



**HUMANITARIAN INTERVENTION AND RESPONSIBILITY TO PROTECT:
THE LEGAL IMPLICATIONS OF THE UNITED STATES-LED INTERVENTION IN IRAQ**

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ABSTRACT

Under the Public International Law, intervening in the internal affairs of another state for whatever reason has been one of the most discussed and hotly debated areas as long as the laws of nations were developed. In recent times, the application of the principles of Humanitarian Intervention and later, Responsibility to Protect (R2P) in crisis situations have proven highly contentious, controversial and elusive as the global community has in no time agreed on the legal justifications proffered by the intervening states or coalition of states. Evidently, the decisions by the US and the Coalition of the willing states to intervene in Iraq in 2003 have been subjected to much legal scrutiny and debates. Consequently, this paper examines the background and motivations of the US-led action against Iraq and the dichotomous legal position of humanitarian intervention and the Responsibility to Protect. The study adopts a descriptive/comparative approach and gathered data essentially from books, journal articles, reports from international humanitarian organizations and the Internet. Findings from the study revealed that the 2003 invasion of Iraq by the US-led Coalition of the willing does not represent a real case of humanitarian intervention and the principles of R2P. While the existing framework must be re-appraised to effectively address the misinterpretation and application of HI and R2P in crisis situations, effective multilateral collective security organization for its implementation is a desideratum

Keywords: International Law, Responsibility to Protect, Iraq, Sovereignty

1. INTRODUCTION

Arguably, of all the legal principles formulated for the orderly management of the international system, none presents so much anguish, dilemma and confusion for political scientists, practitioners and scholars of international law as the principle of non-intervention. Under the Public International Law, the act of intervening in the internal affairs of another state for whatever reason has been a subject of discussion as long as the laws of nations were developed. The principle of non-intervention implies the right of every sovereign state to conduct its affairs without external interference. Between independent states, respect for territorial sovereignty and political integrity is an essential foundation of international relations. The question is: Does the principle of non-intervention provide an all-encompassing, iron-clad immunity to states from all forms of interference, thus conferring on states a warrant or license

to do as they please? Admittedly, a fundamental change which international law underwent after the Second World War was the adoption in 1945 of the United Nations Charter. Thus, the most and strongest frequently cited prohibitions on intervention are those in Article 2 of the UN Charter. Specifically, Article 2(7) states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.¹

From the above cited Charter provisions, two basic facts are discernible. First, although the UN Charter is quintessentially a treaty – imposing rights, duties and obligations on member-states, curiously enough, nowhere in the Charter is there any explicit prohibition on intervention targeted at or addressed to member-states. Therefore, reference in Article 2(4) already cited to “threat or use of force” may not be extended to include prohibition on intervention, rather prohibition of the use of force. Second, Article 2(7) usually considered a provision on intervention is expressly addressed to the United Nations itself, rather than to states. Hence, the absence of any explicit rule or provision in the Charter unambiguously prohibiting intervention of one state or group of states in the internal affairs of another state has produced the result that states do intervene in the internal affairs of other states.² Article 2(7) which has a colonial origin is now frequently cited by post-colonial states in defence of their newly won sovereignty and in condemnation of any intervention without their consent.³

Consequently, the post-Cold War era faces no more critical issue than how to intervene in order to protect people caught in new and large-scale humanitarian crises such as genocide, war crimes, ethnic cleansing as well as crimes against humanity. As a result, humanitarian intervention has been controversial both when it has happened, as in Kosovo, and when it has failed to happen, as in Rwanda. While there is general agreement internationally that the international community should not stand in the face of massive violations of human rights, respect for the sovereign rights of states maintains a central place among the principles governing relations between states. To address the real dilemmas posed by intervention and sovereignty, the UN Security Council adopted the principle of “Responsibility to Protect” (hereinafter, RtoP or R2P). In recent times, two reasons - humanitarian intervention or responsibility to protect or both have been cited to justify intervention by state or coalition of states in another state. This appeared to have been one aspect of claims by the US-led intervention in Iraq under the auspices of the Coalition of the willing.

2. CONCEPTUAL AND THEORETICAL ISSUES

This paper is premised on two major concepts, namely, “humanitarian intervention” and “responsibility to protect”. Their foundational and theoretical conceptualizations are therefore necessary for the purpose of clarity. Generally understood to be part of the Just War discourse, humanitarian intervention is the trans-boundary use of military force in order to halt or avert large-scale and grave human suffering. It is defined humanitarian intervention as “the use of offensive military force by a state or group of states, in the territory of another state, without its

¹ See Article 2(7) of Charter of the United Nations.

² Benneh, E. Y. 1995. Review of the Law of Non-Intervention. *African Journal of International and Comparative Law*, 7(1): 139-157.

³ Roberts, A. 2004. The United Nations and Humanitarian Intervention. In J. M. Welsh ed. *Humanitarian Intervention and International Relations*. Oxford: University Press, pp.71-97.

permission, for the purpose of halting or averting egregious abuse of people within that state that is being perpetrated or facilitated by the *de facto* authorities of that state”.⁴ From the standpoint of Jennifer Welsh, humanitarian intervention is “coercive interference in the internal affairs of a state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering”.⁵ Similarly, the doctrine has been defined as the proportionate help, including forcible help provided by governments (individually or in alliances) to individuals in another state who are victims of severe tyranny... or anarchy...⁶ Therefore, the concept has to do with the reliance upon force for the justifiable purpose of protecting the inhabitants of another state from treatment which is arbitrary and persistently abusive as to exceed the limits of that authority within which the sovereign is presumed to act with reason or justice.

The above definitions points to the fact that humanitarian intervention is traditionally understood to be coercive action against a state to protect people within its borders from suffering grave harm. Thus, the principle of humanitarian intervention has variously been referred to as “action to free a nation oppressed by another”, action aimed at terminating “tyranny”, “extreme cruelty”, and “religious persecution”, while “feeble government or misrule leading to anarchy” is considered to be predisposing conditions for humanitarian intervention.⁷

In the view of J. L. Holzgrefe, 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 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”.⁸ It is pertinent to observe here that the above characterization is a good one in that it does not pre-judge the issue of authorization by the United Nations. On the one hand, it has been argued that the above definitions suffer some problem as a common threat of only the forcible feature of humanitarian intervention runs through each of them.⁹ Also, scholars have argued that the decisions to engage in humanitarian intervention always raise big questions about the legitimacy of intervention in a sovereign state.

From the definitions reviewed so far, it is pertinent to state that humanitarian intervention involves, firstly, the use of force across state borders by states or group of states. Secondly, the purpose is to prevent or end severe, grave and widespread violations of fundamental human rights of individuals in that other state. Thirdly, the force or help applied must be proportionate.

On the other hand, the Responsibility to Protect is a new and evolving concept in international relations that addresses the failure of states - whether unable or willing to protect their populations from mass atrocities. The R2P embraces three specific responsibilities. (i) the responsibility to prevent, that is, to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. (ii) The responsibility to react. (iii) The responsibility to rebuild.¹⁰ In the two paragraphs (138 and 139) of the final 2005 World Summit, the assembled heads of government agreed that the R2P rests on three pillars: (i) the

⁴ Heinze, E. A. 2009. *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention*. Albany, New York: State University of New York Press, p.7.

⁵ Welsh, J. M. 2004. Introduction. In J. M. Welsh ed. *Humanitarian Intervention and International Relations*. Oxford: University Press, pp.1-7.

⁶ Teson, F. R. 2005. *Humanitarian Intervention: An Inquiry into Law and Morality*. 3rd Edition. New York: Transnational Publishers, p.6.

⁷ Benneh, *op. cit.*, 139.

⁸ Holzgrefe, J. L. 2003. The Humanitarian Intervention Debate. In J, L, Holzgrefe and R. O. Keohene eds. *Humanitarian Intervention: ethical, legal and political dilemmas*. Cambridge : Cambridge University Press, P.18.

⁹ Ochogwu, J, P. 2007. Humanitarian Intervention and protracted Social Conflict. In C. O. Bassey and O, Oshita eds. *Conflict Resolution, Identity Crisis and Development in Africa*. Oxford: Malthouse Press Ltd., p.35.

¹⁰ See Report of the International Commission on Intervention and State Sovereignty (ICISS), 2001, P.xi.

responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crime against humanity and their incitement; (ii) the commitment of the international community to undertake peaceful collective action to help states to exercise this responsibility, including concerted long-term capacity-building effort and short-term preventive diplomacy; (iii) the responsibility of member states to respond in a timely and decisive manner when a state is manifestly failing to provide such protection.¹¹

It is noteworthy that the first pillar of R2P – state responsibility is firmly based on existing international law. Treaty – based and customary international legal obligations require states to prevent and punish genocide, war crimes and crime against humanity.¹² As it has been explained, most countries in the world are willing and able to protect their citizens, and thus fulfill their moral obligations under pillar one. A few countries are willing, but weak and unable to protect their citizens, they need assistance. But some oppressive regimes are unwilling to protect their citizens, or even engage their military and police forces in atrocity crimes. These need to be stopped through pillar three interventions – ideally, authorized by the UN Security Council.¹³

Alex Bellamy has observed that responsibility to protect differed from the older concept of humanitarian intervention by placing emphasis on the primary responsibility of the state to protect its own citizen, introducing the novel idea that the international community should assist states in the endeavour, and situating armed intervention within a broader continuum of measures that the international community might take to respond to genocide and mass atrocities. Furthermore, the principle differed from the proposals brought forward by the International Commission on Intervention and State Sovereignty by, among other things, emphasizing international assistance to states, downplaying the role of armed intervention, and rejecting criteria to guide decision-making on the use of force and the prospect on intervention not authorized by the UN Security Council.¹⁴

Basically, idealism, realism and rationalism, post-modernism and institutionalism, etc. have been the contending theories through which world leaders and scholars alike have understood international politics. For some decades, these theories have provided some of the foundational conceptualizations for explaining and analyzing events on the global stage. However, in the recent past, a number of theories have been developed to explain the practice of humanitarian intervention and R2P. For the purpose of this paper, International Society Theory postulated and popularized by the English School of International Relations and Humanitarian Imperialism by Jean Bricmont are adopted.

The two leading International Society theorists are Martin Wight and Hedley Bull. According to Bull, “a society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in a sense that they conceive themselves to be bound by a certain set of rules in their relations with one another, and share in the working of common institutions”.¹⁵ As Jackson and Sorensen put it, “the international society tradition of international relations sometimes labeled the ‘English School’ is an approach to world politics that focuses on international history, ideas, structures, institutions, and values”. Thus, the basic assumptions and claims are fourfold: Firstly, at the heart of the subject are people and basic values such as independence, security, order, and justice. Secondly, international relations scholars are called upon to interpret the thoughts and

¹¹ See World Summit Outcome, A/60/L.I, September 15, paras. 138 and 139.

¹² See the Convention on the Prevention and Punishment of the Crime of Genocide, January 12, 1951, 78 UNTS 7.

¹³ Notoras, M. and Popovski, V. 2011. Responsibility to Protect. <http://unu.edu/publications/articles>. [Accessed March 12, 2014].

¹⁴ Bellamy, A. 2010. Responsibility to Protect: Five Years on. *Ethics and International Affairs*, 2(4): 143-169.

¹⁵ Bull, H. 1995. *The Anarchical Society: A Study of Order in World Politics*. 2nd edn. London: Macmillan, pp. 13, 39.

actions of the people involved with international relations. Thirdly, international anarchy is an important concept, but not an exclusive premise. In this wise, international society scholars argue that world politics is not merely an international system. It is an “anarchical society” with distinctive rules, norms, and institutions that states people are involved within their conduct of foreign policy. Fourthly, two other leading concepts of international society are the notion of a pluralist society of multiple sovereign states, and that of a solidarism world society of the human population on the planet.¹⁶

The pluralist conception holds that the international society theory is concerned with reducing interstate harm by restricting the legitimate use of force to self-defense. They believe that the use of force is likely to result in abuse of the humanitarian justification and selective application of the principle where the worst case of human rights abuses, such as genocide, are ignored by the international community while force is used in pursuit of national self-interest by the powerful states. The pluralists contend that states can only reach minimal agreement on rules that facilitate international order, such as sovereignty and non-intervention.

The Solidarisms, on the other hand, emphasize an emerging consensus around the basic tenets of human rights and promotion of individual justice as the basis for ensuring a stable international order. They maintain that humanitarian intervention in cases of genocide is necessary, even if the military action is taken outside legitimate international settings, the right to intervene should not be unconditional but should satisfy certain tests, including just cause, force as a last resort, proportionality and a high probability that the use of force will lead to a positive humanitarian outcome. They believe in “sufficient solidarity” within the international community to agree on global principles of justice and human rights, and that this is possible as there are global standards of justice and human rights that necessitate action to protect populations from genocide and using military as last resort.¹⁷

The international society theory has been criticized for a number of reasons. First, that the evidence of international norms as determinants for state policy and behaviour is weak or non-existent. Second, the international society tradition downplays domestic politics – e.g. democracy, and cannot account for progressive change in international politics. Third, the theory fails to give account of international economic relationships. Fourth, realist believes that states are bound only by their own national interests, but not by a common set of rules in their relations with one another, and share in the working of common institutions.¹⁸ The above assertion implies that humanitarian intervention has been viewed as a means to pursue non-humanitarian and neo-imperial interests.

Jean Bricmont in his *Humanitarian Imperialism, Using Human Rights to Sell War* explains that the West uses human rights as an excuse for war, and humanitarian intervention in response to a crisis where they themselves are part of the problem. Thus, this irrational and paradoxical situation can only be properly understood when it is seen in a broader context of imperial ambition.¹⁹ The theory argues that Western States that contritely rejected imperialism few decades ago are now resorting to military force to intervene in the territories of other states to actively pursue and protect America’s core values of freedom, justice, human rights and democracy.²⁰ Therefore, most of the interventions have been engaged on behalf of “the international community” by Western states, mainly the United States and the North Atlantic Treaty Organization (NATO) powers.

¹⁶ Jackson, R. and Sorensen, G. 2013. *Introduction to International Relations: Theories and Approaches*. 5th edn. Oxford: University Press, p.132.

¹⁷ Ibid, 150.

¹⁸ Ibid, 151.

¹⁹ Bricmont, J. 2007. Humanitarian Imperialism: Using Human Rights to sell war. *Monthly Review*.

²⁰ Dickson, M. 2010. Humanitarian Intervention in the Post – September 11 Attacks: An Overview of the US-Iraq War, 2003. *African Journal of International Politics and Diplomacy*, 1 (1&2): 150-163.

3. BACKGROUND TO THE US-LED INTERVENTION IN IRAQ

On August 2, 1990, Iraq invaded the small neighbouring state of Kuwait. Four days later, the country was annexed as Iraq's nineteenth province. The UN Security Council resolutions condemned the invasion demanded Iraq's unconditional withdrawal from Kuwait. Five months of negotiation's yielded no positive result. The only option remaining was war. As a result, the US-led military coalition codenamed *Operation Desert Storm* to expel Iraq from Kuwait was launched in mid – January 1991. By the end of February, 1991, Iraq had been expelled from Kuwait. On April 3, 1991 the United Nations Security Council at its 2981st meeting adopted Resolution 687 (hereinafter, the “Ceasefire Agreement” or “Armistice Resolution”)²¹ specifying formal ceasefire terms between Iraq and the international coalition. According to the resolution, “Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision of... all” chemical and biological weapons and ... all ballistic missiles with a range greater than one hundred and fifty kilometers, and shall unconditionally agree not to acquire or develop nuclear weapons or nuclear-weapon-usable material. The resolution also required that Iraq submits to the United Nations Special Commission (UNSCOM) and International Atomic Energy Agency (IAEA) weapons inspection. In addition to the disarmament proviso, the resolution bared Iraq from committing or supporting any act of terrorism or allowing any organization, with interest towards the commission of such acts to operate within its territory.

As years went by, the Security Council became increasingly disunited over whether Iraq had fulfilled the disarmament requirements and other provisions of the armistice resolution. However, following the September 11, 2001 terrorist attacks on the US, the United States kick-started her anti-terrorism war, first, by launching an attack on Afghanistan and overthrowing the Taliban government there.²² Thereafter, the US-led “Coalition of the Willing” intervened in Iraq with the principal justifications in the prelude to the invasion as being, the Iraqi government's alleged possession of weapons of mass destruction, its alleged failure to account for them as prescribed by numerous UN Security Council Resolutions, and its alleged connection with terrorist networks. Ken Roth observed that, in this tangle of motives, Saddam Hussein's cruelty towards his own people was mentioned prominently. Hence, the US determination to free Iraq people from the tyranny of Saddam Hussein and the entire world from grave danger.²³

Similarly, President George W. Bush eloquently announced that “the cruel and brutal nature of the Iraqi regime is indisputable and expressed the US main motivation for launching a pre-emptive war against in order to: disarm Iraq, to free its (Iraq people) from the dictatorial regime of Saddam Hussein and to defend the world from grave danger.²⁴ Therefore, the US determination to free Iraq people from the tyranny of Saddam Hussein and the entire world from grave danger alleged to have been posed by Hussein's dictatorial regime (which, sounds like humanitarian intervention and the responsibility to protect in customary international law), is the basic problem which this paper seeks to unravel.

4. DISCUSSION

From what has been discussed above, it is pertinent to state here that the problem is how to analyze and interpret the use of force or intervention by one state or a coalition of states in another state, particularly from the point of view of humanitarian intervention and R2P. As codified in the UN Charter,²⁵ the prohibition of the use of force has three basic parameters

²¹ See the United Nations Security Council Resolution 687, April 3, S/RES/687 (1991).

²² Dickson, *op cit*, 151.

²³ Roth, K. 2004. War in Iraq: Not a Humanitarian Intervention. *Human Rights Watch*. <http://www.hrw.org/news>. [Accessed March 15, 2014].

²⁴ Uchegbu, A. 2003. War in Iraq and its Implications for International Law. *Nigerian Forum*, 24, 7-8.

²⁵ See the UN Charter, Article 2(4); Article 2(1); Article 2(2); Article 51.

delimiting it. First, the prohibition applies to threats or uses of armed force against “territorial integrity or political independence of any state” (Article 2 (4)). That is, used in a manner inconsistent with “maintaining international peace and security, ... taking effective collective measures for the prevention and removal of threats to the peace, and ... the suppression of acts of aggression or other breaches of the peace” (UN Charter, Article 2(1), or developing friendly relations among nations based on respect for the principle of equal rights and self-determination of the peoples” (Article 2(2)). Third, the prohibition does not apply to threats or uses of armed force in the exercise of “inherent right of individual or collective self defense if an armed attack occurs... until the Security Council has taken measures necessary to maintain international peace and security” (Article 51). Any use of armed force outside of these parameters is illegal.²⁶ From the Charter provisions highlighted above, it is clear that humanitarian intervention is a controversial concept in international law, it is not provided for by the UN Charter as it neither constitutes a legitimate use of force authorized by the UN Security Council nor the use of force in self-defence.

Evidently, the decision by the US and its allies to intervene in Iraq has been subjected to the myriad of scrutiny and debates. Pertinent questions to ask are, was the US-led intervention in Iraq in 2003 a humanitarian intervention or responsibility to protect? What is the chasm between both concepts and the US-led action against Iraq? Or which of the global security provisions did they invoke? From the point of view of Badescus and Thomas (2010), “the US-led invasion of Iraq had nothing to do with the responsibility to protect, the “disingenuous” use of humanitarian rhetoric by US and UK leaders may in fact have significantly affected the overall perception of the responsibility to protect and may even have made a positive contribution to the development of the R2P norm”.²⁷

Furthermore, Weiss scholars have tended to downplay the significance of the Iraq example for the future R2P, on the grounds that it did not meet the standards that have been developed since the publication of the ICISS report in 2001.²⁸ Under R2P, principles of military intervention are fourfold. Firstly, *The Just Cause Threshold* which states that for military intervention for human protection purposes to be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur of the following kind: (a) large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action or state neglect or inability to act, or a failed state situation or (b) large scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, act of terror or rape. Secondly, *the Precautionary Principles* which encompass right intention, last resort, proportional means and reasonable prospects. Thirdly, *the Right Authority*, which concerns both who has the right to resort to the use of force and how this right can be justified. And fourthly, *the Operational Principles*, which sets forth important operational principles to guide any intervention carried out for human protection purposes.²⁹

Similarly, six factors to determine whether the use of force can be characterized as humanitarian intervention have been identified. The pertinent question is, what was the level of killings in Iraq in 2003 before the intervention? Was genocide or comparable mass slaughter underway or imminent? As Ken Roth (2004) notes, “brutal as Saddam Hussein reign had been, the scope of the Iraqi Government’s killing in March, 2003 when the intervention took place was not of the exceptional and dire magnitude that would justify humanitarian intervention”.³⁰ Military intervention may be necessary not only to stop ongoing slaughter, but also to prevent future slaughter; however, the future slaughter must be imminent. Also, to justify the

²⁶ Westra, J. H. 2007. *International Law and the Use of Armed Force*. London, New York: Routledge, p. 14.

²⁷ Badescu, C. and Weiss, T. (2010). “Misrepresenting R2P and Advancing Norms: An Alternative Spiral”. *International Studies Perspectives*, 11:354-374.

²⁸ Thakur, R. 2004. *Iraq and the Responsibility to Protect Behind the Headlines*, 62(1):1-16.

²⁹ ICISS Report, *op. cit.* p.xi.

³⁰ Roth, *op. cit.*, 21.

extraordinary remedy for military force for preventive humanitarian purposes, there must be evidence that large-scale slaughter is in preparation and about to happen unless militarily stopped.³¹ Before the US-led invasion of Iraq, there was no claim that the Iraqi government was planning imminent mass killing, and no evidence had emerged that it was. Therefore, the lack of proof of ongoing or imminent mass slaughter was itself sufficient to disqualifying the invasion of Iraq as a humanitarian intervention or responsibility to protect.

The second argument is whether the intervention and subsequent use of force was the last reasonable option to stop mass killing, genocide, ethnic cleansing and crime against humanity. The criterion for last resort states that the use of force should be employed when alternative means are not available. This implies that military force should not be used for humanitarian purposes if effective alternatives are available. In addition, all possible measures do not have to be attempted or exhausted unless there is a reasonable expectation that they will be successful.³² Since there was no ongoing mass killing and other related crime in Iraq in early 2003, the intervention was therefore unnecessary. If the purpose of the intervention was primarily humanitarian, then at least one other option should have been tried long before resorting to the extreme military step of invading.

The third factor is that humanitarianism should be the dominant reason for military intervention. On whether the invasion of Iraq was guided primarily by humanitarian purpose, it is argued that concern for the welfare of the Iraqi people was a subsidiary motive for the military action. The principal reasons offered in the prelude to the invasion were, among other factors, Iraqi regime's cruelty toward its own people. But in the pre-war period, it was never the dominant factor. Therefore, if the invading forces had determined to maximize the humanitarian impact of an intervention, they would have been better prepared to fill the security vacuum that predictably was created by the toppling of Hussein's government.³³ Fourth, whether the intervention was conducted within respect for human rights and in compliance with humanitarian international law also ventilates robust debate. During the intervention, many civilians were killed and apart from bombs that were dropped on the civilian population, the US ground forces also used cluster munitions near populated areas with predictable loss of civilian life. Approximately 7500 civilian were killed during the invasion phase while more than 60,000 died as at April 2007.³⁴ The loss of life and such disregard for civilian life is incompatible with a genuine humanitarian intervention.

Fifth, it is also expected that an intervention carried out with humanitarian motives must produce more good than harm in the territory invaded. This implies intervention should not be tried if it seems likely to produce a wider conflagration or significantly more suffering. The method of intervention must be reasonably calculated to end the humanitarian catastrophe as rapidly as possible. The invasion of Iraq did not meet these criteria as Iraq was not better off after the intervention.³⁵ Sixth, there is considerable value in receiving the endorsement of the United Nations Security or other multilateral, regional body before launching a humanitarian intervention. An international commitment on intervention also increases the likelihood that adequate personnel and resources will be devoted to the intervention and its aftermath. An approval by the Security Council ends the debate about the legality of an intervention. In the Iraq case, however, the intervention was carried out without the UN Security Council authorization; hence it was a unilateral intervention.

Taking above provisions and analysis into consideration, it is established that the invasion of Iraq failed to pass the litmus for humanitarian intervention and the responsibility to protect. As Moses, Bahador and Wright have pointed out, humanitarian justifications for the

³¹ Ibid.

³² Fixdal, M. and Smith, D. 1998. "Humanitarian Intervention and Just War". *Mershon International Studies*, 42 (2): 283-312.

³³ Roth, *op cit.*, 22.

³⁴ Dickson, *Op cit.*, 159.

³⁵ Ibid.

Iraq invasion were at best used as a clock of convenience for an ill-conceived US foreign policy adventure and only after the “real” justifications had fallen through.³⁶ It is further claimed that “with no evidence uncovered to date, the pre-war justifications of the Iraqi threat (WMDs and links to Al-Qaeda gave way to embellishing the rationale for freeing subjected Iraqi populations from Saddam Hussein’s thuggery. Also, Iraq involved nothing more than a humanitarian veneer applied after no evidence was found of either the purported WMDs or links to Al-Qaeda.”³⁷ In a separate account, Thomas Weiss argues that the humanitarian justifications for invading Iraq were “spurious and largely *ex port facto*” and that R2P language had only been retroactively applied”.³⁸ Corroborating the above assertion, Ken Roth opines that Iraq war was definitely not a humanitarian intervention. This is because the pre-war justifications were ‘comparatively minor’, that the war was not mainly about saving the Iraqi people from oppression. Thus, the humanitarian arguments only came to the fore after alternative justifications had failed.³⁹ Jack Straw argues that the Iraq war represented an almost insurmountable challenge to the principle of R2P from its inception. The motives of the war – the assumed threats of a terrorist attack with Iraqi chemical and biological weapons – were already being questioned when a small coalition led by the United States and the United Kingdom decided to invade Iraq in 2003. The manipulation of the facts that led them to stage the illegal war without the support of the international community was aggravated when they cited the responsibility to protect Iraqi citizens as a motivation to invade Iraq.⁴⁰ Consequently, Alex Bellamy (2004:2005) had accepted that humanitarian arguments were given considerable weight by the US prior to the 2003 invasion, but the legal justification (based on non-compliance with prior UN Security Council Resolutions) was at the centre of the attempt to gain Security Council authorization.⁴¹ It could be recalled that the Security Council had adopted a series of resolutions, including Resolution 660 (1990), 661/678 and 1441, among others, which Iraq’s regime had failed to comply.

However, the UN Security Council resolution 1706 (2006)⁴² represents the first time the principle of R2P was invoked in a resolution relating to conflict. Beyond the specific mention in the paragraphs of the 2005 World Summit Final Document, it is noteworthy to see how the terminology with regards to sovereignty and the responsibilities of states has changed. In the resolution, the responsibilities granted to the United Nations Mission in the Sudan (UNMIS) authorized, in that moment, to protect civilians that were subjected to threats to physical violence, “without prejudice to the responsibility of the Government of the Sudan”. However, to date, the clearest case of an instance of humanitarian responsibility in war explicitly justified by the R2P doctrine is the 2011 NATO air forces intervention in Libya to protect its civilian population from armed attack by the violent regime of Muammar Gaddafi. The intervention was authorized by the UN Security Council Resolution 1973, the air power of NATO and some of its members, particularly France, Britain and the United States, were authorized “to protect civilians and civilian populated areas” of Libya they were under attack by armed forces loyal to Gaddafi. NATO carried out the mission and helps bring an end to the humanitarian crisis.

³⁶ Moses, J. Bahador, B. and Wright, T. 2011. The Iraq war and Responsibility to Protect: Uses, Abuses and Consequences for the future of Humanitarian Intervention. *Journal of Intervention and Statebuilding*, 5(4): 347-367, DOI:10.1080/17502977.2011.595606.

³⁷ Weiss, *op cit*, 137.

³⁸ *Ibid*.

³⁹ Roth, K. 2008. Was the Iraq war a Humanitarian Intervention? And what are our Responsibility today. In R. Copper and J. Kohler Ed. *Responsibility to Protect: The Global Moral Compact for the 21st Century*. New York: Palgrave Macmillan, pp. 101-113.

⁴⁰ Straw, J. 2005. Speech at the Labour Party Conference, Brighton, 28 September.

⁴¹ Bellamy, A. 2004. Ethics and Intervention: the ‘humanitarian exception’ and the problem of abuse in the case of Iraq. *Journal of Peace Research*, 41, 131-147.

⁴² See UN Security Council Resolution 1706, adopted by the Security Council at its 5519th meeting, 31 August 2006, [S/RES/1706(2006)].

5. CONCLUSION

On the strength of the analysis presented above, it is recalled that some opponents of the norm have long argued that the illegal use of force in Iraq in 2003, and the earliest attempt by President George Bush to justify the intervention as serving humanitarian purposes were examples of the potential danger and misuse of R2P. However, this study has made it clear that the invasion of Iraq, neither represents a proper case for the implementation of R2P, nor an example of a response under the R2P framework. It is pertinent to note that while gross human rights violations occurred in Iraq in the 1980s and 1990s, neither were these crimes occurring, nor likely to happen, at the time of the 2003 military intervention, thus failing to meet the basic criteria legitimizing the consideration of “R2P crimes” in this situation. Similarly, peaceful measures were not exhausted before the consideration of military force. Another prerequisite under R2P as spelled out in the 2005 WMD summit. Again, while R2P restricts the use of force by the Security Council under chapter VII of the UN Charter, the invasion itself was illegal as it occurred by a “Coalition of the Willing” – a *defacto* force led by the US with the absence of UNSC authorization.

In sum, the 2003 invasion of Iraq by the US-led Coalition of the Willing does not represent a real case of humanitarian intervention under the principles of R2P, as it did not meet the criteria that have been developed since the publication of ICISS Report, hence, no major lessons can be said to draw from the Iraq example for promotion of the R2P. In the post-Cold War era, while principles guiding humanitarian intervention and R2P are still evolving, international consensus regarding the legal, political, and moral basis for international measures to alleviate human suffering around the world must be separated from national interest of the intervening state or group of states. However, humanitarian intervention and R2P have become an effective and positive form of intervention in international relations. However, drawing from the ‘lip service’ by multilateral and regional collective security organizations in the Darfur crisis, the concept responsibility to protect will remain pure rhetoric unless and until those with the power to intervene effectively – by exerting political, economic or, in the last resort, military muscle – are prepared to take the lead.