

**The Legality of the UN Humanitarian Intervention under Chapter VII of the
UN Charter: Somalia and Beyond**

Abdiwahid Osman Haji

**Thesis submitted to the School of Graduate Studies and Research
in partial fulfilment of the requirements
for LL.M. degree in Law**



University of Ottawa

**Ottawa, Ontario, Canada
December 1997**

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ABSTRACT

The UN Charter acknowledges the right of the UN Security Council to use force to address threats to international peace and security in case of acts of aggression. The Charter, however, does not expressly recognize the right to use force to protect the people of a State against their own governing authorities even when they face genocide, massive internal and external displacements of population, widespread violence, and mass starvation.

In the post-Cold War era, the UN Security Council has authorized humanitarian intervention in Iraq (1991), in Somalia (1992), in the Former Yugoslavia (1992), and in Rwanda (1994). Although the cases each involve different circumstances, they share one momentous motive, that the Security Council determined that human rights violations in these countries had consequences which threatened international peace and security and thus, the Council invoked the provisions of Chapter VII of the UN Charter. These interventions have raised difficult questions of whether the UN Security Council's actions in cases of humanitarian crises or in cases of massive human rights abuses within a territory of a member state are legal under Chapter VII of the UN Charter or whether the Security Council's competence to use force under Chapter VII of the Charter is confined to cases of military aggression.

The purpose of this thesis is to demonstrate that under Chapter VII of the UN Charter the UN has the legal right to intervene for humanitarian purposes in the internal affairs of a member State. This thesis focuses on the Security Council interventions involving internal armed conflicts in which widespread human rights violations occur, with particular analysis of the Somalia crises. It concludes that current international law recognizes the legality of UN humanitarian intervention under Chapter VII of the UN Charter.

TABLE OF CONTENTS

Page

Abstract

Introduction	1
---------------------------	---

Chapter One

1. The Evolution of the Concept of Humanitarian Intervention.....	7
2. The UN Charter and Its Relevant Provisions.....	11
a. The UN Charter.....	11
b. An Overview of Some Relevant UN Charter Provisions.....	13
(i) UN Charter Article 2 (7).....	13
(ii) UN Charter Chapter VII: Articles 39-42.....	15
3. The Protection of Human Rights as International Matters.....	17
a. OCSE Documents.....	20
(i) The Helsinki Accords, 1975.....	19
(ii) The Copenhagen Document, 1990.....	20
(ii) Charter of Paris for a New Europe, 1990.....	20
(iii) The Moscow Document, 1991.....	20
b. Vienna Declaration and Program of Action of 1993.....	21
c. Report of Secretary General on the Work of the Organization.....	22
Endnotes.....	24

Chapter Two

The Legality of UN Humanitarian Intervention under Chapter VII of the UN Charter	
1. Introduction.....	30
2. Legal Basis of UN Humanitarian Intervention under Chapter VII and Practical Solutions to the Legal Obstacles.....	30
a. Security Council Resolutions and The Determination of the “threat to peace” under Chapter VII.....	37
2. UN Humanitarian Intervention under Chapter VII in Customary International Law.....	39
1. Opinio Juris.....	40
2. State Practice.....	42
(i) The Rhodesia Case.....	43
(ii) The South Africa Case.....	44
3. International Human Rights Instruments.....	44
(i) Four Geneva Conventions.....	47
(ii) The Genocide Convention.....	48
3. Conclusion.....	50
Endnotes.....	51

Chapter Three

Post-Cold War UN Humanitarian Intervention under Chapter VII of the UN Charter	
1. Introduction.....	58

2.	The Iraq (Kurds) Case (1991).....	59
3.	The Former Yugoslavia Case (1992).....	61
4.	The Rwanda Case (1994)	64
5.	Conclusion	66
	Endnotes	68

Chapter Four

Somalia: UN Humanitarian Intervention under Chapter VII of the UN Charter

1.	Introduction	72
2.	A Brief History of Somalia	73
3.	The Early UN Involvement in Somalia	77
	a. The Inadequacy of the UN's Initial Response	77
4.	The American Proposal for Somalia.....	78
5.	Relevant Resolutions in the Somali Crisis.....	79
6.	The Legality of UN Humanitarian Intervention in Somalia	82
	a. Why UN Security Council Intervention was Necessary.....	82
	(i) Anarchy and the Absence of a Central Government	83
	(ii) Magnitude of Suffering.....	84
	(iii) Massive Human Rights Violations	85
	(iv) Flow of Refugees to Neighboring States.....	86
	b. The Legality of the UN Security Council's Intervention in Somalia	87
7.	Conclusion.....	88
	Endnotes	90

Chapter Five

	Conclusion: Strengthening the UN Security Council to Protect Human Rights	97
1.	Difficulties of Humanitarian Intervention under Chapter VII	98
	a. UN Humanitarian Intervention and the self-interest of the Permanent Members of the UN Security Council.....	98
	b. The Inability of the UN Security Council to Control Humanitarian Intervention.....	101
2.	Setting Rules for Future Humanitarian Intervention	103
3.	Voluntary Army for the United Nations	107
4.	Conclusion	108
	Endnotes	111
	Bibliography	114

INTRODUCTION

In many parts of the world, the presence of bi-polar superpower confrontation was, until as recently as ten years ago, a stabilizing force. The political and economic well being of many countries depended on financial aid and military protection from either the former Soviet Union (USSR) or the United States (USA). However, the superpower conflict between these entities precluded the United Nations (UN) from taking direct action on issues pertaining to massive human rights abuses in those countries. In light of this, no precedent existed for the UN to authorize forcible intervention without prior sovereign consent across national boundaries. At the end of the Cold War however, as the superpowers eased their pressure and controlling interest in many parts of the globe, a tremendous outbreak of ethnic conflicts and humanitarian crises began to occur. In countries such as Iraq, Bosnia, Somalia, Rwanda, Haiti and Cambodia, the level of human rights abuses intensified. The outbreak of such massive human rights abuses has led to a change in the way the UN conventionally deals with flagrant human rights violations as well as with humanitarian crises. For the first time, the Council began to use the "threat to international peace and security" clause from Chapter VII of the UN Charter to justify the multilateral use of force in internal armed conflicts for humanitarian reasons.

In the past, the UN was ineffective at halting human rights abuses at the international level. The UN regarded mass human tragedy within State borders as an internal matter. For example, in Indonesia, the government caused the deaths of between 150,000 and 400,000 political dissidents in the 1960s; in Rwanda and Burundi tens of thousands of Tutsis and Hutus have been massacred over the past 30 years; in Nigeria, the government killed one million Ibos; in Paraguay, hundreds of Ache Indians have been executed in early 1970's and in Cambodia, the Khmer Rouge massacred

between one million and three million people in the 1970s.¹ Without any international safeguards against such atrocities, governments could commit crimes against humanity with impunity as long as they remained within their own borders.

However, in the post-Cold War era, the UN has adopted a practical approach to humanitarian intervention through Chapter VII of its Charter. It is currently acknowledged that a “threat to international peace and security” includes gross violations of human rights carried out by a government or those that result from civil war or a deteriorating government mandate. In his 1991 Report on the Work of the Organization, Secretary-General Javier Perez de Cuellar called on nations to grant Chapter VII jurisdiction for the UN to enforce human rights. He called the protection of human rights “one of the keystones in the arch of peace.”² The protection of human rights under Article 39 of Chapter VII of the UN Charter was repeated in Boutros Boutros-Ghali's 1992 report. He states, “respect for human rights is clearly important in order to maintain international peace and security and to achieve social and economic development.”³

The Security Council now frequently decides that massive human rights violations constitute a “threat to peace” under Chapter VII of the UN Charter and UN humanitarian intervention is, therefore, warranted. For example, in 1991, Resolution 688 of the Security Council authorized humanitarian intervention to protect the persecuted Kurds within Iraq's borders.⁴ This unprecedented action was followed by a succession of similar humanitarian interventions. In 1992, the Security Council, acting within Chapter VII of the Charter, recognized that the civil war in Bosnia constitutes “a threat to international peace and security” and that the provisions of humanitarian assistance in Bosnia and Herzegovina is an important element in the Council’s effort to restore international peace and security.”⁵ Similarly, the same ruling applied in the starvation of the civilians in Somalia, so as

to ensure a secure environment for humanitarian relief operations in a situation of internal disorder and severe privation.⁶ In 1994, again acting under Chapter VII, the Security Council authorized an operation to protect refugees in Rwanda.⁷

These UN humanitarian interventions have raised many troubling questions on whether the UN Security Council's actions in cases of humanitarian crises are justified within Chapter VII of the UN Charter, particularly when situations of flagrant human rights abuses exist, or whether the Security Council's competence to use force under Chapter VII of the Charter is confined to cases of military aggression between States, or whether enforcement actions under Chapter VII to rescue oppressed people within the territory of a member State could be considered illegal. Where should the Council draw the line between cases that threaten international peace and security and cases of internal conflict? On what legal basis could the Security Council justify the determination of a "threat to peace" in cases of internal conflicts or humanitarian catastrophes? What are the prospects for strengthening intervention on the part of the UN Security Council to remedy gross violations of human rights around the world? Finally, will the Security Council intervene in every country where humanitarian crises are justifiable or only in specific regions where strategic and economic interests its permanent members are involved?

The answers of these questions I will pursue in this thesis. Positively, these questions are doctrinally interesting and that this discipline is likely to re-emerge as a possibility of much imminent controversy among international scholars and government leaders.

The central question in this thesis is whether under Chapter VII of the UN Charter the UN has the legal right to intervene for humanitarian purposes in the internal affairs of a member State. Toward that objective, this paper will demonstrate that the UN Security Council's actions in cases

of humanitarian crises are legal within the letter and spirit of the UN Charter, Chapter VII. In order to reach that conclusion, one has to go back to the wording, the purpose, and the drafting history of the relevant articles of the UN Charter, on the one hand, and, on the other hand, to the interpretation and application of such articles by the Security Council and international scholars. One must also consult UN documentation's, international treaties, and United Nations practice.

A main argument in the paper will centre on the Security Council interventions involving humanitarian crises or internal armed conflicts in which gross human rights violations occur, with particular analysis of the Somalia crises. The research will provide an argument, developed in five parts. Chapter One will first examine the evolution of the concept humanitarian intervention. In the second section, the relevant articles of the Charter-Articles 2(7) and Chapter VII: Articles 39, 40 and 41- will be examined as they pertain to the context and clarification of the principle of non-intervention and the concept of "threat to peace." Finally, the chapter will outline the importance of human rights as an international issue.

In Chapter Two, the legality of the UN humanitarian intervention under Chapter VII of the UN Charter will be examined. In addition, the legal obstacles surrounding the issue-particularly the interpretation of domestic jurisdiction, and the concept of "threat to international peace and security" and human rights, as well as the dependence of these concepts to one another-will be discussed. To find an adequate solution to these legal obstacles, I will argue that the legal propriety of UN humanitarian intervention under Chapter VII of the UN Charter exists and is supported by UN Charter provisions and international customary law evidenced by international practices, international treaties and State practices as well as Security Council resolutions and UN documentation's.

In Chapter Three, an historical analysis of UN forcible humanitarian intervention under

Chapter VII of the Charter will be highlighted through brief case discussions of Iraq, the former Yugoslavia and Rwanda. This chapter will also incorporate positions taken by scholars and government leaders on the legal basis of the UN Security Council to undertake concrete measures to protect human rights under Chapter VII of the UN Charter.

Chapter Four will examine the legality of the UN Security Council's intervention in Somalia as a current case relevant in our research.

Finally, Chapter Five will explore the basis for a more effective role for the Security Council in ending massive human rights violations under "threat to peace" determinations. The assertion of the legality of intervention does not warranty that intervention will occur. The question remains; what assurance is there that the UN Security Council will intervene in crises massive human rights violations? In order to answer this question, I will examine the major problems regarding UN interventions: the Security Council's motivations for intervention, namely when political, economical and military interests of the Security Council Permanent Five are at stake and the inability of the UN Security Council to control humanitarian intervention after it has been authorized. It will be suggested that two process of actions can be taken to alleviate these problems. First, there should be a set of standards drafted in a UN document annexed with Security Council resolution, in which UN humanitarian intervention under Chapter VII is permissible. Second, an international, humanitarian military force that is able to act independently of the interests of the Permanent Members of the Security Council should be established.

The conclusion of this thesis will show that UN humanitarian intervention under Chapter VII is legal and that UN Charter recognizes the legal right of the UN's Security Council to intervene in internal affairs of any State to protect a population from gross violations of human rights.

Endnotes

¹ David J. Scheffer, "Toward a Modern Doctrine of Humanitarian Intervention" (Winter 1992) 23 *University of Toledo Law Review*, 259

² Javier Perez de Cuellar, *Report of the Secretary-General on the Work of the Organization*, UN Doc. GA/46/404(1991).

³ Boutros Boutros-Ghali, *Report of the Secretary-General on the Work of the Organization*, UN Doc. GA/47/407 (1992)

³ "Gravely concerned by the repression of the Iraq civilian population in many parts of Iraq, including most recently in Kurdish populated areas which led to a massive flow of refugees towards and across international frontiers and to cross border incursions, which threaten international peace and security in the region." SC Resolution 688, UN SCOR, 46th Sess., 2982nd mtg at 1, *UN Doc. S/RES/688* (1991).

⁴ S.C. Resolution 771, UN SCOR, 47th Sess., 3106 mtg., UN Doc. S/RES/771(1992); See also S.C. Resolution 757, UN SCOR, 47th Sess., 3082 mtg., UN Doc. S/RES/757(1992)

⁵ In Resolution 794, The Security Council found that the "magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance," constituted a threat to international peace and security. For more details see Res. 794 UN SCOR, 47th Sess., 3154th mtg. UN Doc. S/RES/794 (1992).

⁶ *Report of the Secretary-General on the Situation in Rwanda*, S/1994/640 (May 31, 1994).

For additional documentation of the massive violations of human rights in Rwanda, see also: Report of the UN High Commissioner for Human Rights on his Mission to Rwanda, UN ESCOR, Commission on Human Rights, 3rd Special Sess., *UN Doc. E/CN.4/S-3/3* (May 24-25, 1994). In Resolution 918, the Security Council was "disturbed by the magnitude of the human suffering caused by the conflict" and found the "continuation" of this internal crisis to "constitute a threat to peace and security in the region." S. C. Resolution 918, UN SCOR, 49th Sess., 3377th mtg., *UN Doc. S/RES/918* (1994).

CHAPTER ONE

THE CONCEPT OF HUMANITARIAN INTERVENTION, THE UNITED NATIONS

CHARTER AND HUMAN RIGHTS

1. The Evolution of the Concept of Humanitarian Intervention

According to Steve G. Simon, the doctrine of humanitarian intervention¹ "is not a creature of the Technological Age, Cold War, or the New World Order, but was a doctrine based upon natural law created centuries ago."² Other thinkers, such as St Thomas Aquinas postulated as early as the thirteenth century "the right of one Sovereign State to intervene in the internal affairs of another, if subjects of that State were being mistreated."³ These postulations provide a strong basis for the argument that a unilateral right to intervene in the internal affairs of State for humanitarian purposes has been in existence for a very long time. The doctrine however became more significant in the nineteenth century.

Hugo Grotius was the first international legal writer to advocate the theory that when a government abuses its subjects, and the subjects cannot stop their government, then the government of another country may come to protect the subjects.⁴

In the nineteenth century, many writers referred to humanitarian intervention as "intervention undertaken in the cause of humanity," thus placing the emphasis on protecting human rights.⁵ However, prior to the Second World War, the protection of human rights was deemed to be a matter of domestic concern rather than an international one.

Other legal scholars such as Ellery Stowell have described humanitarian intervention as

the reliance upon force for the justifiable purpose of protecting the inhabitants of another State from treatment which is so arbitrary and persistently abusive as to exceed the limits of that

authority within which the sovereign is presumed to act with reason and justice.⁶

The French international legal philosopher Antoine Rougier, for example, published “The Doctrine of Humanitarian Intervention,”⁷ and stated that “the theory of intervention on the ground of humanity... recognizes the right of one State to exercise an international control over the acts of another in regard to its internal sovereignty when contrary to the laws of humanity.”⁸ In fact, many legal scholars have argued that humanitarian intervention did not begin with the creation of the UN in 1945. This argument can be supported by several examples. In 1829, France, Britain and Russia used military force to enforce the 1827 Treaty of London which contrived the understanding “no less by sentiments of humanity, than by interest for tranquillity of Europe,” and intervened to protect the Greeks from the Ottomans.⁹ Another example was again France's intervention in Syria in 1860. The main goal of the French was to protect Maronite Christians in Syria who were being massacred by the Ottomans.¹⁰

In the late 19th century, Sovereign States that felt strongly about the protection of human rights carried out other causes of humanitarian intervention. Humanitarian interventions were carried out in the Island of Crete between 1866 and 1868.¹¹ Another case of humanitarian intervention took place in 1912, when Greece, Bulgaria and Serbia engaged in humanitarian intervention in Macedonia in order to stop the persecution of Christians by the Ottomans.¹²

In addition to these examples, there seems that is sufficient documentation to support the contention that humanitarian intervention existed before the creation of the United Nation. For example, Professor Fonteyne who has written about State practices prior to World War II holds a firm belief that humanitarian intervention was legal well before the creation of the United Nations Charter.¹³

He states that

While divergences certainly existed as to the circumstances in which resort could be had to the institution of humanitarian intervention, as well as to the manner in which such operations were to be conducted, the principle itself was widely, if not unanimously, accepted as an integral part of customary international law.¹⁴

In contrast, the creation of the United Nations in 1945 changed customary law by outlawing any threat or use of force between States, for any reason except in four explicit situations in which the use of force is permitted. These are: (1) the use of force in unilateral self-defence and in collective self-defence in accordance with article 51; (2) the use of force authorized by the UN Security Council under Chapter VII; (3) the use of force undertaken by the five members pursuant to Article 106 of the Charter; and, (4) enforcement measures under regional arrangements or by regional agencies under Article 53 of the Chapter VIII.¹⁵ The United Nations recognizes State sovereignty in Article 2 of its Charter; Article 2(4) stipulates that

all members shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.¹⁶

This Article 2(4) is also the most explicit Charter rule against intervention through armed force. Moreover, Article 2(7) of UN Charter prohibits UN involvement in conflicts within the domestic jurisdiction of any State. Such stipulation is equally applicable to relations between States.¹⁷ The prohibition of the threat or use of force by one State against another State internal affairs has been the subject of a major controversy within the international community.

Although the UN Charter does not categorically state that it prohibits the use of humanitarian intervention, it effectively precludes such intervention by its general provision that strongly condones the use of force by one State against another.¹⁸ It is interesting to note that after the UN Charter was ratified, resolutions were passed acknowledging the illegality of humanitarian intervention.¹⁹ For instance, The Declaration on the Inadmissibility of Intervention in Domestic Affairs of States and the Protection of their Independence and Sovereignty declares that

No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural element are condemned.²⁰

This declaration was utilized for the reasoning that no State can intervene in the internal matter of another State for any intent. Incompatibly, even though this declaration forbade intervention during this period, some States invoked humanitarian intervention to justify their use of military force. Some of these were considered illegal interventions including, the 1956 Soviet Union intervention in Hungary, the 1965 United States intervention in Dominican Republic, the 1969 Great Britain intervention in Anguilla, the 1975 Indonesian intervention in East Timor, the 1978 Vietnamese intervention in Cambodia, and the 1989 U.S. intervention in Panama.²¹ Proponents of the above interventions argue that governments exist to protect the human rights of their citizens, and that a government that does not respect the basic human rights of its citizenry cannot be considered an adequate or suitable representative of the state as a whole.²²

With the end of the Cold War and the disintegration of the Soviet Union, the UN has placed a greater emphasis on democracy, humanitarian needs and human rights. Some theorists now advocate collective intervention under UN auspices.²³

Ruth Gordon observe that

In the post-Cold War era, traditional assumptions regarding non-intervention and sovereignty are in flux, and matters previously deemed to be within the domestic jurisdiction of states are being placed in the international arena. Thus intervention under multilateral auspices is currently viewed as permissible.²⁴

Others, however, oppose humanitarian intervention even under the auspices of the United Nations.²⁵

Opponents of UN intervention argue that the only exception in Article 2(7) to the prohibition against intervention by the UN in matters that are "essentially within the domestic jurisdiction of state" is for enforcement measures under Chapter VII.²⁶

Recently, the UN began to authorize forcible humanitarian intervention where there is a threat to international peace and security. The existence of such threat allows the Security Council to find a way around Article 2(7) and provides it with a justifiable basis for intervention in situation of gross violation of human rights within the domestic jurisdiction of States.²⁷ Via a comprehensive explanation of what may constitute a "threat to peace" the UN Security Council, with the support of the international community, has included gross human rights violations, obstruction of the delivery of the humanitarian aid, mass displacement of civilians and forced starvation among the circumstances that may authorize forcible humanitarian intervention under Chapter VII of the UN Charter.²⁸ The Security Council's humanitarian intervention in crises likes Iraq-Kurds, former Yugoslavia, Somalia, Haiti, and Rwanda hold some support for this opinion.²⁹

2. The United Nations Charter and Its Relevant Provisions

a. The UN Charter

The UN Conference on International Organization that was held at San Francisco from April 25 to June 26, 1945 drafted the Charter document. The Charter was brought in force on 24 October

1945. The adoption of the UN Charter was essential because it marked the realization that human rights had become a matter of international concern. The Charter is an international treaty and is regulated by the rules that govern international agreements. Thus, like other international treaties, no nation has to obey the UN unless that nation has joined the UN. As Riggs and Plato note, "formally written and ratified as a multilateral treaty, the UN Charter became a "de facto" constitution with the establishment of the UN organization."³⁰

The UN Charter declared that the UN has four purposes.³¹ One of the primary purposes is to maintain international peace and security. This is to be achieved through various measures, including peaceful settlement of disputes and collective measures to prevent and remove "threats to the peace, or breaches of the peace, or acts of aggression."³² These measures, however, are limited in scope as States refuse to restrict their exclusive authority over domestic territory.³³ A second avowed purpose of the UN is the promotion of international co-operation in dealing with economic and social matters. The third purpose that the Charter emphasizes is the aim to promote respect for the human rights of all peoples.³⁴ The fourth purpose that the Charter stress is for the UN to be a centre for assisting the performance of State members in the achievement of these common ends. The Charter created four principal instruments to enact its primary purpose of peace: the UN Security Council, the UN General Assembly, the UN Economic and Social Council, and the International Court of Justice. The Charter consists of 111 articles divided into 19 chapters and, like most constitutional documents, expresses the views, expectations and biases of its founders.

According to the Charter, the UN's fundamental objective-to maintain international peace and security-is carried out by the Security Council. The Security Council consists of 15 members of the UN, five of which are permanent Council members. These permanent members, namely the United

States, the United Kingdom, France, Russia, and China, are often referred to as the "Permanent Five."

The 10 remaining non-permanent members are elected by the General Assembly.³⁵

The UN Charter outlines duties for both the Security Council and member states. According to Article 24(1) of the Charter, members

confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.³⁶

In addressing these duties, the Security Council

shall act in accordance with the Purposes and Principles of the UN. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.³⁷

Under Article 25, members in turn "agree to accept and carry out the decisions of the Security Council."³⁸ The decisions shall be made "by an affirmative vote of nine members including the concurring votes of the permanent members," except when a member of the Council is a party in a dispute, in which case he or she "shall abstain from voting."³⁹ Permanent members have the right to veto an issue, even if it has the support of nine other members of the Council.

b. An Overview of Some Relevant UN Charter Provisions:

(i) UN Charter Article 2(7)

Article 2(7) of the UN Charter states that:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.⁴⁰

This article is one of the most disputable articles in the UN Charter as it describes to the relationship

between the UN as an organization and State members. For example the word "essentially" in this article can have many meanings. Some experts believe that essentially should be read in the narrowest possible manner, so that no government has the right to interfere with the domestic affairs of any other government. Some have claimed that the word "essentially" prohibits intervention on concern of human rights or for any other aim⁴¹. Other experts think that the word should be read broadly, so as to limit the international jurisdiction of the UN.⁴² The San Francisco Conference did not resolve this. The original draft of Article 2(7) said that "matters ... solely within the domestic jurisdiction of the State concerned." Some conference delegates believed that the word "solely"⁴³ limited the scope of domestic jurisdiction too much.⁴⁴ They wanted to use the word "essentially" instead of "solely." Replacing "solely" with "essential" shows that the word "essentially" was meant to restrict international, not domestic, jurisdiction.⁴⁵ Nonetheless, the Security Council seems to see the matter in a different light. For them, the word essentially has not followed what seems to be the intended meaning of Article 2(7). The Security Council interprets "essentially" to be a limit on domestic jurisdiction, and the Council has the right to decide what matters are within domestic jurisdiction in different situations.⁴⁶ However, this basic principle has one important exception. Article 2(7) continues by asserting that "this principle shall not prejudice the application of enforcement measures under Chapter VII."⁴⁷ As such, Chapter VII authorizes the Security Council to use enforcement measures "to maintain or restore international peace and security"⁴⁸ after it has decided under Article 39 that "a threat to or a breach of international peace and security" has occurred.⁴⁹ When the Council exploits this exception under Article 39, it is implied that the Council has concluded that the issue on which it wishes to intervene is not "essentially within the domestic jurisdiction"⁵⁰ of the State concerned.

(ii) UN Charter Chapter VII: Articles 39-42

Article 39 provides the principal powers of the Security Council in the Charter and states

The Security Council shall determine the existence of any threat to peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.⁵¹

Under the terms of this Article, the Security Council has the authority to determine with wide discretion the existence of "threats to the peace, breaches of the peace, and acts of aggression."⁵²

Secondly, if the Security Council decides that there is a "threat to the peace" or "breach of the peace," the Charter gives it the authority to take certain measures. Article 40 gives it the right to make recommendations, or to take "provisional measures." Article 41 gives it the right to impose economic and other non-military sanctions, and Article 42 gives it the right to take military measures. The Security Council is required to follow one or more of these lines of action. It may pursue these sanctions in any sequence it deems proper. Such actions may include "demonstrations, blockades, and other operations by air, sea, or land forces of Members of the UN." If the Security Council decides that a "threat to peace" exists, members of the UN have an obligation to help the Security Council to maintain international peace and security. Under article 39, it is the Security Council, which must decide if a nation has committed aggression and, if so, what collective steps the world organisations should take to solve the problem. However, on what ground could the UN Security Council justify the determination of "threat to peace" or "breaches of the peace," and "acts of aggression"? What specific situation constitutes such conditions? When are these conditions present? International scholars have different views on the answers to these questions that I will examine in the next chapter.

One may think that at the San Francisco Conference, in the original draft of Article 39, the framers of the UN Charter avoided defining the concept of "threat to peace" or "breaches of the peace," and "acts of aggression" in order to give the Security Council a broad discretion in making threat-to-peace determinations in a given situation.⁵³ This discretion is not easy to exercise without the agreement of the five permanent members of the Security Council. From the start, this agreement has been elusive except in a few cases.⁵⁴

The first time the Council passed a resolution leading to the use of force occurred with the respect to Korea in 1950. A significant point is that the only reason the UN was allowed to act in Korea was because, at that time, right in the middle of the Cold War, the Soviet Union was by chance absent from the Security Council.⁵⁵ In June, when North Korean troops crossed the 38th parallel into South Korea, the Council authorized the use of force in a military enforcement action. The Council met on June 25, noting that "the armed attack on the Republic of Korea by the forces from North Korea ... constitutes a breach of the peace," in accordance with Article 39 of the Charter.⁵⁶ Two days later, the Security Council, in Resolution 83,

recommend[ed] that the Members of the UN furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.

Although the Korean enforcement action was the first time the UN authorized the use of force, it should be noted that these resolutions mention neither Chapter VII nor Article 42. Also, the resolutions were only recommendations, not binding decisions.

The Council authorized the use of force in a large-scale enforcement action for the second time at the conclusion of the Cold War. On August 2, 1990, after Iraq invaded Kuwait, the Security Council condemned the action, demanding the immediate withdrawal of Iraq's forces.⁵⁷ Four days

later, the Council imposed economic sanctions on Iraq.⁵⁸ On August 25, the Council, in response to Iraq's claim that it had annexed Kuwait, approved the use of naval forces to enforce Resolution 661 by using "such measures commensurate to the specific circumstances as may be necessary ... to halt all inward and outward maritime shipping."⁵⁹ The allied coalition forces that liberated Kuwait acted in accordance with the authorization of Chapter VII in the Resolution 678. Unlike the action in Korean, however, there was no formal UN command. The allied forces worked with an American commander, with Saudi Arabia serving as host country.⁶⁰ Kuwait's liberation was the first time all permanent members of the Council authorized the collective use of force. Resolution 678 was an authorization pursuant to Article 42, not a command. Further, the language of the resolution, addressed to "Member States co-operating with the government of Kuwait," is in accordance with the United States's view that the forces were acting under Article 51 in collective defence of Kuwait.⁶¹

It is important to note that in the past the UN Charter did not expressly give the Council authority to initiate economic sanctions or military intervention to protect human rights in crisis situations or to intervene in internal matters of a state member. However, the first such case occurred in 1966 when the Security Council imposed mandatory economic sanctions on Southern Rhodesia.⁶²

Eleven years later, the Council again used the threat to the peace rationale to impose a mandatory arms embargo on South Africa.⁶³ This power was later granted in response to the cases regarding Somalia, the former Yugoslavia, Rwanda, and Haiti.

3. The Protection of Human Rights as International Matters

The concept of human rights has been debated, without clear resolution, since ancient time. Jacques Maritain early on pointed out that:

human person possess rights because of the very fact that it is a person, a whole, a master of itself and of its acts...by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to a man because of the very fact that he is man.⁶⁴

Although, the United Nations' concept of human rights surrounds this natural concept of rights, what the international society meant by "human rights" does carry different opinions in various cultures and regimes, which makes the possibility of a stable definition practically impossible. The West tends to think of human rights as "Life, Liberty and the Pursuit of Happiness."⁶⁵ Accordingly, to some authors these rights include the right "to speak freely, to choose a political party or a religion, the right to health," including the right to medical assistance, the right to humanitarian aid and the right to be free from genocide and torture.⁶⁶ In understanding human rights, the East focuses primarily on economic, social and cultural rights.⁶⁷ However, many African nations enjoy a combination of Eastern and Western values. Keba M'Baye, former President of the UN Commission on Human Rights, notes that many African nations overlook the liberties of the Western world in an attempt to combat famine, illness, and ignorance.⁶⁸ Socialist nations believe that, by definition, the state represents the interests of the people and, as such, individuals owe the state their.⁶⁹ Because the state ensures the economic and cultural well being of all individuals, conflicts should never exist between an individual and a state.

The concept of protecting human rights through global legislation was unprecedented, until the Nuremberg and Tokyo Trials.⁷⁰ The world community intensified their efforts to prevent such abuses through the development of new international laws for the protection of human rights.

Human rights are articulated largely in human rights instruments such as treaties and declarations adopted by the United Nations and its specialized agencies. Most human rights principles and rules accomplished during its first 40 years were devoted to developing universal human rights and

promoting human rights world-wide. Such principles and rules can be found in the Charter of the United Nations, Universal Declaration of Human Rights,⁷¹ the International Covenants on Human Rights the Optional Protocol to the International Covenant on Civil and Political Rights and other documents drafted by the United Nations General Assembly, the Economic and Social Council of the United Nations, and the other UN agencies. For example, Article 1(3), Articles 55 and 56, as well as several other provisions of the Charter are devoted solely to human rights.⁷² In addition to these universal texts, there are international documents of a regional nature, such as the European Conventions for the Protection of Human Rights and Fundamental Freedoms, the American Bill of Rights, the European Convention of Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and among others texts produced by the Organization of African Unity " African Charter on Human and People's Rights."⁷³

International human rights law, contained in various treaties since the 1940s, has brought a new aspect into international law: individuals are no longer simply indirect beneficiaries of the state's obligations to other states as was historically the case, but have become subjects of international law.

As such, states can no longer claim that their treatment of their citizens is an internal domestic matter.

Further, these states have given the world community the right to examine their handling of the rights of their citizens.⁷⁴ Various states are now signatories of important declarations and documents concerning the protection of human rights, and each of these states has agreed to make the subject of the human rights a matter of international law.⁷⁵ For example, 165 nations are signatories to the four Geneva Conventions of 1949. The number of the endorsement will indicated the degree of the international community support for the body of these conventions.⁷⁶ The four Geneva Conventions of 1949, safeguards involve a right to live free of violence and torture and also outlaw acts that impose

"outrages upon personal dignity, in particular, humiliating and degrading treatment."⁷⁷ Likewise, Protocol II adopted in 1978 expands the humanitarian principles articulated in Article 3 of the Geneva Conventions. In addition there are post-Cold War the international community adopted several international human rights documents such as the following.

a. OSCE documents

1. The Helsinki Accords, 1975

The Helsinki Accords, adopted on August 1, 1975 by the Conference On Security and Co-operation In Europe (OSCE formerly CSCE) demand "full respect for human rights and fundamental freedoms."⁷⁸ The OSCE is comprised of West European nations, newly independent East European nations, nations formerly of the Soviet bloc, Canada, and the United States. Thus, OSCE documents reflect a wide Western post-Cold War acceptance "of the legitimacy of the international concern about internal repression." The participants in the OSCE decided that there is a shifting dividing line between "internal affairs" to be protected against intervention and the responsibility of the international community to intervene in order to preserve peace and important human values.

2. Copenhagen Document, 1990

On June 29, 1990, representatives of the members of the CSCE stated that

where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include: -the right of the individual to seek and receive adequate legal assistance; -the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms; - the right of individuals or groups acting on their behalf to communicate with international bodies with competence to receive and consider information concerning allegations of human rights abuses.⁷⁹

2. Charter of Paris for a New Europe, 1990⁸⁰

In 1991 an OSCE Conference on the Human Dimension was held in Paris, and in the resulting Charter of Paris for a New Europe, participating states affirmed that

human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace.⁸¹

3. The Moscow Document, 1991⁸²

In 1991, an OSCE Conference on the Human Dimension was held in Moscow and again Europe unanimously declared that

commitments undertaken in the field of the human dimension of the OSCE are matters of the direct and legitimate concern to all participants States and do not belong exclusively to the internal affairs of the State concerned.⁸³

The Moscow documents confirm the OSCE's power to conduct investigations of human rights abuses in member states without their consent. In addition, participating states specified that

[I]ssues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order.⁸⁴

b. The Vienna Declaration and Program of Action of 1993

This declaration, resulting from the UN World Conference on Human Rights, recognized "that the international community should devise ways and means ... to prevent the continuation of human rights violations resulting thereof throughout the world."⁸⁵ The Vienna Declaration was endorsed by

171 states. The Vienna Declaration and Program of Action is the most recent world-wide pronouncement that indicates that human rights issues are a matter of international concern.⁸⁶ Whereas this declaration only provides goals and aspirations for human rights, it stresses that all human rights are a universal notion and any violations are problems that must be resolved by the international community.⁸⁷

c. 1991 Report of the Secretary-General on the Work of the Organization,

The former Secretary-General of the UN, Javier Perez de Cuellar, said that sovereignty must be equally balanced with the protection of human rights:

I believe that the protection of human rights has now become one of the keystones in the arch of peace... It is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity. The fact that, in diverse situations, the United Nations has not been able to prevent atrocities cannot be cited as an argument, legal or moral, against the necessary corrective action, especially where peace is also threatened. Omissions or failures due to a variety of contingent circumstances do not constitute a precedent...⁸⁵

In addition, the former UN Secretary General, Boutros Boutros-Ghali, in his opening statement to the UN World Conference in, said

the state should be the best guarantor for human rights.... However, the issue of international action must be raised when States prove unworthy of this task, when they violate the fundamental principles laid down in the Charter of the UN, and when-far from being protectors of individuals-they become tormentors.⁸⁶

He also implemented one of the conference's proposals by appointing a High Commissioner for Human Rights whose appointment was approved by the General Assembly on February 15, 1994.⁸⁷ This is further recognition that crises involving human rights warrant international attention and assistance. Members of the Security Council have also recognized that the reach of Chapter VII enforcement

action extends to domestic conflicts like those occurring in Yugoslavia, where human rights violations are rampant."⁸⁸ The practice of the UN, including the recognition of participant states that "the promotion and protection of all human rights is a legitimate concern of the international community,"⁸⁹ leads to the conclusion the international community having adopted the international human rights documents, they have accepted in principle the obligations corresponding these rights. These documents predominantly provide that the protection of human rights is no longer a matter within the exclusive domestic jurisdiction of states.

Endnotes

¹Hall first used this term in his treatise. See for more information William Edward Hall, " *A Treatise on International Law* " 8th by A. Pearce Higgins (London: Oxford University Press, 1924) at 304.

²Steve G. Simon. "The Contemporary Legality of Unilateral Humanitarian Intervention" (Fall 1993) 24 *California Western International Law Journal* 117-153 at 117-118.

³Michael J. Bazylar, "Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia" (1987) 23 *Stanford Journal of International Law* 547, 571. Simon, *supra* note 2 at 119.

⁴Hugo Grotius, *De Jure Belli Esti Pacis* 1st ed., 1625, " The Law of War and Peace" (vol. 3 in "Classic of International Law" series), translated by F.W. Kelsey et al, 1925. "If a tyrant ... practices atrocities towards his subjects, which no just man can approve, the right of human social connexion (sic) is not cut off in such a case ... [I]t would not follow that others may not take up arms for them." Quoted in Jean-Pierre L. Fonteyne, "The Customary International Law Doctrine of Humanitarian Intervention" (1974) 4 *California Western International Law Journal* 203, 214.

⁵Henry G. Hodges, *The Doctrine of Intervention* (Princeton, NJ: The Banner Press, 1915) 88-96 at 87,. See also Natalino Ronzitti, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity* (Martinus Nijhoff 1985) xiv-xv .(" Humanitarian intervention has been traditionally distinct from protection of nationals abroad. Humanitarian intervention, in a classical or traditional sense, refers to armed force use by one state or group of states in order to protect the citizens of another state from cruel treatment").*Id* at xiv .See also Ravi Mahalingam, " The Compatibility of The Principle of Nonintervention with the right of Humanitarian Intervention"(Spring, 1996) *IUCLA Journal of International Law and Foreign Affairs* 221 1-80 at 8.

⁶Ronzitti, *supra* note 5 at 53.

⁷ Antoine Rougier, " La Theorie de l'Intervention d'humanite," (1910) 17 *Revue Generale de Droit International Publique* 468 Translated in Fonteyne, *supra* note 4 at 229-230.

⁸Fonteyne, *supra* note 4 at 230

⁹Ronzitti, *supra* note 5 at 90. See also Fonteyne, *supra* note 4 at 208.

¹⁰*Ibid*.

¹¹Thomas E. Behuniak, " The Law of Unilateral Humanitarian Intervention by Armed Force: Legal Survey" (1978), 79 *Military Law Review* 161-162.

¹²*Ibid*.

¹³Fonteyne, *supra* note 4 at 235.

¹⁴Ibid.

¹⁵Article 2 para.4, and Article 51 of the UN Charter.

¹⁶Article 2 para.4 of the UN Charter.

¹⁷Article 2 para.7 of the UN Charter.

¹⁸ See Ian Brownlie. *International Law and the Use of Force by States*. (Oxford : Clarendon Press, 1963) 338-342 at 342. Brownlie, strongly condones a legal validity of humanitarian intervention. In his text cites the legal philosopher W.E.Hall, who also contested the legal right of humanitarian intervention. Id. at 339.

¹⁹Bazyler, *supra* note 3 at 575.

²⁰*The Declaration on the Inadmissibility of Intervention in Domestic Affairs of States and the Protection of Their Independence and Sovereignty* G.A. Res. 2131(XX), 20 U.N. GAOR Supp. 14, at 11, UN Doc. A/6014 (1965); *Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations*, G.A. Res.2625 (XXV) (Oct. 24, 1970) (“No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state.”); *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*, G.A. Res. 36/103 (Dec. 9, 1981)(contain similar text on this issue)

²¹Simon, *supra* note 2 at 117-150.

²²See, W. Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law" (1990) 84 *American Journal of International Law* 866-871 at 870-871.

²³ David J. Scheffer, "Toward a Modern Doctrine of Humanitarian Intervention" (Winter 1992) 23 *University of Toledo Law Review* 258-259.

²⁴See Ruth E. Gordon, "United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond" (1994) 15 *Michigan Journal of International Law* 519, 554

²⁵Lori F. Damrosch. *Enforcing Restraint: Collective Intervention in Internal Conflicts* (New York: Council on Foreign Relations Press, 1993) 215-219; Tom J. Farer, "An Inquiry into the Legitimacy of Humanitarian Intervention" *Law and Force in the New International Order* (Lori F. Damrosch & David J. Scheffer eds., (1991)) 185-191.

²⁶Scheffer, *supra* note 23 at 258-259.

²⁷UN Charter Articles 2 para.7.

²⁸See, e.g., Fernando R. Teson, "Collective Humanitarian Intervention" (1996) 17 *Michigan Journal of International Law* 323, 324; Richard Falk, "The Complexities of Humanitarian Intervention: A New World Order Challenge" (1996) 17 *Michigan Journal of International Law* 491, 503; See also for more discussion on the issue, "International Intervention, State Sovereignty, and the Future of International Society" (November 1993) 138 *International Social Science Journal* 517-530.(They point out that the international community is "currently witnessing the emergence and recognition of a legitimate right to intervene in the domestic affairs of member states

in the name of community norms, values, or interests"); see also Lori F. Damrosch, *Concluding Reflections, in Enforcing Restraint*, supra note 25, at 348, 364 ("The prevailing trend today is to take seriously the claim that the international community ought to intercede to prevent bloodshed with whatever means are available").

²⁹See Fernando R. Teson, *Humanitarian Intervention: An Inquiry into Law and Morality* 2nd Ed. (New York: Transnational Publisher 1988) 186 Fernando R. Teson, "Collective Humanitarian Intervention" supra note 28 ("International law today recognizes, as a matter of practice, the legitimacy of collective forcible humanitarian intervention ..."); W. Michael Reisman, "Humanitarian Intervention and Fledgling Democracies " (1995) 18 *Fordham International Law Journal* 794

³⁰See Jack C. Plato and Robert E. Riggs, *The United Nations: International Organization and World Politics* (Chicago, Illinois: Dorsey Press 1988) at 22.

³¹Article 1 of the UN Charter defines the purposes of the UN as follows: "(t)o maintain international peace and security ... [t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ... to take other appropriate measures to strengthen universal peace ... [t]o achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms ..." and [t]o be a centre for harmonizing the actions of nations in the attainment of these common ends " UN Charter Article 1.

³²See Article 7 (1) of the UN Charter.

³³*Ibid.*

³⁴The purpose is considered by some international lawyers to be a general vague goal. See for more comments A. Lerot Bennett -*International Organizations: Principles and Issues* - 4 Ed. (Englewood Cliffs, New Jersey Prentice Hall, 1977) at 55.

³⁵UN Charter Article 23 (1).

³⁶See UN Charter, Article 24(1).

³⁷*Ibid.* para. 2.

³⁸See also Article 48 of the UN Charter which states that the Security Council has the power to determine, for the maintenance of international peace and security, which Member States shall carry out its decisions "directly and through their action in the appropriate international agencies of which they are members."

³⁹See UN Charter Article 27.

⁴⁰UN Charter Article 2 (7). See also Leland M. Goodrich, Edvard Hambro and Anne Patricia Simons. *Charter of the United Nations: Commentary and Documents* 3d ed. (New York: Columbia UP, 1969), 60-73.

⁴¹Goronwy Jones, *The United Nations and the Domestic Jurisdiction of States* (Cardiff, 1979), 37-40

⁴²M.S. Rajan, *United Nations and Domestic Jurisdiction* 2 ed. (London: Asia Publishing House, 1961) 56-66 This uncertainty flows from the difference between what "essentially" was intended when Article 2 para.7 was

drafted and what it has come to mean through the course of Security Council interpretation. See also Goronwy J. Jones, *supra* note 41 at 19-20 .

⁴³Jones, *supra* note 41.

⁴⁴*Ibid.*

⁴⁵For more information see Cedric E. Evans "The Concept of Threat to Peace' and Humanitarian Concerns: Probing the Limits of Chapter VII of the UN Charter" 5 *Transnational Law & Contemporary Problems* (Spring 1995) 213 See also Djura Nincic, *The Problems of Sovereignty in the Charter and the Practice of the United Nations* (The Hague: Martinus-Nijhoff, 1977) 137 & n. 2, at 159-60.

⁴⁶Rajan, *supra* note 42, at 56-57 (asserting that there are matters inherently within a state's domestic jurisdiction and that domestic jurisdiction is balanced against international jurisdiction on a case-by-case basis).

⁴⁷*Ibid.*

⁴⁸UN Charter Article 39.

⁴⁹*Ibid.*

⁵⁰*Ibid.*

⁵¹UN Charter Article 39.

⁵²UN Charter Articles 39-51. As the title suggests, Chapter VII is concerned with the Council's authority to determine, prevent and remove threats to peace, breaches of peace, and acts of aggression.

⁵³E.g., Leland M. Goodrich & Anne P. Simons, *The United Nations and the Maintenance of International Peace and Security* (Washington, D.C.: The Brookings Institution, 1955) 352-354.

⁵⁴The reason for this inaction is the fact that one or more of the Council's Permanent Five frequently vetoed the Security Council's power. Exceptions to the Security Council's historic pattern on inactivity include the Korean War and the Gulf War.

⁵⁵The Soviet delegation was absent from Security Council meetings in protest of the seating of Taiwan at the Security Council in the place of the People's Republic of China.

⁵⁶UN Security Council Resolution 82 (June 25, 1950).

⁵⁷UN Security Council Resolution 660 (Aug. 2, 1990).

⁵⁸UN Security Council Resolution 661 (Aug. 6, 1990).

⁵⁹UN Security Council Resolution 665 (Aug. 25, 1990).

⁶⁰M. Lee, "North Korea and the Western Notion of Human Rights" in *Human Rights in East Asia: A Cultural Perspective*, ed., by J. Hsiung 129, 131-137.

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- ⁶¹UN Security Council Resolution 678 (1990)
- ⁶²SC Resolution 232, UN SCOR, 23rd Sess., 1428th mtg. at 5, *UN Doc. S/Res/253* (1968).
- ⁶³SC Resolution 418, UN SCOR, 32nd Sess., 2046th mtg. at 2, *UN Doc. S/Res/418* (1977). See Richard B. Lillich, *International Human Rights: Problems of Law, Policy, and Practice*, 2d ed. (Boston: Little, Brown and Company, 1991), 541-563.
- ⁶⁴*Declaration of the Rights of Man and of the Citizens* art.2 (1789), reprinted in I.Brownlie, *Basic Documents On Human Rights* (Clarendon Press-Oxford 1971) 8-10 . see also L. Henkin. "The Rights of Man Today" Westview Press, 1978.
- ⁶⁵*The Declaration of Independence* 2 (U.S. 1776) The Declaration of Independence was adopted by the Continental Congress in Philadelphia on July 4, 1776. See also I.Brownlie, *Basic Documents on Human Rights* supranote 70.
- ⁶⁶Simon, supra note 2 at 117-118.
- ⁶⁷*International Conference on Human Rights in Teheran in 1968* stated "the problems of economic, social and cultural rights should receive due and increasing attention in view of the increasing importance of realizing these rights in the modern world." See A.H.Robertson, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*. (New York: St. Martin's Press 1982). See also A.H.Robertson & J.G.Merrills, "Human Rights in the World" (Manchester: Manchester University Press, 1972) 2 at 12.
- ⁶⁸*Ibid.*
- ⁶⁹Robertson & Merrills, supranote 66 at 13.
- ⁷⁰*The International Military Tribunal at Nuremberg* (Nunberg), November 14, 1946, and the *International Military Tribunal for the Far East, Tokyo*, February 15, 1946 to November 12, 1948. See generally *The Nurnberg Trial*, 6 F.D.R.69 (1946); L.Sohn, *Cases on United Nations Law* (1st ed.1956) 898-967.
- ⁷¹*The Universal Declaration of Human Rights*. adopted by the United Nations General Assembly December 10, 1948; GA Res. 217 A (III), UN Doc. A/810 (1948).
- ⁷²Article 13 of the UN Charter authorizes the General Assembly to make studies and recommendations about human rights. Article 62 authorizes the Economic and Social Council to make recommendations to promote human rights. Article 68 requires the Economic and Social Council to start up commissions to promote human rights. Article 76 makes the promotion of human rights one of the basic objectives of the trusteeship system.
- ⁷³*African Charter on Human and People's Rights*, O.A.U. Doc. CAB/LEG/67/3/Rev. 5, 21 *Int'l Legal Material*.59; concluded June 26, 1981; entry into force October 21, 1986; 39 ratification as July 5, 1991.
- ⁷⁴*Refugee Policy Group, Human Rights Protection for Internally Displaced Persons: An International Conference* 7 (results of meeting held June 24-25, 1991).
- ⁷⁵See generally "Vienna Declaration and Programme of Action Set Goals for 21st Century", 30 *UN Monthly*

Chronicle. (Sept. 1993) 54.

⁷⁶ *Ibid.* 11

⁷⁷ *Ibid.* at 94. See generally Major Thomas J. Murphy, “Sanctions and Enforcement of the Humanitarian Law of the Four Geneva Conventions of 1949 and Geneva Protocol I of 1977”, (1984) 103 *Military Law Review* 3

⁷⁸ *Conference on Security and Co-operation in Europe: Concluding Document of the Belgrade Meeting in follow-up to the Conference*, Mar. 8, 1977, 17 *Int’l Legal Material* 414 (1978); *Conference on Security and Co-operation in Europe: Final Act*, Aug. 1, 1975, 14 *Int’l Legal Material* 1292 (1975); *Conference on Security and Co-operation in Europe: Madrid Session*, Nov. 11, 1980-Sept. 9, 1983, 22 *Int’l Legal Material* 1395 (1983).

⁷⁹ See *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, (1990). 29 *Int’l Legal Material* 1305

⁸⁰ *Charter of Paris for a New Europe, A New Era of Democracy Peace and Unity*, Nov. 21, 1990, 30 *Int’l Legal Material* 193 (1990).

⁸¹ *Ibid.*

⁸² *Document of the Moscow Meeting on the Human Dimension, Emphasizing Respect for Human Rights, Pluralistic Democracy, The Rule of Law, and Procedures for Fact Finding*, 30 *Int’l Legal Material* 1670, 1672 (1991).

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action*, June 25, 1993, 32 *Int’l Legal Material* 1661, 1664 (1993).

⁸⁶ See generally *Vienna Declaration and Programme of Action Set Goals for 21st Century*, 30 *U.N. Monthly Chronicle* (Sept. 1993) 54.

⁸⁷ *Ibid.*

⁸⁵ Javier Perez de Cuellar, *Report of the Secretary-General on the Work of the Organization*, UN Doc. GA/46/404 (1991).

⁸⁶ *Speeches of the Plenary Session of the 2nd United Nations Conference on Human Rights, The Vienna Declaration and Programme of Action*, United Nations Department of Public Information, June, 1993: 30.

⁸⁷ *Assembly Names Kose Ayala Lasso, of Ecuador, as First High Commissioner for Human Rights*, Federal News Service, Feb. 15, 1994, available in LEXIS, News Library, Curnws File.

⁸⁹ *Ibid.*

CHAPTER TWO

THE LEGALITY OF UN HUMANITARIAN INTERVENTION

UNDER CHAPTER VII OF THE UN CHARTER

1. Introduction

The UN Charter does not expressly authorize to the UN to forcibly intervene directly or indirectly in domestic affairs of any other State even when the people of that State face genocide, ethnic cleansing, widespread violence, starvation, or gross violations of internationally recognized human rights.

However, in the post Cold-War era, the UN Security Council has authorized the use of force within the borders of member States on several occasions. In Somalia, the Council authorized the use of force to deal with famine and violence. In Rwanda, it authorized the use of force to prevent the genocide of one ethnic group by another. In Haiti, authority was granted to use force to end the systematic abuse of human rights and to restore democracy. The Security Council has established that the internal human rights abuses or humanitarian crises of States may qualify as a "threat to peace" thus allowing the UN to intervene forcibly under Chapter VII of the UN Charter. This chapter examines the legality of the UN humanitarian intervention under Chapter VII of the UN Charter. The chapter covers the legal obstacles, which might undermine the legality of the UN intervention under Chapter VII and possible supporting solutions to the issue.

2. The Legal Basis of the UN Humanitarian Intervention under Chapter VII and Practical Solutions to the Legal Obstacles.

The most significant legal obstacle to UN humanitarian intervention under Chapter VII of the

UN Charter emerges from the interpretation of the concept of "threats to peace" placed upon it by Article 39 of the UN Charter, Chapter VII. The legal obstacle centres on the possibility that the concept of "threat to international peace and security" is limited strictly to international trans-border wars and is therefore not applicable to internal conflicts even in cases of violations of fundamental human rights.

The Charter authorizes the Council to intervene under Chapter VII in across-border wars or international conflicts, such as the "threats to peace" in Korea and Kuwait where these wars, by definition, were not internal conflicts.¹ Under the Charter, the fundamental responsibility and power of the Security Council is not to preserve internal peace and security of any member State, but to maintaining international peace and security in accordance with the principles and purpose of the United Nations.² This has created a legal dilemma. In cases of intervention in internal affairs of State to protect human rights, the legal question remains whether the Council has exceeded its power under the U.N. Charter, or whether the Council has effectively unlimited discretion to determine the existence of a "threat to the peace."

Before we proceed any further, it is important to establish the intentions of the UN drafters in setting out the Charter. The deliberations at the 1945 conference supported the position that Article 39 of the UN Charter, Chapter VII does not prohibit recent forms of Security Council humanitarian intervention. During the 1945 San Francisco conference on International Organization, at which the UN Charter was drafted, representatives have discussed over whether to define the concept "threat to peace" under Article 39."³ However, the framers intentionally desisted from defining this concept in order to give the Council broad discretion in making threat-to-peace determinations on a case-by-case basis.⁴ Despite the intent of the framers, proponents of this obstacle argue that there are limits

to the Council's discretionary authority. For example, Professor Mary O'Connell in an insightful recent paper "Continuing Limits on UN Intervention in Civil War" (1992) disagrees with the notion that "threats to peace" should be determined by the process of Security Council deliberation.⁵ In fact, she claims that such ideas are in direct contrast with "the spirit in which the Charter was written."⁶ Furthermore, O'Connell contends that threat-to-peace determinations must be grounded on a "substantive notion of what threatens the international peace."⁷ Similarly, many observer have properly rejected an expansive interpretation of the meaning of "threat to peace" from the Security Council, even in cases of severe human rights abuses. They press for a restricted interpretation of the "threat to peace" and they interpret human rights violations as incompatible with the legal concept of international peace. Therefore, these threats are unlikely to constitute a threat to international peace.⁸ Professors Damrosch and Meron argue that, under Chapter VII, the Council can only act forcibly in cases of "threat to the peace, breach of the peace, and acts of aggression."⁹ Within this definition, even human rights violations as severe as genocide would not constitute aggressions or threats to international peace, as long as they are contained within State borders. Supporters of the stricter interpretation of "threat to peace" find that the Council can not intervene unless a human rights violation threatens international peace and security.¹⁰ These authors, however, are in the minority. Professors' McDougal and Reisman hold a more prevalent view regarding the Council's discretionary authority. They asserted that the drafters originally intended to give "a very broad competence" to the Council. As they explain, there were two reasons for this competence: to permit the Council to decide the existence of any "threat to peace," and to allow them to decide the steps necessary to maintain or restore international peace and security.¹¹ They recognize that the Council is "the only judge of what situations make up threats to peace."¹² Similarly a definition provided by

Combacau explains the broad discretion of the Council in determining the boundaries of the “threat to peace”. He outlines that “a threat to peace in sense of article 39 of the Charter is a situation which the organ competent to impose sanctions, declares to be an actual threat to peace”¹³

In addition, Judge Weeramantry described the expansive scope, of the Security Council, as follows:

for the determination under Article 39 of the existence of any threat to the peace, breach of the peace or act of aggression, is one entirely within the discretion of the Council. It would appear that the Council and no other is the judge of the existence of the state of affairs which brings Chapter VII into operation. That decision is taken by the Security Council in its own judgment and in the exercise of the full discretion given to it by Article 39.¹⁴

Moreover, Delbruck and Wolf support the idea that the Security Council should interpret "a threat to the peace" to include cases of massive violations of human rights.¹⁵ They argue that if the concept of a threat to international peace were connected with cases international wars only , then the genocide in Cambodia or the treatment of Kurds in Iraq would not have been considered by the Council threats to international peace cases.¹⁶

This legal obstacle is not very strong, and it is clear that the drafters of the Charter insisted on granting the Council exclusive discretion on determining what is "domestic," and what constitutes a "threat to peace." Allowing for greater interpretative powers has the end result of permitting the UN to assess each case on an individual basis, and to promote the protection of human rights as its major objective.¹⁷

Another legal obstacle to humanitarian intervention authorized by UN's Security Council emerges from the doctrine of non- intervention placed upon it by Article 2(7) of the UN Charter. Proponents stress that massive human rights violations constitute a matter essentially within the

domestic jurisdiction of a State. In order for the UN to authorize forcible humanitarian intervention, under Chapter VII of the Charter, the Security Council must find that (1) the controversy does not lie "essentially within the domestic jurisdiction" of the State,¹⁸ and (2) it constitutes a threat to "international peace and security."¹⁹

International scholars discuss two approaches to address this obstacle. The first approach is supported by M. Reisman is that severe violations of human rights do not constitute a situation essentially within the internal jurisdiction of a State. Consequently, there is no need for the enforcement actions exception of Article 2(7) to operate.²⁰ The second approach, conducted by Thomas Franck follows an analysis of the Security Council's authority to address human rights violations under Chapter VII in the context of the enforcement measure exception to the limitation of Article 2(7).²¹ His view is that massive violations of human rights do not constitute a matter essentially within the internal affairs of a State and determination that human rights abuses constitute a "threat to peace" activates the article's exception clause.²² The main difference between these two approaches is in the justification for UN intervention into domestic affairs of a State to address human rights. In the former, the UN intervention to address human rights inside domestic jurisdiction is supported by the concept of "popular sovereignty."²³ Reisman assess carefully the notion of "popular sovereignty" as "people's sovereignty rather than the sovereign's sovereignty."²⁴ He firmly believes that sovereignty is no stumbling block to intervention to guard the populations from human rights violations.²⁵ Alternatively, under the latter approach, the UN intervention is legal because human rights violations are not considered as matters of domestic jurisdiction, but as matters, which threaten the international peace and security that activate the article 2(7) exception.²⁶ Conflicting considerations by scholars correspond by inference to one or the other of the two approaches.²⁷

However, I found that those who argue that a severe violations of human rights constitute a threat to the peace, particularly in light of the expanding interpretation of a threat to peace and the adoption of enforcement measures activate the article 2(7) exception clause have the more persuasive argument. This argument recognizes the clear link that exists between the violation of human rights and the maintenance of international peace and security. Clearly, Thomas Franck approach to the legality of UN Humanitarian intervention under Chapter VII would support the function of the Security Council in meeting its responsibilities to prevent massive human rights violation around the world. More support for this approach can be found in the Charter where there is a link between international peace and security and fundamental human rights.

Over time it has been recognized that it is not only as important to maintain peace and security in order to protect human rights, but conversely, the protection of human rights is vital to the maintenance of peace and security. The two concepts are interdependent. Therefore, it is not enough to read Article 2(7) independently of the Preamble of the UN Charter and of Articles 1(3), 55,56 and 68. The Preamble aims and these articles are interdependent and must be understood within the context of the whole. For instance, in the preamble of the Charter the prime reason for the assembly in San Francisco to draft the Charter and establish the UN was "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small... "²⁸ is denominated after the first legally committed purpose of saving "succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind." Under Article 2, the commitments of solving humanitarian problems, promoting human rights, and respecting the right of self-determination are listed after the purpose of maintaining international peace and security. Article 1(3), for example, sets out as one aim

of the UN Charter,

the achievement of international co-operation in resolving international problems of an economic, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, language, or religion.

Article 55 states in part, the United Nations shall promote: " ... universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language, or religion. " Article 56 contains a pledge by member States "to take joint and separate action in co-operation with the United Nations" to accomplish the purposes set out in Article 55.²⁹ It would certainly come into view, that the Security Council giving substance to Article 1(3), 55 and 56 may lawfully intervene and use enforcement measures provided in Chapter VII of the UN Charter to respond to massive human rights violations within domestic jurisdiction of a member State. The Charter's evolution, coupled with the Security Council's broad discretion in interpreting Article 2(7) and Article 39 in order to bring human rights violation within the boundary of the enforcement measures of Chapter VII, have provided a legal foundation for recent interventions such as those in Iraq, the former Yugoslavia, Somalia, Haiti and Rwanda under Chapter VII of the UN Charter.

The legality claimed by the UN Security Council to intervene for humanitarian purposes in internal conflicts has been documented in different Council meetings and decisions. For example, January 1992 meeting, attended by heads of State attendees discussed prospects for the UN after the Cold War and participants specifically acknowledged the wider interpretation of the scope of "threat to peace and security." All heads of State with a joint declaration agreed that

"The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The

United Nations membership as a whole...needs to give the highest priority to the solution of these matters."³⁰

Moreover, some members in the General Assembly and Security Council have also supported that the combination of human rights violations, and humanitarian crises create a threat to international peace and security, while others members have argued that such situations are still internal matters.³¹

The voices proclaiming that such situations are internal matters outside of the Council's jurisdiction have not prevailed in numerous relevant international documents and UN resolutions.³²

(i) Security Council Resolutions and The Determination of the "threat to peace"

Accordingly to Lois E. Fielding "the Security Council decisions are international law and form principles of international relations." ³³ As Judge Lachs stated in a separate opinion joining the majority in the Lockerbie case,

[w]hile the Court has the vocation of applying international law as a universal law, operating both within and outside the United Nations, it is bound to respect, as part of that law, the binding decisions of the Security Council."³⁴

Therefore, Security Council decisions on the current expanded meaning of "threats to peace" are binding under international law.

In framing determinations under Chapter VII the Security Council adopted resolutions that characterized as a "threat to peace" a number of different situations. These include, but are not limited to (1) humanitarian crises combined with massive human suffering (2) sudden interruption of established democracy, (3) mass displacement of populations and flows of refugees to neighboring countries, (4) obstacles to the distribution of humanitarian relief and medical service and (5) practices of ethnic cleansing, genocide and war crimes. These precedents are drawn from specific cases, such

as the Kurdish situation in northern Iraq and the situation in Somalia, the former Yugoslavia, Haiti and Rwanda.

For example, in Resolution 794 (1992) addressing the starvation of civilians in Somalia, the Security Council found that "the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance,..." and "widespread violations of international humanitarian law" constituted a threat to international peace and security.³⁵

In resolution 918 (1994), the Security Council, alarmed by the reports of flagrant human rights abuses in Rwanda, determined that "the magnitude of the human suffering caused by the conflict" and found the "continuation" of this domestic crisis to "constitute a threat to peace and security in the region."³⁶

In resolutions concerning the former Yugoslavia and Somalia the Security Council concluded in Resolution 774 (Somalia) and Resolution 770 (the former Yugoslavia) that in both countries "the obstacles to the delivery of humanitarian relief constitute a threat to international peace and security."³⁷

In addition other resolutions indicate that mass killing, genocide and other crimes against humanity in the Former Yugoslavia and in Rwanda constitute a threat to international peace and security. Consequently, the Security Council authorized the establishment of ad hoc international criminal tribunals that seek to punish individuals who have committed crimes against humanity in the Former Yugoslavia and in Rwanda.³⁸ Under Resolution 940, in reference to the Haiti crisis, the Security Council cited the "continuing escalation by the illegal de facto regime of systematic violations of civil liberties.."and "... the refusal of the military junta to abide by the Governors Island

Agreement and the Pact of New York, for not restoring the democratically-elected Aristide back to power, as major in finding a threat to peace."³⁹

Moreover, in different resolutions the Security Council indicates that a massive exodus of refugees and internal displacement can constitute a threat to international peace and security. For instance, Resolution 688 (1991) found the massive exodus of Kurdish refugees toward and across neighbouring countries to "threaten international peace and security in the region."⁴⁰ More importantly, in Resolution 841, the Council found that the massive flow of Haitian refugees and the "mass displacements of population "can constitute a threat to international peace and security."⁴¹

3. UN Humanitarian Intervention under Chapter VII and Customary International Law

The final step in assessing the legality of UN humanitarian intervention under Chapter VII of the UN Charter is to examine the evolution of customary international law in this issue. International customary law is recognized as one of the main sources of international law. The Statute of the International Court of Justice (I.C.J.) states that Court will apply "international custom, as evidence of the general practice accepted by law" ⁴²

International scholars have debated when a practice becomes a custom. There are two recognized criteria: (1) evidence that the states follow the practice out of a sense of legal obligation (*opinio juris*),⁴³ and (2) the manifestation of a general and consistent practice among a significant number of States.⁴⁴ Unless a State objects to custom during its formation as custom it is considered to have accepted the rule of custom.⁴⁵ Once the custom is recognized, it is binding upon all nations, including those who enter the international community after the custom is recognized as law.⁴⁶ When one applies these criteria to evidence of State practice and attitudes toward massive human rights

violations, it is widely acknowledged that under customary international law all States have some obligations to the global community to prevent a government from committing massive human rights violations.⁴⁷

a. Opinio Juris

There are several writers who support the legality of humanitarian intervention under customary international law. For example, Sohn and other authors attempted to give a legal justification for humanitarian intervention under customary international law. In their opinion, that conclusion is supported by numerous governments and different cases where some governments have step in to stop a neighbour government to commit such abuses "as constituted a violation of the universally recognized and generally respected rules of decent State conduct."⁴⁸

In addition Fonteyne notes the principle of non-intervention under Article 2(7) is not a device to hide behind when a State massively abuses human rights.⁴⁹ As far back as mid-century, jurist L. Oppenheim states in the seventh edition of his treatise, *International Law*:

There is general agreement that, by virtue of its personal and territorial supremacy, a State can treat its own nationals according to its discretion. But there is a substantial body of opinion and practice in support of the view that there are limits to that discretion; when a State renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible.⁵⁰

Although other scholars rejected this opinion, many others believed that States have a right to intervene forcibly to end serious human rights violations and reject the norm of exclusive domestic jurisdiction. When the Security Council authorizes intervention in domestic conflicts, however, it also normally offers substantive justifications for its decision comparable to those relied on by individual

States. Such justifications may include the consent of a legitimate authority⁵¹ or the protection of human rights or democracy.⁵²

A number of scholars have argued for traditional analysis that permits humanitarian intervention

“when a state abuses its right of sovereignty by permitting within its territory the treatment of its own nationals or foreigners in a manner violative of all universal standard of humanity, any state may step in and exercise the right of humanitarian intervention.”⁵³

Moore added that intervention is justifiable only when there is “ an extensive threat to fundamental rights, particularly a threat of widespread loss of human life.”⁵⁴ Recently, some legal commentators now argue that international law does, or should, accept substantive justifications as the basis for displacing the principle of non- intervention. In their opinion, at the end of the Cold War international lawyers accepted the view that the Security Council could consider internal human rights abuses as a "threat to peace" under Chapter VII of the UN Charter.⁵⁵ For example, David Forsythe and Kelly Pease, referring to the precedential importance of Resolution 688 (1991), asserted that the " Security Council for the first time in its history stated a clear and explicit linkage between human rights violations materially within a State and a threat to international security.”⁵⁶ They pointed out that "the Council clearly has the legal authority to authorize armed action, or lesser coercive measures, to correct human rights violations materially within a territorial State.”⁵⁷ Also, Douglas Eisner notes that the Security Council intervention in Iraq, Somalia and Yugoslavia "demonstrate the new concern for human rights and the evolution of a new norm legalizing humanitarian intervention.”⁵⁸ He added that these recent interventions have moved toward the articulation of a new norm in customary international law: the right of forcible intervention to protect human rights.⁵⁹ These recent sequence of cases indicate an opinio juris that massive human rights violations are no longer a matter of domestic jurisdiction and that a legal right of Security Council to intervene in humanitarian crises to

remedy human rights abuses now exist under Chapter VII of the UN Charter.

b. State Practice

States have justified their use of humanitarian intervention with the professed desire to end massive human rights violations or to punish perpetrators. The trend of state practice indicates that severe human rights violations are international matters. For example, in December 1971 India moved its military forces into East Pakistan following the killing of more than 10,000 East Bangladesh by the Pakistani army.⁶⁰ Within one week of India's humanitarian intervention, the Pakistani army had surrendered.⁶¹ A new State of Bangladesh was then created from the former area of East Pakistan.⁶² In January 1979, Tanzania moved forces into Uganda and partially justified its actions on humanitarian grounds.⁶³ After eight years of rule in which Idi Amin had murdered and tortured 300,000 people,⁶⁴ the Tanzanian army, along with assistance from Uganda rebels were able to oust Amin's regime in a bloody two and a half-month campaign.⁶⁵ By not condemning Tanzanian intervention, the international community tacitly accepted the action. Many members of the United Nations recognized the new Ugandan government.

While these represent cases of unilateral intervention without the UN backing, they are important because they represent instances where some State recognized the existence of massive human rights violations in a neighbouring State and took action to resolve the violations. During this period, the UN was often constrained by the Superpowers and their alliances.

Despite these superpower constraints, however, the UN was able to agree that internal abuses of human rights may constitute a threat to peace and non-forcible humanitarian action was warranted in Rhodesia in 1966 and in South Africa in 1977. These cases demonstrate a clear link between human

rights and international peace and security.

UN Practice

(i) The Rhodesia Case

The first determination by the Security Council of the existence of a "threat to peace" on humanitarian grounds occurred in 1966 in Rhodesia. On November 11, 1965 the white minority regime in Southern Rhodesia made a unilateral declaration of independence.⁶⁶ Delegates from 35 member States pondered this action while 22 African and Asian member States claimed that the already volatile situation was aggravated by the declaration.⁶⁷

As a result, the Council adopted Resolution 217 (November 20, 1965)⁶⁸, which stated that the unilateral declaration of independence by the racist minority regime in Southern Rhodesia constituted a "threat to international peace and security."⁶⁹ The second result was that the Council adopted Resolution 221 (April 9, 1966) which determined that the situation in Southern Rhodesia constituted a threat to the peace and called upon Portugal not to allow passage of oil to Southern Rhodesia.⁷⁰ In addition, the United Kingdom was requested "to prevent, by use of force if necessary" ships from carrying oil to Southern Rhodesia.⁷¹ Finally, on December 16, 1966, the Council adopted Resolution 232⁷² and determined that the continued existence of Southern Rhodesia's white minority government, "the Smith regime," constituted a threat to international peace and security.⁷³ Resolution 232 is extraordinary because it was not based on any tangible external consequences of Southern Rhodesia's internal situation.⁷⁴ Some argue that the Council's determination was based on the premise that the mere existence of a racist regime could potentially spread racist ideas "to other communities and becom[e] international."⁷⁵ Regardless of whether this interpretation is correct, the

determination by the Council in the absence of external consequences fully demonstrates the Council's willingness to use its broad competence to identify situations that constitute threats to the peace and to enact measures aimed at the removal of such threats. This action clearly demonstrates a precedential Chapter VII practice, which would lay the foundation for future interventions.

(ii) The South African Case

The UN first become involved in the issue of apartheid in South Africa after the Sharpeville massacre in 1960 in which South African police shot at unarmed blacks protesting South Africa's "pass laws." Over 250 black demonstrators were killed or wounded.⁷⁶ Following the Sharpeville tragedy, in 1963 the UN imposed a voluntary arms embargo which was made mandatory later in the Security Council Resolution 481 passed on November 4, 1977. This resolution made reference to its Chapter VII measures and stated that the continuation of South Africa's racial policies constitutes a threat to international peace and security.⁷⁷ The South African government protested claiming apartheid policies to be a matter of domestic jurisdiction while the Security Council viewed apartheid policies as a threat to international peace and security. More importantly, the actions taken by the UN in relation to Rhodesia and South Africa show that human rights are not only the property of States but also the property of international community and that human rights are an important part of international law and discourse.⁷⁸

(c) International Human Rights Instruments as part of State practice

International human rights instruments are systematically integrated in treaties and declarations adopted by the United Nations and regional organizations, as well as in the Geneva

Conventions of August 12, 1949 for the protection of victims of war and two additional protocols of 1977 and other instruments applicable to armed conflicts.

No international human rights agreement have ever indicted a clear authority to the Security Council to intervene in the internal affairs of any nation in case of human rights abuses. However, the international community has ratified a long series of treaties, which affirm the value of human rights. These treaties create an obligation owed to the "international community as a whole" to prevents human right violations and to intervene in case of massive violations of human rights. The obligation arises because these international agreements require that states protect individual communities against human rights violations regardless of territorial boundaries. Some international human rights agreements have been accepted as the norms of customary international law , because of the universal acceptance of these conventions as binding treaties. The Genocide Convention entered into force on January 12, 1952, is an example and currently 112 States are parties.⁷⁹ The Geneva Conventions have been ratified by 165 States. In 1986, in the case of *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States of America), the ICJ acknowledged common Articles 1 and 3 of the Geneva Conventions as reflecting general principles (i.e. customary law).⁸⁰

International lawyers usually claim that the norms of International human rights treaties bind only the countries that are parties to those treaties. However, Michael Byers notes that "even those states which have refused to ratify human rights treaties have international human rights obligations." Michael Byers bases his opinion on two main grounds. First, by ratifying the U.N. Charter, all member States accepted to respect human rights norms stated in Articles 55(c) and 56.⁸¹ This explanation demonstrates that the subsequent human rights treaties have only elaborated the Charter

based norms, not established new norms in themselves.⁸² Also, it is generally accepted that the norms of customary international law have developed with respect to specific human rights and the jurisdiction of the international community to monitor, encourage respect and enforce the implementation of those rights within the territory of non-consenting states.⁸³

The international community has ratified important international treaties which ensure the value and protection of human rights, but these treaties do not explicitly affirm that violations are a "threat to international peace and security" or that the UN Security Council may intervene in internal conflicts for humanitarian purposes. But examining these international treaties in detail underlines the violation of human rights as matter of international concern.

There are an extremely large number of these documents. Such international documents include, but are not restricted to, the 1948 Universal Declaration on Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.⁸⁴ Moreover, the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, December 10, 1984, and the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid. Also, The Statute of the Nuremberg War Crimes Tribunal and the Statute of the Yugoslavia War Crimes Tribunal and The Statute of the International Criminal Tribunal for Rwanda that constitute international codification's of crimes against humanity. I cannot discuss all these international documents, but I will mention the primary documents that apply particularly to a number of cases in which the Security Council of the UN has intervened, namely the Four Geneva Conventions and the Genocide Conventions.

(i) Four Geneva Conventions

Four Geneva Conventions were ratified in 1949, and 165 nations have ratified them.⁸⁵ The Geneva Conventions are the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Ship-wrecked Members of Armed Forces at Sea of August 12, 1949; and the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

Article 3 of each of the four Geneva Conventions⁸⁶ (Common Article 3) and the Additional Protocol to the Geneva Conventions⁸⁷ (Protocol II) have provisions applicable to persons in a country, which is experiencing an internal armed conflict. Article 3 of these conventions precisely determine that citizens have protection in "case of armed conflict not of an international character," in other words purely domestic conflicts.⁸⁸ The first article of Protocol II "develops and supplements Article 3 Common to the Geneva Conventions."⁸⁹ Under Article 3 of Protocol II, persons who are not taking part in the conflict are "to be treated humanely, without any adverse distinction founded on race, colour, religion or faith, ...or any other similar criteria." The following acts are prohibited:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;⁹⁰

Article 4, provides that the state, as well as the opposing party or parties, are obligated to respect certain fundamental rights of persons not active in the conflict.⁹¹

More significantly, Article 14 of Protocol II forbids,

starvation of civilians as a method of combat... It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works... .⁹²

This article makes clear that civilians may not be starved as an instrument of war.⁹³ It is hardly necessary to remind the reader that this sort of starvation of civilians and attacks on drinking water supplies was one of the primary reasons for the UN intervention in Somalia and in the former Yugoslavia. Protocol II also prohibits the State and opposition armed forces from using the civilian population as the "the object of attack," from committing "threats of violence the primary purpose of which is to spread terror among the civilian population" and from starving "civilians as a method of combat."⁹⁴ Whole villages have been destroyed in order to prevent opposing forces from using them for protection, as in Bosnia-Herzegovina; and in the case of Somalia food supplies were hijacked in order to prevent aid reaching opposing factions.

(ii) The Genocide Convention

The United Nations was barely one year old when the General Assembly unanimously passed Resolution 96(I) December 11, 1946.⁹⁵ This resolution proclaims that genocide "is a crime under international law which civilized world condemns..." and requested the Economic and Social Council to draft a convention on the crime of genocide and to be proposed to the next regular session of the General Assembly. On December 9, 1948 the General Assembly endorsed Convention on the Prevention and the Punishment of the Crime of Genocide.⁹⁶ The punishment of the crime of genocide is a situation of international interest. Like the Geneva Conventions, the Genocide Convention

provides an absolute obligation to prosecute people' responsible whether private citizen, public officials or head of States for genocide as defined in the Convention.⁹⁷ Article I of the Convention make firm that Genocide, is a crime under international law. Article II then defines Genocide as...any of the following acts committed with the intent to destroy, entirely or in part, a national, ethnical, racial or religious group such as:

 killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.⁹⁸

Many of the brutal atrocities committed by the Iraqi, Rwandan, by Serbs, Croats and Muslims in the former Yugoslavia and by the Haitian military regimes where racial, political, religious motivated and these actions completely or in part satisfy the Convention's definition. For example, in the former Yugoslavia after the Serbs surrender of the town of Biscani, called one hundred women to the center of the city and instructed to disband. While dispersing, they were shot in the back. At another village the Serbs casually called names from a list and killed those named.⁹⁹

Obviously, in cases in which the humanitarian crisis arises from an act of genocide, the act of forcible humanitarian intervention is authorized by the Genocide Convention. It is, however, an act, which requires UN approval and authorization. Article VIII of the Genocide Convention states: "any Contracting Party may call upon the competent organs of the UN to take such action under the Charter of the UN as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III."¹⁰⁰

4. Conclusion

I have shown that current international law recognizes, within the letter of the UN Charter the legality of UN intervention under Chapter VII of the Charter. The drafters of the Charter deliberately invested the Security Council with wide discretion to determine freely when a "threat to the peace " existed. The legality of Council recent humanitarian intervention is supported by the final provision of Article 2(7) relating to enforcement measures and the expansive interpretation on what constitute " threat to international peace and security." In effect, the Security Council was given a free hand to determine what is a "threat to international peace and security," and what is outside of domestic jurisdiction. The drafters intended that the sole restriction on the Council's discretion would be the veto power of the five permanent members. In examining the legal dilemma raised by this issue it is clear that once the gross violations of human rights of State an issue subject to international peace and security, the domestic jurisdiction exception in Article 2(7) is applicable. Then the UN has the legal right to intervene and use enforcement measure under Chapter VII. Furthermore, the Preamble of the Charter, when linked with Article 1(3), 55, and 56 as well as, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the Four Geneva Conventions can be interpreted as allowing intervention to prevent human rights abuses. Evidence of State practice and approach reveals that a new norm of customary international law has come up. *Opinio juris* declared by nations through UN resolutions on Rwanda, Iraq, Somalia, and Bosnia, and other internal conflicts have demonstrated that massive violation of human rights can jeopardize international peace and security.

Endnotes

¹See Mary Ellen O'Connell, "Commentary on International Law: Continuing Limits on UN Intervention in Civil War"(1992) *67 Indiana Law Journal* 903-911

²UN Charter Article 24.

³*UN Doc. 987, I/1/40*, 16 U.N.C.I.O. Doc. 210 (1945); Doc. 1019, I/1/42, 17 U.N.C.I.O. Doc. 506 (1945).

⁴Leland M. Goodrich & Anne P. Simons, *The United Nations and the Maintenance of International Peace and Security* (Washington, D.C. : The Brookings Institution, 1955) 352-354.

⁵Mary E. O'Connell, (1992), supra note 1 at 909- 911. For more information see Cedric E. Evans "The Concept of Threat to Peace' and Humanitarian Concerns: Probing the Limits of Chapter VII of the UN Charter" (Spring 1995) *5 Transnational Law. & Contemporary Problems* 213

⁶*Ibid.*

⁷ *Ibid.*

⁸Jost Delbruck, "A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations " (1992), *67 Indiana Law Journal* 887, 889. See also Daniel Wolf "Humanitarian Intervention " (1988) *9 Michigan Yearbook of International Legal Studies* 333, 356.

⁹See Theodor Meron, "Commentary on Humanitarian Intervention, in Law and Force " in *the New International Order*, at 212, 212-213. See also Lori F. Damrosch, "Commentary on Collective Military Intervention to Enforce Human Rights " *Law and Force in the New International Order*, ed. by Lori Fisler Damrosch & David J. Scheffer (Boulder: Westview Press, 1991) 215, 217-21.

¹⁰Meron, *Ibid.* at 212.

¹¹Myers S. McDougal & W. Michael Reisman "Rhodesia and the United Nations: The Lawfulness of International Concern " (1968) *62 American Journal of International Law* 1-15 at 6.

¹²See, e.g., W. Michael Reisman, "The Constitutional Crisis in the United Nations" (1993) *87 American Journal of International Law* 83 which outlines the relationship between the Court and the Council, and questions the Court's competence to review Chapter VII actions by the Council.

¹⁴Case concerning questions of interpretation and application of the 1971 Montreal Convention arising from the aerial incident at Lockerbie (Libya v. U.S.)(Order with regard to Request for the indication of provisional measures of Apr. 14.)(Separate opinion of Judge Shahabuddeen), 1992 I.C.J.114 Id. at 176 (dissenting opinion of Judge Weeramantry). For cogent discussions of the issue of Security Council competence, see W. Michael

Reisman, *The Constitutional Crisis in the United Nations*, 87 *American Journal of International Law* 83, 92 (1993); Thomas M. Franck, *The "Powers of Appreciation: Who is the Ultimate Guardian of UN Legality?"* (1992) 86 *American Journal of International Law* 519, 521

¹³ Combacau, *Le pouvoir de sanction de l'ONU*, Paris, 1974 at 100: "une menace pour la paix au sens de l'art. 39 est une don't l'organe competent pour declencher une action de sanctions declare qu'elle menace effectivement la paix." See also for more information Peter H. Kooijmans, *The Enlargement of the Concept 'Threat to Peace' in the Development of the Role of the Security Council* 113 (Rene-Jean Dupuy, ed., 1993) at 111. (July 21-23, 1992) (printed for private circulation only, as part of the Hague Academy of International Law Workshop 1992 on the Development of the role of the Security Council)

¹⁵ However, Arnison stated that large-scale atrocities constitute "inherent" threats to international peace under evolving notions of peace. For example, the Security Council recognized the apartheid regime in South Africa, the Ian Smith regime in Southern Rhodesia, and the Saddam Hussein regime in Iraq over Kurdistan as threatening international peace. For more discussion see Nancy D Arnison, . "International Law and Non-Intervention: When Do Humanitarian Concerns Supersede Sovereignty?" (1993) 17 *Fletcher Forum of World Affairs* 199

¹⁶ Delbruck, *supra* note 8, at 900

¹⁷ See UN Charter Prologue and Chapter 1.

¹⁸ UN Charter Article 2 para. 7.

¹⁹ UN Charter Article 39.

²⁰ *Ibid.*

²¹ Thomas M. Franck, *The Security Council and "Threats To The Peace": Some Remarks on Remarkable Recent Developments, in Peace-Keeping and Peace-Building, The Development of the Role of the Security Council* 83 (Rene-Jean Dupuy ed., 1992). (July 21-23, 1992) (printed for private circulation only, as part of the Hague Academy of International Law Workshop 1992 on the Development of the role of the Security Council)

²² *Ibid.*

²³ W. Micheal Reisman, "Sovereignty and Human Rights in Contemporary International Law" (1990) 84 *American Journal of International Law* 866, 872-873

²⁴ *Ibid.* at 869

²⁵ *Ibid.* at 872-873. Reisman states that "no serious scholar still supports the contention that internal human rights are essentially within domestic jurisdiction of any state." *Ibdi.* at 869.

²⁶ Franck, *supra* note 21.

²⁷Franck, *supra* note 21, at 105.

²⁸Leland M. Goodrich et al., *Charter of the United Nations: Commentary and Documents* 3rd ed. (New York: Columbia UP, 1969) at 19, 60, 73. In addition, the Purposes of the Charter lists the achievement of "international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" as well as "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." *Id.* at 25.

²⁹W. Michael & McDougal. Myres S., "Humanitarian Intervention to Protect the Ibos" *Humanitarian Intervention and the United Nations* by Lillich, Richard B. (Charlottesville: University Press of Virginia, 1973). 167-195. (Answering to a announcement of the death of thousands of Ibos, Yale Professor Micheal Reisman in partnership with his colleague Myers S. Dougal presented a memorandum to the United nations that urged for humanitarian intervention in the Nigerian civil war in order to protect the Ibos." See for more information GUENTER Lewy, "The Case for Humanitarian Intervention" *Orbis* (Fall, 1993) 626.

³⁰UN Security Council Summit Declaration. *UN Document S/3046*. (New York, 1992) 31.

³¹See UN SCOR, 46th Sess., 2982nd Mtg., at 17, 27, 28-30, 31, 44-45, 63, *UN Doc. S.PV. 2982* (1991)

³²Prosecutor v. Dusko Tadic, decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *UN Doc. IT-94-I-AR72* before the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991, para. 30 (Oct. 2, 1995) ("It can thus be said that there is a common understanding, manifested by the subsequent practice' of the membership of the United Nations at large, that the threat to peace' of Article 39 may include, as one of its species, internal armed conflicts").

²⁹See Lois E. Fielding , " Taking the next step in the Development of the new Human Rights: the Emerging Rights of Humanitarian Assistance to Restore Democracy" (Spring 1995) *5 Duke Journal Comparative & International* 329.

³⁴Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.S.), 1992 *I.C.J.* 114 (April 14) (separate opinion of Judge Lachs).

³⁵Res. 794 (1992) UN SCOR, 47th Sess., 3154th mtg. UN Doc. S/RES/794 (1992).

³⁶Res. 918 (1994) UN SCOR, 49th Sess., 3377th mtg., UN Doc. S/RES/918 (1994).

³⁷Res. 770 UN SCOR, 47th Sess., 3106nd mtg. at 1, UN Doc. S/Res/770 (1992).

³⁸ First, the Security Council under Resolution 827 founded an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia. Then, under Resolution 955 it established an International Tribunal for Rwanda. U.N. Doc. S/RES/955 (1994) and U.N. Doc. S/RES/827 (1994) .

³⁹U.N. Doc. S/RES/940 (1994).

⁴⁰U.N. Doc. S/RES/688 (1991)

⁴¹U.N. Doc. S/RES/841 (1993).

⁴²I.C.J. Statute Article 38.

⁴³Theodore Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford, 1989). 229-230 See also *Restatement (Third) of the Foreign Relations Law of the United States*, s 321 (1987) [hereinafter *Restatement (Third)*]

⁴⁴*Ibid.* See also Arthur M. Weisburd, "Customary International Law: The Problem of Treaties," (1988) 21 *Vanderbilt Journal of Transnational Law* 1, 6

⁴⁵*Ibid.*

⁴⁶*Restatement (Third)*, supra note 43.

⁴⁴Egon Schwelb, "The International Court of Justice and the Human Rights Clauses of the Charter," (1972) 66 *American Journal of International Law* 350.

⁴⁵Louis B. Sohn and Thomas Buerghenthal, "International Protection of Human Rights" (Indianapolis, 1973) See Also Louis B. Sohn "The New International Law: Protection of The Rights of Individuals Rather Than States" (Fall, 1982) 32 *American University Law Review* 1-64

⁴⁶Jean-Pierre Fonteyne, "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the UN Charter" (1973) 4 *California Western International Law Journal*. 203.

⁵⁰As quoted in Richard B. Lillic, *International Human Rights: Problems of Law, Policy, and Practice* (Boston: Little, Brown and Company, 1991), 2nd edition, 573. See also Guenter Lewy, "The Case for Humanitarian Intervention" *The China Quarterly* (Fall, 1993) 625.

⁵¹See, e.g., SC Resolution 940, UN SCOR, 49th Sess., 3413th mtg., *UN Doc. S/RES/940* (1994) (relying in part on a letter from President Aristide as a basis for the decision to authorize military intervention in Haiti).

⁵²See, e.g., *ibid.* ("Reaffirming that the goal of the international community remains the restoration of democracy in Haiti ..."); UN SCOR, 47th Sess., 3145th mtg. at 1, *UN Doc. S/RES/794* (1992) (citing the "magnitude of the human tragedy caused by the conflict in Somalia" as the basis for authorizing military intervention).

⁵³ Aaron Thomas J., & Ann V.W. Thomas, *The Dominican Republic Crisis 1965* ed., by J.Carey (Dobbs Ferry, N.Y.: Oceana 1967) at 19

⁵⁴ John Norton Moore, "The Control of Foreign Intervention in International Conflict" (1969) 9 *Virginia Journal of International Law*. 205-264 at 264.

⁵⁵Ibid.

⁵¹David Forsythe & Kelly Pease, "Human Rights, Humanitarian Intervention, and World Politics" (1993) 15 *Human Rights Quarterly* 290, 303

⁵⁷Ibid. at 303.

⁵⁸Douglas Eisner "Humanitarian Intervention in the Post-Cold War" (1993) 11 *Boston University International Law Journal*. 195, 28.

⁵³Ibid.

⁶⁰Daniel Wolf, "Humanitarian Intervention," (1988) IX *Michigan Yearbook of International Legal Studies* 333, 347

⁶¹Ibid.

⁶²Ibid.

⁶³Ibid. 349.

⁶⁴Ibid.

⁶⁵Ibid. 354. See also F. Hassan. "Realpolitik in International Law: After Tanzanian-Ugandan Conflict 'Humanitarian Intervention' Reexamined" (Fall, 1981) 17 *Willamette L.R.* 859-912.

⁶⁶See Karel C. Wellens (ed.), T.M.C. Asser Institute. *Resolution and Statements of the United Nations Security Council (1946-1989): A Thematic Guide*. Martinus Nijhoff Publisher The Netherlands (1990) , at 78. (Hereinafter RESOLUTIONS).

⁶⁷Ibid.

⁶⁸Resolution 217 (1965) of 20 November 1965.

⁶⁹Ibid. at 1 .For more information review the full text of Resolution 217 (1965).

⁷⁰Resolutions, supra note 66, at 83.

⁷¹Ibid. at 84.

⁷²See Resolution 232 (1966) of 16 December 1966.

⁷³Ibid.

⁷⁴Ibid. For more details see RESOLUTIONS, supra note 66, at 79, 105. (The mandatory sanctions were

terminated under Council Resolution 460 (December 21, 1979), which noted with satisfaction the establishment of a "Constitution for a free and independent Zimbabwe providing for genuine majority rule.")

⁷⁵See C.G. Fenwick, Editorial comment: "When Is There a Threat to Peace? - Rhodesia," (1967), 61 *American Journal of International Law* 753. For more information see also R.M. Cummings, "The Rhodesia Crisis Unilateral Declaration of Independence and the Position of the International Community" (1973) *New York University Journal of International Law & Politics* 47-84

⁷⁶R.B. Ballinger, "UN Action on Human Rights in South Africa" in *The International Protection of Human Rights*, 39 ed., by Evan Luard (1967) 248.

⁷⁷*Ibid.* 259.

⁷⁸Rosalyn Higgins, "Intervention and International Law" in *Intervention in World Politics*, Hedley Bull ed., (Oxford : Clarendon Press, 1984)36.

⁷⁹*Convention on the Prevention and the Punishment of the Crime of Genocide*, Dec. 9, 1948, 78 UNTS 277.

⁸⁰*Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. US)* 1986 ICJ Rep. 14.

⁸¹Michael Byers "Custom, Power, and the Power of Rules Customary International Law From an Interdisciplinary Perspective" (Fall, 1995) 17 *Michigan Journal of International Law* 109, 173

⁸²*Ibid.* 120.

⁸³*Ibid.*

⁸⁴ See the 1968 *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crime against Humanity*, Nov. 26, 1968, 754 UNTS.73. See *Slavery Convention*, Sept. 25, 1926, 60 UNTS 253; *Protocol of Amendment to the Slavery Convention*, Dec. 7, 1953, 212 UNTS 18; and *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, Sept. 7, 1956, 266 UNTS 4. See *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, March 21, 1950, 96 UNTS 272. See *ILO Convention Concerning Forced or Compulsory Labour*, June 28, 1930, 39 UNTS 55; and *ILO Convention (No.105) Concerning the Abolition of Forced Labour*, June 25, 1957, 320 UNTS 291. *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*, Dec. 10, 1984, UNGA Res.39/46, 38 UN GAOR Supp (No. 51) 197, UN Doc. A/39/51 (1984). *Ibid.* See also *The 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid*. See GAOR Res. 44 (I) (1946).

⁸⁵One hundred and sixty-five nations are signatories to the four Geneva Conventions of 1949. *Ibid.* at 11.

⁸⁶Geneva Conventions, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; 6 U.S.T. 3217, 75 U.N.T.S. 85; 6 U.S.T. 3316, 75 U.N.T.S. 135; 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Conventions].

⁸⁷*Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II)*, opened for signature Dec. 12, 1977, 16 *I.L.M.* 1391, 1442

[hereinafter Protocol II].

⁸⁸ Article 3 of the Geneva Conventions details the basic protections afforded citizens in non-international armed conflict. See generally Major Thomas J. Murphy, *Sanctions and Enforcement of the Humanitarian Law of the Four Geneva Conventions of 1949* and Geneva Protocol I of 1977, 103 *Military Law Review* 3 (1984).

⁸⁹ There are a number of standards that must be met in order for a situation to qualify as an armed conflict under Protocol II. See, e.g., *Id.* Article 1(1), at 1443.

⁹⁰ *Id.* Article 3(1)(a) and (c), 6 U.S.T. at 3116, 3118, 75 U.N.T.S. at 32, 34; 6 U.S.T. at 3220, 3222, 75 U.N.T.S. at 86, 88; 6 U.S.T. at 3318, 3320, 75 U.N.T.S. at 136, 138; 6 U.S.T. at 3520, 75 U.N.T.S. at 228, 290.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Protocol II*, *supra* note 87, Articles 13, 14, at 1447.

⁹⁵ G.A. Res. 96(I), U.N. Doc. A/64/Add.1 at 188 (1946). See *United Nations Resolutions: Resolutions Adopted by the General Assembly; 1947-1948* (1973)

⁹⁶ *Convention on the Prevention and the Punishment of the Crime of Genocide*, Dec. 9, 1948, 78 U.N.T.S. 277. Adopted by G.A. on Dec. 9, 1948 and entered into force on January 12, 1951.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ "Supplemental United States Submission of Information to the United Nations Security Council," 3 *US State Department Dispatch*, Nov. 2, 1992, at 802, 803

¹⁰⁰ *Convention on the Prevention and Punishment of the Crime of Genocide*, Dec. 9, 1948, Article VIII, 78 U.N.T.S. 277.

CHAPTER THREE

POST-COLD WAR UN HUMANITARIAN INTERVENTION UNDER

CHAPTER VII OF THE UN CHARTER

1. Introduction

Internal conflict, in the eyes of many international observers, is currently the most significant threat to the global community.¹ Thus, the Council, acting under Chapter VII of the UN Charter, has intervened in selected cases where human rights violations have been viewed as being a "threat to international peace and security." Since the creation of the UN's Chapter VII, a determination of threat or a breach of the peace has only been reached in for those involving cases of Palestine, Korea, Congo, Southern Rhodesia, South Africa, Cambodia, Iran-Iraq, Iraq-Kuwait, Iraq, Yugoslavia, Somalia, Libya, Haiti and Rwanda.²

As I mentioned, in view of the main focus of my research, it is important to examine only some of the cases involving internal conflicts where massive human rights violations constituted "threats to the peace" under Chapter VII that have occurred since the Post-Cold War era. In this chapter I will examine three cases of the Iraqi-Kurds,³ Yugoslavia and Rwanda in order to reconcile the Security Council's decision to the adoption of Resolution 688, 713 and 918. This chapter will examine these cases individually. They will be examined for their precedent-setting value in determining if the concept of "threat to international peace and security" provides an adequate legal justification for responding to human rights abuses in internal affairs of these states. Although the cases each involve different circumstances, I chosen in view of the same collateral effects, including magnitude of human suffering, huge refugee's flows into nearby countries, impediment of the delivery of humanitarian aid, the internal displacement of thousands of citizens.

2. The Iraq (Kurds) Case (1991)

The first internal conflict in the post-Cold War era in which the UN intervened to prevent human rights abuses within the border of a member state took place in Iraq.⁴ At the beginning of 1991, both Kurdish groups and Shia Muslim groups in Iraq rebelled against Iraqi government. Within weeks, Iraqi troops suppressed the rebellion and massacred Kurdish people in northern Iraq and the Shia Muslims in southern Iraq.⁵ The result was a massive human tragedy, many Kurds fled north and many Shia fled south in order to reach safety in Turkey and in Iran.⁶ However, there were no refugee camps there; disease, starvation and freezing temperatures led to almost 1000 deaths per day in that period.⁷ The televised scenes, especially of Kurds of the north exposed to the severe winter conditions shocked the world. After seeing these scenes, the international community, particularly the United States, Great Britain and France put pressure on the UN Security Council to intervene.⁸

On April 5, 1991, the Council reacted to this humanitarian crisis by adopting Resolution 688.⁹ This resolution started a new era in the protection of human rights.¹⁰ In Resolution 688, the Security Council acting, under the Charter of the United Nations for the maintenance of international peace and security and [r]ecalling Article 2, paragraph. 7 of the UN Charter condemned "the repression of the Iraqi civilian population," and demanded the immediate end of this repression, and insisted on the immediate access to the areas by international organizations for all those in need. Although the resolution did not explicitly cite Article 39 of the UN Charter, it identifies the repression of the Kurdish civilian population by the Iraqi regime as a "threat to international peace and security". The basic rights of the Kurds to life, liberty, own property, shelter, security of person, food the right to, culture, and take part in the government as well as the right to vote were being violated by the Iraqi government, and UN humanitarian intervention was justified under the terms of Resolution 688.¹¹

This was a unique case, because not only did the UN Security Council prevent a state from attacking its own people,¹² it also, for the first time, considered massive human right violations, combined with refugee flows, as threats to international peace and security.¹³ The flight of millions of Kurds toward the Turkish and Iranian borders¹⁴ was considered to be destabilizing to the region.¹⁵ By deeming the matter a threat to international peace and security, the situation was no longer an internal matter under Article 2(7) of the Charter, and the Council had adequate legal authority for a relief operation inside Iraq.

The purpose of Resolution 688 was to address the dire situation in northern Iraq, and to give legal authority to member states, particularly the United States, Great Britain and France, as well as humanitarian organizations to intervene in Iraq for humanitarian purposes.¹⁶ The allied forces commenced "Operation Provide Comfort" by air-dropping variety of food, tents and blankets to the Kurds in the southern Iraq. Thirteen nations mostly European and US, sent close to 30,000 military and civilian personnel to participate in the relief mission.¹⁷ The allied forces set up "safe zones" in the north and established a de facto air exclusion zone¹⁸ and warned Saddam Hussein's regime against flying over northern Iraq. Some critics have claimed that setting up safe zones for Kurds went beyond the perimeters of Resolution 688,¹⁹ but others, like James Mayall, have suggested that protecting the Kurds was an international obligation²⁰ that should have been discharged earlier.²¹

Victor Perton observes that the resolution was

an important precedent as it marked the first time the Security Council linked the repression of a civilian population to a threat to international peace and security, thus permitting forceful intervention without the consent of the target state."²²

The debate of Resolution 688 in the Security Council addressed the principle of non-

intervention in the internal affairs of the Iraqi government. Many member countries of the UN opposed this infringement on Iraqi sovereignty. In particular, Yemen and Zimbabwe said the Council used the flow of refugees across the borders as a cover to justify a threat to peace determination based exclusively on what Iraq was doing domestically.²³ Yemen and Zimbabwe were of the opinion that the existence of refugee flow is not enough to change the situation from a domestic affairs, to one of international affairs.²⁴ Yemen also claimed that the Security Council tried "to circumvent the international rule of law for political ends".²⁵ In the view of Yemen and Zimbabwe, a state's treatment of its own citizens is always a matter of internal jurisdiction and, as such, the citizens should be left to defend for themselves.²⁶ But many countries France included explained that the human rights violations were so severe that they had become international concerns.²⁷ For example, French foreign minister Roland Dumas claimed in the aftermath of the Kurdish crisis that the international community has:

the right to intervene in humanitarian cases, and should be prepared to violate national boundaries to alleviate human suffering resulting from repression, civil disorder, interstate conflict or natural disasters."²⁸

The view of internal conflicts as threats to international security, and the Security Council's subsequent responsibility to intervene, was slowly changing in 1991.²⁹ The Council was beginning to realize that they must intervene in cases of extreme violations of human rights, and that they had to start considering them as threats to international peace.

3. The Former Yugoslavia Case (1992)

The situation in the former Yugoslavia is another good example of how the Security Council

has built on the precedent set by Resolution 688 linking massive human rights violations to a threat to international peace and security.

Yugoslavia was originally formed as a nation in 1918 (called Kingdom of the Serbs, Croats, and Slovenies, 1918-1929) as the Ottoman Empire were defeated in the Balkan territories.³⁰ With the resistive leadership of Marshall Tito at the end of World War II, the country became a federal republic. Upon his death, the republic started to separate when Croatia and Slovenia declared their independence from Yugoslavia on June 25, 1991.³¹ On June 27, the armed forces of Yugoslavia in an attempt to prevent secession attacked the provisional Slovenian militia.³² Although, the Serbians living in Croatia wished to remain within the federation of Yugoslavia,³³ they also wanted to secede from Croatia. Fighting broke out between Serbs living in Croatia and the Croatian government, and the Yugoslav army helped the Serb rebels.³⁴ The Yugoslavian authorities stated that its support of the rebel forces was merely to protect the legitimate national and civil rights of its fellow Serbs.³⁵

Massive human rights violations in the former Yugoslavia territory began with the outbreak of the internal armed conflicts and with the elimination of some ethnic minorities by members of other ethnic group in order to "purify" territorial regions.³⁶ To accomplish this removal, each ethnic group used a policy of "ethnic cleansing, first Serbs and then Croats as well as Bosnians ."³⁷ Both, Slobodan Mislovec, the Serbian Prime Minister, and Radovan Karadzic, the leader of the Serbian rebel forces in Bosnia, have denied responsibility for ethnic cleansing.³⁸ However, a number of reports indicate that Serbs did indeed undertake ethnic cleansing and have committed genocide. There were many examples indicating the genocide; for example, in November 20, 1991 mass killing of 300 Muslims by Serb soldiers occur outside Vukovar,³⁹ in late May of 1992 there was an execution of as many as 5,000 Muslims by Serbian forces in the town of Kozarac,⁴⁰ and in May 18, 1992 56

Muslims were murdered by Serb militiamen in Grbavci.⁴¹ By the end of 1992, one report estimated that Serb forces had killed as many as 200,000 Bosnian Muslims (nearly ten percent of the total Muslim population).⁴²

The initial response of the UN Security Council to prevent massive human rights violations in the conflict between the three former Yugoslav republics was the adoption of Resolution 713 on September 25, 1991.⁴³ This resolution expressed concern "that the continuation of ... [the situation in Yugoslavia] constitutes a threat to international peace and security."⁴⁴ To back up its "threat to peace" determination, the Council presented two pieces of evidence: the "heavy loss of life and material damage," and the "consequences for the countries of the region, in particular the border areas of neighboring countries."⁴⁵ This means that the Council while was identifying that the crises in the former Yugoslavia as a "threat to international peace and security," the Security Council was also "deeply concerned" by the reports of abuses against civilians.⁴⁶

On August 25, 1992, the UN General Assembly demanded an end to the fighting in Bosnia while condemning the massive violations of human rights and humanitarian law, especially as exemplified by "ethnic cleansing." On October 6, the Council voted unanimously to establish a war-crimes commission to collect evidence of human rights violations within the former Yugoslav federation and to decide which individuals should face prosecution.⁴⁷ On October 9, 1992, the Security Council passed Resolution 781, which imposed a "no-fly" zone over Bosnia in order to prevent Serbian forces from obstructing the delivery of humanitarian aid.⁴⁸ UNPROFOR was given the authority (through Resolution 836) to use force to maintain order in safe areas, to monitor the cease-fire, to assist in the withdrawal of non-Bosnian military units, and to facilitate the delivery of humanitarian aid.⁴⁹ The UN humanitarian intervention in the former Yugoslavia was justifiable under

Chapter VII of the UN Charter and international human rights laws. For example, the international community viewed as crimes against humanity the massive human rights violations taking place daily in the former Yugoslavia. Therefore, those crimes are in violation of the UN Charter, and international human rights instruments such as the Charter of Nuremberg⁵⁰, the Genocide Convention,⁵¹ the Torture Convention,⁵² and other international human rights laws. Also, the commission report on massive human rights violations in the former Yugoslavia become one of the main legal bases that warranted UN humanitarian intervention under Chapter VII of the UN Charter.

4. The Rwanda Case (1994)

The case of Rwanda provides additional valuable case of the manner in which the UN is changing its policies. The crisis in Rwanda began, on April 6, 1994 when the plane carrying the President of Rwanda was shot down while approaching the capital of Kigali. The assassination of the President was the first attack in an uprising by the new Rwandan Patriotic Front (RPF), composed largely of Tutsis.⁵³ The Rwandan army forces composed mainly of Hutus, blamed the president assassination on the Tutsis.⁵⁴ Without provocation, Hutu militiamen began killing masses of innocent Tutsis in the capital of Kigali, and this genocidal violence quickly spread throughout the country.⁵⁵ The RPF's response to the killings was to renew its civil war against the Rwandan government,⁵⁶ and its offensive against the Hutus resulted in a mass exodus of refugees which resulted in 250,000 civilians crossing into Tanzania on April 28 and 29, 1994.⁵⁷ This flood of refugees was described as "the largest mass exodus of people ever witnessed" by the United Nations High Commission for Refugees (UNHCR).⁵⁸

Refugee camps in Goma and Zaire were continually swept by outbreaks of cholera, which

took up to 20,000 lives.⁵⁹

A UN report surmised that three million Rwandans had been displaced internally, and more than two million had fled to nearby countries.⁶⁰ The UN Secretary-General's report entitled "The Massacres in Rwanda" highlights, unprecedented human atrocities. According to the report, between 250,000 and 500,000 men, women and children, out of the seven million Rwandan national population, were killed in the previous seven weeks. The Secretary-General states:

On the basis of the evidence that has emerged, there can be little doubt that it constitutes genocide, since there have been large scale killings of communities and families belonging to a particular ethnic group.⁶¹

On June 22, 1994, the Security Council approved France's proposal to intervene in Rwanda.⁶² Resolution 929 allowed France to use "all necessary means" in protecting civilians against Rwanda's recent violent civil war. The Council also requested that the French halt the killings and to set up safe havens for the many refugees who had been forced to flee.⁶³ By June 22, three days after the Council's approval, 2,500 French troops were putting the proposal into effect in Rwanda and neighboring Zaire. These French troops helped to distribute relief supplies and patrolled throughout the countryside. The French forces were there strictly for humanitarian purposes. The French forces withdrew after two months, requesting that the UN quickly send replacement forces.⁶⁴ While thousands of UN troops from Ethiopia, Ghana, and Zimbabwe had replaced the French forces by August 1994, the UN response to the replacement request was very slow.

The UN-sanctioned action in Rwanda was legal under the Chapter VII exceptions to the doctrine of non-intervention.⁶⁵ The French intervention under the UN umbrella was justifiable under international law. Firstly, the Security Council authorized this intervention in the form of providing

humanitarian relief⁶⁶ thus negating any perception of the French forces as a threat to the territorial integrity and political sovereignty of Rwanda. Secondly, intervention to protect people from massive human rights violations is allowed under international law; therefore, the UN humanitarian actions were legal. The purpose of the UN-authorized French and African mission was clearly to stop civil war atrocities from occurring, not to take sides in the conflict. Unfortunately, the Rwanda situation remains problematic. Although the UN's reaction to Rwanda's internal conflict was legal under Chapter VII of the UN Charter and international law, the intervention was behindhand and resulted in failure by not preventing genocide of the Rwanda's population. However, the fact that the UN mission was not nonsuccess does not shift the fact that it was legally authorized under Chapter VII of the UN Charter.

5. Conclusion

The UN Security Council has interpreted serious human rights violations to be "threats to international peace and security" in the past; first, with the Ian Smith regime in Southern Rhodesia (Zimbabwe) and then with the apartheid regime in South Africa. These cases raised significant controversy over the interpretation of Article 39 despite their occurrence over 30 years ago. However, recent cases of post-Cold War intervention by the Security Council support the view that, once again, the Council is prepared to act on human rights violations under Chapter VII. The protection of the Kurds in Iraq and the intervention in the former Yugoslavia as well as Rwanda were undertaken for humanitarian concerns, and are the fundamental points of UN development. These interventions to end genocide and human suffering were supported by the world community and

undertaken collectively under the authority of the Security Council. These cases provide significant evidence of widespread international acceptance of the new interpretation of human rights violations as "threats to peace", and the exception of the principle of non-intervention in such cases. The analysis of these case studies reveals the legality of UN intervention in humanitarian crises. The examples of Kurds in Iraq, Rwanda and the former Yugoslavia show that, when tens of thousands of civilians face death from starvation or extermination, the international community considers the use of force under Chapter VII to be a legitimate and legal recourse to end suffering. This new legal commitment will ultimately encourage significantly the Security Council to fulfil the purpose for which the United Nations was created. However, as long as the Permanent Five (Russia, United States of America, France, United Kingdom and China) are in bargain, and have political will then the UN should respond easily to save thousand of lives. Nonetheless, if this compact should fail then the long-term future of UN humanitarian interventions under Chapter VII of the UN Charter could be placed in jeopardy.

Endnotes

¹Ruth E. Gordon "United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond" (1994), 15 *Michigan Journal of International Law* 519, 544-45; Gene M. Lyons "A New Collective Security: The United Nations and International Peace" (1994), 17 *Washington Quarterly* 171, 178-179.

²See Karel C. Wellens (ed.), T.M.C. Asser Institute. *Resolution and Statements of the United Nations Security Council (1946-1989): A Thematic Guide*. Martinus Nijhoff Publisher The Netherlands (1990)

³See SC Resolution 688, UN SCOR, 46th Sess., 2982nd mtg. at 1, *UN Doc. S/RES/688* (1991).

⁴See Jane E. Stromseth, *Iraq's Repression of its Civilian Population: Collective Responses and Continuing Challenges*, in *Enforcing Restraint, Collective Intervention in Internal Conflicts*, 77 ed. by Lori Fisler Damrosch (New York: Council of Foreign Relation Press, 1993) 256.

⁵*Decades of Disaster: The United Nation's Response: Hearing Before the House Selected Committee on Hunger*, 102nd Cong., 1st Sess. 67 (1991) (testimony of Ved P. Nanda, Directory, International Legal Studies program, *Univeristy of Denver College of Law*, entitled "United Nations Convention on the right to Food, Humanitarian Intervention, and the UN Response to International Disasters - An International Law Perspective").

⁶William Safire. "Duty to Intervene" *New York Times* April 15, 1991, at A17 See also David J. Scheffer. "Use of Force After the Cold War: Panama, Iraq, and the New World Order" in *Right V. Might: International Law and the Use of Force* 109, 144 (2d. 1991)

⁷See Patrick Tyler, "A.U.S. Scouting Refugee Sites Well Inside Iraq's Border," *New York Times*, Apr. 10, 1991, at A1.

⁸See Philip Meek, "Operation Provide Comfort: A Case Study in Humanitarian Relief and Foreign Assistance." (1991) *The Air Force Law Review* 225

⁹SC Resolution 688(1991) supra note 3 .

¹⁰James Nafziger, A.R. "Humanitarian Intervention in a Community of Power Part II" (1994) 22 *Denver Journal of International Law & Policy* 219, 221.

¹¹S.C. Resolution 688, UN SCOR, 46th Sess., supra note 3 , at 10-11. The Resolution states that the Council "condemns the repression of the Iraqi civilian population in many parts of Iraq, including and most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region." The resolution further insists that Iraq allow immediate access (to the Kurds) by international humanitarian organizations and "demands that Iraq cooperate with the Secretary-General to these ends."

¹²Gordon, supra note 1, 519, 545.

¹³See Jane E. Stromseth, "Iraq's Repression of its Civilian Population: Collective Responses and Continuing

Challenges," *supra* note 4

¹⁴See UN SCOR, 46th Sess., 2982nd mtg., *supra* note 3, at 58. In the public statements prior to the vote in favour of Resolution 688, U.S. Ambassador Pickering said: "the transboundary impact of Iraq's treatment of its civilian population threatens regional stability." The resources needed for caring for the Kurds would place grave burdens on neighbouring states. Moreover, Turkey feared that an influx of Kurds would exacerbate tensions between the Turkish government and ethnic Kurds already living in Turkey. *Id.* at 4-8.

¹⁵*Ibid.*

¹⁶*Ibid.* at 2.

¹⁷Aid to Kurds Stepped Up as Refugee Crisis Escalated; US Allies to Build Camp in Iraq Territory" (1991) *Facts on File*, 269.

¹⁸*Ibid.* 269.

¹⁹ Mary Ellen O' Connell, "Continuing Limits on UN intervention in Civil War." (1992) 67 *Indiana Law Journal* 903, 907.

²⁰James Mayall, "Non-Intervention and the New World Order," in *Political Theory, International Relations and the Ethics of Intervention*, Ian Forbes and Mark Hoffman, eds. (New York St. Martin's Press, 1993) 171.

²¹*Ibid.* 173.

²²Victor Pertou, "Humanitarian Intervention in The New World Order" (1994) *The Economist*.

²³See Tom Hundley, "Iraq Plotted Genocide of Kurds." *Chicago Tribune* April 1, 1992 at 1.

²⁴S.C. Resolution 688, *supra* note 3.

²⁵Michael E. Harrington, "Operation Provide Comfort: A Perspective in International Law" (1993) 8 *Connecticut Journal of International Law* 635, 44

²⁶Yemen, Zimbabwe and Cuba voted against resolution 688. See for more information UN SCOR, 46th Sess., 2982nd meeting 53 & 64-66. *UN Doc. S/PV.2892* (1991). *supra* note 3.

²⁷*Ibid.* 8.

²⁸Thomas G. Weiss and Kurt M. Campbell, "Military Humanitarianism" (September/October 1991) 32.5 *Survival* 452.

²⁹ See, e.g., Fernando R. Teson, "Collective Humanitarian Intervention" (1996) 17 *Michigan Journal of International Law* at 323,324.

³⁰For an account of the conflict, see "Chronology of Conflict in Former Yugoslavia," *Reuter*, Oct. 12, 1995.

³¹Chuck Sudetic, "2 Yugoslav States Vote Independence to Press Demands," *New York Times*, Jun. 26, 1991,

A1.

³²Marc Weller, "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia" (1992) 8 *American Journal of International Law* 569. On June 24, 1991, the Yugoslav Prime Minister warned "the Federal Government will use all means available to stop the republics' unilateral steps toward independence

³³*Ibid.*

³⁴"Yugoslav Rebel Republic Freeze Independence; Tense Cease-fire Halts Army, Slovene Fighting's" (1991) *Fact on File* 489.

³⁵*Ibid.*

³⁶Russell Watson et al., "Ethnic Cleansing," *Newsweek*, Aug. 17, 1992, at 16; J.F.O. McAllister, "Atrocity and Outrage," *Time*, Aug. 17, 1992, at 23.

³⁷*Ibid.* "Ethnic cleansing" refers to the systematic removal of the members of one ethnic group by the members of another in an attempt to "purify" geographical regions.

³⁸*Ibid.* See also Laura Silber, "Serbs Agree to Allow Red Cross Into Camps," *Washington Post* Aug. 9, 1992, at A1.

³⁹"Cornfield May Hold 300 Killed by Serbs," *Chicago Tribune* Nov. 29, 1992, at 4.

⁴⁰See Trevor Rowe, "UN Report: Serb Actions Undermining World Body," *Washington Post* Nov. 25, 1992, A12.

⁴¹Elaine Sciolino, "U.S. Names Figures It Wants Charged With War Crimes," *New York Times*, Dec. 17, 1992, at A1.

⁴²Frank McCloskey, "The U.S. Is Appeasing Fascism and Genocide," *Christian Science Monitor*, Dec. 31, 1992, at 19; Sadako Ogata, the United Nations High Commissioner for Refugees, dispatched to examine the crisis in the Balkan region, stated, "if only 10% of the information [reports regarding alleged atrocities] is true, we are witnessing a massacre."

⁴³S.C. Res. 713, UN SCOR, 46th Sess., 3009th mtg., UN Doc. S/RES/713(1991).

⁴⁴"Security Force Pact is Settled With Iraq, Official" *New York Times*, May 24, 1991 at A8.

⁴⁵See Stephen Robinson. "The Middle East: Bush and UN Chief Clash Over Legality of Military Move" *Daily Telegraph* April 18, 1991 at 10.

⁴⁶ See, e.g., Fernando R. Teson, "Collective Humanitarian Intervention" (1996) 17 *Michigan Journal of International Law* 323, 324

⁴⁷S.C. Resolution 771, UN SCOR, 47th Sess., 3106th mtg., at 25, UN Doc. S/RES/771 (1992).

⁴⁸S.C. Resolution 781, UN SCOR, 47th Sess., 3122nd mtg., UN Doc. S/Res/781 (1992).

⁴⁹See 30 UN Chronicle, Sept. 1996, at 14.

⁵⁰ Report of the Secretary-General on the Situation in Rwanda, UN SCOR 49th Sess., at 3, *UN Doc. S/1994/924* (1994)

⁵¹"Rwanda - Countdown to Catastrophe," *Reuter*, July 22, 1994.

⁵²*Ibid.* See Scott Kraft, "France's Big Gamble Pays Off in Rwanda," *LA Times*, July 16, 1994, at A1.

⁵³"Rwanda - Countdown to Catastrophe" *supra* note 51.

⁵⁴*Ibid.*

⁵⁵U.S. Agency for Int'l Dev., *Situation Report No. #4: Rwanda - Civil Strife/ Displaced Persons 1* (1994) [hereinafter USAID Report].

⁵⁶See Scott Kraft, "France's Big Gamble Pays Off in Rwanda" *supra* note 52. The civil war between the French-backed, Hutu-dominated government of Rwanda and the mostly-Tutsi RPF erupted in October 1990. The RPF attacked government forces from Rwandan refugee bases in Uganda. In August 1993, the government and the RPF signed a peace accord in Arusha, Tanzania, but the accord was never fully implemented. In November 1993, over 2,000 UN troops arrived to monitor the accord.

⁵⁷U.S. Dep't of State, *Chronology of U.S. Government Humanitarian Assistance to Rwanda 1* (1994).

⁵⁸"Rwanda - Countdown to Catastrophe," *Reuter*, *supra* note 51.

⁵⁹*Report of the Secretary-General on the Situation in Rwanda*, *supra* note 50.

⁶⁰*Report of the Secretary-General on the Situation in Rwanda*, *supra* note 50, at s 8.

⁶¹*Report of the Secretary-General on the Situation in Rwanda*, S/1994/640 (May 31, 1994). For additional documentation of the massive violations of human rights in Rwanda, see also: Report of the UN High Commissioner for Human Rights on his Mission to Rwanda, UN ESCOR, Commission on Human Rights, 3rd Special Sess., *UN Doc. E/CN.4/S-3/3* (May 24-25, 1994).

⁶²See Draft Resolution Concerning the Deployment of A Temporary Multinational Humanitarian Operation in Rwanda, UN SCOR, 49th Sess., *UN Doc. S/1994/737* (1994); SC Res. 929, UN SCOR, 49th Sess., 3392nd mtg., *UN Doc. S/RES/929* (1994).

⁶³See Letter Dated 20 June 1994 from the permanent representative of France to the United Nations addressed to the Secretary-General, UN SCOR, 48th Sess., *UN Doc. S/1994/734* (1994).

⁶⁴Paul Lewis, "France Calls Rwanda Mission a Success: Asks for UN Force," *New York Times* July 11, 1994, at A8.

⁶⁵S.C. Res. 918 UN SCOR, 49th Sess., 3377nd mtg. at 1, *UN Doc. S/RES/918* (1994).

⁶⁶*Ibid.*

CHAPTER FOUR

SOMALIA: UN HUMANITARIAN INTERVENTION UNDER CHAPTER VII OF THE UN CHARTER

1. Introduction

The collapse of the Siad Barre military regime in 1991 precipitated a clan power struggle in many parts of Somalia. The ensuing hostilities resulted in a brutal civil war, which killed more than 350,000 Somalis and left two million more at risk of starvation.¹ The political chaos, deteriorating security situation and widespread banditry and looting increased, aggravated by the collapse of all structures and institutions of government. The lack of government authority compounded by the total down break of law and order constrained the provision and delivery of humanitarian supplies.²

As we shall see, UN's early response to the crisis in Somalia was ineffective in numerous respects . However, on December 3, 1992, the UN Security Council passed Resolution 794.³ In this resolution, the Council, acting under Chapter VII of the Charter,⁴ authorized the Secretary General and member states to use "all necessary means to establish ... a secure environment for humanitarian relief operations in Somalia."⁵ The Council justified its intervention by claiming the human tragedy in Somalia constituted a "threat to international peace and security."⁶ In this chapter we will examine the UN humanitarian intervention in Somalia. Our examination will be divided into three parts. First, a brief history of Somalia will be examined. Second, the UN intervention in Somalia will be analyzed and, thirdly, the legality of the UN intervention in Somalia will be assessed.

2. A Brief History of Somalia

Somalia is a country on the Horn of Africa with an overall land area of 637,000 square kilometers and a coastline of 2,960 kilometers⁷ that borders the Gulf of Aden and the Indian Ocean.

Somalia borders Djibouti to the north-west, Ethiopia to the west and Kenya to the south.⁸ The UN estimates the population of Somalia was 7.7 million people as of mid-1991.⁹ Although the Somali people have a common language and ethnic origin, they are deeply divided along clan lines. Somalis belong to six major clans, the Darod, Issaq, Hawiye (who are pastoral and form 70 percent of the population), Digil and Rahawein (who are agricultural clans and represent 20 per cent of the population).¹⁰ Clans are indispensable to Somali life, and each clan is divided into a stunning number of sub-clans. Allegiances among various clans shift frequently because of complicated inter-clan rivalries.¹¹

During the past 100 years, Somalia has experienced colonization by many different countries. In 1886, the British Empire declared a protectorate over northern Somalia, with the objective of safeguarding the trade links of its colony, Aden.¹² In 1881, France set presence in part of the Somali peninsula which they called Somali-France (now Djibouti). Italy established a colony in southern Somalia by 1889.¹³ Somalia was also the target of African expansionism; Ethiopians in the 1880s claimed the Ogaden area. Somalia was then divided into five jurisdictions: British Somaliland, Italian Somaliland, French Somaliland, Ethiopian Somaliland, and the Northern Frontier District of Kenya, formerly claimed by the British.¹⁴ World War II saw the defeat of Italy and the merger of British and Italian Somaliland.¹⁵ This merger did not last long, however, for Northern Somalia soon returned to the British and southern Somalia was returned to the Italians as a United Nations trusteeship.¹⁶

In 1960, both the southern part of Somalia, under Italian rule, and the northern part, under

British rule, became independent.¹⁷ Although these smaller areas voluntarily agreed to join together to form the Somali Republic, the other areas (French Somaliland, Ogaden, and the northern frontier District of Kenya) forming part of Ethiopia, Djibouti, and Kenya were excluded.¹⁸ With the formation of the Somali Republic, Somalian political leaders continued to follow a policy of "AGreater Somalia," in which the boundaries of the new state were to be extended to include all the missing territories: Somali-Ethiopia (Ogaden), Somali-France (now Djibouti) and northern Somali-Kenya.¹⁹ These attempts at unification failed. In fact, the new government became estranged from the western states who protected Kenya and Ethiopia, as well as French Somaliland. Somali leaders pursued the unity proposal by building up their arms. This brought about the involvement of the former Union of Soviet Socialist Republics (USSR) into Somalian affairs.²⁰

On October 21, 1969, the civilian administration was overthrown in a military coup led by Major-General Mohamed Siad Barre.²¹ Barre made major changes to Somali government system when he took over: he suspended the 1960 constitution, dissolved the National Assembly and replaced it with a 25-member committee (Supreme Revolutionary Council) which consisted of army and police officers.²² The regime also abolished and prohibited the multi-party system, trade unions and free speech.²³ Scientific socialism was adopted, and the government was centralized under the Supreme Revolutionary Council.²⁴

Barre's regime was in need of economic assistance to develop Somalia's infrastructure. Both the United States and the former USSR saw an opportunity to help.²⁵ The Somali government first turned to the USSR for protection during the period from 1970 to 1977.²⁶ During this period, Barre received millions of dollars worth of tanks, AK47 assault rifles, anti-tank guns, mortars, military vehicles and ammunition from the Soviet Union.²⁷ From the early 1960s to the late 1970s, Somalia

received about \$300 million in fresh military aid from the Soviet Union.²⁸ The end of the Somali/Soviet relationship came when Moscow refused to support Barre's desire to unite the Somali Ogadeen (Ethiopia) with the rest of the country. Barre invaded southern Ethiopia (Ogadeen) in 1977, and the Soviets were unwilling to support this military aggression into Ethiopia.²⁹

In early 1978, Ethiopian forces, with help from the Soviet military, expelled Somali forces from the region.³⁰ Barre then turned to the United States for assistance. According to Ayittey;

On August 22, 1980, Somalia and the United States signed an agreement that permitted the United States to use military facilities at the port of Berbera. In exchange, Washington agreed to provide Barre with \$20 million in credits for the purchase of military equipment, \$5 million in budgetary support, and \$20 million in general credits that year.³¹

Although the United States had made a strong point of speaking out against human rights violations in other parts of the world, it kept quiet about the suspension of political parties and the violation of human rights in Somalia, while at the same time continuing to provide support to the repressive regime in the form of weapons and military aid.³² Ironically, much of the American aid to Somalia was used to suppress the Somali people and to commit human rights violations against them, something the United States had condemned in other countries. For example, in May 1988 Barre regime's declared war on its own people, dropping bombs on Somali citizens in northern Somalia.³³ During the 21 years of Barre's rule, Somalia became one of the most heavily armed African nations. Barre used the massive military aid to obtain his objective of domination. He applied the principle of "divide and rule," favoring his clan, the Marehan, both economically and militarily. When other Somali clans tried to resist this domination and favoritism, he supplied arms to opposing clans.³⁴ Gradually, much of Somalia fell into civil war between the armed clans.

In the early 1990s, the Cold War ended and the Soviet and American influence in Somalia

came to an end. At this time, Barre's regime found itself engulfed in civil war.³⁵ By December 1990, full-scale civil war broke out after Barre's government was weakened economically and militarily.

The civil war in this traditional, clan-based society was fought among three major clan opposition movements, the United Somali Congress (Hawiye clan) (USC), the Somali Patriotic Movement (Ogaden clan), and the Somali National Movement (Issaq clan) (SNM).³⁶

On January 28, 1991, after months of fighting in the capital city of Mogadishu, the USC faction took over the capital and Barre fled to the south of the country (Gedo Region).³⁷ By the end of January, Somalia's government had completely disintegrated, and the country became embroiled in anarchic power struggles among the clans.³⁸ A conference was sponsored by the government of Djibouti in concert with some Western non-governmental organizations to promote a reconciliation of Somali communities. This conference was held in Djibouti from June 5 to 12, 1991. A second reconciliation conference took place from July 12 to 15, 1991 which was attended by six political groups. Here, the leaders of all the political groups signed a Memorandum of Intent. It set out five resolutions³⁹ which, unfortunately, were opposed by General Mohamed Farah Aided. This opposition led to a disastrous and bitter war between Ali Mahdi and Aided.⁴⁰ Had these men resolved their differences using diplomatic means, further civil war most likely would have been averted. Unfortunately, for the second time in a year, heavy artillery was used without concern for the safety or welfare of the general public. Fighting spread from Mogadishu throughout Somalia. About 15 different groups, some belonging to the Hawiye clan and others to the Darod clan, claimed control of different parts of the country. Somalia became a country of unpredictable attacks by clan factions or bandits. All over Somalia civil war drove thousands of citizens from their homes.⁴¹ As a result, Somalia became a country without a central, regional or local administration; it was a nation without

a government, without a cohesive society or political culture, without rules, and without law or order. It soon became a disparate conglomeration of warlords. In the meantime, indiscriminate violence and looting of relief supplies continued.

An estimated 300,000 people have died from starvation since November 1991, while at least one million persons have been at risk of losing their lives.⁴² The resulting dual catastrophes of famine and merciless civil war made humanitarian intervention essential and inevitable.⁴³ The next section of this chapter deals with the role of the UN in this humanitarian intervention.

3. The Early UN Involvement in Somalia

a The Inadequacy of the UN's Initial Response

The UN response in Somalia was, at times, appallingly ineffective; and there are several important factors, which contributed to this ineffectiveness.⁴⁴ The Somalis held the organization in almost complete contempt because the UN spent the majority of its time haggling over bureaucratic problems. Without some cooperation from the Somalis, it was very difficult for the UN to play a constructive role.⁴⁵ For example, the UN was extremely indecisive in determining priorities and establishing the mechanisms for the distribution of aid. In addition, it was indecisive as to what actions should be taken for the disarmament of the warring factions. Secondly, in January 1991, the UN withdrew from Mogadishu, leaving the relief effort in the hands of non-governmental organizations.⁴⁶ This made the Somali people feel abandoned.⁴⁷ The UN did not lose any personnel in Somalia, but they decided to pull out anyway. From January to November 1991, there was relative peace in Somalia. The UN ignored Somalia during this time, choosing instead to focus on the former Yugoslavia. In doing so, it missed the opportunity to foresee and prevent the clan uprisings which

arose immediately afterwards.⁴⁸ UN officials said that they could offer no solution to the conflict because the security situation that forced them and most international agencies out of the country persisted. "We can mediate border disputes and political differences, but tribal conflicts are more tricky," said one UN official.⁴⁹ Yet the UN had proved in the Middle East and Nicaragua that it had the resources to deal with clan-based tensions like those in Somalia. The third factor was the UN's unwillingness to heed the advice of the Special Envoy to Somalia, Mohamed Sahnoun a career diplomat from Algeria who was extremely knowledgeable about Somalia's plight.⁵⁰ This was merely another example of the UN's bureaucratic haggling over Somalia. Consequently, Sahnoun quickly resigned and was replaced by Ismat Kittani, a bureaucrat from New York who was considered by international observers to be indifferent and ill informed about Somalia.⁵¹ Fourthly, the fact that Boutros Boutros-Ghali was the Secretary-General of the UN played a pivotal part in UN-Somali relations. Many Somalis remembered Boutros-Ghali's position as a representative of the Egyptian government⁵² when Egypt had close ties with Siad Barre's military regime, and some of the Somali factions saw him as being hostile to their cause.⁵³ This preconception turned out to be accurate because Boutros-Ghali urged the UN to intervene in Somalia⁵⁴ when it would have been better for him to downplay his personal involvement. These factors undermined the UN's ability to find a solid solution to the Somali conflict.

4. The American Proposal for Somalia

The UN's ineffectiveness in Somalia put the status of the whole humanitarian intervention program into question. One of the most noteworthy actions the UN took to improve its image occurred on December 3, 1992. On that day, the UN Security Council considered an American

proposal to provide 30,000 troops to Somalia. The Security Council adopted Resolution 794 by a unanimous vote of its 15-member council and authorized the use of "all necessary means to establish as soon as possible a secure environment for the delivery of humanitarian relief operation in Somalia."

In this resolution the Council determined that the "magnitude of the human tragedy in Somalia" constituted a threat to international peace and security a determination that permitted the use of force under Charter VII of the UN Charter,⁵⁵ despite the fact that Article 2(4) and Article 2(7) of the Charter prevent intervention in matters which are "essentially within the domestic jurisdiction of any state."⁵⁶

On December 4, 1992, then U.S. President George Bush announced that the United States would send a substantial force of troops to Somalia.⁵⁷ Without the U.S's offer to lead this coalition, the international community might have continued fumbling with ineffective ideas for months or even years.⁵⁸

5. Relevant Resolutions in the Somali Crisis

In the Somalia case, the UN Security Council, "equated massive human tragedy with a threat to international peace and security."⁵⁹ Mark Hutchinson explains that

although the Security Council did not explain why the civil war in Somalia was a >threat to international peace and security," it may be inferred that the Security Council was concerned about the massive refugee movement and the possible spill over of violence into neighboring states.⁶⁰

The rationale behind intervention on this basis must be understood within the analysis of the relevant resolutions adopted by UN Security Council in the Somali humanitarian crisis. The most relevant of these are Resolutions 733, 746, 751, 767, 775, 794 and 814, which I will briefly discuss.

On January 23, 1992, the Security Council imposed an embargo on deliveries of arms and

military equipment to Somalia and urged all the warring factions to agree to a cease-fire.⁶¹ Although much of this resolution contained the usual needless verbosity, it called for a cease-fire and continued UN action.⁶² As some observers have noted, the imposition of embargoes is typically the first, and somewhat effective stage of the Council's actions.⁶³ In the case of Somalia however it was of little consequence. To begin with, embargoes force governments to abide by the rules of the international community, but Somalia had no government.⁶⁴ Furthermore, arms embargoes are only a long-term solution because most countries have, at any given time, enough weapons to satisfy their short-term goals.⁶⁵ This however was not the case with Somalia; the Cold War had ensured that the different clans in Somalia had more than enough arms to last them for a long time, regardless of any embargo. As Ramlogan noted, the Resolution 733 arms embargo had no effect on the Somali crises because "the cold war ensured that Somalia was awash with arms ... the reality was that in Somalia guns could be purchased more easily than food."⁶⁶

Because Resolution 733 did not help matters very much, the Security Council met again on March 17, 1992 to pass Resolution 746.⁶⁷ This resolution outlined various peaceful options in an attempt to appeal to the humanitarian sides of the leaders. But these clan leaders did not respond well to such options; they did not seem interested in finding a peaceful solution at all.⁶⁸ Thus the Council's pleas again fell on deaf ears. The only way in which the new resolution was an improvement over the previous one was that the clans accepted the Secretary-General's idea to send a technical team to discuss the possibility of a cease-fire between the warring parties.⁶⁹ This solution in the end turned out to be "too little, too late."⁷⁰

On April 24, 1992, the Security Council met once again and passed Resolution 751⁷¹, which affected the Council's role in Somalia in four significant ways. Firstly, the UN decided to form a

security team called the United Nations Operation in Somalia (UNOSOM)⁷² which would be lightly armed and responsible for providing security for UN humanitarian efforts. Secondly, the Secretary-General would send a special representative to direct UN activities in Somalia.⁷³ Thirdly, the Council would send a contingent of 50 officials to observe the cease-fire⁷⁴ and fourthly, a committee was established to monitor the arms embargo. Despite the UN's good intentions, most of these measures were tentative and ineffective because the embargo was not working.⁷⁵ Furthermore, the peace-bringing representatives were unable to resolve anything in such a dangerous situation.⁷⁶

On July 27, 1992, the Council convened and passed Resolution 767.⁷⁷ This resolution used the same language as the previous ones and included the deployment of 50 observers. However, such actions are only workable if a cease-fire is in effect⁷⁸ because the situation in Somalia was clearly volatile, and there was no cease-fire in sight, this deployment was useless. Most of this resolution simply repeated the UN's desire for enforcement of the arms embargo and for the parties to work towards peace.⁷⁹ However, there was one significant change. For the first time, the Council threatened that if the clans did not cease fighting, "other "measures would be considered to achieve "the general stabilization of the situation in Somalia."⁸⁰

Resolution 775 was passed on August 28, 1992.⁸¹ Though this resolution increased the strength of the UNOSOM force,⁸² the Council failed to consider how, or why, the previous UNOSOM deployment was unsuccessful. UNOSOM's problem was that it had been given a mandate incompatible with the actual day-to-day situation in Somalia. A small force cannot handle widespread civil conflicts, especially where the parties involved have no inclination to resolve the conflict without further bloodshed⁸³, have more effective weapons,⁸⁴ and have little or no respect for the UN forces.⁸⁵

The first genuine attempt to bring the Somalia conflict to an end occurred on December 3,

1992 with Resolution 794.⁸⁶ This resolution authorized military action in Somalia under Chapter VII of the Charter.⁸⁷ The action would be taken by the Unified Task Force, a US-led coalition. The job of this force was to secure an environment peaceful enough for the delivery of humanitarian aid.⁸⁸

Resolution 814, passed on March 26, 1993,⁸⁹ was intended to continue the work of the Unified Task Force. This resolution reflected the UN's realization that a threat to peace and security still existed in Somalia, and expressed the organization's desire for an effective transition from the Task Force to the powers of the expanded UNOSOM II forces.⁹⁰

6. The Legality of UN Humanitarian Intervention in Somalia Under Chapter VII

To address the legality of UN Security Council intervention in Somalia, the necessity of the intervention will first be examined. An examination of the legality issue will follow.

a. Why United Nations Security Council Intervention Was Necessary

In addition to examining the UN intervention in Somalia under Chapter VII of the Charter, it is important to consider the intervention in relation to the reasons and objectives set forth at its outset. It is also important to note at the outset that, from all accounts, the conflict in Somalia created a critical, in fact desperate, situation. It presented a combination of circumstances, which made UN intervention not only appropriate but necessary as well. According to Rajendra Ramlogan, certain factors have to appear in combination to make intervention appropriate:

1. Civil war and the absence of effective governmental authority, both legally and realistically;
2. Grave hardship; e.g., because of famine conditions;
3. Massive abuse of human rights; and
4. Implications for the international community; e.g., refugee problems or ecological disaster.

Because Somalia evidenced not just one, but a combination of all four of these factors, the issue of the Security Council's intervention in that state was easily justified. Even if the international community does not agree that these four criteria were met, or that the four points are even valid as a barometer, the Security Council's decision is legally beyond reproach.⁹¹

(i) Anarchy and the Absence of a Central Government

When considering the UN intervention in Somalia, the lack of any form of government at the time of the crisis is a critical consideration. Somalia was unable to carry out domestic and foreign policy decision-making.⁹² There was, in effect, no government; the infrastructure was destroyed; there was no health care, no education; no law and order; and the starvation of perceived "enemies" was a policy of the warring factions. All government and vital institutions such as police, judiciary, banking, sanitary facilities and water supplies were either damaged or destroyed; schools and hospitals were inactive or destroyed; the press, telecommunications and electrical power were non-existent; and bandits and clan militias continually looted what was left.

This anarchy strengthened the clans, as the clan factions become the only sources of personal protection, employment and survival.⁹³ The fact was that this was a country where there was no civil authority; thus, there was no government or like authority to either request or object to UN intervention.⁹⁴ Legally, Somali was considered a "failed state," at least in the Western concept of state. Thus, the Security Council had no legal impediment to consider the Somali civil war as a "threat to international peace and security" in order to put an end to the severe suffering of the people.⁹⁵

(ii) Magnitude of Suffering

Regardless of the lack of government in Somalia, the magnitude of human suffering alone should have been enough to warrant action on the part of the Security Council. Warring factions were holding the entire population of the country hostage, depriving them of food, health care facilities, and other basic necessities of life. In order to evaluate effectively this problem, one must first consider some eyewitness testimony. For example, the testimony of Congressman Ben Gilman to the Select Committee on Hunger noted:

The tragedy facing Somalia is beyond our hearts and minds to grasp. It makes Sarajevo look like a picnic in the park. 30,000 dead since November in Mogadishu alone. Last month 7,000 people died from hunger in Baidoa ... Red Cross officials say they believe that about one-third of Somalia's people are likely to die in the next six months unless more food is pumped into the country. So many dead. So many dying. So much suffering. So little hope.⁹⁶

One must also consider the statement on a visit to Somalia by U.S. Congressman Mervyn M. Dymally

What I witnessed there will haunt me for the rest of my life... The sight of the emaciated bodies of the living, often too weak to bury their beloved dead, remains vivid in mind. That town's (Mogadishu) agony is part of the greatest tragedy to confront mankind since Holocaust and the "killing fields" of Cambodia.⁹⁷

He continues that

power comes out of the barrel of guns wielded by undisciplined youth who in the name of warring factions steal food from their unarmed countrymen and from the foreign and international agencies who have come to the rescue of the starving populace.

Moreover, in a letter of the Secretary-General to the UN Security Council, the Secretary-General noted that

... the picture of starvation and famine are not due to a hostile environment. There has been no drought, no act of nature to make these people suffer. This is the result of inhumanity of

war. It is manmade disaster. The "cycle of extortion and blackmail" by warlords is to extort payments from UN and other relief agencies in exchange for not attacking food suppliers.⁹⁸

The Somali citizens and the personnel of the relief agencies are targets of severe human rights abuses. The warring factions made no distinction between their political struggle and banditry; the starving populations, together with the personnel of the relief agencies, were their preferred targets and are abused if they don't cooperate with warlords.⁹⁹

The food was there, the need was there, but the food could not get through to the most needy. The situations were unique and unprecedented. Airlifts did not resolve the problem, what was needed was ground distribution of enough food for Somalis. The obstacles to the delivery of food were the Somali factions, which had presided over the starvation of hundreds of thousands of innocent citizens. The intervention was necessary to facilitate the delivery of food to starving people.

(iii) Massive Human Rights Violations

The failure of the warring factions to stop fighting led to the massive destruction of property and the massacre, by all tribal factions of thousands of innocent civilians - including international relief workers under Red Cross protection, and women and children, some of whom had sought sanctuary in hospitals. Such actions are contrary to every recognized standard of civilized behavior.

Moreover, the Somali conflict or civil war was not only a quest for power among the clans, but included undeniably massive human rights violations such as genocidal killings. It must be remembered that Aidid controlled almost the whole of southern Somalia, and during this period his troops, with premeditated and systematic efficiency, eliminated a particular tribe. According to Aryeh Neier, it was stated that the Human Rights Watch group

received reliable report of killing of civilians ... in which Aidid's forces selectively killed at least 100 civilians of the Marehan clan (Siad Barre's clan). Similar incidents have been reported from the towns of Dolo, Luug and Garbaharey, where casualties from ethnic killing

certainly run into hundreds.¹⁰⁰

(iv) Flow of Refugees to Neighboring States

The main impetus for intervention in Somalia was mass-starvation. The UN was also concerned with the displacement of refugees. The Council was concerned with possible international repercussions from trans-border refugee flows when they embarked on it ambitious initiative.¹⁰¹ It has been shown that in Somalia, hundreds of thousands of people were uprooted between 1991 and 1992.¹⁰² The collapse of governmental authority and the onslaught of factional fighting produced anarchic conditions in which disease and famine spread and the number of refugees increased.¹⁰³ For example, Aryeh Neier noted for the first six months of 1992 that

upwards of 300,000 Somalis have fled into Kenya and as many as 2 to 2.5 million have been displaced within the country. Ten thousand are in Ethiopia. Also, an observer points out the dangers of the massive movement of Somalis into neighboring states such as Yemen and Kenya."

He further noted that

The desperation in the countryside has pushed more than 300,000 Somali refugees into north Kenya in the last six months and forced thousands of others on hazardous trips on overcrowded ships and down to Yemen and the Kenyan Coast."¹⁰⁴

Even though the threat of Somali's refugee flows into Kenya and Ethiopia were a valid reason for UN intervention, it was not the main reason for the Security Council resolution authorizing humanitarian intervention. Resolution 794 (1992) did not mention refugees, and initially no provision was made to bring the Somali refugees home. However, Secretary-General Boutros Boutros-Ghali, in discussing Somalia, found that

refugees from the senseless killing and famine have exported the problem to neighboring states. There again, our humanitarian action is necessary to save lives and preserve the

resources of Somalia's neighbors.¹⁰⁵

b. The Legal Justifications of the UN Security Council's Intervention in Somalia

The UN Security Council-authorized intervention in Somalia recognized that the situation had the potential for threats to international peace and security.¹⁰⁶ The Council took the step of equating, more directly than ever before, the link between massive human suffering and the threat to international peace and security. The authorization came in the form of Resolution 794, passed by the Security Council on December 3, 1992. This resolution was the first serious attempt to bring the tragedy in Somalia to an end. It authorized the use of forcible military intervention to establish a secure environment conducive to the delivery of humanitarian aid.¹⁰⁷

One important precedent had been established in the Somali crisis: the concept that human rights violations in the form of starvation, disease and suffering threaten the fundamental principle of international peace and security. The case of Somalia with its catastrophic loss of life, the refugees, and overall anarchy was, in fact, the first test for this wider interpretation of the Charter, despite the fact that the conflict was considered internal. The Security Council characterized the special nature of the Somali crisis and found that

the magnitude of the human tragedy caused by the continuing conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security.¹⁰⁸

The UN intervention in Somalia was legal mainly because in the country, effective authority had ceased to exist. This coupled with the growing plight of the population, and large-scale transborder migration. In fact, the situation in Somalia had been deteriorating for some time. The internal conflict, which began in 1988, followed by the overthrow of Barre in 1991 and the collapse

of talks to establish an interim government, resulted in a civil conflict, which created a political vacuum. This coupled with a massive humanitarian problem, left Somalia void of leadership and without the ability to operate as a state within the community of nations. In Somalia, the state could no longer function, nor was it capable of decision-making. The international community recognized this, as "threat to international peace and security" and the situation compelled the UN to act without the consent of the state. Thus, the UN's reaction to Somalia's internal conflict was legal under the Charter and international law. However, the intervention was a major tragedy, both in terms in numbers of the peacekeepers and Somalis who were killed, and in terms of the assiduous disagreement of the UN Secretary General and United States government over the objective of the humanitarian intervention. The fact that the mission was a totally failure however does not change the reality that it was legally authorized under Chapter VII of the UN Charter.

7. Conclusion

It would be unrealistic to presume that the succeeding internal conflicts in which the UN intervenes will resemble Somalia. Somalia was unique. The reasons for this are complex; the country's infrastructure was gutted, and no new legal authority had emerged. Political chaos resulted in civil war, which drove the population into migration, starvation and suffering on an immense scale. Somalia, at this time, presented the international community with a very difficult problem. It was clear that the international community would have to respond. The important questions were to what degree, and in what form as well as how to justify that intervention.

How the UN responded would carry implications far beyond the immediate situation. As Somalia deteriorated, and international pressure for action grew, the competing principles of UN

policy -on the one hand the protection of human rights; on the other , respect for sovereignty and non- intervention-came into conflict. The initial UN response to the crisis in Somalia proved inadequate. External forces had influenced Somalia for much of its history, often without any tangible benefit to the nation. Superpower competition had turned the country into an armed camp, but had done little to promote development and stability. The UN, through the Security Council, was able to agree on collective intervention due to the enormity of human suffering. The UN started gradually with non-forcible intervention. This was a legitimate response to conditions, but proved not to be very effective. Political and social order was deteriorating and the necessary security for proper implementation of humanitarian relief simply was not there. When it became obvious that the UN was failing to achieve its aim and that, if anything, conditions were getting worse, the Security Council moved to broaden its authority through a new interpretation of the concept of “threat to peace” under Chapter VII of the UN Charter.

The overriding principle of ensuring international peace and security was not altered, only enlarged to include the new situation of Somalia. Thus, the intervention in Somalia was justified and consistent with the UN Charter. Whether similar sets of cases with massive humanitarian suffering, in conjunction with a lack of government authority will arise in the future requiring UN intervention is unknown. However, the UN has set the precedent with Somalia and shown the justification and legality of its reaction.

Endnotes

¹Ioan Lewis. "In the Land of the Living Dead - Famine and the History of a People" *Sunday Times* August 30, 1992. See also Huband, Mark "The Disintegration of a Nation-Tracing the Roots of a Famine" *Guardian*, Aug. 7, 1992, 1.

²See Mark Yost "A Short History of Somalia" *Wall Street Journal*, Oct. 19, 1993, 22.

³SC Res. 794, UN SCOR, 4th Sess., 3145th mtg., at 3, UN Doc. S/RES/794 (1992), 1 [hereinafter Resolution 749].

⁴Ibid.

⁵Ibid. 1.

⁶Ibid. 1-2.

⁷Ministry of Information and National Guidance, *Somali Democratic Republic*. The State Printing Press. Mogadishu-Somalia (1979) 3.

⁸See, for discussion about the Somali ethnic origins and major clans compositions, Helen Chapin Metz, (ed.). *Somalia: A Country Study*. (Washington: Library of Congress, 1993). See also I.M. Lewis *A Modern History of Somalia: Nation and State in the Horn of Africa* (Boulder: Westview Press, 1979).

⁹Metz, ed., at 16.

¹⁰Ibid. See also Lewis, supra note 8, at 2-4.

¹¹Simon Baynham. "Somalia: Operation Restore Hope" (1993). *Africa Insight* vol. 23 no. 1 at 17.

¹²Metz, ed., supra note 8, at 16.

¹³Ibid. at 16.

¹⁴Lewis supra note 8, at 40.

¹⁵Ibid. at 116.

¹⁶Ibid. at 139, 148.

¹⁷Ibid. 165.

¹⁸Metz, supra note 8, at 28, 29.

¹⁹Baynham, supra note 11, at 18.

²⁰Steven R. David, *Choosing Sides: Alignment and Realignment in the Third World* (Baltimore: Johns Hopkins University Press, 1991) 247. 1991) 98-100

²¹George B.A, Ayittey. "The Somali Crisis: Time for an African Solution" *Policy Analysis* no. 205 March 28, 1994. 3-4.

²²Baynham *supra* note 11, at 18.

²³Lewis *supra* note 8, at 209.

²⁴Ayittey, *supra* note 21, at 4.

²⁵Metz, ed., *supra* note 8, at 176.

²⁶Ayittey, *supra* note 21, at 5.

²⁷Their goal was to obtain the rights to operate a military base and port at Berbera in north Somalia. If the Soviet Union had established a base in this location, it would have guaranteed them control over the Red Sea and easy access to the Egypt, which was their most important client state. Zaki Laidi. *The Superpower and Africa: The Constraints of Rivalry 1960-1990* (University of Chicago Press 1990) 208.

²⁸*Ibid.* at 209.

²⁹Ayittey, *supra* note 21, at 5.

³⁰*Ibid.*

³¹*Ibid.*

³²Sam Gejdenson, "Congress Makes U.S. Foreign Policy - Somalia: A Case Study " *5 American University Journal of International Law & Policy* 1087. See also Metz, ed., *supra* note 8, 177.

³³Africa Watch, *Somalia – Government at War With Its Own People* (New York: Africa Watch, 1990) 265 at 15. Accordingly to the Africa Watch it estimated that during war between the Barre's regime and the opposition movements 50,000 to 60,000 civilian were put to death.

³⁴See generally Metz, ed., *supra* note 8, at 90.

³⁵Ioan Lewis, "In the Land of the Living Dead-Famine and the History of a People" *supra* note 1

³⁶Mark Yost, "A Short History of Somalia." *supra* note 2, at 22. See also "Africa Watch. Somalia: A Fight to the Death?," *Africa Watch*, Feb. 13, 1992. p. 3. For more information see, Jonathan Stevenson, "Hope Restored In Somalia?" *Foreign Policy* 91 (Summer 1993): 142.

³⁷"Somalia Rebels Hold Most of the Capital City." *USA Today* Jan. 2, 1991.

³⁸Metz , *supra* note 8, at 170.

³⁹See, the paper of Djibouti II Conference. "National Reconciliation Conference Paper." July 15-21,1991. Prepared by the President of Djibouti Republic Mohamed Guled Abtidoon and some African leaders. The five resolution signed in the document were: (1) To initiate an "all-out war" against Siad Barre and his supporters; (2) To implement a general cease-fire in the country; (3) To respect the sanctity of coexistence and national unity"; (4) To read out the 1960 Constitution; and, (5) To confirm as Somali Interim President Ali Mahdi Mohamed.

⁴⁰Although their hostility began back in early 1991, with their controversy to support some local warlords who controlled the harbour and airports in Mogadishu, serious fighting between Ali Mahdi and Aided began in Mogadishu in September 1991. See also Metz supra note 8, at 170.

⁴¹United Nations Department of Public Information. *The United Nations and The Situation in Somalia..* Reference Paper 30 April 1993. 1.

⁴² Ibid. at 1

⁴³See Resolution 794 (1992) of the Security Council, supra note 3. See also Reference Paper 30 April 1993 supra note 41 at 1.

⁴⁴Terry Atlas, "New Activism Underscores UN's Failures" *Chicago Tribune*, Jan 10, 1993, at C1. (suggesting that "Somalia is possibly one of the UN's worst failings in recent history").

⁴⁵Ron Howell, "The New York Newsday Interview with Said Samatar: Somalia is a 'Stepchild' of Two Cultures," *New York Newsday*, Jan. 11, 1993, at 57 (quoting Said Samatar, Professor of History at Rutgers University).

⁴⁶See generally *World Debt and the Human Condition: Structural Adjustment and the Right to Development* 151-205 (Ved P. Nanda et al. eds., 1993) (describing the general role of non-governmental organizations (NGOs)).

⁴⁷See Africa Watch "Somalia: A Fight to the Death?," supra note 36 , at 22-23.

⁴⁸Terry Atlas, "New Activism Underscores UN's Failures" supra note 44.

⁴⁹Sly Liz, "Death rules in war-torn Somalia: Gun plentiful, food scarce" *Chicago Tribune*. April 18, 1992, page A1.

⁵⁰Ibid. See Edward J. Perkins, "Statements of the U.S. Permanent Representative to the United Nations Before the United Nations Security Council," (July 27, 1992) in *Dep't St. Dispatch*, Aug. 3, 1992) (praising Ambassador Sahnoun's work in Somalia). Stanley Meisler, "From Peacekeepers to Peacemakers?," *LA Times*, Dec. 8, 1992, at H2.

⁵¹Keith B. Richburg, "U.S. Envoy in Somalia Viewed as Linchpin in Reconciliation," *Washington Post*, Feb. 2, 1993, at A14.

⁵²Boutros-Ghali was involved with the Egyptian government from 1977 until he became Secretary-General of the United Nations on January 1, 1992. Elaine Sciolino & Paul Lewis, "Mission in Somalia: Secretary Besieged," *New York Times*, Oct. 16, 1993, s 1, at 1; Michael Hedges, "Hostile Mob Blocks UN Chief," *Washington Times*

Jan. 4, 1993, at A1.

⁵³Terry Atlas, "New Activism Underscores UN's Failures" *supra* note 44, at 4.

⁵⁴"A Bridge Loan of Salvation for Somalis," *Star Tribune*, Dec. 5, 1992, at A16.

⁵⁵Resolution 794 (1992) *supra* note 3.

⁵⁶UN Charter Article 2(4) and Article 2(7).

⁵⁷George Bush. "US Humanitarian Crisis in Somalia." (Letter dated December 10, 1992). *Department of State Dispatch* 14 (December 1992): 877.

⁵⁸See Mark R Hutchinson. "Restoring Hope: UN Security Council Resolutions for Somalia and an Expanded Doctrine of Humanitarian Intervention." (Spring, 1993) 34 *Harvard International Law Journal* 627-624.

⁵⁹Marc M. Boutini "Note, Somalia: The Legality of UN Forcible Humanitarian Intervention." (Winter, 1994) 17 *Suffolk Transnational Law Review*, 138-150.

⁶⁰Hutchinson *supra* note 58, at 627.

⁶¹S.C. Resolution. 733, UN SCOR, 47th Sess., 3039th mtg., *UN Doc. S/RES/733* (1992). [hereinafter Resolution 733].

⁶²*Ibid.*

⁶³Once it has been determined that a threat to peace exists or an act of aggression has occurred, the UN Charter requires the Security Council to determine which enforcement measures to take pursuant to articles 41 and 42. UN Charter Article 39. Article 41 provides for measures not involving armed forces, including embargoes. This Charter also permits the Security Council to apply provisional measures. UN Charter Article 40. Article 42 authorizes the use of armed forces, but only if "the Security Council consider[s] that measures provided for in Article 41 would be inadequate or have proved to be inadequate." *Ibid.* Art. 42.

⁶⁴Jane Perlez, "Warring Somalia Factions Agree to Meet at UN," *New York Times*, Feb. 8, 1992, s 1, at 2.

⁶⁵Rajendra Ramlogan, "Towards a New Vision of World Security: The United Nations Security Council and the Lessons of Somalia," (1993) 16 *Houston. Journal of International Law* 213, 236-38

⁶⁶*Ibid.*

⁶⁷S.C. Resolution 746, UN SCOR, 47th Sess., 3060th mtg., *UN DOC. S/RES/746* (1992) [hereinafter Resolution 746]. The Security Council discussed Somalia in the context of recommendations made by the UN Secretary-General.

⁶⁸The Situation in Somalia: Report of the Secretary General, UN SCOR, S/23829/Add.1 (1992) [hereinafter Situation]. The Unified Task Force did not seek to procure the consent of the clan leaders but implemented its mandate of pacifying Somalia while maintaining discussions with the clan leaders aimed at attaining a more permanent solution to the conflict. "Allied Troops Tell Somalis it's Time to Disarm," *Agence France Presse*,

Feb. 4, 1993.

⁶⁹Resolution 746, *supra* note 67, para. 6; see Report of the Secretary-General, UN SCOR, 47th Sess., 3039th mtg., at 16, *UN DOC. S/23693* (1992).

⁷⁰Criticism of the UN for its role in Somalia should be lessened somewhat by the discouraging account of the regional organizations in trying to untangle the Somali crises.

⁷¹S.C. Resolution 751, UN SCOR, 47th Sess., 3069th mtg., *UN DOC. S/RES/751* (1992) [hereinafter Resolution 751]. This meeting had to consider yet another report by the Secretary General on the situation in Somalia.

⁷²*Ibid.* para. 2, 4.

⁷³*Ibid.* para. 6.

⁷⁴*Ibid.* para. 3.

⁷⁵See Somalia: "Pause to Bury," *Economist*, Feb. 1, 1992, at 44.

⁷⁶See Resolution 733, *supra* note 61.

⁷⁷S. C. Resolution 767, UN SCOR, 47th Sess., 3101st mtg., *UN DOC. S/RES/767* (1992) [hereinafter Resolution 767].

⁷⁸*Ibid.*

⁷⁹Resolution 767, *supra* note 77, para. 4, 9, 10.

⁸⁰*Ibid.* para. 4.

⁸¹S.C. Resolution 775, UN SCOR, *UN DOC. S/RES/775* (1992) [hereinafter Resolution 775].

⁸²*Ibid.* para. 16. See also "Security Council Approves More Troops to Somalia," *Agence France Presse*, Aug. 29, 1992.

⁸³*Ibid.*

⁸⁴Jim Okerblom, "Admiral Urges Care in Cutbacks," *San Diego Union-Tribune*, Dec. 18, 1993, at B10 (quoting Adm. David E. Jeremiah as saying U.S. "high-technology military equipment [is] ill-suited for the political upheavals" in Somalia).

⁸⁵*Ibid.*

⁸⁶Resolution 794, *supra* note 3.

⁸⁷*Ibid.* para. 10. This authorization was possible as a result of the Security Council's determination that the human tragedy in Somalia constituted a threat to international peace and security.

⁸⁸Resolution 794, *supra* note 3, para. 10.

⁸⁹SC Res. 814, SCOR 48th session, 3188th meeting, UN Doc. S/RES/814 (1993) Resolution 814 was reaffirmed in Resolutions 837, 865, and 878. See "UN Security Council Resolution 885 on Somalia," *U.S. Dep't St. Dispatch*, Nov. 22, 1993, at 810.

⁹⁰*Ibid.* at 1. Resolution 814 adopted the Secretary-General's March 3, 1993 report which provided a comprehensive plan for continuing the efforts at bringing peace to Somalia while striving to rebuild the society.

⁹¹See United Nations. *The United Nations and Somalia 1992-1996*. New York: United Nations, 1996.

⁹²*Ibid.* (describing situation in Somalia prior to UN intervention) 3-8.

⁹⁴Human Rights Watch, *The Lost Agenda: Human Rights and UN Field Operations* (New York: Human Rights Watch, 1993), 112-113.

⁹⁴*Ibid.* See also Statement of John R. Bolton, Assistant Secretary of State for International Organization Affairs, Before the Subcommittee on Africa of the Senate Foreign Relations Committee, in *Dep't St. Dispatch*, Oct. 5, 1992, at 752 (hereinafter Statement of John R. Bolton).

⁹⁵*Ibid.* 3-6 (portraying extent of the Somali humanitarian disaster).

⁹⁶Before the House Select Committee on Hunger, July 22, 1992, 81.

⁹⁷Before the House Select Committee on Hunger, July 22, 1992, .6.

⁹⁸See Letter Dated 24 November 1992 from the Secretary-General addressed to the President of the Security Council, UN SCOR, 47th Sess., *UN Doc. S/24859* (1992) (hereinafter Letter from the Secretary-General to the Security Council). In a letter of the Secretary-General to the UN Security Council, the Secretary-General said: "The cycle of extortion and blackmail must ... be broken and security conditions established that will permit the distribution of relief supplies." p.61.

⁹⁹The international community knew these bandits and some Somali faction leaders as warlords.

¹⁰⁰Human rights and Humanitarian needs in Somalia Testimony of Aryeh Neier, Human Rights Watch. Before the House Select Committee on Hunger July 22, 1992. p.107. See also Africa Watch. *Somalia: No Mercy in Mogadishu: The Human Cost of the Conflict & the Struggle for Relief* (New York: Africa Watch and Physicians for Human Rights, Vol 4, no 4, March 26, 1992) 26 Africa Watch was one of the NGO's in Somalia to give information about "the genocidal tactics of Mohamed Farah Aideed and other warlords."

¹⁰¹See UN SCOR, 47th Sess., 3145th mtg. at 10-11. *UN Doc. S/PV./3145* (1992). Cape Verde, a Member of the Council, stated that the crisis in Somalia had an international dimension and, "because of its repercussions on neighbouring states, it is imperilling the stability and security of the region."

¹⁰²Reuters, "UN Relief for Somalia," reprinted in *New York Times*, Dec. 29, 1991 at A7.

¹⁰³Ibid.

¹⁰⁴ See also Before the House Select Committee on Hunger July 22, 1992 , 80.

¹⁰⁵1992 Report, supra note 68, 21..

¹⁰⁶Boutin, supra note 59 at 138-150.

¹⁰⁷UN Resolution 794 supra note 3.

¹⁰⁸S.C. Resolution 794, supra note 3 , at 1.3

CHAPTER FIVE

CONCLUSION: STRENGTHENING THE SECURITY COUNCIL'S INTERVENTION TO PREVENT HUMAN RIGHTS ABUSES AFTER SOMALIA.

Many experts believe that a "threat to peace" determination gives the UN Security Council both a legal obligation and a duty to intervene in the internal affairs of a member state. However, this view leads us to several other questions. Will the Security Council take action each and every time it establishes that human rights abuses constitute a threat to peace justifying Chapter VII intervention, even without a military threat? If not, will intervention occur only when it supports the interests of the five permanent members? Finally, the Security Council does not possess a military force of its own. Instead, it can only approve and sanction intervention by the armies of its member states. Once intervention begins, will the Security Council be able to control these armies?

In this Chapter, I will attempt to answer these questions by looking at several recent interventions and the international commentary and reactions to them. I will conclude by suggesting two possible remedies. Firstly, the Security Council must establish and follow a clear set of rules, which will remedy gross human rights violations and would authorize intervention under Chapter VII. This will prove that the Security Council's interventions are impartial. Secondly, the UN Security Council must establish an army of its own. As the Secretary General of the United Nations said in "*Agenda For Peace*," his annual report for 1992:

the ready availability of armed forces on call could serve, in itself, as a means of deterring breaches of peace since a potential aggressor would know that the (Security) Council had at its disposal a means of response.¹

Brian Urquhart, a former Under-secretary-General of the United Nations, also sees "the need for a highly-trained international volunteer force, willing, if necessary, to fight hard to break the cycle of violence at an early stage in low-level but dangerous conflicts."² Following these propositions a UN army as mechanism to remedy human rights violations should be established.

1. **Difficulties of Humanitarian Intervention under Chapter VII**

Since UN's Security Council humanitarian intervention implies an operative, planned step, a forcible military intervention in another country, to remedy a situation of human rights abuses presuming that this multinational military intervention will protect the abused people, two difficulties remain: (1) the self-interest of the permanent members, (2) the inability of the Security Council to control forcible humanitarian intervention. However, neither of these is serious enough to make intervention impossible or illegal.

a. **UN humanitarian Intervention and the self-interest of the Permanent Members of the UN Security Council.**

Every UN humanitarian intervention in cases of human rights abuses is likely to face many objections. Many member states who are cynical or suspicious of mandates authorizing intervention would argue that the major powers dominate the Security Council, and that they are simply using it as a basis to surreptitiously pursue their own ambitions and their own national interest.³ Consequently, the Security Council will find a "threat to international peace and security" legalizing humanitarian intervention only where it is in the Permanent Five members' interest to do so. According to Ruth Wedgewood,

The United Nations is a deeply political place. Members consider national self-interest. To a realist, Security Council action can be explained as the resolution of political vectors. Each country calculates its national self-interest, and the interests of allied cooperative states, while speaking a universalistic vocabulary.⁴

If interventions are indeed the result of political calculations by the Permanent Five members, then the prestige and institutional legitimacy of the Security Council could be undermined. This fundamental criticism that the Council intervene only in cases in the national interests of the Permanent Five may become apparent as we investigate some recent interventions. In 1991, the Security Council authorized member states to send armies to protect human rights in Iraqi Kurdistan. In 1992, it authorized intervention in Somalia, and in Haiti in 1994. All three of these interventions succeeded in protecting millions of people, and as such, they advanced the arguments for humanitarian intervention as a general principle. However, the Security Council has undermined its credibility in intervening to protect human rights violations in some nations, but not in others. While UN armies were fighting in Iraq, Haiti, and Somalia, thousands of people were dying in internal wars in other countries, such as Sudan, Zaire, Burundi, Algeria, Sierra Leone, Guatemala, East Timor and the former Soviet republic of Georgia. The Security Council did nothing to resolve the conflicts in these countries, particularly in Sudan and East Timor where those crises posed threats to peace which justify collective intervention. Such inconsistencies help undermine the credibility of the Council and bolster arguments which suggest that the Security Council only acts in the interests of the Permanent Five members. These arguments could be refuted more effectively if the UN developed a clear set of rules to implement in situations where its intervention became necessary.

On a practical basis, the Security Council usually takes action only when a member state has offered to send in its own forces on peace-keeping or peace-enforcement missions. When this

happens, critics argue that the state, which is offering the forces, is simply using the UN as a smokescreen to further its own interest. For example, when the Security Council authorized US-led intervention to liberate Kuwait, the Iraqi delegates claimed that the United States' initiative was merely a means to realize its "aggressive and imperialist" ambitions in the Middle East.⁵ In Rwanda, France was criticized for its intervention because of its previous relationship with the regime of Habaeryana. Before the crisis worsened, Hutus, who had received continuous military aid from the French government, dominated the Rwandan government.⁶ Critics maintained that the French supported the Hutus because they spoke French as a second language, while the Tutsis preferred English.⁷ Furthermore, critics argued that France had failed to speak out when the Rwandan government began massacring Tutsis.⁸ Instead, the French continued sending weapons to the Rwandan government even after the massacres had begun.⁹ As could be expected, the Tutsi-supported Rwanda Patriotic Front took a dim view of French intentions. It objected to any plan to send French forces into the area, and it swore to defeat any French forces, which arrived.¹⁰ Most likely there is no nation in the world, which could have gotten a worse reception in Rwanda. However, France was the most powerful nation whose interest was affected.

Any intervention costs time and money. If the intervention faces resistance, then it will also cost blood. These prices lead many to believe that the five permanent members will only commit forces if their own interests are involved. As a diplomatic correspondent for Reuter's has said:

Analysts and diplomats say that problems with peacekeeping missions in Somalia and Bosnia have made the most powerful states - the United States, Russia, France and Britain - wary of involvement in missions where they do not have a clear stake.¹¹

In 1994, the United States published a statement that seems to support this conclusion. Essentially,

it said that the United States must have an interest in internal political or ethnic conflicts before it allows its forces to participate in a UN operation. This interest, of course, must be more intense and more specific than America's general interest in peace.¹² The pursuit of self-interest may be a common idea in international affairs. Indeed, some would say it is the essence of the foreign policy of every nation. However, it contradicts the UN Charter, which implies that peace in all parts of the world is a matter of direct interest to every nation.

b. The Inability of the UN Security Council to Control Humanitarian Intervention.

Serious questions also remain about the inability of the UN Security Council to control humanitarian intervention. Since UN military intervention can spread from guerrilla maneuvers to conventional battles, many international observers complain that once intervention begins, the Security Council has little control over the duration and scale of the fighting.¹³ The Charter asserts that the Security Council must also define military objectives, and decide when combat is to cease.¹⁴ Discussing the Bosnian resolutions that authorize UN intervention, many member states have complained that the UN has no control over the states that send their own armies. For example, Zimbabwe and India both abstained, asserting that the resolution did not allow the Security Council to control the armies in the field.¹⁵ The delegate from Zimbabwe said:

any necessary measures taken or arrangements made to deal with this crisis have to be undertaken as a collective enforcement measure under the full control of and with full accountability to the United Nations through the Security Council, as provided for by the Charter of the United Nations.¹⁶

The Zimbabwean delegates felt that the UN flag could be used to justify any action which UN members wanted to undertake in the area, whether or not the Security Council approved.

Some nations worried that armies acting for the UN might use too much force. During the Persian Gulf War, Malaysia said that Resolution 678 "does not provide a blank cheque for excessive and indiscriminate use of force."¹⁷ It spoke against "any action purportedly taken under this resolution that would lead to the virtual destruction of Iraq."¹⁸

Among all the UN resolutions to mandate intervention, only the Somali intervention received unanimous support from the Security Council. Some argue that this intervention was popular because the Security Council had more control.¹⁹ Despite its popularity, the Somali mission still faced misgivings. India wanted even more UN control:

The present actions should not, however, set a precedent for the future. We would expect that, should situations arise in the future requiring action under Chapter VII, it would be carried out in full conformity with the Charter provisions²⁰

Belgium was also a member of the Council, and it had views along the same line. The Belgians "preferred that this to be a purely United Nations operation...."²¹ None of these nations tried to keep members of the UN from sending forces to help Somalia; however, they all wished that the UN could have used an army which truly belonged to the UN, rather than a dozen armies from a dozen separate nations.

The Rwanda project also faced numerous criticisms of the same sort. Nigeria agreed that the UN could send forces; however, the Nigerian delegation said that the armies should be controlled through the UN Assistance Mission for Rwanda (UNAMIR), which was already working in Rwanda.²² Voices were again raised to say similar things before the mission to restore democracy in Haiti. The Chinese declined to vote on the measure. They said "(t)he practice of the Council's authorizing certain Member States to use force is even more disconcerting because this would

obviously create a dangerous precedent."²³ Unlike the Chinese, the Pakistanis voted in favour of sending forces to Haiti; however, they said that giving the Security Council direct control would be the "preferred course of action."²⁴

Much thought has been given to these objections. However, the question remains that once a rescue mission has begun, by what means can the UN control the armies of its members?

2. Setting Standards for Future UN Intervention to Prevent Human Rights Abuses

As I mentioned that UN humanitarian intervention under Chapter VII consists of military support and financial resources, there is a preference for UN members with such capability to intervene only when the nations in which the intervention take place are considered to be vital interests to the participating UN members. Consequently, a nation that is not considered to be of vital interest would not be qualified to receive UN humanitarian intervention, thereby denying its people of needed international aid and protection. If the actions of the Security Council are to gain sufficient political consensus of the Security Council in favor of intervention, or if they are to reduce the possibility that the Council's resolutions may gain universal respect and support, the world must perceive that they are properly motivated and governed by objective standards. If so, there should be objective standards to assess where UN humanitarian intervention is legally justifiable. Then, the Council must move whenever intervention is permissible under these standards. These standards should be drafted in a document applying for a right of UN humanitarian intervention under Chapter VII. Under such a standard, then, bloodshed in Sudan, would be as warranted intervention as bloodshed in Rwanda. Of course, if such standards were to compel action whenever they were fulfilled, then the Security Council would be at war almost constantly and in many parts of the world.

This would probably cost too much in lives and money. However, if the Security Council ignored any humanitarian crises, then the prestige and influence of its ideals would decline.

In the future, perhaps, the UN will receive more money. Even then, the structural problems examined above will still exist. For this reason, the UN will have to set priorities. For example, the Security Council might dedicate a large part of its resources to the worst offences, such as genocide, and a lesser portion to offences that harm a smaller number of people.

In past several authors have proposed set of criteria that authorize either to UN, to a Regional Organization or to a group of States to intervene to prevent human rights abuses. For example in 1968, Professor Micheal Reisman expressed the need to draft a "Protocol of Procedure for Humanitarian Intervention."²⁵ Similarly, Dennis T. Fenwick in his article "A Proposed Resolution Providing for the Authorization of Intervention by the United Nations, a regional Organization, or a Group of States in a State Committing Gross Violations of Human Rights," propose a draft resolution for the General Assembly or the Security Council under which humanitarian intervention could be warranted and that such a resolution should prevent human rights abuses. Also Ved P.Nanda²⁶, Richard B.Lillich,²⁷ John Norton Moore²⁸ and the International Commission of Jurists,²⁹ proposed manifold set of rules.

Recently, scholars and critics keep trying to make rules for the UN, but the UN and its members keep shrugging them off. One expert, Sean Murphy, has suggested that the UN should itself propose and follow a set of rules.³⁰ These rules, Murphy argues, "might be embodied in a Security Council or General Assembly resolution, or in a statement by the President of the Security Council, or the Secretary General."³¹ Murphy says that the U Thant, who was the Secretary General when the UN sent armies into the Middle East and the Congo, proposed a set of loose guidelines, and

these could be adopted.³² However, one doubts the procedural importance of having the Secretary General or the Security Council prepare formal rules to address UN humanitarian interventions.

Oscar Schachter, a UN veteran, has warned against

a tendency on the part of those seeking to improve the United Nations to prescribe sets of rules for future cases, usually over-generalizing from past cases. Each crisis has its own configuration. Governments will always take account of their particular interests and the unique features of the case. While they can learn from the past, it is idle and often counterproductive to expect them to follow 'codified' rules for new cases³³.

Scharcter makes a good case against adopting too detailed a set of rules. However, I believe that the adoption of some essential standards will improve the legality of UN intervention. Thus I am suggesting that the UN has to develop objective standards for the warrant of humanitarian intervention under Chapter VII and how the intervention should be conducted..

- a. When widespread human rights atrocities pose a threat to international peace and security, for example, the UN Security Council should intervene to stop a government from constantly abusing and killing its own people. Intervention under UN endorsement may be warranted, where a government has collapsed completely, where large numbers of people at risk in the immediate future for their lives in terms of adequate food or shelter, where an internal armed conflict advances to mass killings that shocks the conscience of mankind, where there is a denial of the right of existence of entire racial, political and political group, where large number of refugees flows towards and across international frontiers, or where there is crime contrary to international law and to the spirit and aims of the United Nations. In these cases human rights violations become a matter of international concern and consequently pose threats to international peace and security.

- b.** Intervention should be warranted when the intervention it has clear objective and articulated operation for the use of Chapter VII of the UN Charter. Since humanitarian intervention is engaging on complicated roles-political, military and as well as humanitarian- is difficult to control and there is potential for abuse, the objectives for its operation should be cautiously established with defined mandate, which specifies the condition under which aggressive military action is admissible. For example, the objectives of the mission should be to protect the delivery of humanitarian aid, maintain and protect safe areas, monitor of violation of human rights, repatriate refugees, provide secure environment for the delivery of humanitarian aid, monitoring election and other nation-building activities.
- c.** Intervention should be warranted when peaceful negotiations and settlements plan fail. Forcibly military intervention (employing ground force) should be ultimate alternative.
- d.** Intervention should be warranted when there is strong commitments by the international community to carry out the mission determination. UN multinational force should stay until the mission is completed. Strategies of short-lived intervention are volatile. Although temporary interventions are conditioned by their own special characteristics they cannot be crowned with success. The experience of Somalia did not necessarily establish a policy of “cut and run”. Indeed, the acceptance of such policy would hamper the success and development of UN humanitarian intervention. In contrast, after achieved its goal UN intervention should end as soon as possible.

This document should have the framework of UN declaration annexed to Security Council resolution, not a document with the structure of an international treaty, given the obstacle of

acquiring endorsement of the treaty by a notable number of states. This document can gain worldwide support and facilitate the legality and the legitimacy of the UN humanitarian intervention under Chapter VII as well as strengthening the UN's ability to prevent human rights abuses. If the UN's Security Council is not given the criteria to warrant humanitarian intervention in order to improve its capabilities and to provide confidence to act in case of massive human rights violation it will incapacitate the United Nations' interventions on the motive of humanitarianism.

3. Volunteer Army for the United Nations

Clear and objective standards will strengthen the prestige of the Security Council under any circumstances. However, there are other measures, which gives the UN to act quickly to prevent, rather just to respond to humanitarian crises. To improve UN ability to respond more effectively in preventing human rights abuses around the world, UN should have a volunteer army. Some experts have suggested that the UN should no longer have to rely on the good will of the great powers or a stand-by-forces volunteered by member states. For instance, in 1993 the UN established a registry of stand-by-forces³⁴ volunteered by member states to speed up reaction time in humanitarian crises and 10 states committed to volunteer its forces³⁵. However, when Rwanda crises broke in 1994, not a single state of the committed countries would volunteer its forces for an intervention in the Rwanda human tragedy³⁶. On the other hand, many great powers are now reluctant to send their soldiers to assist the Security Council. Domestic critics often suggest that no government has a right or a duty to send its citizens across the world to fight and die for people whom they have never met, for causes that cannot benefit their own country. Instead, they say, the Security Council should possess its own army. This army would be composed of volunteers and paid for by UN funds.

This measure might solve a number of political problems. If the UN had an army of volunteers to do its fighting, then no nation need complain that its sons and daughters were being stolen to rescue foreigners. Of course, there are obvious difficulties with this idea. Where would this "international" army have its physical headquarters? From what countries would its members come? Who would pay for it? And how would the world power structure react to this new force on the international stage? Many might say that, at the present time, this international army is more idealistic than possible. Alternatively, there is another possibility. Throughout the history of UN interventions, it has always been very difficult to organize dozen or more armies to carry out a single mission. Before the forces can be assembled, weeks or even months have been lost through logistics, training and preparation for the mission. Furthermore, the separate forces from the different nations often do not work together in a unified, coherent manner. As, Jonathan Howe, the special representative of the secretary-general in Somalia predicted his disappointments in UN multinational force

The UN has all the disadvantages of volunteer organization. Troops contributors rotate units at short interval and withdraw them altogether with little notice. Nations want to dictate where their contingents will serve and what duties they will perform. The UN does not have the authority to hold individual nations to a fixed contract. The result in Somalia was a significant loss of time due to constant reassignment and readjustment of forces.³⁷

This, then, opens up another possibility. Some have suggested that many different nations might set aside part of their own armies to serve the UN. These forces could be trained to work together, and they could be ready to move quickly.³⁸ This issue is very problematic, indeed. However, if we are to continue to use the UN as a means to prevent human rights abuses then some form of unified force under the direct command of the UN is required. This is the only way to ensure

the enforcement of humanitarian intervention on an even plain.

4. Conclusion

Details conclusion have already drawn at the end each of previous four chapters. It may practicable however, to pull things together with some concise concluding remarks.

The end of the Cold War has changed many things. The UN was created to prevent another conflict like the Second World War, or another slaughter like the Holocaust; but the history of the past 50 years reveals a failure to act aggressively to prevent human rights abuses. However, for the first time since the Korean War, it is now possible for the nations of the earth to act together and make collective security work. Indeed, it is even possible to prevent ethnic cleansing, starvation, and human rights abuses within national borders. International peace and security had traditionally been seen in the light of aggression, the violation by one nation of another nation's boundary. Conditions such as genocide, famine, mass migration or human rights violations were not considered under the doctrine of international peace and security. Somalia, Rwanda, Bosnia and Iraq forced a change in that perception; a change in definition and a change in approach were required. The Security Council's humanitarian intervention in the post-Cold War reflects a new approach in which gross human rights abuse, mass starvation, refugee flows, human suffering, and interference with the delivery of humanitarian relief may constitute a "threat to peace" even in the absence of international military conflict. This new approach allowed the UN to react to the humanitarian crises presented in these countries.

Indeed, when gross human rights violations occurs especially as was caused by the warring clans in Somalia, affecting innocent civilians to such an unmerciful degree -- the United Nations

through the Security Council has commitment to respond in any way possible. The option – of allowing innocent people to suffer without protecting -- is unthinkable.

The Council's intervention has been in accordance with the setting of the UN Charter, and other international human rights instruments. These interventions have set objective standards for the justification of UN humanitarian intervention in Iraq, Somalia, former Yugoslavia, Haiti, Rwanda, which should be developed into a new document of international law in order to prevent abuses of human rights around the world. Although, there are meaningful reasons to doubt the intensity of this new commitment, the legality of the UN humanitarian intervention under Chapter VII of the UN Charter is well established by this thesis.

Endnotes

¹Boutros Boutros-Ghali, *An Agenda for Peace UN Doc. S/24111*, 17 June 1992, p.13. The opinion of the establishing a permanent UN army is not new. See for more details information Grenville, Clark and Louis Sohn, *World Peace Through World Law* (Cambridge, Mass: Harvard University Press, 1958) 308-317. Guenter Lewy, "The Case for Humanitarian Intervention" *Orbis* (Fall, 1993) 630.

²"For a UN Volunteer Military Force", *The New York Review of Books* June 10, 1993, p.3.

³See David D. Caron, "The Legitimacy of the Collective Authority of the Security Council," (1993). 87 *American Journal of International Law* 552, 562-65

⁴Ruth Wedgwood, "The Evolution of United Nations Peacekeeping"(1995).28 *Cornell International Law Journal* 63

⁵S.C. Resolution 678, UN SCOR, 45th Sess., 2963rd mtg. at 1-2, *UN Doc. S/RES/678* (1990). See Richard Falk, "The United Nations and the Rule of Law", (1994) 4 *Transnational Law & Contemporary Problems*.626 n.4

⁶Philippe Leymarie, Tardif "Reveil Humanitaire': Litigieuse intervention francaise au Rwanda", *Le Monde Diplomatique*, July 1994, at 3 (questioning whether France was entering Rwanda with humanitarian intent, given the fact that it had armed and trained the government forces that were being accused of genocide against the civilian population of Rwanda).

⁷Bill Bowring, "The Droit et Devoir d'Ingerence": A Timely New Remedy for Africa?", (1995)7 *African Journal of International & Comparative Law* 493, 506; Peter Smerdon, "International Community Failed Dismally in Rwanda", *Reuters World Service*, Sept. 29, 1994.

⁸Ibid.

⁹Ibid.

¹⁰Keith B. Richburg & Jonathan C. Randal, "First French Soldiers Arrive on Mission to Help Rwanda", *Washington Post* June 24, 1994, at A29. See id. (Neighbouring Burundi and Tanzania denied France use of their territory as staging areas out of concern that France would play a partisan role in Rwanda).

¹¹Nicholas Doughty, "Haiti Shows Big Power Shift on UN Missions", *Reuters World Service*, Sept. 19, 1994,

¹²See also Tom Ashbrook, "Who Will Keep the Peace?", *Boston Globe*, May 3, 1995, at 1

¹³See Burns H. Weston, "Security Council Resolution 678 and Persian Gulf Decision-Making: Precarious Legitimacy", 85 *American Journal of International Law* 526-527 (1991)

¹⁴Mary E. O'Connell, "Enforcing the Prohibition on the Use of Force: The UN's Response to Iraq's Invasion of Kuwait", (1991)15 S. Ill. U.L.J. 453, 465

¹⁵Paul Lewis, "UN Council Votes to Support Force in Assisting Bosnia", *New York Times*, Aug. 14, 1992, at A1.

¹⁶Ibid. at 16 (Mr. Mumbengegwi, Zimbabwe).

¹⁷SCOR, 2963rd mtg., supra note 5, at 76-77 (Mr. Abu Hassan, Malaysia).

¹⁸Ibid. 77.

¹⁹S. C. Resolution 794, UN SCOR, 47th Sess., 3145th mtg. at 3, *UN Doc. S/RES/794* (1992). The resolution was adopted by 15 votes (Austria, Belgium, Cape Verde, China, Ecuador, France, Hungary, India, Japan, Morocco, Russia, U.K., U.S.A., Venezuela, Zimbabwe) to zero. Provisional Verbatim Record, UN SCOR, 47th Sess., 3145th mtg. at 27-28, *UN Doc. S/PV.3145* (1992) (Mr. Hohenfellner, Austria, citing the provisions regarding the Secretary-General's role in the use of all necessary means and in making the necessary arrangements for the unified command and control of the forces involved, and to the appointment of an ad hoc commission of the Council, the creation of a liaison staff, and improved reporting requirements, and expressing the view that the Council had in this respect "come a long way" since the Iraq resolution); id. at 24 (Mr. Noterdaeme, Belgium, stating, the draft resolution makes it quite clear that the operation in Somalia will be under the political control of the UN).

²⁰C. Resolution 929, UN SCOR, 49th Sess., 3392rd mtg. *UN Doc. S/RES/929* (1994), at 51 (Mr. Gharekhan, India).

²¹Ibid. at 24 (Mr. Noterdaeme, Belgium).

²² See for more details Sess., 3392rd mtg., supra note 20, at 10.

²³S.C. Resolution 940, UN SCOR, 49th Sess., 3413rd mtg. *UN Doc. S/RES/940*(1994). at 12 (Mr. Li Zhaoxing, China).

²⁴Ibid. at 26 (Mr. Marker, Pakistan).

²⁵W. Michael Reisman & McDougal. Myres S., "Humanitarian Intervention to Protect the Ibo's" *Humanitarian Intervention and the United Nations Nations* ed., by Lillich, Richard B. (Charlottesville: University Press of Virginia, 1973). 167-195. Dennis T. Fenwick, "A Proposed Resolution Providing for the Authorization of Intervention by the United Nations, a regional Organization, or a Group of States in a State Committing Gross Violations of Human Rights." (1972-73) *Virginia Journal of International Law* 340-374

²⁶ Ved P. Nanda, "The United States' Action in the 1965 Dominican Crisis: Impact on World Order-Part I" (1966) 43 *Denver Law Journal* 439-477

²⁷ Richard B. Lillich, "Forcible Self-Help by States to Protect Human rights," (1967) 53 *Iowa Law Review*.325-347. See also Lillich, Intervention to Protect Human rights, (1969) 15 *McGill Law Journal* 205.

²⁸ John Norton Moore, "The Control of Foreign Intervention in International Conflict," (1969) 9 *Virginia Journal of International Law* 205-264

²⁹ International Commission of Jurists, *The Events in East Pakistan, 1971* (Geneva: H. Studer 1972) at 94.

³⁰Sean D. Murphy "The Security Council, Legitimacy, and the Concept of Collective Security After the Cold

War" (1994) 32 *Columbia Journal of Transnational Law* 201.

³¹Ibid.

³²Ibid. See also D. Bowett, *United Nations Forces: A Legal Study* (1964); R. Higgins, *United Nations, Peacekeeping: Documents and Commentary* (Middle East, Asia, Africa, Europe) 4Vols. London: Oxford University Press, 1969- 1981)

³³ Oscar Schachter, *Commentary*, (1992) 86 AM. SOC'Y INT'L. PROC. 320

³⁴ John Hillen, *Getting UN Military Operations Back to Basisc* in *Delusions of Grandeur: The United Nations and Global Interventions* edited by Ted Galen Carpenter. (Cato Institute: 1997), at 118

³⁵.Ibid.

³⁶.Ibid.

³⁷ Jonathan Howe " The United States and the United Nations in Somalia" *Washington Quarterly* 18, No.3 (Summer 1995): 54

³⁸Barry Blechman, *The Military Dimensions of Collective Security in US Policy and the Future of the United Nations* ed., by Roger A. Coate (1994) at 67.

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