The UNOTIL was to continue to support the development by also provided and supported the development of the security and peace in Timor-Leste as well as improved human rights situations. UNOTIL was scheduled to end its mission on 20 May 2006, and another new mission was established in August 2006 named as the United Nations Integrated Mission in Timor-Leste (UNMIT).<sup>188</sup>

To Sum up, East Timor had gone through so many tragedies in the past that threaten its people lives from one generation to another such as colonization for centuries, invasions, civil wars, human rights violations, atrocities and mass killing caused by a neighboring country and many massacres. After the bloodbath crisis, it finally got the attention from international communities and received support from UN operations such humanitarian

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<sup>187</sup> Supra note 177

<sup>188</sup> Ibid

interventions as well as peacekeeping missions. The UN took its responsibilities to operate with long-term motivation and helped to stop the conflicts and gained independence for Timor-Leste. Timor-Leste finally got their independence on 20 May 2002 and got its independence name as The Democratic Republic of Timor-Leste.<sup>189</sup>

## **4.2. The Intervention in the Case of Rwanda Genocide**

### **4.2.1. Background**

There are three groups in Rwanda, Hutus are the majority, Tutsis are the minority, and Twa. The Rwandan genocide had its root cause in the years of civil conflict and strong tension between these two groups, the working class Hutu consisted of 85% of the Rwandan population and the ruling Tutsi consisted of 14% of the population.<sup>190</sup> After World War I in 1918, Rwanda which was the former German colony of Rwanda-Urundi, was put under the governance of Belgian. The Belgians following the lead of their German predecessors, formed a new strict class system between Tutsi and Hutu. In 1959, with the support of Belgian, Hutu overthrew Tutsi Rule.<sup>191</sup> Rwanda then became independent in 1962; and 11 years later, the moderate Hutu government was overturned and allowed more (anti-Tutsi) Hutu government, which contributed to the Rwandan genocide to occur.<sup>192</sup>

In 1978, Habyarimana became the president of Rwanda. Tutsis minority were restricted in their rights. In 1990, Tutsis refugees in a vast amount fled to shared frontier countries and created a rebellion group call Rwandese Patriotic Front (RPF).<sup>193</sup> Afterward, they began fighting against the Rwandese government from Uganda. In October 1993, due to

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<sup>189</sup> Ibid

<sup>190</sup> Robinson, "The Tragedy of Rwanda," 53.

<sup>191</sup> Ibid

<sup>192</sup> Ibid

<sup>193</sup> Leitenberg, "Rwanda, 1994: International incompetence produces genocide," p6.

the request of the government of Rwanda,<sup>194</sup> UN raised a resolution to send 2500 peacekeepers to secure a peace agreement between those two parties. The agreement called “Arusha Agreement” did not satisfy the Hutus nationalist.

In the year of Rwandan Genocide 1994, the majority Hutu in the Central East of African Nation Rwanda, murdered as many as 800,000 people, most of the Tutsi minority.<sup>195</sup> In 1996 April 6, a plane which was carrying President Habyarimana and Burundi’s Ntaryamira was shot down over the capital city of Kigali, leaving no survivors.<sup>196</sup> (The real culprits behind this had never been determined; some would say the Hutu extremists were the culprits, while others accused the RPF leaders). The mass killings in Kigali was quickly spread over the Rwandan Cities and in many parts of Rwanda, with some 800,000 people slaughtered over the next three months. During that time, the officials of the local as well as the radio stations which was sponsored by the Rwandan government, called on the civilians of Rwandan to murder their neighbors.<sup>197</sup> In response to such chaos and fear, more than two million people (mostly Hutus) fled Rwanda, crowded into refugee camps in the Congo (then called Zaire) and other neighboring countries for their safety and protection. In those victims of the genocide were the Hutu Prime Minister Agathe Uwilingiyimana and her 10 Belgian bodyguards, who were killed on April 7.<sup>198</sup> This violence “created a political vacuum, into which an interim government of extremist Hutu Power leaders from the military high command stepped on April 9”.<sup>199</sup>

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<sup>194</sup> “United Nations Assistance Mission for Rwanda.” Available on <https://www.britannica.com/topic/United-Nations-Assistance-Mission-for-Rw>, accessed on 13<sup>th</sup> November 2018

<sup>195</sup> “Rwandan Genocide,” History, Accessed on 06<sup>th</sup> November 2018, <https://www.history.com/topics/africa/rwandan-genocide>

<sup>196</sup> Ibid

<sup>197</sup> “Rwanda: How the genocide happened,” BBC NEWS, 17<sup>th</sup> May 2011, <https://www.bbc.com/news/world-africa-13431486>

<sup>198</sup> Fernando R. Teson, Collective Humanitarian Intervention. *Michigan Journal of International Law*. 1996. 17(2), pp362-363

<sup>199</sup> Ibid

#### 4.2.2. International Response

On the 7<sup>th</sup> April, Ms. Agathe Uwilingiyimana, a Hutu Prime Minister of Rwanda, has been murdered along with the ten Belgian peacekeepers who were sent by the UN as her bodyguards.<sup>200</sup> This is appeared to have frightened the international contingent into withdrawing UNAMIR. Following that, the government of Belgium decided to withdraw all of its troops from Rwanda, and have a letter stated to the UN Secretary-General that UNAMIR was not useful and effective when it came to the internal crisis that keeps getting worse and worse; the Belgian soldiers had encountered many risks making the troops' presence unbearable.<sup>201</sup> The French troops had been sent to Kirgali, Rwanda to help only their nationals (the French people), leaving the Rwandans behind.

Based on Resolution 872, UNAMIR was sent to Rwanda for the purpose of monitoring the ceasefire and implementation of the Accords, not engaging in the enforcement of peace. When the violence broke out and the UN troops as the targets of the conflict, the UN Secretariat and Department of Peacekeeping Operations (DPKO) decide to withdraw UNAMIR, being afraid that more and more UN troops would die in this claimed civil conflict. A United States diplomat, Michael Barnett at the UN, stated that there was the existence of a short discussion about the possibility of the UNAMIR's intervention to stop the intense of the violence from going more extreme; however, no single state would dare to offer their troops to Rwanda to carry out the operation. On April 10<sup>th</sup>, overwhelmed with shock with what had happened in Rwanda, General Romeo Dallaire, a force commander of UNAMIR, was ordered to prepare in withdrawing the UN troops. Based on Alison des Forges, the Hutus assumed that the UN could do nothing to the crisis; hence, the government who believed to be genocidal would achieve their goals in persuading those who at first

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<sup>200</sup> Fernando R. Teson, *Collective Humanitarian Intervention*. *Michigan Journal of International Law*. 1996. 17(2), pp362-363

<sup>201</sup> UN Security Council, Letter dated 15 April 1994 from the Permanent Representative of Belgium to the UN addressed to the President of the Security Council, S/1994/446.

hesitate to involve in committing genocide, to start taking part of the crime and take up arms.<sup>202</sup>

In 1994 April 20<sup>th</sup>, UN Secretary-General Boutros Ghali drafted three choices to the UNSC.<sup>203</sup> The first option was to deploy thousands of more UN troops under the mandate of UN Chapter VII to compel a ceasefire. The second option was to reduce UNAMIR troops to 270 for engaging in negotiation and assisting humanitarian relief operation. The third option was to withdraw UNAMIR completely from Rwanda. As this internal crisis had been portrayed as the civil war rather than Genocide, this had made the United States, France, and Britain to legitimize their decision not to intervene in the matter of this internal conflict.<sup>204</sup> On April 21<sup>st</sup>, the UN Security Council voted on the Second Choice which was to cut down the UNAMIR significantly to just 270 troops.<sup>205</sup> This has led some scholars to believe that UNAMIR was not effective to carry out its mission, but this did not indicate that all the UN troops had to be withdrawn. There would be another possible way which was to change the UNAMIR's mandate and deploy a more effective and strong military force, like the conduct of collective humanitarian intervention.<sup>206</sup>

The UN Security Council, on the 28<sup>th</sup> and 29<sup>th</sup> of April, met to talk over the Rwanda situation. The representatives from New Zealand and the Czech Republic urged the Security Council to take the Rwanda Situation a Genocide and start taking an active role in response to such atrocities.<sup>207</sup> Moreover, the Secretary-General also suggested the UNSC to reconsider its decision of withdrawing the UN troops while the Rwanda situation kept getting worse and worse. On the same period of time, the International Committee of the Red Cross (ICRC) also

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<sup>202</sup> *Human Rights Watch*, Propaganda and Practice. Available online on <https://www.hrw.org/reports/1999/rwanda/Geno1-3-10.htm>, accessed on 5 July 2019

<sup>203</sup> *The National Security Archive*, Inside the UN Security Council: April–July 1994. 2014. Available on <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB472/>, accessed on July 5 2019

<sup>204</sup> *Ibid*

<sup>205</sup> Fernando R. Teson, Collective Humanitarian Intervention. *Michigan Journal of International Law*. 1996. 17(2), p363

<sup>206</sup> *Ibid*

<sup>207</sup> Karel Kovanda (2010), “The Czech Republic on the UN Security Council: The Rwandan Genocide,” *Genocide Studies and Prevention: An International Journal*. 15(2), article 7.



issued its strongest statement in its history regarding the terrific violence and genocide occurring in Rwanda. However, the UNSC then released a statement quoting from the Genocide Convention regarding what happened in Rwanda but did not use the term Genocide in that statement.

On May 17<sup>th</sup>, Resolution 918 referring to “the killings of members of an ethnic group with the intention of destroying such a group in whole or in part” were passed by the UN Security Council. This resolution changed the mandate of UNAMIR and decided to increase the troops’ number to 5500 troops. The deployment of UNAMIR troops came in two phases.<sup>208</sup> Phase One consisted of only 150 non-military observers and Ghanaian soldiers deployed to secure the airport, while the deployment of troops in Phase Two was claimed to take up to three months to organize even though the Resolution 925 on 8 June realized the existence of the act of Genocide and issued a call on its member states to respond immediately to the request of troops and resources from Secretary General.<sup>209</sup>

For the separate French intervention which was approved by the UN on June 18<sup>th</sup> for the purpose of humanitarian intervention, French troops entered Rwanda from Zaire. On the US and UK side, this was a relief that the intervention by the French was conducted without their involvement because staying out of the Rwanda issue was their initial objectives.<sup>210</sup>

On the 22<sup>nd</sup> late June, the UNSC was somehow caused suspicion about the real intention of the intervention by the French and went on passing another resolution 929 which prohibited the establishment of temporary operation under the national command.<sup>211</sup> At the same day, there was the launch of Operation Turquoise, and 2500 French Foreign Legion troops came in Rwanda. In the face of the RPF’s rapid advance, “they limited their

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<sup>208</sup> UNITED NATIONS ASSISTANCE MISSION FOR RWANDA. Available online on [https://www.un.org/Depts/DPKO/Missions/unamir\\_b.htm](https://www.un.org/Depts/DPKO/Missions/unamir_b.htm), accessed on July 5 2019

<sup>209</sup> Ibid

<sup>210</sup> Krosiak D, *The Role of France in the Rwandan Genocide*, (London: Hurst, 2007)

<sup>211</sup> Paul Lewis, *France Calls Rwanda Mission a Success: Asks for U.N. Force*, N.Y. TIMES, July 11, 1994.

intervention to a “humanitarian zone” set up in southwestern Rwanda, saving tens of thousands of Tutsi lives and also helping some of the genocide’s plotters – allies of the French during the Habyarimana administration.”<sup>212</sup> However, French Arms were accused by RPF leader that those French troops cooperated in military training with Hutus military<sup>213</sup>.

In the mid of July, RPF dominated in most parts of countries and control in government official buildings. French troops stood aside as the RPF seized control of Kigali, Capital of Rwanda on July 4; French forces also did nothing to prevent the fall of Butare the second largest city of Rwanda, to RPF forces on July 5.<sup>214</sup> On July 18, the RPF declared a unilateral ceasefire that ended the civil war, and RPF decided to create the same structure government similar to Arusha agreement that gives the power of the president to Hutus to avoid the future dispute<sup>215</sup>. French forces withdrew from Rwanda after two months, urging the United Nations to send replacements as soon as possible.<sup>216</sup> On July 22, the US with the support of the UK, launched the Operation Support Hope to provide humanitarian assistance in and around Rwanda,<sup>217</sup> and by August several thousand blue-helmeted U.N. troops from Zimbabwe, Ethiopia, and Ghana, replaced the French troops.<sup>218</sup> Still, the Rwanda situation had not been entirely alleviated.

All in all, it can be seen that even the purpose of the French mission was to stop the mass atrocities occurred in Rwanda’s Civil war, it was somehow an extreme failure of humanitarian intervention by the French as well as by the UN member states, the UN, and the international community as a whole in a lack response to such a large scale violation of human rights, genocide, crime against humanity, and war crime in this beautiful country,

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<sup>212</sup> “Rwandan Genocide,” History, Accessed on 5 July 2019, <https://www.history.com/topics/africa/rwandan-genocide>

<sup>213</sup> Ibid

<sup>214</sup> Fernando R. Teson, Collective Humanitarian Intervention. *Michigan Journal of International Law*. 1996. 17(2), p365

<sup>215</sup> “Rwanda: How the genocide happened,” BBC NEWS, 17<sup>th</sup> May 2011, <https://www.bbc.com/news/world-africa-13431486>

<sup>216</sup> Paul Lewis, France Calls Rwanda Mission a Success: Asks for U.N. Force, N.Y.TiMES, July 11, 1994, at A8.

<sup>217</sup> Uvin P, Reading the Rwandan Genocide. *International Studies Review*. 2001. 3:3, pp75-99

<sup>218</sup> Fernando R. Teson, Collective Humanitarian Intervention. *Michigan Journal of International Law*. 1996. 17(2), p365

Rwanda. Boutros Ghali, a former U.N. Secretary-General asserted that “The failure of Rwanda is 10 times greater than the failure of Yugoslavia, because in Yugoslavia the international community was interested, and involved. In Rwanda nobody was interested.”<sup>219</sup> To rectify this passivity, attempts were later made. The UNAMIR operation was brought back up to strength to make it better and more effective after the RFP’s victory. This operation remained in Rwanda until 1996 March as one of the largest humanitarian relief efforts in history.<sup>220</sup>

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<sup>219</sup> “Rwandan Genocide,” History. Available on <https://www.history.com/topics/africa/rwandan-genocide>, accessed on July 5 2019

<sup>220</sup> Ibid

## CONCLUSION

The mass violation of Human Rights around the world have significantly raised the concern and awareness for the international communities to take action, primarily through the intergovernmental organization, the United Nations. Even though there are many international laws such as Human Rights Law and Humanitarian Law established to protect and ensure that we all as human-beings deserve those inalienable rights, the real practice, and the actual situation may go against the expectation. Consequently, the collective humanitarian intervention has played a significant role in eradicating those gross violation of human rights within state's internal conflict by taking a real action to bring out the practical solutions in respond to the issues, in which the use of military force is authorized by the UNSC to ensure peace and security to the world.

In this research study, we have studied about the protection of Human Rights in the UN by focusing on the Collective Humanitarian Intervention, in which we have questioned about the differences between the peacekeeping mission and the Humanitarian Intervention, the legality and legitimacy of Collective Humanitarian Intervention, and the notion of state sovereignty regarding the large-scale violation of Human Rights.

This research paper has found out that Peacekeeping Mission and Humanitarian Intervention shared the same goal such as working to ensure peace and security of the world and working for humanitarian purpose in the internal affairs of one state. However, Peacekeeping Mission involves the act of entering across boundary of another state in order to bring and preserve peace into that state, and it aims to promote the termination of an armed conflict or the resolution of long-standing disputes; it can only enter into a state with the consent from the host state to send the troops. It works to restore the function of social and political institutions as well as support daily living such as providing logistic aids and medical

team. On the other hand, Humanitarian Intervention uses military force to intervene in a state without the consent of its government.

In addition, our research papers had introduced and discussed the legality and legitimacy of collective humanitarian intervention. For the collective humanitarian intervention to be legal and legitimate, the advanced authorization from the UN must be obtained. The UN Security Council under Chapter VII of the UN Charter is capable of conducting collective humanitarian intervention legally and legitimacy when it comes to the mass humanitarian crisis that constitutes to a threat to the international peace and security. The UNSC is the main organ which determines whether the intervention should be carried out, and its decision must get approval from the five permanent members. The UNSC, who has the primary role in the maintenance of peace and security, has to initially determine which acts constitute the threat of peace, in which its determination opens the door for the enforcement of humanitarian intervention under Chapter VII which involves the legal use of force. Furthermore, this research points out that the intervention should be based upon the precautionary principle, within the framework of responsibility to protect, which is to have the right intention, last resort, proportional means, reasonable prospects, and right authority. Within this, we agreed on the same line with Nicholas J Wheeler, Gareth Evans and Mohammed Sahnoun who claimed that for the intervention to be legitimate, it must meet the six criteria such as Just cause, Last resort, Good over harm (Right authority), Proportionality, Right intention, and Reasonable prospect. Consequently, the authorization of the military intervention in those violating states are lawful to be conducted on humanitarian grounds, and the one who can legally authorize the intervention is the UNSC.

Regarding the Unilateral Intervention, Daniele Archibugi claims that the UNSC is not just the only proper body to make a decision whether the intervention can be carried out or not, but the unilateral or other regional organizations like the NATO that should play an

important role in the intervention as well. Eva Maria Jellinek also points out that it is unfair to prohibit the use of force in carrying out unilateral humanitarian intervention without the authorization from the UN for humanitarian purposes. However, this research has found that this type of intervention is considered illegal as it does not get prior authorization from the UNSC because the unilateral intervention has no legal basis under the UN Charter, but is somehow believed to be legitimacy for its moral purpose on saving human life. Hence, this issue is still ambiguous in our research study.

Furthermore, when a state is unable or unwilling to take responsibility to uphold its citizens' human rights, such as in the case of mass killing, this research has argued that the state sovereignty should never be applied. Referring to what has been studied by Okoronye and Okeke, they assert that every state, according to the international law especially in human rights and humanitarian law, has the responsibility protect the lives of their citizens or civilians within their own territories. However, if they fail to, that means they lose their state sovereignty, and the international communities have to step in like the United Nations. Vladimir Kirushev asserts that state has no absolute sovereignty because the international law has stated clearly about the situation when states are unable to protect their own people from humanitarian atrocities, they already lose their state sovereignty. In this research report, we agree to the same position they have raised. The notion of state sovereignty has given that all states must respect the sovereignty of other states, and all states have control of their own territory. No states can intervene in the domestic affairs of other states with respect to the non-intervention principle. Nevertheless, nothing can prejudice the application of enforcement measures under Chapter VII, in which it allows the UN Security Council to use force and determine what it can do to respond to the violating states which are shielded by their sovereignty. Consequently, whether the crisis occurs in the domestic borders or not, the notion of state sovereignty may not be the hindrance to the collective intervention at all when

the mass atrocities occur causing human suffering, casualties, and fatalities. In respect of that the international communities should come together for example, like the United Nations to bear the responsibility to protect when the state failed to fulfill their duties in protecting its own people. This paved the way for the collective humanitarian intervention (with the use of military force) to protect people from large scale violation of their rights from genocide, crime against humanity, ethnic cleansing, and war crime.

## **RECOMMENDATION**

- There should be more effective action in response to mass atrocities, and large scale violation of Human Rights such as in the case of Rwanda Genocide
- There should be the establishment of new international law with regards to the conduct of Collective Humanitarian Intervention
- There should be a clear division between the Concept of Peacekeeping Mission and the Humanitarian Intervention
- The UN Charter should establish the provisions which deal with the Collective Humanitarian Intervention
- The UN should support the Unilateral Humanitarian intervention, which is a type of intervention conducted to respond to the humanitarian crisis and severe oppression
- The International Communities, especially the UN should act immediately when there is the existence of mass human rights violation or mass atrocities within the internal conflicts of a state
- There should be more legal frameworks in dealing with the Humanitarian Intervention
- Humanitarian intervention should be restricted to reduce the motive of the state to the use of military force for their political benefits, self-interests, and the protection against the violation of the Humanitarian Intervention doctrine
- There should be fewer mandate changing since the UN had changed and switched between operations many times in the example of East Timor
- The UN should have secured a long term operation to avoid switching between operation as it would help smoothing out the situation better for the case of East Timor



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