

IN THE NAME OF PROTECTION: THE DILEMMA OF UNILATERAL HUMANITARIAN INTERVENTION

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Abstract

The issue of whether states can legally use force against another state to stop mass atrocities is undoubtedly one of the most controversial debates in contemporary international law. The present article asserts that there is no unilateral right of humanitarian intervention (UHI) in international law and, more significantly, that there should be none. It reiterates that the emphasis on such a right is motivated not by any legal necessity but by the need (of some) to legitimize coercion via moral rhetoric. The reasoning is trifurcated, encompassing legal, historical and structural dimensions. Legally, UHI finds no foundation in Article 2(4) of the United Nations Charter (UN Charter), the self-defence exception under Article 51, the doctrine of necessity under the Articles on State Responsibility, or customary international law. Historically, the logic underlying UHI descends in an unbroken line from colonial civilizing missions and League of Nations mandates to post-Cold War R2P, each iteration reproducing the same hierarchy between protector and protected under a different name. Structurally, five recurring pathologies, including selectivity, mission creep, resource misallocation, collateral damage, and moral hazard, exist. Together, these indicate systematic failure even against their own stated objectives. The crisis in Gaza, in which over 72,000 people have been killed, serves as the litmus test. It exposes, with painful clarity, how humanitarian norms are invoked selectively. It shows how institutions are obstructed by the states that claim to uphold those norms elsewhere. The article concludes that the path forward lies not in refining the conditions for intervention, but in building an architecture that is preventive, collective, and regionally grounded. The goal is not a world in which force is better regulated; it is a world that no longer needs to reach for it.

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1. Introduction

“There is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice.”²

Montesquieu's warning is directly applicable to the theory of humanitarian intervention. Time and again, the purported use of power to protect the “weak” has produced outcomes that are anything but protective. Those who have witnessed the destruction of Baghdad, the collapse of Tripoli, and the besieging of Gaza know very well how far this promise fell short in practice.

The roots of humanitarian intervention lie in natural law theory and can be traced to Hugo Grotius. Similar to contemporary advocates of humanitarian intervention, Grotius contemplated circumstances in which force might be justified to remedy severe injustices. Yet

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² Charles de Montesquieu, *The Spirit of the Laws* (Anne M Cohler, Basia Carolyn Miller and Harold Samuel Stone eds, Cambridge University Press 1989)

even within the Grotian framework, the ethical dilemma of who may assume the role of saviour and who is deemed worthy of protection was evident. Thus pointing to moral dilemmas that existed from the very foundations of this concept.³

In this essay, UHI refers to the deployment of military force by one or more states against another state without its consent and without authorization from the UN Security Council (UNSC). The objective being to stop major violations of basic human rights such as genocide, war crimes, ethnic cleansing, etc.⁴ It is worth noting that Security Council-authorized operations fall into a different legal category and are outside the scope of this article.

The essay will argue that there is no right of UHI in international law, nor should such a right exist. The debate has advocates on both sides. Unfortunately, both sides rest on unrealistic ideals. Proponents of the UHI picture an intervention uncoloured by strategy and ulterior motives. Opponents assume an international legal system independent of politics. Accordingly, this essay adopts a balanced approach, acknowledging the valid concerns raised by both sides while primarily focusing on the challenges associated with UHI. In doing so, it develops a framework better suited to the complexities of an international order that is neither black nor white but shades of grey.

2. Literature Review

The academic discourse around humanitarian intervention spans a range of fields, including international law, political theory, international relations, and postcolonialism. Although all the participants in this debate agree on the necessity of protecting civilian populations from grave injustices, they firmly disagree on whether humanitarian intervention can be legal, ethical, and politically viable. This paper briefly reviews the main lines of this academic discourse and identifies the role of this current article within the discussion.

Among the most prominent arguments for humanitarian intervention come from liberal just war theories. Scholars such as Michael Walzer and Nicholas Wheeler suggest that the rule of non-intervention (while being a fundamental pillar) cannot be regarded as absolute in cases of genocide, ethnic cleansing, and other mass atrocities.⁵ Walzer adds to this by suggesting that humanitarian intervention becomes ethical — or perhaps even a necessity — when a state behaves in ways that shock the conscience of humankind and deprive individuals of their basic survival needs.⁶ It is clear, then, in light of such scholars, that sovereignty cannot be an unconditional right. Instead, the right of sovereignty becomes valid only when it serves to protect people under its jurisdiction. Hence, whenever a state violates the sovereignty

³ Marko Novaković, 'The Roots of the Idea of Humanitarian Intervention in De Iure Belli ac Pacis by Hugo Grotius' (2019) 71(2) *Medjunarodni problemi* 244, 244–58 <https://doi.org/10.2298/MEDJP1902244N> accessed 22 October 2025.

⁴ Elisabeth J Brennen, 'Rejecting Customary Regression: Unilateral Humanitarian Intervention and the Evolution of Customary International Law' (2022) 43 *Michigan Journal of International Law* 241

⁵ Terry Nardin, 'From Right to Intervene to Duty to Protect: Michael Walzer on Humanitarian Intervention' (2013) 24(1) *European Journal of International Law* 67. ; Nicholas J Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford University Press 2002).

principle itself by committing mass atrocities or failing to prevent them, sovereignty loses the moral value embedded in its essence.

However, this liberal view has been heavily criticized by international lawyers. As Simon Chesterman suggests, attempts to address humanitarian catastrophes might weaken other legal principles.⁷ For instance, while trying to deal with injustice and promote moral values, UHI will produce yet another injustice, undermining the rule of law.⁶ Along similar lines of argument, Christine Gray and Ian Brownlie support their position from a positivist standpoint. According to Gray and Brownlie, moral considerations cannot take precedence over the categorical prohibition mentioned in the UN Charter.⁷ For these researchers, the prohibition on unilateral use of force is one of the crucial aspects of the legal system established after World War II. Allowing exceptions would simply mean returning to the era where humanitarian catastrophes occurred because no legal restrictions existed.

Notably, the concept of R2P aimed to address this problem by reconciling the dichotomy between the necessity of morality and limitations of law.⁸ However, R2P was unable to solve this ever-so-complex tension, as it failed in practice. The use of R2P has been inconsistent across comparable situations. For instance, the Security Council sanctioned military action in Libya, but failed to respond effectively in Syria. Moreover, the aftermath of R2P interventions has often been contested, with outcomes in some cases generating further instability rather than eradicating harm.⁹

Other critical legal scholars have further examined these complexities. Anne Orford contends that the discourse of humanitarian intervention tends to portray the state doing the intervention as a beneficent power, whose legitimacy lies in protecting the weak and vulnerable. The rhetoric here, according to Orford, resembles that of earlier forms of imperial trusteeship, indicating that while humanity highlights its progress, it is instead revolving in the same circle under a different masquerade.

Scholars working under the umbrella of Third World Approaches to International Law (TWAIL), among other postcolonial traditions, have elaborated further on such criticisms. According to TWAIL scholars, one cannot understand current international law without seeing it in relation to its colonial history and structural inequalities. A particularly influential contribution comes from Makau Mutua. In his view, the international humanitarian narrative

⁶ Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford University Press 2001) 45.

⁷ Christine Gray, *International Law and the Use of Force* (4th edn, Oxford University Press 2018) 36–40; Ian Brownlie, *International Law and the Use of Force by States* (Oxford University Press 1963) 338–342.

⁸ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre 2001); United Nations General Assembly, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc A/59/2005 (21 March 2005) <https://www.refworld.org/reference/themreport/unga/2005/en/68553> accessed 19 October 2025.

⁹ United Nations Secretary-General, *Responsibility to Protect: 20 Years of Commitment to Principled and Collective Action*, Report of the Secretary-General (29 May 2025) <https://www.globalr2p.org/publications/responsibility-to-protect-20-years-of-commitment-to-principled-and-collective-action/> accessed 19 October 2025.

often casts the Global South as an area populated by victims who need rescuing from local brutality, placing Western protagonists in the role of rescuers.¹⁰ This portrayal tends to depoliticize the actions of local populations and reinforce colonial hierarchies of domination and legitimation.

Following this line of reasoning, Elisabeth Brennan states that efforts to create a customary international right to UHI are a sign of legal retrogression.¹¹ Modern studies, such as those by Akande and Roberts, illustrate that the immorality of UHI does not make it any less illegal. The former explains that circumventing the United Nations system undermines the Charter's legality, while the latter notes that labelling an intervention as “illegal but legitimate” may encourage selective acceptance of the rule of law.¹²

UHI's lack of legitimacy, colonial heritage, and failure as a practice have all been critiqued separately in the literature. However, this article sets out to show that all three criticisms are symptoms of the same problem: coercive authority held by a few states. This is done by critically analyzing the legal, historical and structural case against UHI.

3. The Legally Impossible Nature of UHI

The notion that international law allows for, or should allow for, a UHI does not survive scrutiny at every level of international legal analysis. These challenges are not simply procedural (and hence negligible) but are present within the Charter provisions themselves, international legal principles, and even in customs.

3.1 The UN Charter

Article 2(4) of the UN Charter precludes the use of force against the territorial integrity or political independence of any state. Supporters of UHI have contended that this prohibition is subject to an exception, including the use of force to pursue the UN's human rights-related objectives. In practice, such an interpretation has received negligible judicial or academic backing. Article 2(4) is considered to codify a peremptory norm of international law, and thus leaves it immune to derogation save where provided for by the Charter itself.¹³

¹⁰ Makau Mutua, ‘Savages, Victims, and Saviors: The Metaphor of Human Rights’ (2001) 42 *Harvard International Law Journal* 20

¹¹ Elisabeth J. Brennan, *Rejecting Customary Regression: Unilateral Humanitarian Intervention & the Evolution of Customary International Law*, *Michigan Journal of International Law*, Vol. 43 (2022), pp. 241–273.

¹² Dapo Akande, ‘The Legality of Military Action in Syria: Humanitarian Intervention and Responsibility to Protect’ (EJIL: Talk!, 28 August 2013) <https://www.ejiltalk.org/the-legality-of-military-action-in-syria-humanitarian-intervention-and-responsibility-to-protect/> accessed 17 October 2025.; Anthea Roberts, ‘Legality vs Legitimacy: Can Uses of Force be Illegal but Justified?’ in Philip Alston and Euan Macdonald (eds), *Human Rights, Intervention, and the Use of Force* (Oxford University Press 2008).

¹³ Ian Brownlie, *International Law and the Use of Force by States* (Clarendon Press 1963) 267; Jörg Kammerhofer, ‘The Resilience of the Restrictive Rules on Self-Defence’ in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 627, 642.

Article 51 also fails this test. It was clear from the foundations that the notion of self-defence applies only when there is an armed attack by one state against another. In *Nicaragua v United States of America* and *Oil Platforms*, the Court did not agree to extend its application further. In *Armed Activities on the Territory of the Congo*, the International Court of Justice (ICJ) explicitly said that it will not accept humanitarian considerations as grounds for unilateral force; hence, no doctrine of self-defence or the like applies to such interventions.¹⁴

3.2 The Doctrine of Necessity

The third rationale is through the law of State responsibility. Some authors contend that extreme humanitarian concerns can be considered as justification under Articles 25 and 26 of the ILC Articles. However, necessity as such is a strictly defined legal category.¹⁵ To trigger the necessity defence, the invoking state must face an immediate threat to one of its vital interests. Humanitarian emergencies taking place in other countries are simply irrelevant and thus inapplicable in this regard.

3.3 Customary International Law

The case under the umbrella of customary law also rests on untenable grounds. For custom, there must be consistency of state practice and the presence of *opinio juris*, or the conviction that this practice is legally required. These prerequisites are not fulfilled in the current scenario. Examples of humanitarian interventions have a narrow geographic and political focus, are primarily carried out by Western countries or their allies, and are consistently challenged rather than accepted as legitimate.

For instance, the United Kingdom's 2013 attempt to define humanitarian interventions as exceptions to the rule has been strongly opposed by the Group of 77, the Non-Aligned Movement, and many African, Asian, and Latin American states.¹⁶ Similarly, most examples used to prove that a customary principle is forming do not hold up. The interventions in Somalia, Haiti, Bosnia, East Timor, and Libya have all been authorized by the UNSC in accordance with Chapter VII. They fall within the scope of international law, but don't exist beyond it. Kosovo serves as the canonical example, but it is also widely accepted that it was an exceptional political act rather than a truly humanitarian intervention.

¹⁴ International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)*, ICJ Rep 1986, p 14; *Oil Platforms (Islamic Republic of Iran v United States of America)*, ICJ Rep 2003, p 161; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, ICJ Rep 2005, p 168.

¹⁵ Danish Institute of International Affairs, *Humanitarian Intervention: Legal and Political Aspects* (1999) 82; O'Meara, 'Should International Law Recognize a Geology of Humanitarian Intervention?' (2017) 66 *International and Comparative Law Quarterly* 441, 463.

¹⁶ Elisabeth J Brennan, 'Rejecting Customary Regression: Unilateral Humanitarian Intervention and the Evolution of Customary International Law' (2022) 43 *Michigan Journal of International Law* 241; V Lowe and A Tzanakopoulos, 'Humanitarian Intervention' in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press Online Edition, 2011)

As Kevin Jon Heller correctly asserts, the Kosovo case should be seen as a violation of the ban on the use of force rather than a development (or perhaps acceptance) of that rule. There does not exist a single legal means that upholds UHI since this concept has only survived as a figment of political expediency.¹⁷

4. The Genealogy of Humanitarian Intervention

A discussion on UHI in present times would be incomplete (and unfair) without analyzing its historical roots. The primary inquisition in this regard is whether the fundamental assumptions that were endemic to the concept have been truly left behind or rather just repackaged in a more subtle moral discourse.

4.1 From Ancient Practice to Colonial Rule

Although the concept of humanitarian intervention discussed in this article appears to have emerged later, it can be traced back to ancient times. This is because the powerful political entities in existence before the founding of the United Nations (UN) also justified the need to engage in activities on other lands. Similar to present-day justifications, their activities were grounded in the premise of ensuring order, civilization, or protection. For example, the expansion of the Roman Empire was seen as a process of bringing peace and order to societies believed to lack these.¹⁸

This practice continued during the period of colonization. Imperialism was always sold in terms of civilization and humanitarian duty. While British rule in India and Africa could be due to several grounds, including strategic and economic ones, the moral justification for it was always highlighted. British colonizers viewed their actions as a benevolent exercise aimed at ensuring that order and civilization were brought to these backward societies.¹⁹ This “civilizing mission” was not merely a byproduct of imperialism; rather, it was a major legitimizing factor for the latter.

4.2 From the Post-War Period to Contemporary Times

Similar ideologies have also been institutionalized during the interwar years through the Mandate System of the League of Nations.²⁰ Areas previously colonized by now-defeated empires were made to fall under the governance of European nations because “they lacked the

¹⁷ Kevin Jon Heller, ‘The Illegality of “Genuine” Unilateral Humanitarian Intervention’ (2021) 32 *European Journal of International Law* 613.

¹⁸ William Plowright, ‘The Imperial Past and Decolonised Future of Humanitarian Action’ *Humanitarian Alternatives* (10 Jevenuly 2023) <https://humanitarian-alternatives.org/en/the-imperial-past-and-decolonised-future-of-humanitarian-action/> accessed 17 October 2025.

¹⁹ Hannah Cornwell, ‘Introduction: Roman Imperialism and the Meaning of Peace’ in *Pax and the Politics of Peace: Republic to Principate* (Oxford University Press 2017); Carey A Watt and Michael Mann, *Civilizing Missions in Colonial and Postcolonial South Asia: From Improvement to Development* (Anthem Press 2011) ch 1 <https://www.jstor.org/stable/j.ctt1gxp9mc.3> accessed 20 October 2025.

²⁰ Miguel Bandeira Jerónimo, ‘A League of Empires: Imperial Political Imagination and Interwar Internationalisms’ in Miguel Bandeira Jerónimo and José Pedro Monteiro (eds), *Internationalism, Imperialism and the Formation of the Contemporary World* (Palgrave Macmillan 2018) 8

capacity for self-rule". Though presented as a duty to help less developed civilizations, it was, in fact, an international hierarchy in which only some states had the right to impose their will.

The international hierarchy persists in discussions of humanitarian interventions even in present times. For instance, even today, it is the Global North that can define a humanitarian situation, whether intervention is required, and how it is to be carried out. It is due to the power granted by military, economic, and political supremacy that intervention can be shaped according to their preferences, something most states do not possess.

5. Institutional Challenges and Structural Breakdown in UHI

5.1 UN Security Council

The primary argument put forward in support of UHI is that the UNSC is incapable of taking any action due to the veto rights held by its permanent members. However, this argument is inherently contradictory. In the most recent cases, it is the permanent members of the P5 who both shape and block collective action. The United States has itself allegedly carried out unilateral military action under humanitarian pretexts, such as in Iraq (and even Iran).²¹ At the same time, it has also used its veto power, alongside others, to block draft resolutions, including a proposed permanent ceasefire in Gaza in 2025.²² This creates the very institutional paralysis that supporters of UHI rely on to justify such actions.

The same can be said about permanent members of the West who advocated for military intervention in Libya based on the R2P principle but refused to do anything similar in Syria, where the humanitarian considerations were even more valid.²³ Thus, replacing collective security with unilateral force in such circumstances does not solve the problem of selectivity; it concentrates it further in the hands of those already responsible for it.

5.2 International Courts

There are also problems with the effectiveness of existing international judicial institutions in dealing with violations of international law by powerful countries. For instance, in *Nicaragua v. United States*, the ICJ determined that the United States had breached customary international law which prohibits the use of force by backing up the Contra rebels and laying

²¹ Jurist, 'The US-Iran Conflict Is Dismantling the Rules-Based International Order' (Jurist, 20 March 2026) <https://www.jurist.org/commentary/2026/03/the-us-iran-conflict-is-dismantling-the-rules-based-international-order/> accessed 20 June 2026

²² United Nations News, 'Security Council: US votes against resolution on Gaza ceasefire' (18 September 2025) <https://news.un.org/en/story/2025/09/115xxx> accessed 20 June 2026.

²³ Danny Singh and Haian Dukhan, 'From Libya to Syria: Assessing the Impact of the Responsibility to Protect Doctrine on Global Intervention Strategies' (2025) *Global Responsibility to Protect* (Brill, online first, 1 April 2025) <https://brill.com/view/journals/gr2p/gr2p-overview.xml> accessed 20 June 2026.

mines in the harbours of Nicaragua. However, the United States refused to accept the jurisdiction of the court, failed to take part in the merits hearing and continued violations.²⁴

Similarly, the International Criminal Court (ICC) is often accused of selective prosecution; 47 of the 54 warrants for arrest that had been filed by 2024 are aimed at African leaders, which is perceived as evidence of neo-colonialism and has led to a decrease in the credibility of the ICC.²⁵ Furthermore, efforts have been made to investigate crimes committed by influential leaders. Many still roam free, such as Russian President Vladimir Putin and Israeli Prime Minister Benjamin Netanyahu.²⁶

The above examples demonstrate a broader issue: the inability of international organizations to impose their authority on powerful countries. In this regard, even if it were accepted as an individual's legal right, UHI could not be effectively enforced due to the absence of any means to ensure its appropriate and unbiased application and to protect it from abuse.

6. Strategic and Operational Failures: Five Recurring Patterns

6.1 Selectivity and the “Politics” of Compassion

One of the most significant patterns of humanitarian intervention practice is the extreme degree of selectivity involved. While the ideal concept of humanitarian intervention is built on the assumption of universality, namely, that the value of life is equally important for all people, that is precisely where practice and theory fail to coincide.

For instance, the NATO intervention in Kosovo in 1999 was explained by the rapidly escalating humanitarian situation that led to the deaths of several thousand people. On the other hand, the war in Yemen resulted in a much higher death toll.²⁷ Yet, this has not led to comparable military intervention. In the same manner, the authorization of force in Libya through the R2P doctrine was permitted, but the same doctrine stayed silent in the case of Syria even when there was a confirmed use of chemical weapons and many more civilian fatalities.²⁸ The Rwandan genocide continued unabated while international organizations remained preoccupied with determining whether the legal threshold for “genocide” had been

²⁴ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States) (ICJ, 27 June 1986) [1986] ICJ Rep 14.

²⁵ Melissa Hendrickse, ‘A chance for Africa to counter the pitfalls of international criminal justice?’ (Amnesty International, 22 April 2024) <https://www.amnesty.org/en/latest/news/2024/04/a-chance-for-africa-to-counter-the-pitfalls-of-international-criminal-justice/> accessed 20 October 2025.

²⁶ Ashifa Kassam, ‘Netanyahu visits Hungary as Orbán vows to defy ICC arrest warrant’ *The Guardian* (3 April 2025) <https://www.theguardian.com/world/2025/apr/03/netanyahu-to-visit-hungary-as-orban-vows-to-defy-icc-arrest-warrant> accessed 20 October 2025.; Mike Corder, ‘Putin is expected to meet Trump in Hungary despite ICC arrest warrant for the Russian president’ *AP News* (17 October 2025) <https://apnews.com/article/putin-trump-hungary-icc-arrest-warrant-2025> accessed 20 October 2025.

²⁷ Al Jazeera, ‘Yemen war deaths will reach 377,000 by end of the year: UN’ (Al Jazeera, 23 November 2021) <https://www.aljazeera.com/news/2021/11/23/yemen-war-deaths-will-reach-377000-by-end-of-year-un> accessed 21 October 2025

²⁸ Marella Bodur Ün and Tuğçe Kelleci, ‘The Responsibility to Protect (R2P) in Libya and Syria: An Analysis of Competing Normative Discourses’ (2023) 54 *Turkish Yearbook of International Relations* 1.

met, ultimately delaying any meaningful action.²⁹ Likewise, Congo continues to be in a state of armed conflict, leading to hundreds of deaths with occasional and limited foreign intervention.³⁰

This blueprint of selectivity in intervention decision-making has a plethora of rationales. From the related geographic and strategic interests of Western countries to the targeted country's lack of allies. It also encompasses other reasons, including the alignment of intervention policies with the domestic politics of donor countries and public discussion in the media. The presence of oil in Libya, Kosovo's location in Europe, and Rwanda's relative strategic unimportance further support this line of argument.

6.2 Mission Creep and the Remaking of Mandates

The second structural problem concerns the expansion of intervention mandates beyond their original scope, commonly termed “mission creep.” This tendency does not occur by chance but rather represents an inherent part of humanitarian interventions, arising from the nature of the complex problems they seek to solve. Undoubtedly, humanitarian emergencies seldom exist in isolation. Instead, they are rooted in more profound political, economic, and institutional structures. Consequently, any limited military intervention that seeks to ensure immediate security may be driven by ulterior motives.

Herein lies another exemplary case: Afghanistan. Initially, the 2001 humanitarian intervention was justified by the need to conduct counterterrorism operations following 9/11. Yet, over time, this mandate was broadened significantly. The aims transformed into state-building, constitutional reconstruction, countering drug trafficking, promoting women's rights, and establishing democracy.³¹ While some of these goals could be seen as laudable normative aspirations in theory, they lacked a legal basis, as they were outside the ambit of the intervention.

Libya is a case where the same dynamic occurs at a faster pace. The mandate approved by the UNSC in 2011 was justified on humanitarian grounds, in particular because of the fear of a possible attack against Benghazi. However, the operational mandate extended far beyond the mere protection of civilians, including support for the rebels and regime change. In terms of consequences, there was not only instability, but even greater fragmentation: the appearance of several competing militias, ongoing conflict, and erosion of state sovereignty.³²

There is also criticism of the politically constructed nature of humanitarian intervention. Parenti argues that, in the case of Kosovo, the crisis presented as purely humanitarian may

²⁹ Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (Harper Perennial 2007).

³⁰ Council on Foreign Relations, 'War Returns to the Democratic Republic of Congo: What to Know' (2024)

³¹ Laurel Miller, 'Afghanistan 2001-2021: U.S. Policy Lessons Learned' (Testimony before the US Senate Committee on Foreign Relations, International Crisis Group, 17 November 2021)

<https://www.crisisgroup.org/asia/afghanistan/afghanistan-2001-2021-us-policy-lessons-learned> accessed 21 October 2025.

³² Aisvaria Subramanian, 'Is Humanitarian Intervention Boon or Bane? A Critical Analysis of Humanitarian Intervention in Libya' (2019) 4(5) *International Journal of Law Management & Humanities* 1245

have been partly shaped by earlier Western involvement in the region. This suggests that humanitarian narratives should be examined carefully in each case. Curiously, Kosovo was not unique in this regard. India's intervention in Bangladesh (then East Pakistan) in 1971, for example, was driven by both humanitarian and political considerations, including the desire to weaken a regional rival.³³

6.3 Resource Misallocation and Economics of Intervention

Moreover, an issue that can be identified in current humanitarian interventions concerns the economics of military intervention. Any military intervention is highly resource-intensive, and the costs of large-scale operations tend to be higher than those of preventive humanitarian actions.

The overall economic impact of the Libya conflict was around \$576 billion considering direct and indirect costs.³⁴ Similarly, the broader economic cost of the “War on Terror” including the involvement in Afghanistan reached about \$8 trillion in two decades and thousand of casualties, and those resources were spent mainly not on prevention but rather on the war itself which did not address the factors that created an unstable situation in the first place (poverty, misgovernance, lack of healthcare or education, etc.).³⁵

Nevertheless, the world humanitarian system suffers from chronic underfunding. By mid-2025 only 19% of UN consolidated humanitarian appeals had been reached despite crises in Syria, Gaza, Sudan, etc.³⁶ This stark asymmetry raises a broader political economy realization: the dominant global response prioritizes high-cost military action over lower-cost but potentially higher-impact preventive and humanitarian investment.

6.4 Collateral Damage and the Extension of Violence

The need for humanitarian intervention can be better assessed by the consequences of such endeavours. From a pragmatic point of view, humanitarian interventions often involve considerable collateral damage, leading, in many instances, to an extended or increased violent situation.

The intervention in Iraq in 2003 appeared to be justified, based on the alleged atrocities committed against civilians under the leadership of Saddam Hussein, among other reasons.

³³ Michael Parenti, *To Kill a Nation* (YouTube, 28 August 2012)

<https://www.youtube.com/watch?v=blackiron60> accessed 22 October 2025; Onkar Marwah, 'India's Military Intervention in East Pakistan, 1971–1972' (1979) 13(4) *Modern Asian Studies* 549–580 (Cambridge University Press).

³⁴ United Nations Economic and Social Commission for Western Asia (ESCWA), 'Cost of conflict in Libya exceeds \$576 billion, ESCWA study finds' (Press Release, 2 December 2020) [Cost of conflict in Libya exceeds \\$576 billion, ESCWA study finds - United Nations Economic and Social Commission for Western Asia](#)

³⁵ Jill Kimball, 'Costs of the 20-year war on terror: \$8 trillion and 900,000 deaths' (News from Brown, 1 September 2021) [Costs of the 20-year war on terror: \\$8 trillion and 900,000 deaths | Brown University](#) (accessed 21 October 2025)

³⁶ UN News, 'UN's humanitarian work is “underfunded, overstretched, and under attack”' (15 September 2025) <https://news.un.org/en/story/2025/09/1165232> accessed 21 October 2025.

However, due to the breakdown of the Iraqi state and ensuing instability, this led to the emergence of the group known as ISIS, which caused violence rates to increase even more than in the past. Furthermore, reports of abuse from Abu Ghraib prison and torture committed by the occupying troops further undermine the justification of the intervention.³⁷

Equally, the long-term implications for military involvement in Afghanistan and Pakistan are massive losses of civilian lives, widespread destruction of infrastructure, and increased insecurity. After almost two decades of intervention, the return to power by the Taliban illustrates how externally initiated political changes may be relatively short-lived.³⁸ The case of Libya is illustrative in this respect too, as the aftermath of the military intervention has not created stability but rather a state of political fragmentation, competing militias, and worsening human rights violations compared to the pre-intervention period.³⁹

This can be explained by existing literature in conflict studies, which demonstrates that external military intervention in civil wars tends to increase violence and prolong conflicts, thereby complicating peace-building after war.⁴⁰

6.5 Dependence and Moral Hazard

Finally, there is the behavioural incentive mechanism generated by the prospect of humanitarian intervention. When people believe that outside parties may intervene in response to human suffering caused by a certain group, this belief can prompt that group to adjust its strategies in anticipation of external involvement. This adjustment can increase the likelihood of escalation.

According to Alan Kuperman, the conflicts in the Balkans show how local forces may use humanitarian disaster to prompt NATO intervention in their favour. In this case study, moral hazard creates a strategic opportunity. The lower cost of escalation, due to the presence of intervention, creates an incentive to cause a humanitarian catastrophe in the first place.⁴¹

Furthermore, conflict zones create severe information asymmetry. For example, casualties cited by intervenors in Libya before the intervention faced heavy criticism of their credibility. In Syria, each party sought to present information about the conflict to influence the international response. In these situations, intervention thresholds based on humanitarian

³⁷ Maryam Zakir-Hussain, "Twenty years on: The shocking numbers behind the Iraq war" *The Independent* (20 March 2023) <https://www.independent.co.uk/news/world/middle-east/iraq-war-bush-twentieth-anniversary-b2302031.html> accessed 19 June 2026.

³⁸ Vasja Badalič, *The War Against Civilians: Victims of the "War on Terror" in Afghanistan and Pakistan* (Palgrave Macmillan 2019) <https://doi.org/10.1007/978-3-030-12406-9> accessed 19 June 2026.

³⁹ Mustafa Fetouri, 'Libya's human rights situation is worse than what it was under Gaddafi' *Middle East Monitor* (13 April 2023) <https://www.middleeastmonitor.com/20230413-libyas-human-rights-situation-is-worse-than-what-it-was-under-gaddafi/> accessed 19 June 2026.

⁴⁰ David E Cunningham, 'Blocking Resolution: How External States Can Prolong Civil Wars' (2010) 47(2) *Journal of Peace Research*.

⁴¹ Alan J Kuperman, 'The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans' (2008) 52 *International Studies Quarterly* 49.

concerns gain strategic relevance. This creates incentives to distort and manipulate reports of suffering.

Consequently, humanitarian decisions are not made in an informationally neutral setting. These decisions are instead made in a politicized knowledge space. Actors with a stake in possible intervention influence the knowledge that will inform the decision.

6.6 Synthesis

The above analysis results in an overall evaluation of the UHI that is unambiguously negative from both legal and practical standpoints. In terms of legality, UHI cannot be justified either by the UN Charter, the decisions of the ICJ or ICC, the structure of customary international law, or the rules of state practice and *opinio juris*. Legal theories aimed at extending the meaning of Article 2(4), interpreting Article 51 more broadly, or invoking necessity under the Articles on State Responsibility prove insufficient to establish a legal framework for UHI.

In terms of history, UHI can hardly be considered as anything but a revival of the same logic of asymmetric trusteeship, only dressed in the terminology of moral necessity. Instead of breaking away from past intervention patterns, UHI may simply reproduce them under a more attractive name.

Normatively, the claim that UNSC paralysis opens up possibilities for unilateralism misinterprets the implications of institutional malfunctioning. By concentrating coercion in a few select states, the institutional dilemma does not find its solution but merely repeats it in a more unbridled fashion. From this perspective, UHI does not address the inadequacies of international institutionalism but would actually exacerbate them.

From a pragmatic standpoint, the reality of the interventions further validates this suspicion. In terms of at least five distinct recurrent themes as discussed prior. It becomes apparent that humanitarian intervention often fails to live up to its own proclaimed principles. Humanitarian intervention proves to be selective according to political, rather than humanitarian, considerations; it exceeds its initial mandate, turning into an open-ended political project; it squanders resources that could otherwise have been invested in prevention or humanitarian aid; it causes collateral damage and prolongs conflicts; and finally, it establishes a set of incentives which, in some cases, can lead to escalations.

This makes clear that the argument against UHI cannot rest only in technical, doctrinal, or policy terms. It must also be made morally, because a doctrine which consistently creates discriminatory application, excessive and predictable extension, and recurring violations can hardly constitute a sustainable articulation of humanitarian concern.

7. The Litmus Test of Today: The Situation in Gaza and Humanitarian Legitimacy in Ruins

For humanitarian intervention and the R2P doctrine, as its institutional form, to be evaluated in terms of their practical application and implementation, the ongoing crisis in Gaza since

late 2023 serves as an important benchmark. Under such circumstances, it becomes clear how the limits of such a theoretical construct come into light.

The humanitarian disaster currently unfolding in Gaza has received substantial international attention. According to reports, 72,939 Palestinians have been killed and another 172,927 injured since the start of the conflict as of 30 May 2026.⁴² In addition to the direct toll in terms of loss of life, the conflict has resulted in widespread displacement, with 76,000 IDPs occupying 116 active UNRWA emergency shelters. The humanitarian situation is grave, with 1.6 million people (or 77 percent of the total population of Gaza) still experiencing acute food insecurity, and more than 100,000 children and thousands of nursing mothers are predicted to be malnourished.

While the fear of famine was briefly alleviated with increased humanitarian access due to the ceasefire, 4 governorates were still designated as IPC Phase 4 (Emergency), indicating high levels of food insecurity, acute malnutrition, and mortality risk.⁴³ Damage to infrastructure combined with shortages of healthcare services, water, sanitation facilities, and humanitarian aid has further compromised the health of the population, with consultations for communicable skin diseases increasing from 27,000 in March to 36,000 in May 2026.⁴⁴ The above facts demonstrate an unprecedented humanitarian crisis that has often been cited as an example of the international community's inability to safeguard civilians.

The Gaza crisis serves as a critical test of the theory behind humanitarian intervention. It raises three related issues: whether humanitarian laws are universal or selective; whether international institutions enforce these laws or merely reflect the structure of great-power politics within the international system; and whether the states themselves bound by these laws are consistent in their application.

In each of these respects, the dilemma cannot be avoided. The case of Gaza not only highlights the inconsistent application of humanitarian norms; it also fits perfectly with each of the structural pathologies mentioned in prior sections of this article. The inability to obtain a complete (and enduring) ceasefire via the UNSC because of the use of veto power is emblematic of the systematic obstruction to humanitarian interventions that the institution was designed to carry out. Moral hazard can be observed in the exploitation of international pressure during ceasefire talks as an important strategy rather than a real restraint on actions. Resource disparity becomes clearer in light of the comparison made by the difference between

⁴² United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *UNRWA Situation Report #224 on the Humanitarian Crisis in the Gaza Strip and the Occupied West Bank, including East Jerusalem* (3 June 2026) accessed 19 June 2026.

⁴³ Food and Agriculture Organization (FAO), United Nations Children's Fund (UNICEF), World Food Programme (WFP) and World Health Organization (WHO), *UN Agencies Welcome News that Famine Has Been Pushed Back in the Gaza Strip, but Warn Fragile Gains Could Be Reversed Without Increased and Sustained Support* (19 December 2025) accessed 19 June 2026.

⁴⁴ United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *UNRWA Situation Report #224 on the Humanitarian Crisis in the Gaza Strip and the Occupied West Bank, including East Jerusalem* (3 June 2026) accessed 19 June 2026.

the sheer volume of militarized efforts alongside the underfunding of humanitarian appeals, with the latter only managing to gain a small percentage of their needs by mid-2025.⁴⁵

Mission creep is apparent from the gradual extension of Israeli war aims beyond the initial goals of destroying Hamas and retrieving the hostages to one of continued occupation of the territory and administrative reform of Gaza itself. By May 2025, Israel had declared Operation Gideon's Chariots (a project based specifically on the intention of taking over Gaza and keeping the territory occupied until the realization of all war aims) an open-ended goal, raising questions under international humanitarian law.⁴⁶

The collateral damage from this expanded operation has now led to legal repercussions. On 29 December 2023, South Africa brought an action against Israel at the ICJ on the grounds of violation of the Genocide Convention through the murder of civilians, causing grave harm to their physical and mental well-being, and creating living conditions that might lead to the destruction of the Palestinian people in Gaza.⁴⁷ The Court has taken binding provisional measures in three separate instances, including those relating to the duty to provide humanitarian assistance, that have not been fulfilled.⁴⁸ It must be made clear that the proceedings are not an aside but a direct result of the structural malfunctions discussed in this essay: When humanitarian standards are selectively implemented, when institutional processes are actively obstructed, and when military aims are allowed to run wild, responsibility shifts from the political to the judicial realm, inadequately and always too late.

8. Towards an Architecture of Prevention for Global Protection

The real issue is not only the lack of an adequately developed theory of humanitarian intervention, but also the underlying presumption that intervention is the main (and perhaps inescapable) form of responding to mass atrocities. The approaches suggested by Evans on the basis of threshold criteria, Pape based on pragmatic considerations, and Brazil with respect to Responsibility While Protecting all rest on this presumption, viewing intervention as the unavoidable evil that has to be regulated and controlled.⁴⁹ However, this article contends that a more fruitful approach would be to explore ways to reduce our dependence on intervention.

⁴⁵ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Gaza Flash Appeal / Occupied Palestinian Territory Humanitarian Response Plan 2025* (2025) <https://www.unocha.org> accessed 19 June 2026; United Nations Office for the Coordination of Humanitarian Affairs, *Financial Tracking Service: Occupied Palestinian Territory 2025 – Country Snapshot* (data as of 18 June 2026) <https://fts.unocha.org> accessed 19 June 2026.

⁴⁶ Salma Eissa, 'Q&A: What do Israel's shifting tactics in Gaza tell us about what's ahead?' (*ACLEDA*, 29 May 2025) <https://acleddata.com> accessed 19 June 2026.

⁴⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Application Instituting Proceedings, ICJ, 29 December 2023) [Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip \(Sou](#) accessed 19 June 2026

⁴⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Order of 26 January 2024) ICJ; (Order of 28 March 2024) ICJ; (Order of 24 May 2024) ICJ <https://www.icj-cij.org/case/192> accessed 19 June 2026

⁴⁹ Roland Paris, 'The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention' (2014) 30 *International Peacekeeping* 569

There are three overlapping areas of reform to consider. The first is that global protection must be decentred from Northern epistemologies.⁵⁰ There are other normative traditions. For example, the Constitutive Act of the African Union specifically recognizes the right of member states to intervene in cases of genocide, war crimes, and crimes against humanity. ECOWAS is also involved in conflict resolution in West Africa. In certain circumstances, regional institutions may be better placed to respond to crises than external actors.⁵¹

The second line of reform is that prevention needs to become a paradigmatic humanitarian action rather than a rhetorical prelude to intervention. Even though the first pillar of R2P officially prioritizes prevention, it remains largely neglected in practice.⁵² Preventive systems require early-warning capacity, peace-building infrastructure, and the addressing of structural factors, such as political marginalization and institutional weakness, that lead to atrocities. The UN Peacebuilding Fund demonstrates that multilateral financing of prevention is institutionally feasible even amid chronic underfunding.⁵³ The existence of an apolitical, collectively managed prevention fund will facilitate moving from crisis management to structural risk management.

Third, when (and only if) the use of force becomes necessary, such action should be taken collectively, with accountability, guided by three key reform points: (1) procedural constraints to prevent mandate expansion, (2) clear up-front definition of objectives, and (3) proper post-action evaluation. The Libya example shows that without procedural constraints, objectives can shift from protection to regime change without accountability.⁵⁴ Where rivalry between great powers persists, and reform is slow, it is better to adopt constraint than discretion.⁵⁵

9. Concluding Remarks

The question of whether UHI serves as a just cause or merely a just cover is not, ultimately, difficult. The evidence assembled through legal, historical and structural fronts consistently points in one direction. What makes it difficult is not the evidence but the emotional weight of the alternative, the fear that rejecting UHI means abandoning populations to their fate. That fear is understandable. It is also, this article has argued, misplaced.

⁵⁰ Thomas Peak, Charlie Laderman and Cecilia Jacob, 'Intervention and the Responsibility to Protect: Past, Present, and Futures' (2022) 14 *Global Responsibility to Protect* 261.

⁵¹ Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) 2158 UNTS 3, art 4(h); Cyril I Obi, 'Economic Community of West African States on the Ground: Comparing Peacekeeping in Liberia, Sierra Leone, Guinea Bissau, and Côte d'Ivoire' (2009) 2(2–3) *African Security* 119–135 <https://doi.org/10.1080/19362200903361945> accessed 19 June 2026.

⁵² Jennifer Welsh, 'The Responsibility to Prevent: Assessing the Gap between Rhetoric and Reality' (2016) 51(2) *Cooperation and Conflict* 216–232 <https://www.jstor.org/stable/48512898> accessed 19 June 2026.

⁵³ UN General Assembly Res 60/180 (20 December 2005) UN Doc A/RES/60/180; UN Peacebuilding Fund [UNITED](https://www.un.org/peacebuilding-fund/) accessed 19 June 2026

⁵⁴ Phil Miller, 'Nato bombing of Libya "exceeded UN mandate"' (*Declassified UK*, 19 May 2022) <https://www.declassifieduk.org/nato-bombing-of-libya-exceeded-un-mandate/> accessed 19 June 2026.

⁵⁵ Alex J Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Polity Press 2009); Ramesh Thakur, *The United Nations, Peace and Security* (CUP 2006)

The real choice is not between intervention and indifference. It is between a model that arrives after a catastrophe with bombs and a mandate that will inevitably expand, and a model that takes seriously the structural conditions (for example, political marginalization, institutional fragility, chronic underfunding of early warning and peacebuilding) that produce catastrophe in the first place. UHI does not offer an escape from the costs of inaction. It offers the illusion of one, at considerable cost to those it purports to save, while leaving the underlying conditions entirely untouched.

Gaza (and numerous prior incidents) makes this impossible to ignore. Here is a crisis unfolding in real time, in full view of every institution the international community has built for precisely this purpose, and those institutions have not failed through incapacity. They have been actively obstructed by the same states that elsewhere invoke humanitarian necessity to justify the use of unilateral force. That is not a paradox. It is the system functioning exactly as the existing distribution of power permits.

What should be done — what this article has argued it must do — is redirect the considerable resources, political will, and moral energy currently invested in debating the conditions for intervention toward building the architecture that makes intervention unnecessary. That is not a counsel of passivity. It is the only serious response to a doctrine that has consistently promised protection and consistently delivered something else.

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