

**EVALUATING THE EFFECTIVENESS OF HUMANITARIAN  
INTERVENTION AS A TOOL FOR ENFORCING HUMAN RIGHTS**

**DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE  
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## DECLARATION

I, ANTHONIA OMOZE NDUBUISI declare that the work presented in this dissertation is original. It has never been presented in any other university or institution. Where other people's works have been used, references have been duly provided. It is in this regard that I declare this work original. It is hereby submitted in partial fulfilment of the requirements for the award of the LLM Degree in International law.

Signed.....

Date.....

Supervisor: DR. GUS WASCHEFORT

Signature.....

Date.....

## **DEDICATION**

To Him who sits on the throne and watches over me are all the glory, honour and majesty. Indeed God is awesome!

This thesis is hereby dedicated first to the Almighty God who has been my guide since inception. My journey thus far would not have been complete without Him because with Him, I can do all things through Christ that strengthens me. I mean all honourable and legal things.

To my wonderful family; my hubby and of course my adorable son David.....you are not left out, thanks for your support and cooperation. I am African, therefore, I also dedicate this piece to my parents and siblings in Diaspora; God bless you all.

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Also, I appreciate my numerous friends, classmates and work colleagues during my active advocacy days for spurring me to attain greater heights.

## LIST OF ABBREVIATIONS

AP I	Additional Protocol I to the four Geneva Conventions
AP II	Additional Protocol II to the four Geneva Conventions
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
ECOWAS	Economic Community of West African States
GC IV	The four Geneva Conventions
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICISS	International Commission on Intervention and State Sovereignty
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
IHRL	International Human Rights Law

IHL	International Humanitarian Law
NATO	North Atlantic Treaty Organization
OTP	Office of the Prosecutor
PSC	Peace and Security Council
R2P	Responsibility to Protect
UN	United Nations
UNC	United Nations Charter
UNSC	United Nations Security Council
UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force
UNITAF	Unified Task Force

## TABLE OF CONTENTS

	Page
DECLARATION	i
DEDICATION	ii
ACKNOWLEDGEMENT	iii
LIST OF ABBREVIATIONS	iv-v
TABLE OF CONTENTS	<b>Error!</b>
<b>Bookmark not defined.-viii</b>	
<b>CHAPTER 1: INTRODUCTION TO THE SUBJECT MATTER</b>	
1.1 Background	<b>Error!</b>
<b>Bookmark not defined.-3</b>	
1.2 Thesis Statement	3
1.3 Significance of study	3
1.4 Literature Review	4
1.5 Methodology	7
1.6 Overview of Chapters	<b>Error!</b>
<b>Bookmark not defined.</b>	
1.7 Limitation	7
<b>CHAPTER 2: CONCEPTS AND APPLICATION</b>	
2.1 Introduction	8-9
2.2 State Sovereignty and its erosion	9-12
2.3 Human Rights and Humanitarian Intervention: Conceptualization	13-15
2.4 Customary International Law and Humanitarian	

Intervention	16
2.5 Treaty Law and Humanitarian Intervention	<b>Error!</b>
<b>Bookmark not defined.</b>	
2.6 Conclusion	<b>Error!</b>
<b>Bookmark not defined.7</b>	
<b>CHAPTER 3: LEGAL BASIS OF HUMANITARIAN INTERVENTION</b>	
3.1 Unilateral and Collective Humanitarian Intervention	18-20
3.2 Legality and Legitimacy of Humanitarian Intervention	<b>Error!</b>
<b>Bookmark not defined.1-22</b>	
3.2.1 Criteria for Humanitarian Intervention by the International Commission on Intervention and State Sovereignty	22-23
3.3 Intervention under the African Union auspices	23-25
3.4 The Purpose of Humanitarian Intervention	25-26
3.5 The Facade of Human Rights	27-28
3.6 Conclusion	29
<b>CHAPTER 4: CASE STUDIES OF STATE PRACTICE</b>	
4.1 Introduction	30
4.2 Bosnia- Herzegovina	31-33
4.3 Afghanistan	34-36
4.4 Somalia	36-38
4.5 The Intricacies of these Interventions	38-39
4.6 Evaluation of its effectiveness as a tool for enforcing Human Rights	39-41
4.7 Conclusion	41

## **CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS**

5.1	Interventions and its flaws	42-43
5.2	General recommendations	44-45
5.3	Conclusion	46
6	<b>BIBLIOGRAPHY</b>	
	Books	47-48
	Case Law	49
	Chapters In Books	50-52
	Declarations And Resolutions	52-53
	International And Regional Instruments	54
	Internet	55
	Journal Articles	56-58
	Reports/Papers	59-60

# CHAPTER ONE

## INTRODUCTION TO THE SUBJECT MATTER

### 1.1 BACKGROUND TO THESIS STATEMENT

Humanitarian intervention is prominent in the maintenance and restoration of international peace and security where violence occur, which, in the words of Hersch Lauterpacht 'shock the conscience of mankind'.<sup>1</sup> Walzer further qualifies the acts by stressing that it must be acts that 'shock the moral conscience of mankind'.<sup>2</sup> The legality or otherwise of humanitarian intervention has put various scholars in divergent school of thoughts.

The definition of Humanitarian intervention is paramount at this juncture in order to understand its meaning and structure.

Humanitarian intervention in its classical sense may be defined as 'coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants'.<sup>3</sup> Also, humanitarian intervention was defined more elaborately in a report by the Advisory Committee on Issues of International Public Law on The Use of Force for Humanitarian Purposes, the term was defined as such, 'The threat or the use of force by one or more states within the territory of another state, with the sole aim of halting or preventing large-scale , serious violations of fundamental human rights, which are taking place or which appear imminent, such rights being in particular the right to life of individual, regardless of nationality, in cases where the threat or use of force is carried out without either the prior authorisation of component UN bodies or the permission of the legitimate government of the country in the territory of which the intervention takes place'.<sup>4</sup>

Gleaning from the afore stated definitions, it is trite to state that humanitarian intervention differs from other means of enforcing human rights; for instance, intervention designed to protect or take to safety nationals of the intervening

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<sup>1</sup> *Oppenheim's International Law* sixth (ed.) 1947 pg 280.

<sup>2</sup> Walzer, Michael: *Just and Unjust Wars: A Moral Argument with Historical Illustrations* 1977 pg 107.

<sup>3</sup> Adam Roberts, 'The so-called Right of Humanitarian Intervention (2000) Yearbook of International Humanitarian Law Volume 3 pg 5.

<sup>4</sup> *The use of force for humanitarian purposes: enforcement action for humanitarian purposes and humanitarian intervention*. Netherlands pg 4.

state will not be defined as humanitarian intervention as this is described as exercising the inherent right of individual or collective self defence.<sup>5</sup> In the same vein, enforcement actions for humanitarian purposes vary from humanitarian intervention.<sup>6</sup>

The cardinal legal requirement for the United Nations Security Council to take or authorise enforcement action is the existence of a situation which poses threats to the peace, breaches of the peace and acts of aggression.<sup>7</sup>

Also, the United Nations Charter in its preamble and Article 1 embrace respect and protection of human rights.<sup>8</sup>

Consequently, humanitarian intervention, though prohibited by Article 2(4) of the Charter, is like euthanasia which in some countries is unlawful but tolerated by law in genuine cases.<sup>9</sup>

Moreover, there is a policy objection to humanitarian intervention as humanitarian intervention is prone to abuse as it provides cover for self interested action.<sup>10</sup> The danger of abuse of such a right outweighs its benefit to humanity.<sup>11</sup> This position is taken against the backdrop that its effectiveness is within the control of the intervener, there are inadequate resources in terms of funds<sup>12</sup> and personnel and gaps in leadership weaken its effectiveness, thereby causing more harm than good. The fact that the United Nations does not have its own armed forces also contributes to the shortcoming because when enforcement action is authorised by the United Nations Security Council, there is

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<sup>5</sup> *Ibid* See also Article 51 of the United Nations Charter 1945.

<sup>6</sup> Kindiki Kithure; *Humanitarian Intervention in Africa: The Role of Intergovernmental Organisations*. University of Pretoria (ed.) (2005)pg 11.

<sup>7</sup> Article 39 of the United Nations Charter 1945 See generally, Chapter VII of the Charter. See also, Article 5(2) of the Statute of the International Criminal Court (Also known as the Rome Statute).

<sup>8</sup> In conjunction with the Universal Declaration of Human Rights(1948) and the International Covenant on Civil and Political Rights(1966) and International Covenant on Economic, Social and Cultural Rights (1966).

<sup>9</sup> Barrie, George N.: *Forcible intervention and International Law: Legal theory and realities* 1999 South African Law Journal pg 803. See also Dugard J. *International Law : A South African Perspective* (Third Edition) 2005 pg 516.

<sup>10</sup> Annan, Kofi; Secretary General of United Nations (As he then was) in an interview with Online News hour on the 18<sup>th</sup> October 1999.It triggered the need for building a threshold or better put criteria for humanitarian intervention since there appears to be a *lacuna* in the United Nations Charter on the position.

<sup>11</sup> Dugard John, *International Law : A South African Perspective* (Third Edition) 2005 pg 515. Emphasis mine.

<sup>12</sup> According to Jeremy Sarkin, funding has been an issue for African Union interventions. Quoted in *The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and Responsibility to Protect* Journal of African Law Vol. 53 (2009) pg 20.

the temptation that the mandate can be abused since the armed forces are drawn from member states.

In addition, the notion that humanitarian intervention has no defined criteria *stricto sensu* was one of the instigations to carry out this research.

The six proposed criteria by the International Commission on Intervention and State Sovereignty are considered in the course of the study.

Moreover, the study shall buttress the fact that the legal framework for humanitarian intervention is largely determined by the United Nations Charter. It also examines the notion that international law, however, develops not just through treaties such as the United Nation Charter but also through incidents and through how international actors respond to them.

## **1.2 THESIS STATEMENT**

The research attempts to evaluate the effectiveness of humanitarian intervention as a tool for enforcing human rights in instances where egregious, gross and systemic violations of fundamental human rights take place, and to align it with the provisions of the United Nations Charter. Works already done in relation to the topic will be considered and recommendations are made for future interventions.

## **1.3 SIGNIFICANCE OF STUDY**

Humanitarian intervention in a sovereign state without the consent of its government or authorisation by the United Nation Security Council undermines the prohibition on use of force, principle of non interference and sovereignty as enunciated in Article 2(4) and 2(7) of the United Nations Charter. There have been a lot of writings on the concepts – humanitarian intervention and human rights which forms the bedrock of this study. Suffice it to say that much has not been said about the effectiveness of humanitarian intervention as a tool for enforcing human rights. In the light of this, the study seeks to contribute to the scholarly debate on humanitarian intervention and in particular, by evaluating previous interventions and their outcomes, to ascertain whether or not humanitarian intervention is an effective tool for enforcing human rights.

## 1.4 LITERATURE REVIEW

Intervention in the affairs of sovereign states without its consent is fraught with difficulty, encountered by the intervening states. The principle of the sovereignty of states has as its basic premise the norm of non-intervention in domestic affairs, be it forcible or non-forcible.<sup>13</sup> However, sovereignty has undergone drastic changes on the international stage.<sup>14</sup> Where states are unwilling or unable to promote and protect the fundamental human rights of its people in conflict situations, the international community intervenes under the *obligation erga omnes* responsibility.<sup>15</sup>

Humanitarian intervention was defined more elaborately as 'coercive action by states involving the use of armed force in another state without the consent of its government, with or without authorisation from the United Nations Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law'.<sup>16</sup>

Effective Humanitarian Intervention can play a very important role in the protection of human rights. An effective humanitarian intervention is one that saves lives by preventing or ending violent attacks on unarmed civilians<sup>17</sup> where gross, massive and systematic violations of human rights takes place. The intervention should be seen to do more good than harm. This in essence means, 'at a minimum, the intended beneficiaries of the action are better off after the intervention than they would have been had the intervention not taken place'.<sup>18</sup> In order for a humanitarian intervention to be deemed successful, the number of lives saved should be considered.<sup>19</sup> Welsh states that timely and effective action to prevent mass suffering requires a particular state with the capability, interest,

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<sup>13</sup> Barrie, George: *International law and forcible intervention: a millennium assessment* in L du Plessis and Hough, M -*The challenge of military invention* (ed.) pg 74 See also Article 2(4) of the Charter.

<sup>14</sup> Jeremy Sarkin, *The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and Responsibility to Protect* Journal of African Law Vol. 53 (2009)pg 4.

<sup>15</sup> Under the auspices of the Chapter VII powers of the United Nations Security Council See also Article 4(h) of the African Union Constitutive Act 2001.

<sup>16</sup> *Humanitarian Intervention: Legal and Political Aspects* (Copenhagen, Danish Institute of International Affairs 1999) pg 11.

<sup>17</sup> Seybolt, Taylor B.: *Humanitarian Military intervention: The condition for success and failure* (2007) pg 6. though, there could be instances where the civilians in protest of the imminent danger arm themselves to fight back their attackers.

<sup>18</sup> *Ibid* pg 3.

<sup>19</sup> *Ibid* pg 4.

and will to lead the military effort.<sup>20</sup> Seybolt states that if humanitarian intervention is not done well, it wastes lives and resources and might perpetuate or exacerbate the problems it is intended to address.<sup>21</sup>

It is noteworthy to state that human rights referred to in the thesis relates to fundamental human rights. As such, Humanitarian Intervention is not meant directly to protect or promote civil and political rights or socio-economic rights.<sup>22</sup> It is paramount to state also at this juncture that civil and political rights and economic, social and cultural rights are two sets of rights that can neither logically nor practically be separated in watertight compartments due to the fact that civil and political rights may constitute the condition for and thus be implicit in economics and social rights.<sup>23</sup>

According to Roberts<sup>24</sup>, humanitarian Intervention has affected the United Nations deeply, not just because of the normative controversy it has sparked but because it has proved problematic in practice for the Organization and its individual member states. Roberts views as stated above replicates the incidence which occurred during the military intervention in Libya.<sup>25</sup>

Effective humanitarian intervention tends to strengthen the vision of the United Nations to end scourges of war in the world.<sup>26</sup> Borchard argues that in case of gross violation of human rights one or more States may intervene in the name of the society of nations and may take such measures as to substitute at least temporarily, if not permanently, its own sovereignty.<sup>27</sup> Abiew argues that the international human rights regime, at least in principle, constitutes limitations on

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<sup>20</sup> Welsh, Jennifer M.: *Conclusion: The Evolution of Humanitarian Intervention in International society' in Humanitarian Intervention and International Relations* 2004 pg 178.

<sup>21</sup> Seybolt, Taylor B.: *Humanitarian Military intervention: The condition for success and failure* (2007)pg 5 n 14.

<sup>22</sup>As quoted in Seybolt pg 6. See also, the classification of rights by Jack Donnelly in *International Human Rights* (West View Press) 1998.

<sup>23</sup>Steiner Henry J & Philip Alston, *International Human Rights in Context: Law, politics and morals text and materials* 2<sup>nd</sup> Ed 2000 pg 247.

<sup>24</sup>Sir Adam Roberts, *The United Nations and Humanitarian Intervention in 'Humanitarian Intervention and International Relations'* (ed.) pg 72. As quoted in Welsh, Jennifer M.: *Conclusion: Humanitarian Intervention after 11 September in Humanitarian Intervention and International Relations* 2004 pg177.

<sup>25</sup> For instance, the politics played over the cease-fire operation by Libyan President Muammar Gaddafi.

<sup>26</sup> Though, the United Nations Charter (1945) in its Articles 2(1) 2(4) 2(7) stipulates the principle of non-intervention in the sovereignty of states and the prohibition of the use of force with exception to situations warranting self Defence which are taken or authorised by the United Nations .(see chapter VII & VIII of UN Charter).

<sup>27</sup>As quoted in Kindiki Kithure, *The Legality and Applicability of Humanitarian Intervention to Internal Conflict in Africa*. East African Journal of Peace and Human Rights Vol. 7 no.1 (2001) pg 40. See Borchard E.: *The Diplomatic Protection of Citizens Abroad* 14 (1922).

the sovereignty of states which have accepted the respective agreements.<sup>28</sup> His view is in consonance with Kwakwa, who posits that the notion of sovereignty seems somewhat anachronistic today.<sup>29</sup> According to Kindiki, humanitarian intervention, especially collective humanitarian intervention can play a very important role in the resolution of internal armed conflicts and the protection of human rights in Africa.<sup>30</sup> Humanitarian Intervention may be undertaken unilaterally (intervention by a single state) or collectively (intervention by a group of states). The thesis adopts the use of collective actions in carrying out humanitarian intervention thus; emphasis will be put on the application of collective intervention. There is need for set standards for humanitarian intervention as intervention in the sovereignty of another state is prone to abuse by the intervening states. Various significant expositions of criteria have emerged.<sup>31</sup> Udoh proposes certain criteria in order to validate military missions based on humanitarian purposes as follows:<sup>32</sup>

- 1 The use of humanitarian intervention must be immediate and only occur during the actual commission of the human rights violation or immediate threat of an offence.
- 2 Authorisation for intervention must be by a competent body within the United Nations.
- 3 Humanitarian Intervention must be a collective effort executed by more than one Nation.
- 4 Humanitarian Intervention must be used as a last resort when all other means have failed.
- 5 Humanitarian Intervention must only be used for grave and large- scale violations of human rights.
- 6 All military forces involve in the intervention must respect the principles and spirit of the Geneva Conventions and all other applicable International humanitarian Laws.

The above stated criteria when viewed against the backdrop of what is tenable in international relations, it is somewhat dicey that it will absolutely regulate the affairs of States.

The International Commission on Intervention and State Sovereignty proposed criteria that will enable governments to ascertain when interventions to protect human rights are warranted.<sup>33</sup> Its basic principles are worth reiterating here:

State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the State itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or State failure, and the State in question is unwilling or

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<sup>28</sup>Abiew, Francis Kofi: *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International) 1999 pg 63.

<sup>29</sup>Kwakwa, E.: *Internal Conflicts in Africa: Is There a Right of Humanitarian Intervention?* 2 AFR.YB. INT'L L. Pg 15.

<sup>30</sup>Kindiki Kithure: *The Legality and Applicability of Humanitarian Intervention to Internal Conflict in Africa* .East African Journal of Peace and Human Rights Vol. 7 no.1 (2001) pg 16.

<sup>31</sup> For instance, United Nations Secretary-General Kofi Annan in his report of 8 September 1999 proffered some major considerations for intervention.

<sup>32</sup>Asian C Udoh: *When is Humanitarian Intervention Legal?* 33-MAR L.A.Law.44.

<sup>33</sup> See 'The Responsibility to Protect' ICISS Report December 2001.

unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.<sup>34</sup>

Consequently, gleaned from the provisions of the United Nations Charter, the exhaustion of all peaceful means of enforcing human rights should be explored before the recourse to use of force commences.

Furthermore, use of force should be a last resort in fulfilling the *obligations erga omnes* responsibility when maintaining international peace and security. States are legally bound to pursue all reasonable peaceful means available to resolve the conflict situation.<sup>35</sup>

## 1.5 METHODOLOGY

Data for the study will predominantly be obtained from primary and secondary sources. Basically, desk library research approach was utilized. It tried as much as possible to collate and analyse information on the subject matter from books and journal articles sourced. Attempts were also made to have discussions and unstructured interview with experts in the field and information were sought from the internet.

## 1.6 OVERVIEW OF CHAPTERS

Chapter one introduces the subject matter and provides a background to the study. Chapter two shall discuss the concepts of sovereignty, humanitarian intervention and human rights. Chapter three examines the legal basis of humanitarian intervention. Chapter four analyses and evaluates previous interventions as a case study. It goes further to discuss whether or not it was effective in enforcing fundamental human right. Chapter five deals with conclusion and possibly, recommendations.

## 1.7 LIMITATION

A research on humanitarian intervention arguably requires easy accessibility to information and ample of time and financial wherewithal to adequately carry out a thorough study. Due to some constraint, desk library research was predominantly utilized.

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<sup>34</sup> *Ibid* p. XI. Emphasis mine.

<sup>35</sup> As quoted in Joyner Christopher, C “*The Responsibility to protect*”: *Humanitarian Concern and the Lawfulness of Armed Intervention*, 47 Virginia Journal of International law (2007) pg 712. See Responsibility to Protect Report (ICISS) 2001.

## CHAPTER TWO

### CONCEPTS AND APPLICATION

#### 2.1 INTRODUCTION

A discourse on humanitarian intervention always overlap with issues of violations of human rights as a result of the intricacies' surrounding international humanitarian law and international human rights law applicability. For instance, customary international law permitted intervention in support of humanity under certain circumstances.<sup>36</sup> In internal armed conflicts, human rights law and international humanitarian law apply concurrently.<sup>37</sup> Gasser further states that both humanitarian law and human rights are designed to restrict the power of state authorities with a view to safeguarding the fundamental rights of the individual.

The principle of state sovereignty enshrined in Article 2(1)<sup>38</sup> of the United Nations Charter has been the cornerstone of international law since the peace of Westphalia and has been codified.<sup>39</sup> The 1933 Montevideo Convention succinctly stipulates that 'no state has the right to intervene in the internal and external affairs of another.'<sup>40</sup> Also, the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States<sup>41</sup> replicates this view on state sovereignty. However, sovereignty has been affected by certain developments such as the rise in power of human rights.<sup>42</sup> As a result, the doctrine of state sovereignty is no longer absolute as it

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<sup>36</sup> Abiew, Francis Kofi: *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (The Hague: Kluwer Law International) 1999 pg 61.

<sup>37</sup> Hans-Peter Gasser: International humanitarian law and protection of war victims lecture note to (LLM) International law student, University of Pretoria.

<sup>38</sup> This Article should be read in conjunction with Article 2(4) & 2(7) to appreciate its working.

<sup>39</sup> Stefan Kirchner: *The Human Rights Dimensions of International Peace and Security: Humanitarian Intervention After 9/11* 2004 pg 3 Available at [www.jha.ac/articles/a143.pdf](http://www.jha.ac/articles/a143.pdf).

See also Chandler, David: *'International law and the challenge of human rights' in from Kosovo to Kabul Human Rights and International intervention* pg 123.

<sup>40</sup> Article 8.

<sup>41</sup> 1970.

<sup>42</sup> Helene Ruiz Fabri: *'Human Rights and State Sovereignty: Have the Boundaries been significantly Redrawn'* in Philip Alston and Euan Macdonald, *Human Rights, Intervention and the Use of Force* (ed.) Oxford University Press 2008 pg 37.

is increasingly eroded due to the fact that the protection of human rights takes a central place in modern day concerns.<sup>43</sup>

Gleaning from the foregoing, it is trite to state that the subjects of discourse in this chapter are embodied in the corpus of international customary law, the United Nations Charter, treaty law and other international instruments.

State sovereignty and its erosion shall now be considered in detail.

## 2.2 STATE SOVEREIGNTY AND ITS EROSION

Respect for the fundamental sovereignty, territorial integrity, and political independence of states is a cornerstone of the international system, one of the most important building blocks of global stability, security, and progress.<sup>44</sup>

However, the understanding of sovereignty is undergoing a significant transformation.<sup>45</sup>

The principle of absolute state sovereignty is premised on the notion that each state is a sovereign actor capable of deciding its own policies, internal organization, and independence.<sup>46</sup> Despite international norms of non-intervention in the internal affairs of sovereign states, external interventions are by no means a new phenomenon in international politics.<sup>47</sup> Furthermore, states that are party to major international human rights covenants have chosen to make itself accountable to treaty bodies that monitor adherence to these instruments, thus they routinely accept restrictions on their sovereignty in order to cooperate with others in the pursuit of various common global good.<sup>48</sup>

Sovereignty though does not constitute an inherent right of the state.<sup>49</sup>

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<sup>43</sup> Kindiki Kithure: *The applicability of humanitarian intervention to internal conflicts in Africa*. East Africa Journal of Peace & Human Rights Vol.7 2001 pg 29.

<sup>44</sup> Annan Kofi A: *'Peacekeeping, Military Intervention and National Sovereignty in Internal Armed Conflict'* in Moore Jonathan: *Hard Choices; Moral Dilemmas in Humanitarian Intervention* (, Lanham, Md.: Rowman & Littlefield, and Oxford) 1998 pg 56.

<sup>45</sup> *Ibid.*

<sup>46</sup> Abiew, Francis Kofi: *Supra* pg 65. *Vide* the International Court of Justice explanation in the Nicaragua V The United States (case concerning Military and Paramilitary Activities in and against Nicaragua) ICJ Reps (1986).

<sup>47</sup> Theodora- Ismene Gizelis and Kristin E Kosek: *Why humanitarian interventions succeed or fail The role of local participation in Cooperation and Conflict*: Journal of the Nordic International Studies Association Vol. 40 (4) 2005 pg 364.

<sup>48</sup> Annan Kofi A: *Supra* pg 57.

<sup>49</sup> Abiew, Francis Kofi: *Supra* pg 74.

Under international human rights instruments,<sup>50</sup> it is only individuals who have inherent, inalienable and universal human rights. Thus, a sovereign state derives its rights from its citizens and has no separate Identity.<sup>51</sup>

According to Ruiz Fabri<sup>52</sup> 'it is no longer acceptable to see governments flouting their citizens' rights under the pretext of sovereignty'. Therefore when states are unwilling or unable to promote and protect the human rights of its citizen, the international community intervenes and the veil of absolute state sovereignty is lifted in order to forestall violations of human rights.

The international legal system in its bid to protect fundamental human rights accrued to individuals holds the view that perpetrators of atrocities should no longer be able to hide behind the shield of state sovereignty.<sup>53</sup> Also, former UN Secretary General Javier Perez de Cuellar wrote in 1991, '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.'<sup>54</sup> Kofi Annan's immediate predecessor Boutros Boutros-Ghali in *An Agenda for Peace, his 1992 report on preventive diplomacy, peacekeeping, and post conflict peace building*, wrote, 'The time of absolute and exclusive sovereignty ... has passed; its theory was never marched by reality.'<sup>55</sup> This stance has led to the emergence of the international legal norm of 'Responsibility to Protect'.<sup>56</sup>

The concept of 'R2P' was developed by the International Commission on Intervention and State Sovereignty in its 2001 report.<sup>57</sup> The concept evolved from mere aspiration voiced by UN Secretary – General Kofi Annan to the

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<sup>50</sup> Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966 and the 1948 Convention on Genocide.

<sup>51</sup> Abiew, Francis Kofi: supra fn 3.

<sup>52</sup> *Human Rights and State Sovereignty: Have the Boundaries been significantly Redrawn* in Philip Alston and Euan Macdonald, *Human Rights, Intervention and the Use of Force* (ed.) 2008 pg 33. As quoted by Annan Kofi, United Nations Secretary General (as he then was) in context of the Kosovo war.

<sup>53</sup> Jide Nzelibe: *Courting Genocide; The unintended effects of humanitarian intervention* (2009) 97 Cal. L. Rev.1171 pg1.

<sup>54</sup> Annan Kofi A: '*Peacekeeping, Military Intervention, and National Sovereignty in Internal Armed Conflict*' in Moore Jonathan, *Hard Choices; Moral Dilemma in Humanitarian Intervention* 1998 pg 58.

<sup>55</sup> *Ibid.*

<sup>56</sup> Herein after referred to as R2P. Available at [www.responsibilitytoprotect.org](http://www.responsibilitytoprotect.org).

<sup>57</sup> The United Nations General Assembly pledged its commitment to R2P as evidenced by the Outcome Document of the 2005 World Summit.

status of a norm in process of becoming a legal principle.<sup>58</sup> Its central theme is worth reiterating here:

“the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation- but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states”.<sup>59</sup>

R2P<sup>60</sup> laid down the threshold to ascertain when a violation of human rights occurs in order to trigger action that amounts to legitimate forcible intervention. The six threshold criteria are as follows:

1. Just cause: Military intervention is an exceptional measure only to be undertaken in extreme humanitarian emergencies.
2. Right intention: The primary motive of the military action must be humanitarian.
3. Last resort: All non - military options must be explored before force is used.
4. Proportional means: The nature of the force used must be proportionate to the humanitarian objective and limited in scale and intensity.
5. Reasonable prospects: The operation must have a reasonable chance of success and negative consequences of force must not outweigh the consequences of inaction; and
6. Right authority: Military action should be authorized by the United Nations Security Council.<sup>61</sup>

R2P has been incorporated in the United Nations World Summit outcome document.<sup>62</sup>

The United Nations High - Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility<sup>63</sup> also proposed some criteria for taking military intervention. These criteria are similar to the ICISS. The following are the guidelines<sup>64</sup> recommended in considering whether to authorize or apply military force:

(a) Seriousness of threat

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<sup>58</sup> Joyner Christopher C: *The Responsibility to Protect: Humanitarian concern and the lawfulness of armed intervention* 47 Virginia Journal of International law (2007) pg 704.

<sup>59</sup> Stahn Carsten, *‘Responsibility to Protect: Political rhetoric or emerging legal norm?’* Vol. 101:99 AJIL (2007)pg 99. As quoted in International commission on intervention and state sovereignty, *The Responsibility to Protect VIII* (2001).

<sup>60</sup> ‘R2P (as it is known) is clearly seen by many as a licence to intervene’. Quotes from Welsh, Jennifer M.: *Conclusion: ‘The evolution of humanitarian intervention in international society’* in *‘Humanitarian intervention and International Relations* pg 188.

<sup>61</sup> Welsh, Jennifer M.: *‘Conclusion: Humanitarian Intervention after 11 September’* in *Humanitarian Intervention and International Relations* 2004 fn.2. For elaboration on this criteria see Joyner Christopher C *supra* pg 711-716.

<sup>62</sup> 2005 see Engel, Karen: *‘Calling in the Troops’* *The Uneasy Relationship Among Women’s Rights, Human Rights, and Humanitarian Intervention* Harvard Human Rights Journal Vol. 20 (2008) pg 215.

<sup>63</sup> 2004. Available at <http://www.un.org/secureworld>.

<sup>64</sup> See generally Report by the United Nations High Level Panel on Threats, Challenges and Change (2004) UN Documents A/59/565/Part three: ‘Collective Security and the use of force.

- (b) Proper purpose
- (c) Last resort
- (d) Proportional means
- (e) Balance of consequences

In conclusion therefore, the principle of absolute state sovereignty has been eroded<sup>65</sup> and a state can no longer perpetrate gross and systematic human rights violations and presume impunity.<sup>66</sup> The international community based on obligations *erga omnes* does not tolerate acts tantamount to *jus cogens*<sup>67</sup> (peremptory norms) such as genocide, crimes against humanity.<sup>68</sup> Leaders alleged guilty of committing these heinous crimes shall be flushed out of their sanctuary, if there is any at all. For instance, the former Ivory Coast head of state Laurent Gbagbo who is alleged of committing crimes against humanity during the country's post election violence was arrested by virtue of an arrest warrant been issued against him by the ICC. He was subsequently placed under house arrest for the period of seven month. He has hence being transferred to the ICC headquarters on the 30<sup>th</sup> November 2011 for trial. Also, the occurrences in Libya are still fresh in mind. The killing of Muammar Gaddafi on October 20, 2011 is an issue which calls for closure in the sense that, the Office of the Prosecutor of the International Criminal Court<sup>69</sup> has already issued an arrest warrant for his arrest. An offer of reward was placed on his arrest. Thus, the proper thing is for him to be captured alive and brought to the impartial court of justice *to face the music* rather than to be killed in a 'jungle justice' manner. Whether he was killed in a cross fire or not is not water-tight as the amateur video recording of the incidence did show that there was no bullet proof or helmet on him as a shield unlike Laurent Gbagbo scenario.

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<sup>65</sup> Jeremy Sarkin: *The Role of the United Nations, the African Union and Africa's Sub- Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian intervention and the Responsibility to Protect*. Journal of African Law Vol. 53 No 1 pg 4 states that 'while the principle of state sovereignty has not been discarded entirely, it has been eroded in recent years'.

<sup>66</sup> Thomashausen, Sophie: *Humanitarian Intervention in an evolving world order: The cases of Iraq, Somalia, Kosovo and East Timor* 2002 pg 135.

<sup>67</sup> The notion of *jus cogens* has its origin in the Vienna Convention on The Law of Treaties 1969. See its definition in Article 53 of the VCLT.

As quoted in Dugard, John; *International Law: A South African Perspective* 2005 (3<sup>rd</sup> ed.) pg 43.

<sup>68</sup> See Article 5-7 of the ICC Rome Statute.

<sup>69</sup> Situate in The Hague, Netherlands. Established and governed by the Rome Statute. Its court is also in Arusha, Tanzania. The Statute was adopted on 17 July 1998 and it entered into force in 2001.

### 2.3 HUMAN RIGHTS AND HUMANITARIAN INTERVENTION: CONCEPTUALIZATION

The term “human rights” is encapsulated in the United Nations Charter.<sup>70</sup> Though, these rights are not enumerated in its provisions. As such, recourse is had to the various legal instruments on human rights and general rules of interpretation. The onus also, lies on UN member states to bear the responsibility of defining the concept in their systems bearing in mind its universal character.<sup>71</sup>

This is based on the fact that human rights can not be defined in a straight jacket way because of its inherent nature in a human being. Distinctly however, human right scholars as well as national human rights systems have made some remarkable impact in attempting its definition.

According to Professor Jack Donnelly, human rights are the rights that one has simply because one is a human being, thus, are held equally and inalienably by all human beings. They are social and political guarantees necessary to protect individuals from the standard threat to human dignity posed by the modern state and modern markets.<sup>72</sup> He further states that human rights are a legitimate and well-established international concern.<sup>73</sup>

International Human rights law is made up of many international treaties and declarations. These are the Universal Declaration of Human Rights,<sup>74</sup> the two 1966 International Covenants and its optional protocols: International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>75</sup>

Human rights are the inherent rights of human beings and it is inalienable, indivisible and universal. Human rights are more widely accepted than ever

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<sup>70</sup> Article 1(3) of the United Nations Charter 1945.

<sup>71</sup> See Article 55 & 56 of the Charter.

<sup>72</sup> Donnelly, Jack: *International Human Rights* (west view press) 1998 pg 202.

<sup>73</sup> *Ibid* pg 109.

<sup>74</sup> 1948.

<sup>75</sup> Hereinafter referred to as ICCPR & ICESCR respectively. The list also includes but not limited to, The Convention on the Prevention and Punishment of the Crime of Genocide 1948, Convention on the Elimination of All Forms of Discrimination against women (CEDAW) 1979, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, International Convention on the Elimination of All Forms of Racial Discrimination 1966, Convention on the Rights of the Child 1989.

before in history.<sup>76</sup> Thus, the internationalization of human rights has changed the sphere of the application of the principle of sovereignty.<sup>77</sup>

Consequently, humanitarian intervention<sup>78</sup> as advocated by R2P is often canvassed when egregious, systematic violations of human rights occur in a state due to the fact that gross systematic violations of human rights have become a concern of the whole international community and not just a matter exclusively within the domestic purview of states.<sup>79</sup> Therefore, fundamental human rights must take precedence over any norms of non-intervention in the internal affairs of state.<sup>80</sup>

Humanitarian intervention, however ambiguous its scope was never conceived as anything but an add-on to the existing rules of international law, including the rules of self- defense.<sup>81</sup> According to Keohane,<sup>82</sup> intervention creates a situation in which external authorities control the politics of a formerly independent state due to the erosion of the Westphalia sovereignty by on going atrocities violating the fundamental human rights of the people, thereby paving way for the protection of human rights doctrine.

Intervention though can either be constructive or destructive. This position is taken against the backdrop of events during the intervention and its aftermath. In order for states to intervene in internal conflict<sup>83</sup> where gross human rights abuse is taking place policy considerations are always extremely important factors in deciding whether or not to intervene.<sup>84</sup> The United Nations Security Council is also a cumbersome mechanism for achieving justice since the existence of the *veto* means that powerful states are in a position to block humanitarian interventions that do not serve their interests.<sup>85</sup>

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<sup>76</sup> Frederick J. Petersen *The facade of Humanitarian Intervention for Human Rights in a Community of Sovereign Nations* 15 *Ariz. J. Int'l & Comp. L* 871 pg 6.

<sup>77</sup> Helene Ruiz Fabri: *Human Rights and State Sovereignty: Have the Boundaries been significantly Redrawn* in Philip Alston and Euan Macdonald, *Human Rights, Intervention and the Use of Force* (ed.) 2008 pg 39.

<sup>78</sup> The definition in chapter one is adopted here.

<sup>79</sup> Abiew, Francis Kofi: *supra* pg 82.

<sup>80</sup> *Ibid* pg 97.

<sup>81</sup> Jose E Alvarez *The Schizophrenias of R2P* in Philip Alston and Euan Macdonald, *Human Rights, Intervention and the Use of Force* (ed.) 2008 pg 283.

<sup>82</sup> Robert O.Keohane: *Political authority after intervention: gradations in sovereignty* in Holzgrefe J. L and Robert O Keohane: *'Humanitarian Intervention Ethical, Legal and Political Dilemmas'* (ed.) 2003 pg 296.

<sup>83</sup> See common Article 3 to the four Geneva Conventions 1949. Also see Additional Protocol II to the four Geneva Conventions for clear understanding on internal conflict.

<sup>84</sup> Frederick J. Petersen: *supra* pg 6.

<sup>85</sup> As quoted in Coady C. A. J: *The Ethics of Armed Humanitarian Intervention* 2002 pg 26.

Also, the 'hegemonic'<sup>86</sup> states among the permanent members of the UN Security Council<sup>87</sup> may utilize its veto power when deliberation on intervention is on going in an abusive manner due to its state interest.<sup>88</sup> Where the UNSC do not adopt normative resolution to intervene in the conflict ridden state, the lapses creates avenue for state or regional agencies to take unilateral or collective action without prior authorization from the UNSC. Intervention ought to be carried out based on humanitarian grounds and to secure international peace as against state interest. Michael Doyle and Nicolas Sambanis contend that interventions can be successful at keeping peace and encouraging democratization if implemented in the first few years after 'civil conflict.'<sup>89</sup> In addition, similarly, in order to manage, exploit, govern, save or reconstruct the states subjected to humanitarian intervention, the international community has had to have a physical presence in such locations- as observers, as peace-keepers, as technical development assistants, and as aid workers.<sup>90</sup> The ruins left of the formerly beautiful city of Sirte *inter alia* in Libya is borne in mind. In conclusion, humanitarian intervention which cuts across international human rights law and humanitarian law seeks to enforce human rights in the entire globe, however, both branches of international law remains distinct despite its overlapping and until now, still seeks preeminence over each other.

## 2.4 CUSTOMARY INTERNATIONAL LAW AND HUMANITARIAN INTERVENTION

Article 38 (1) (b) of the Statute of the International Court of Justice provides for international custom as a source of international law. According to Dugard<sup>91</sup> courts have identified two main requirements for the existence of a customary rule: settled practice (*usus*) and the acceptance of an obligation to be bound

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<sup>86</sup> That is, the P5 (United States of America, United Kingdom, France, Russia and China) or better still, the 'super powers' among the UNSC permanent members.

<sup>87</sup> The UNSC is vested power by chapter VII and Article 25 of the Charter to adopt legally binding decisions in situations that it determines threaten international peace and security. See Article 39 and in particular, Chapter VII of the Charter generally.

<sup>88</sup> which may be political or economic interest in the conflicting state. Although, quoting from Coady, when a veto is exercised, a simple majority of the UNSC or of the permanent members could confer a moral authorization for intervention.

<sup>89</sup> Murdie, Amanda & Davis, David R.: *Problematic Potential: The Human Rights Consequences of Peacekeeping Interventions in Civil Wars Human Rights Quarterly* 2010 Vol. 32, no.1 pg 52.

<sup>90</sup> Orford, Anne: *Reading Humanitarian Intervention Human Rights and the Use of Force in International Law* 2003 pg 204.

<sup>91</sup> *Supra* pg 29.

(*opinio juris sive necessitatis*). These elements are what customary international law consists of. Kindiki argues that for a practice to be regarded as *usus*, 'consistency and generality of a practice must be proved'.<sup>92</sup> The practice must receive widespread acceptance in order to qualify as custom.<sup>93</sup> Considering cases wherein humanitarian intervention was applied, arguably, it can be affirmed that humanitarian intervention has gained widespread acceptance.<sup>94</sup> Customary international law permitted intervention in support of humanity under certain circumstances.<sup>95</sup> An instance is during the violation of human right in a systemic, gross and egregious way. The advent of the United Nations Charter suggests that the customary institution of humanitarian intervention still exists, and is not inconsistent with the purposes of the United Nations.<sup>96</sup> The general practice apart from gaining widespread acceptance must be accepted as law.<sup>97</sup> This in effect means the settled practice must be regarded as having a binding force.<sup>98</sup> Consequently, humanitarian intervention can be said to have in principle, gain acceptance.<sup>99</sup>

## 2.5 TREATY LAW AND HUMANITARIAN INTERVENTION

The United Nations Charter<sup>100</sup> incorporates the legal basis of humanitarian intervention.<sup>101</sup> The whole basis for humanitarian intervention is grounded in prior agreement about the internationalization of human rights as embodied in Articles 55 and 56 of the United Nations Charter, as well as the International Bill

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<sup>92</sup> *Supra* pg 36. As quoted in Brownlie, Ian: *Principles of Public International Law* Oxford 1998 at 4.

<sup>93</sup> Dugard, J.: *supra* pg 32.

<sup>94</sup> As stated earlier in chapter one, the research adopts collective action as against unilateral intervention without United Nations Security Council authorization.

<sup>95</sup> Abiew, Francis Kofi: *supra* pg 61.

<sup>96</sup> *Ibid* pg 132.

<sup>97</sup> See the wording of Article 38 (1) (b) of the Statute of ICJ.

<sup>98</sup> See the North Sea Continental Shelf Case 1969 ICJ Reports 3.

<sup>99</sup> The research shall in chapter four consider states where humanitarian intervention was utilised and its outcome. Recently, Egypt, Tunisia and Libya used forceful means to dethrone its leaders who violated their human rights. Bahrain, Yemen and Syria are still protesting against its leadership for similar reasons.

<sup>100</sup> According to Kindiki *infra* pg 33-35, the Charter does not expressly provide for the 'right of humanitarian intervention' but it can be inferred if the Charter is progressively interpreted.

<sup>101</sup> See the reasoning of Kindiki Kithure on this position in *The Legality and Applicability of Humanitarian Intervention to Internal Conflicts in Africa*. East African Journal of Peace & Human Rights Vol. 7 no.1 (2001) pg 33. *Vide*, Article 38(1) (a) of the Statute of the International Court of Justice. It lists treaties as one of the sources of International law and the United Nations Charter falls under treaties.

of Human Rights.<sup>102</sup> It is argued that the international human rights regime, at least in principle, constitutes limitations on the sovereignty of states which have accepted the respective agreements.<sup>103</sup>

According to Sir Adam Roberts<sup>104</sup>, there are three possible bases for the view that the Charter can be seen as leaving some scope for humanitarian intervention:

- I. From the Charter references to fundamental human rights which are proclaimed to be central purposes of the United Nations in the Preamble and in Article 1.
- II. The possibility of such intervention under United Nations Security Council auspices.
- III. The third way in which the Charter might, at least in theory, be considered to leave some scope for humanitarian intervention is in Chapter VIII, on regional arrangements.

In sum, certain provisions of the main post-1945 treaties on the laws of war can be interpreted as giving some basis for humanitarian intervention.<sup>105</sup>

## 2.6 CONCLUSION

In conclusion, this chapter has shed some light on the relationships of the concepts forming the bedrock of this research. It also illustrates this by drawing references to the occurrences in the world with regard to humanitarian intervention.

The entire globe is a market place; as such, issues' pertaining to forcible intervention continues to evolve having in mind that international law is not static: the international legal order continues to develop rules.

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<sup>102</sup> Abiew, Francis Kofi: supra pg 132.

<sup>103</sup> *Ibid.* Pg 63. It is pertinent to note that the Convention on Genocide inter alia is basis for humanitarian intervention.

<sup>104</sup> *The So- Called Right of Humanitarian Intervention; Yearbook of International Humanitarian Law* 2000 Vol. 3 pg 8-9.

<sup>105</sup> Sir Adam Roberts: *The United Nations and Humanitarian Intervention* in Welsh, Jennifer M.: supra pg 76.

## CHAPTER THREE

### LEGAL BASIS FOR HUMANITARIAN INTERVENTION

#### 3.1 UNILATERAL AND COLLECTIVE HUMANITARIAN INTERVENTION

The United Nations Security Council is vested the primary responsibility of maintaining and securing international peace.<sup>106</sup> As such it can authorize enforcement actions by adopting normative resolutions.

As earlier stated in Chapter one, the Charter does not authorize any exception to the prohibition of the use of force rule except for the right of self – defence and enforcement measures undertaken by the Council under Chapter VII of the Charter.<sup>107</sup> The Security Council may authorise regional arrangement or group of states to carry out enforcement action on its behalf and the instruction to so do are documented in resolutions.<sup>108</sup> However, in situations whereby the Security Council are not forthcoming with adopting resolutions for intervention in a conflicting state, state(s) and/or regional agencies takes up the challenge of securing peace and stability in such conflict-ridden states.<sup>109</sup> Thus, unilateral<sup>110</sup> humanitarian intervention occurs when the Security Council has not authorized intervention.<sup>111</sup> As Wedgwood states, 'when push comes to shove; waiting for unanimity may sometimes fail to protect other values as stake.'<sup>112</sup>

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<sup>106</sup> Article 24 of the United Nations Charter 1945 See also Article 25 of the Charter.

<sup>107</sup> Gray, Christine D.: *International Law and the Use of Force* (Oxford University Press) 3<sup>rd</sup> Edition 2000 pg 31. See Article 51 of the Charter and the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons: 8 July 1996.

<sup>108</sup> This is due to the fact that the UN does not have its own armed forces. It relies on members to make available armed forces for enforcement measures .See Article 43 & 45 of the Charter.

<sup>109</sup> For instance, NATO carried out such operation in Kosovo. ECOWAS did same in Liberia and Sierra Leone. The NATO operation in Kosovo and ECOWAS operation earlier stated were subsequently 'approved' by the UNSC. See UNSC Resolution 788 of 1992 on Liberia.

<sup>110</sup> Sometimes, a group of states (coalition states) carry out enforcement action. This is regarded as collective humanitarian intervention if done with the authority of the UNSC. The USA, UK and France forcibly intervened in Iraq after the Iraq/Kuwait conflict to protect the Kurds and Shi'ites without express authorization from the UNSC.

<sup>111</sup> See Anthea Roberts infra pg 180.

<sup>112</sup> Wedgwood: '*Unilateral Action in the United Nations System*' (2000) 11 *European Journal of International Law* 349, 353. As quoted in Aoife O'Donoghue: *Humanitarian Intervention Revisited* *Hanse Law Review* (HanseLR) 2005 Vol. 1 No. 2 pg 170.

Some commentators argue in favour of unilateral intervention using Article 1, 55 and 56 of the Charter as their premise.<sup>113</sup>

In order to prevent recourse to unilateral intervention, it must act in all serious situations.<sup>114</sup>

Unilateral (intervention by a single state) or Collective (intervention by a group of states) actions are sometimes carried out by state or regional arrangements when there appears to be inaction by the UNSC in the face of gross, egregious atrocities due to its veto power debacle. This situation prompted O'Donoghue to make the following rhetoric:

Will a larger more representative Security Council be able to take decisive action or will the usual politicking continue, leading to intervention outside of the UN framework to continue unabated.<sup>115</sup>

The politics played by the Security Council whilst exercising its veto power should be addressed since the Charter states in its preamble that '...armed force shall not be used, save in the common interest'<sup>116</sup> of the international community. What is good for the goose is good for the gander. According to Coady, intervention here and failure to intervene there surely shows a flawed moral response since what is right to do in one place must also be right to do in another exhibiting the same morally relevant features.<sup>117</sup> As unilateral humanitarian intervention poses the dilemma of what states should do when there is a great divide between what international law requires and what morality dictates.<sup>118</sup> It also, threatens the harmony and concord of the society of sovereign states.<sup>119</sup>

However, Byers argues that unilateral Humanitarian Intervention is a developing customary international law...that is an intervention, for humanitarian purposes, which has not been authorised by the Security Council.<sup>120</sup> In addition,

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<sup>113</sup> See Abiew, Francis Kofi: *The Evolution of the Doctrine and Practice of Humanitarian Intervention* 1999 pg 101 see also fn 109 pg 102 to see Ronzitti's view.

<sup>114</sup> Aoife O'Donoghue: *Humanitarian Intervention Revisited* *Hanse Law Review* (HanseLR) 2005 Vol. 1 No. 2 pg 173.

<sup>115</sup> Aoife O'Donoghue: *supra* pg 174.

<sup>116</sup> Emphasis is mine.

<sup>117</sup> Coady, C. A. J.: *The Ethics of Armed Humanitarian Intervention* 2002 pg 24-25.

<sup>118</sup> Anthea Roberts: 'Legality Verses Legitimacy: Can Uses of Force be illegal but justified?' In Philip Alston and Euan Macdonald: *Human Rights, Intervention and the Use of Force* 2008 pg 179.

<sup>119</sup> As quoted in Adam Roberts: *The So-Called Right of Humanitarian Intervention. Yearbook of International Humanitarian Law* 2000 Vol. 3 pg 15.

<sup>120</sup> Byers Michael: *Terrorism, the Use of Force and International Law after 11 September* 51 IC LQ (2002) pg 404.

Wedgewood states, 'when push comes to shove; waiting for unanimity may sometimes fail to protect other values at stake.'<sup>121</sup>

This research adopts the concept of Collective humanitarian intervention as ideal since it reflects a collective will and may not be prone to abuse and selectivity.<sup>122</sup> However, authorization must be sought from the United Nations Security Council and where the authorization is not forthcoming from the Security Council; necessary lobbying of the members of the General Assembly may be done leading to the adoption of a "uniting for peace" declaration by the United Nations General Assembly.<sup>123</sup> Barrie argues that when the humanitarian intervention is *applied by states collectively*, however, it is acceptable as being rule of organized society.<sup>124</sup> Also, he opines that when it comes to forcible humanitarian intervention, the acceptable legalistic avenue to follow would be to request the Security Council, acting under Chapter VII of the Charter, to recommend humanitarian intervention by United Nations forces or by individual states ( or a collection of states) where appropriate.<sup>125</sup>

In addition, Annan on the issue of NATO operation in Kosovo stated that 'It is indeed tragic that diplomacy has failed, but there are times when the use of force may be legitimate in the pursuit of peace. But... under the charter the Security Council has primary responsibility for maintaining international peace and security...therefore the council should be involved in any decision to resort to the use of force'.<sup>126</sup>

In conclusion, the United Nations Security Council should stand up to its Charter responsibility. The veto power ought to be utilized for its actual purpose of maintaining and restoring international peace and security and not as a shield or sword to be brandished when any of the 'super power' interest is an issue.<sup>127</sup>

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<sup>121</sup> Wedgewood: '*Unilateral Action in the United Nations System*' (2000) 11 European Journal of International Law 349, 353. As quoted in Aoife O'Donoghue *Humanitarian Intervention Revisited* Hanse Law Review (HanseLR) 2005 Vol. 1 No. 2 pg 170.

<sup>122</sup> Barrie states that the ECOWAS action in Liberia set a precedent for regional collective action with humanitarian purposes as the main aim. See Barrie, George N.: *Humanitarian Intervention in the Post-Cold War Era* (2001) 118 SALJ pg 162.

<sup>123</sup> As quoted in Kindiki Kithure: *The Legality and Applicability of Humanitarian Intervention to Internal Conflicts in Africa* East African Journal of Peace & Human Rights Vol. 7 pg 34

<sup>124</sup> *Infra* pg 101.

<sup>125</sup> Barrie, George N.: *Forcible Intervention and International Law: Legal Theory and Realities* 1999 South African Law Journal pg 806.

<sup>126</sup> As quoted in Aoife O'Donoghue *Humanitarian Intervention Revisited* Hanse Law Review (HanseLR) 2005 Vol. 1 No. 2 pg 170 see also Press Release SG/SM/6938 of 24th March 1999.

<sup>127</sup> The inaction of the UNSC in Rwanda crisis clearly portrays this view.

## 3.2 LEGALITY AND LEGITIMACY OF HUMANITARIAN INTERVENTION

The concept of Humanitarian intervention has sparked various view points from the *classical or restrictionist* to the *counter-restrictionist*.<sup>128</sup> The most commonly cited international example of the ‘illegal but justified’ approach is the judgement of the ICJ in the Corfu Channel case.<sup>129</sup>

Also, the invasion of Kosovo by NATO has been viewed as ‘though illegal but justified’:

‘NATO eventually intervened militarily without Security Council authorization. Many argued that NATO’s intervention was both ‘illegal’ and ‘legitimate’.<sup>130</sup> According to this argument, a commitment to justice required the international community to support the NATO intervention in Kosovo, despite its illegality.<sup>131</sup>

According to Abiew,<sup>132</sup> Riesman and MacDougal argue, ‘the UN Charter not only confirmed the legitimacy of humanitarian intervention but also strengthened it.’

The issue of legality and legitimacy of humanitarian intervention is cloudy. Due to the nature and consequences of humanitarian intervention, it is tempered with a lot of resistance from states wielding their sovereignty as a shield. However, the ICISS Report has in a way modified ‘intervention’ so as to reflect its essence.<sup>133</sup>

It is a fact that states or regional arrangements now embark on intervention with or without the required authorization to so do when faced with massive atrocities been perpetrated in a state and the government are unable or unwilling to put a halt to the impunity. More often than not, the atrocities are committed by the state leaders. Hence, if the United Nations Security Council is to win the respect it must have as the primary body in the collective security system, it is critical that its most important and influential decisions, those with large-scale life –and– death impact, be better made, better substantiated and better communicated.<sup>134</sup>

Where authorization of the UNSC is sought and granted, the burden of proving legitimacy shifts from the intervening states.

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<sup>128</sup> Quoted from Welsh, Jennifer M.: ‘*Taking Consequences Seriously: Objections to Humanitarian Intervention*’ in Welsh, Jennifer M.: *Humanitarian Intervention and International Relations* 2004 pg 55.

<sup>129</sup> ICJ Reports 1949 As quoted in Anthea Roberts supra pg 189.

<sup>130</sup> Engle, Karen: pg 207.

<sup>131</sup> Orford, Anne: *Reading Humanitarian Intervention, Human Rights and the Use of Force in International Law* 2003 pg 5.

<sup>132</sup> Pg 132.

<sup>133</sup> See Chapter two for detail on ICISS on intervention.

<sup>134</sup> As quoted in the UN High Level Panel Report on Threats 2004 pg 57.

As Brenfors and Petersen put it, today there is broad consensus in the international community that collective humanitarian intervention, under the umbrella of Chapter VII of the Charter, is legal.<sup>135</sup>

Conclusively, Annan states that 'emerging slowly, but I believe surely is an international norm against the violent repression of minorities that will and must take precedence over concerns of state sovereignty.'<sup>136</sup>

### **3.2.1 Criteria For Humanitarian Intervention By The International Commission On Intervention And State Sovereignty**

The ICISS as shown in chapter two provides threshold for intervening in a conflicting state. This belief that criteria would breed greater legitimacy was echoed by Annan in his report to the General Assembly in March 2005, in *larger freedom*.<sup>137</sup> The search for a threshold was mostly clamoured for by third world countries. According to Sands, smaller and developing countries in particular are fearful that humanitarian intervention will be used to justify the use of force when the established rules do not permit it.<sup>138</sup> They are right to be concerned, until clear criteria have emerged and are accepted by the international community as a whole.<sup>139</sup>

The criteria as stipulated by the ICISS report have been outlined in chapter two of the research; hence, it is not iterated here.

The essence of the ICISS Report was to ameliorate interventions in conflict ridden states, especially such interventions that are carried out without the requisite consent of the government, as issue bordering on state sovereignty is a sensitive one.

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<sup>135</sup> Brenfors M. and Petersen M.M.: *The Legality of Unilateral Humanitarian Intervention –A Defence* Nordic Journal of International Law 69 2000 pg 450 See fn 5.

<sup>136</sup> O'Donoghue Pg 173 Press Release SG/SM/6949 of 7th April 1999.

<sup>137</sup> . Welsh, Jennifer M.: *'Conclusion: The Evolution of Humanitarian Intervention in International Society' in Humanitarian Intervention and International Relations* 2004 pg 184.

<sup>138</sup> Sands Philippe: *Lawless World* (2005) pg 178.

<sup>139</sup> *Ibid.*

Chesterman argues that, this shift from military intervention to preventive action mirrors the move made in the ICISS report, Entitled 'The Responsibility to Protect'.<sup>140</sup>

Moreover, military or forcible intervention in the sovereignty of states for the purpose of enforcement of human rights as humanitarian as it seem, is not devoid of abuse. The panel on the ICISS report putting into consideration this notion and other intrinsic reasons that trigger human rights violation in states coupled with the corresponding action of governments to protect its people from human rights violation, decided to lay the foundation for considerations to be made before resorting to military intervention.

### 3.3 INTERVENTION UNDER THE AFRICAN UNION AUSPICES

The right of intervention by the Union is decided by the Assembly of Heads of states and Governments upon the recommendation of the African Union Peace and Security Council (PSC) as stipulated in Article 4 (h) of the Constitutive Act of the African Union.<sup>141</sup> In a bold step, they included a provision granting the Union an unprecedented right of humanitarian intervention.<sup>142</sup> Also, 'the amended Article 4(h) now takes the grounds<sup>143</sup> for intervention further than is envisaged by the UN Charter<sup>144</sup>, by including situations where there is a 'serious threat to legitimate order' for the purpose of restoring peace and stability in the conflict ridden member state.'<sup>145</sup> The capacity of the African Union to act on this right remains limited.<sup>146</sup> This posits is viewed in light of the funding and troops required to carry out a successful intervention. In addition, Baimu and Sturman argues that extending the grounds of intervention to include serious threat to

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<sup>140</sup> Simon Chesterman: 'Humanitarian Intervention and Afghanistan' in Welsh, Jennifer M.: Humanitarian Intervention and International Relations (ed.) 2004 pg 172.

<sup>141</sup> Vide the Protocol on amendment to the Constitutive Act which was adopted in 2003.

<sup>142</sup> Kunschak Martin: *The African Union and the right to intervention: Is there a need for UN Security Council authorisation?* (2006) 31 SAYIL pg 195.

<sup>143</sup> Prior to the amendment of the AU Constitutive Act, the ground for intervention was vested on the occurrence of war crimes, genocide and crimes against humanity.

<sup>144</sup> See the United Nations World Summit Outcome Document (2005). In particular, its Article 138.

<sup>145</sup> Evarist Baimu and Kathryn Sturman: *Amendment to the African Union's Right to Intervene; A shift from human security to regime security?* African Security Review Vol. 12 No 2, 2003 pg 1.

<sup>146</sup> Welsh, Jennifer M.: *Conclusion: The Evolution of Humanitarian Intervention in International Society in 'Humanitarian Intervention and International Relations* (ed.) 2004 pg179.

legitimate order would hardly pass the test of the criteria required for the UN interventions.<sup>147</sup>

In Article 4(j) of the AU Constitutive Act, states members have the right to request intervention from the Union for restoration of peace and security. According to Kioko, the African Constitutive Act is the only international treaty containing such a right.<sup>148</sup>

The African Union is a regional arrangement and its states members are also, member states of the United Nations. As such, the authorization from the United Nations Security Council to carry out intervention of this sort is necessary by virtue of its membership.<sup>149</sup> The principle of *Pacta sunt servanda* is alive.

In support of the wording of Article 53 of the United Nations Charter, Kuwali opines that ‘there is consensus that intervention on the part of regional organisations should be under United Nations authorisation’, both the AU Act and the Peace and Security Council (PSC) Protocol are silent on what will happen if the UN will not authorise intervention.

The *Ezulwini Consensus*, however, gives guidance that such approval could be granted ‘after the fact’ in circumstances requiring ‘immediate action’.<sup>150</sup> The Ezulwini Consensus Document provides that where ex post facto authorization is given, the UN should assume financial responsibility for the action undertaken. On the contrary, in the absence of subsequent United Nations authorization, the African Union shoulders the financial burden of the mission.<sup>151</sup>

The position of the United Nations is clear; authorization is required from the Security Council when taking enforcement action against acts that threaten the peace, breaches the peace or acts of aggression because such intervention can only be invoked under the Chapter VII powers of the Security Council.<sup>152</sup> Thus, Greenwood states, as a regional arrangement, ECOWAS can take enforcement

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<sup>147</sup> Supra fn 144.

<sup>148</sup> Kioko Ben: *The Right of Intervention under the African Union’s Constitutive Act: From non-interference to non intervention* IRRC December 2003 Vol. 85 No. 852 pg 808.

<sup>149</sup> Vide Article 52 & 53 of the UN Charter. Also, perhaps it is right to bring in the provision of Article 103 of the UN Charter at this juncture to buttress supremacy of UN obligations.

<sup>150</sup> Dan Kuwali *The end of humanitarian intervention: Evaluation of the African Union’s right of intervention* pg 51.

<sup>151</sup> The Common African position on the Proposed reform of the UN: “The Ezulwini Consensus” (7<sup>th</sup> extraordinary session of the AU Executive Council, Addis Ababa, Ethiopia). 2005. As quoted in Sarkin Jeremy: *The role of the United Nations, the African Union and Africa’s sub-regional Organizations in dealing with Africa’s Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect*. Journal of African Law Vol. 53 No. 1 pg 8.

<sup>152</sup> Though, this position tends to limit the scope of Article 4(h) of the AU Constitutive Act.

action only with the consent of the United Nations Security Council.<sup>153</sup> Although ECOWAS in complying with Article 54 of the UN Charter reported its activities in Liberia to the UNSC, however, the UNSC adopted a resolution afterwards, which could be interpreted as approving the ECOWAS operation.

Wedgewood criticises the AU by arguing that: It appears that it sees itself as able to take action in a humanitarian crisis without specific authorisation by the Security Council, this seems to be the clearest statement yet as to the parameters countries are willing to lay themselves outside the UN.<sup>154</sup>

It is pertinent to state that African Union Constitutive Act does not permit unilateral intervention in the internal affairs of another state.<sup>155</sup>

In conclusion, the essence of humanitarian intervention under the auspices of the African Union can be summed up in the statement of Said Djinnit<sup>156</sup> “No more, never again. Africans cannot watch the tragedies developing in the Continent and say it is the UN’s responsibility or somebody else’s responsibility. We have moved from the concept of non-interference to non-indifference. We cannot as Africans remain indifferent to the tragedy of our people”.<sup>157</sup>

### 3.4 THE PURPOSE OF HUMANITARIAN INTERVENTION

Gleaning from various resources on the concept of Humanitarian intervention, it appears the common goal sought is to put to an end gross, egregious and systematic violation of human rights of the people. Antonio Cassese<sup>158</sup> maintains that:

It is axiomatic that use of force should be commensurate with and proportionate to the human rights exigencies on the ground. The more urgent the situation of killings and atrocities, the more intensive and immediate may be the military response thereto.

Although, other motives for intervening may be present, this view is taken against the backdrop of occurrences in intervention actions. For instance, there

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<sup>153</sup> Christopher Greenwood: *Is there a right of Humanitarian Intervention* The World Today, Vol. 49, No. 2 (Feb. 1993) pg 37.

<sup>154</sup> As quoted in Aoife O’Donoghue: *Humanitarian Intervention Revisited* *Hanse Law Review* (HanseLR) 2005 Vol. 1 No. 2 pg 172.

<sup>155</sup> Article 4(g) of AU Constitutive Act 2001 As quoted in Sarkin Jeremy supra pg 18.

<sup>156</sup> Commissioner for Peace and Security of the African Union.

<sup>157</sup> Sarkin Jeremy supra pg 23 Quoted in Powell K “ or *The African Union’s emerging peace and security regime: Opportunities and challenges* delivering on the responsibility to protect” (2005) 119 *Institute for security studies Monograph series* 1.

<sup>158</sup> *Ex Injuria jus Oritur: Is International Legitimation of Forcible Humanitarian Countermeasures Taking Shape in the World Community?* 10 *Eur. J. Int. L* 23 (1999), 35 As quoted in Steiner, Henry J and Philip Alston: *International Human Rights in Context Law Politics and Morals text and materials* 2000 pg 661.

have been speculations on the motive for intervention in Libya. *Inter alia*, it is stated that the United States of America, United Kingdom and France are targeting the crude oil in Libya. Thus; the need for threshold can not be over emphasized. As Roberts puts it, an obvious and crucial criterion for any humanitarian intervention is that there should be a serious prospect of achieving results.<sup>159</sup> The ICISS and the High Level Panel on Threats Report laid down certain criteria to be considered in taking enforcement actions.<sup>160</sup> The Responsibility to Protect was defined in Wikipedia Free Encyclopedia as a *recently developed concept in international relations that aims at 'providing a legal and ethical basis for humanitarian intervention.'*<sup>161</sup>

Moreover, Annan states that '[t]he fact that we can not protect people everywhere is no reason for doing nothing when we can. Armed intervention must always remain the option of last resort but in the face of mass murder it is an option that cannot be relinquished.'<sup>162</sup>

In sum, quoting the words of Greenwood, 'it seems that the law on humanitarian intervention has changed both for the United Nations and for individual states. It is no longer tenable to assert that whenever a government massacres its own people or a state collapses into anarchy, international law forbids military intervention altogether.'<sup>163</sup>

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<sup>159</sup> Adam Roberts: *supra* pg 42.

<sup>160</sup> See Chapter two of the study.

<sup>161</sup> As quoted in Stahn Carsten: *Responsibility to Protect Political Rhetoric or Emerging Legal Norm?* 101 AJIL (2007) pg 100.

<sup>162</sup> Quoted in Engel, Karen: "*calling in the Troops*": *The Uneasy Relationship Among Women's Rights, Human Rights, and Humanitarian Intervention* Harvard Human Rights Journal Vol.20 pg 203.

<sup>163</sup> Christopher Greenwood: *Is there a right of Humanitarian Intervention* The World Today, Vol. 49, No. 2 (Feb. 1993) pg 50.

### 3.5 THE FACADE OF HUMAN RIGHTS

Human Rights have been elevated from the domestic purview to an issue of international concern. Its violation within the municipal sphere when determined by the United Nations Security Council that it reflects acts under Article 39 of the Charter, the onus then, lies with the UNSC in conjunction with the international community to halt or prevent its continuance out rightly. Human rights are a legitimate and well-established international *concern*.<sup>164</sup>

The commitment to the promotion and protection of human rights by the United Nations was given a voice when it adopted the Universal Declaration of Human Rights. The declaration though lacks binding force, the emergence of the two international Covenants on human rights in 1966 created a normative framework for a legally binding instrument.<sup>165</sup> The uniqueness of these two sets of rights reflects the universality, indivisibility, interdependence and interrelatedness of all human rights.

Subsequently, however, the UN state members incorporated these rights in their domestic legislation so as to provide the required enforcement machinery that was not catered for by the UN in its Charter.<sup>166</sup> For instance, Article 2(1) of International Covenant on Economic Social and Cultural Rights<sup>167</sup> stipulates that:

“Each state party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

The phrase ‘maximum of its available resources’ and ‘achieving progressively the full realisation of the rights’ connotes that the rights are to be progressively implemented based on the availability of funds to so do by state parties, thus, it is characterised as ‘mere’ programmatic right.

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<sup>164</sup> Donnelly, Jack: *Universal Human Rights in Theory and Practice* 2003 pg 109.

<sup>165</sup> Prior to the entering into force of these two covenants, there are other legal instruments on human rights specificity. For example, the Genocide Convention, the four Geneva Conventions and its additional Protocols were already in place.

<sup>166</sup> The UN does not have enforcement police. In the words of Dugard J, “no enforcement machinery is provided for, unless the denial of human rights assumes such egregious proportions that it constitutes a threat to international peace under Chapter VII of the Charter”. Quoted from Dugard John: *International Law: A South African Perspective* (third Edition) 2005 pg 311.

<sup>167</sup> See the Preamble and Article 2 of the ICCPR as well.

According to Dugard, it is argued that the Universal Declaration now forms part of customary international law.<sup>168</sup>

Regional human rights conventions such as the African Charter on Human and Peoples Rights<sup>169</sup>, the Inter American System and the European Human Rights Convention 'complement and reinforce universal human rights Conventions.'<sup>170</sup>

Conclusively, the international community in its protection of human rights is willing to engage the use of force as a last resort especially if such determination is made by the UNSC that it constitutes acts stipulated in Article 39 of the UN Charter.

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<sup>168</sup> Dugard, John: *supra* pg 315. The category of rights he referred to as forming part of customary international law are, non discrimination principle, the right to a fair trial, and the Prohibition on torture and cruel, inhuman or degrading treatment.

<sup>169</sup> Otherwise known as the Banjul Charter.

<sup>170</sup> Words in quotes from Dugard J.: *supra* pg 330.

### 3.6 CONCLUSION

There are authorities as indicated in this research that buttress the fact that humanitarian intervention is gaining grounds in the enforcement of human rights. However, the term “Responsibility to Protect” is more embraced ‘when compared to broader concepts such as “Humanitarian Intervention” and “Human Security” as it is considered the least intrusive.’<sup>171</sup> The recent development in international law as it relates to humanitarian law and human rights are undergoing some form of transformation that with time, the municipal laws of states would reflect same in its legislation in the bid to fortify its state sovereignty. The exhaustion of local remedies over cases of violation of human rights in national courts will then be well utilized. Human rights violation suits will be adjudicated upon judiciously and expeditiously.<sup>172</sup>

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<sup>171</sup> Quotes from Saxer Marc: *The Politics of Responsibility to Protect* Briefing Paper No. 2- 2008, FES Berlin, April 2008 pg 5.

<sup>172</sup> The position will be different if the state leader is the actual perpetrator.

## CHAPTER FOUR

### CASE STUDIES OF STATES PRACTICE

#### 4.1 INTRODUCTION

In evaluating the effectiveness of humanitarian intervention as a tool for enforcing human rights, it is pertinent to turn to states where interventions had taken place and make analyses of the intervention in order to appreciate its outcome. A case- by-case evaluation will be appropriate so as to understand the intervention strategy and the possible prospects of its outcome. Thus, interventions in Bosnia – Herzegovina, Somalia and Afghanistan shall be considered in the cause of this research.

These states were singled out for analyses due to the nature of the conflicts and the enforcement measures carried out there. For instance, according to Chesterman, the situation in Afghanistan demonstrated that the collapse of the institutions of statehood may have consequences wider than poverty and lawlessness for a state's own population.<sup>173</sup> Also, the uniqueness of the intervention *inter alia* in Somalia is worth reiterating in this study. This view is taken against the backdrop of what Boutros Boutros-Ghali<sup>174</sup> opined in 'The United Nations and Somalia 1992-1996':

'There was no model for the United Nations to follow in its effort to bring humanitarian assistance and peace to the people of Somalia. It responded flexibly and creatively to an evolving series of unprecedented and unusually complex situations that raised fundamental questions.....'<sup>175</sup>

Moreover, the case study shall give details of the intervention in these states where necessary in order to do a proper evaluation of its effectiveness or otherwise.

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<sup>173</sup> Simon Chesterman: 'Humanitarian Intervention and Afghanistan' in Welsh, Jennifer M.: *Humanitarian Intervention and International Relations* 2004 pg 163.

<sup>174</sup> United Nations Secretary--General (as he then was).

<sup>175</sup> *The United Nations and Somalia 1992-1996: supra* pg 5.

## 4.2 BOSNIA-HERZEGOVINA

There was conflict in the Socialist Federal Republic of Yugoslavia in 1991 amongst its six republics which includes Bosnia-Herzegovina.<sup>176</sup> There was outbreak of war in Bosnia-Herzegovina in 1992. It was clear to all that the unstable ethnic mix within Bosnia's borders had to explode.<sup>177</sup> The complicated conflict in the former Yugoslavia created one of the toughest dilemmas for the Western alliance at the end of the Cold War.<sup>178</sup> The atrocities that were reported were of comparable gravity and magnitude to those committed by the Nazis in World War II.<sup>179</sup> Moreover, the infamous practice of ethnic cleansing began.<sup>180</sup> The most difficult challenge for the international community in Bosnia is dealing with the results of ethnic cleansing.<sup>181</sup>

The situation on ground led the United Nations Security Council to adopt series of resolutions in order to contain the dilemma. However, the consent of the government of Yugoslavia was sought and granted. Thus, according to Greenwood, 'the resolution could be portrayed as an instance of the Council using its Chapter VII powers to deal with an internal situation which was threatening neighbouring states but doing so in cooperation with the government of the state concerned and thus, fully respecting the sovereignty of that state'.<sup>182</sup> On 25 September 1991 the UN Security Council passed Resolution 713 which expressed concern that the continuation of the 'war' constituted a threat to international peace and security and under Chapter VII of the UN Charter, all states are requested to implement a complete embargo on all deliveries of military equipment.<sup>183</sup>

The United Nations Protection Force (UNPROFOR) was established in February 1992 by Security Council Resolution 743.

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<sup>176</sup>The incidence subsequently led to the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) for trial of the perpetrators of the heinous crimes. For instance, it indicted *inter alia*, Bosnian Serb leaders Radovan Karadzic, Ratko Mladic and Slobodan Milosevic.

<sup>177</sup>Quoted from Barrie, George N.: '*Humanitarian intervention in the Post-Cold War Era*,' (2001) 118 SALJ pg159.

<sup>178</sup> Quotes from Teson, Fernando R.: *Collective Humanitarian Intervention* 17 Mich. J. Int'l L. 1995-1996 pg 366.

<sup>179</sup>Quotes from Teson, Fernando R.: *Ibid*.

<sup>180</sup>Teson, Fernando R.: *supra* note 6.

<sup>181</sup>Quotes from Cox Marcus: *Strategic Approaches to international intervention in Bosnia and Herzegovina* Sarajevo, October 1998 pg 7.

<sup>182</sup>Greenwood Christopher: *Is There a Right of Humanitarian Intervention?* The World Today, Vol. 49, No. 2 (February 1993) pg 38.

<sup>183</sup>Barrie, George N.: *supra*.

Its objective was to consolidate the ceasefire which was then in effect and to facilitate the negotiation of a comprehensive settlement.<sup>184</sup>

It is pertinent to state at this juncture that ‘three of the former Yugoslav republics, Bosnia and Herzegovina, Croatia and Slovenia had now achieved widespread international recognition’<sup>185</sup> and as such, their subsequent admittance of United Nations membership. Thus, the conflict situation ceased from that of internal conflict alone to a complicated mixture of international and internal conflicts.<sup>186</sup> Therefore, the rules and principles applicable in international armed conflict and non-international armed conflicts were brought to bear in its governance.<sup>187</sup> The use of force to resist international aggression is beyond the scope of this study. Also, the Security Council on August 13 1992, adopted Resolution 770 acting under its Chapter VII power, called upon states ‘to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery ...of humanitarian assistance .... in....Bosnia-Herzegovina.’<sup>188</sup>

In spite of the earlier resolutions, the military support was minimal and the humanitarian assistance delivery was heavily disrupted.<sup>189</sup> On October 9 1992, the Security Council passed Resolution 781, establishing a ‘no- fly zone’ over Bosnia-Herzegovina in order to prevent Serbian assaults from obstructing humanitarian aid supplies and in response, on October 16; NATO expanded its mission to include *Operation Sky Monitor*, which monitored Bosnian airspace for unauthorized flights.<sup>190</sup> Subsequent resolutions 819 and 824 were both passed under Chapter VII of the UN Charter but neither resolution provided for enforcement action in the event that any of the parties violated the Council’s demand that the areas demarcated as the *safe havens* ‘be free from armed attacks and from any other hostile act’.<sup>191</sup> Resolution 836 was adopted to fill in this gap.

NATO, acting with Security Council authority, did initiate widespread air strikes against Bosnia Serbs targets in 1995, and it is claimed that this action was

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<sup>184</sup> *Ibid.*

<sup>185</sup> Quotes from Greenwood Christopher: *supra* pg 38.

<sup>186</sup> *Ibid.*

<sup>187</sup> *Vide* the Four Geneva Conventions of 1949 and its two Additional Protocols 1977.

<sup>188</sup> Teson, Fernando R.: *supra* pg 367.

<sup>189</sup> Barrie, George N.: *supra* note 5.

<sup>190</sup> Quotes from NATO intervention in Bosnia; Wikipedia (Accessed on 18<sup>th</sup> October 2011).

<sup>191</sup> Quotes from Wheeler Nicholas: *infra* pg 254.

decisive in persuading the President of the rump Yugoslav state, Slobodan Milosevic, to negotiate a peace settlement under US auspices at Dayton, Ohio, in 1995.<sup>192</sup>

Although none of these authorizations were subjected to a time-limit, they were explicitly terminated by S/RES/1031 of 15 December 1995.<sup>193</sup>

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<sup>192</sup>Quote from Wheeler, Nicholas J.: *Saving strangers Humanitarian intervention in international society* 2000 pg 242.

<sup>193</sup>Quoted from Erika de Wet, *Collective Security* pg 9 Lecture notes handed over to LLM International Law student of University of Pretoria in 2009.

### 4.3 AFGHANISTAN

After the 9/11 attack on the United States of America in 2001 by the Al Qaeda terrorist network group based in Afghanistan, the state of security in the country was addressed and tougher measures put in place to fortify its borders, airstrips, waters and Home land offices.

Shocked by the terrorist attacks on world trade centre in New York and the Pentagon in Arlington, Virginia and the Pennsylvania countryside, the intelligence report of United States of America identified members of al Qaeda, an organization based in, operating out of and allied with the Taliban's Islamic Emirate of Afghanistan as the perpetrators of the attack.<sup>194</sup> The White House contacted the Taliban government through its diplomatic channel to ascertain its findings and on 5 October 2001, the Taliban offered to try Osama Bin Laden in an Afghan court, so long as the United States provided what it called "solid evidence" of his guilt, but the United States would not hand over its evidence to the Taliban.<sup>195</sup>

Therefore on October, 7 2001, the United States of America led an international force comprising of the armed forces from USA, UK, Australia and the Afghan United Front (Northern Alliance) to Afghanistan to oust the al Qaeda network and to depose the terrorist sponsored Taliban regime.<sup>196</sup> President G.W Bush stated in his address that Taliban military sites and terrorist training grounds would be targeted and in addition, food, medicine, and supplies would be dropped to 'the starving and suffering men, women and children of Afghanistan.'<sup>197</sup> By early 2002, the regime had crumbled and President George W. Bush promised that the United States of America would stay and help rebuild Afghanistan so that the country would never again become a haven for international terrorists.<sup>198</sup> The military action was presented—and broadly accepted----as an exercise of the right of self- defence.<sup>199</sup>

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<sup>194</sup> Sourced and quoted from Wikipedia (Accessed on 18<sup>th</sup> October 2011).

<sup>195</sup> *Ibid.*

<sup>196</sup> Sourced and quoted from the internet. See [www.enotes.com>social](http://www.enotes.com>social) sciences (Accessed on 20<sup>th</sup> October 2011).

<sup>197</sup> Sourced and quoted from the internet. See [en.wikipedia.org/wiki/war\\_in\\_Afghanistan\\_\(2001-present\)](http://en.wikipedia.org/wiki/war_in_Afghanistan_(2001-present)). Accessed on 18<sup>th</sup> October 2011.

<sup>198</sup> *Supra* fn 24.

<sup>199</sup> *Supra*, Simon Chester man in Welsh, Jennifer M.: pg 163-164.

The UNSC in its Resolution 1368 of 12 September 2001 'stated its readiness to take 'all necessary steps' to respond to the attacks'.<sup>200</sup> The United States, in collaboration with certain allies as stated above, launched two massive military campaigns in the aftermath of September 11 2001.<sup>201</sup> On 7 October, the United States informed the Security Council that it was exercising its right of self-defence in taking actions in Afghanistan against Al-Qaeda terrorist-training camps and Taliban military installations.<sup>202</sup> Operation 'Enduring Freedom' began on 7 October 2001 in Afghanistan, and led a few weeks later, to the collapse of the Taliban regime.<sup>203</sup>

The United Nations Security Council further reiterates its position in its resolution; UNSC Res. 1378 of Nov. 14 2001 by 'condemning the Taliban for allowing Afghanistan to be used as a base for the export of terrorism by the al Qaeda network and other terrorist groups and for providing safe haven to Osama Bin Laden....',<sup>204</sup>

In the Afghanistan operation, legitimate self –defence was the official justification canvassed by the United States of America and some of its allies.<sup>205</sup> When it began Operation Enduring Freedom in Afghanistan, the USA claimed to be acting in self-defence,<sup>206</sup> but it subsequently went on to say that it wanted to overthrow the Taliban regime and install a new government.<sup>207</sup>

The crucial question is whether democracy can ever be established by force, as in Afghanistan after Operation Enduring Freedom.<sup>208</sup>

However, it is worthy of note that majority of the Taliban regime leaders fled Afghanistan for Pakistan during the bombardments of their hide-out in Afghanistan.

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<sup>200</sup> As quoted in Welsh, Jennifer M.: pg 164 See fn 173 for citation.

<sup>201</sup> Quotes from Corten Olivier: *'Human Rights and Collective Security: Is There an Emerging Right of Humanitarian Intervention?'* In Philip Alston and Euan MacDonald: *Human Rights Intervention and the use of force* 2008 pg 132.

<sup>202</sup> *Supra* Simon Chesterman pg 165.

<sup>203</sup> *Supra*, Corten Olivier: pg 132

<sup>204</sup> As quoted in Wikipedia. See fn. 25.

<sup>205</sup> S/2001/946 (2001) As quoted in Corten Olivier.

<sup>206</sup> See Erika de Wet *supra* pg 17.

<sup>207</sup> Quotes from Gray, Christine D.: *International Law and the Use of Force* (2000) pg 190.

<sup>208</sup> *Ibid* pg 52.

The words of President Barrack Obama are worth reiterating here:

“We are in Afghanistan to prevent a cancer from once again spreading through that country. But this same cancer has also taken root in the border region of Pakistan. That is why we need a strategy that works on both sides of the border.”<sup>209</sup>

Therefore, the core goal of the US must be to disrupt, dismantle, and defeat al Qaeda and its safe havens in Pakistan, and to prevent their return to Pakistan or Afghanistan.<sup>210</sup>

#### 4.4 SOMALIA

Chapter VII powers of the United Nations Security Council was invoked to authorize enforcement measures in Somalia which was already a failed state as there was no substantive government in power to either consent to an intervention or request the United Nations to intervene. There was no functioning central government.<sup>211</sup> Thus, the country fragmented, thereby having political factions of militia. The Somali crisis was touched off by the power vacuum created when President Mohammed Siad Barre, the country’s long time dictator, fled the capital city of Mogadishu in January 1991.<sup>212</sup> Throughout 1991, Somalia was torn apart by battles among the factions’ militias and by widespread looting and banditry.<sup>213</sup> The fighting between factions prevented the distribution of food and created an epidemic that killed thousands and threatened hundreds of thousands more.<sup>214</sup>

A cease- fire agreement conference sponsored by the United Nations was negotiated among the warring factions to put an end to armed conflict, reconcile their differences through peaceful means and seek to establish a transitional

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<sup>209</sup> Speech at West Point, December 1, 2009 Sourced and quoted from the internet in Dr. Kurt Kleinschnitz & Dr. David Leffler: *The Perfect Military Intervention in Afghanistan Centre for Advanced Military Science (CAMS) Institute of Science*. See Senegambia news.com/article/---intervention\_in\_Afghanistan/19 (Accessed on 18<sup>th</sup> October 2011).

<sup>210</sup> Quote from *White Paper of the Interagency Policy Group’s Report on U.S. Policy toward Afghanistan and Pakistan* pg 1.

<sup>211</sup> Quote from Gordon Ruth E, *infra* pg 50.

<sup>212</sup> Quote from Teson Fernando R.: *Collective Humanitarian Intervention* 17 Mich. J. Int’l L. 1995-1996 pg 348.

<sup>213</sup> Quote from *The United Nations and Somalia 1992-1996* pg 12.

<sup>214</sup> Petersen Frederick J, *The Facade of Humanitarian Intervention for Human Rights in a Community of Sovereign Nations* 15 Ariz. J. Int’l & Comp. L. 871 pg 8 As quoted in Cassidy, Robert M. : *Sovereignty Versus the Chimera of Armed Humanitarian Intervention*, 21 FLETCHER F. WORLD AFF. 47(1997).

governing mechanism.<sup>215</sup> The two Mogadishu-based faction leaders (Mr. Ali Mahdi (a prominent business man) and General Aidid) each sent representatives to the February consultations at the United Nations Headquarters<sup>216</sup> prior to signing of the cease-fire agreement. It was at the “reconciliation conference” between the warring factions that Omer Arteh Qhalib was selected as interim Prime Minister.<sup>217</sup> However, Qhalib held no perceptible authority over Somali faction leaders.<sup>218</sup> Consequently, the Somali parties failed to honour the commitments they had made as the struggle between the warring factions had escalated to a full-scale civil war.<sup>219</sup>

During 1991, many individual voices were raised calling attention to Somalia’s plight, declaring it to be both a humanitarian tragedy and a threat to stability and security in the entire Horn of Africa.<sup>220</sup> On January 11, 1992, Qhalib sent a letter to the Security Council requesting an immediate meeting to address the rapidly deteriorating security situation in Somalia.<sup>221</sup> The UN Security Council in response adopted Resolution 733 in which it urged all the parties to the conflict to cease hostilities, promote reconciliation,<sup>222</sup> also, with a mandate directing the UN Secretary-General to undertake necessary action to increase humanitarian assistance to the people of Somalia.<sup>223</sup> Consequently, UNOSOM I<sup>224</sup> was established by resolution 751.

However, Somalia presents a more intricate and complex case.<sup>225</sup> The Security Council’s evaluation of the situation in Somalia resulted in Resolution 794<sup>226</sup>, which found that the unfolding human rights crisis in Somalia and the obstacles to the delivery of humanitarian assistance constituted threats to international peace and security.<sup>227</sup> This resolution resulted to the establishment of UNITAF (a United States-led Unified Task Force) which was to create a secure environment

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<sup>215</sup> *Ibid* pg 6.

<sup>216</sup> *The United Nations and Somalia: supra* pg 18.

<sup>217</sup> Teson, Fernando R: pg 348.

<sup>218</sup> Teson, Fernando R: *Ibid*.

<sup>219</sup> *The United Nations and Somalia: supra* pg 6.

<sup>220</sup> *Ibid*. pg 16.

<sup>221</sup> Teson, pg 348-349.

<sup>222</sup> *The United Nations and Somalia 1992-1996, United Nations Blue Books Series, Vol. VIII* (New York: United Nations, Dept of Public Information) 1996 pg 18.

<sup>223</sup> Quotes from Barrie, George N.: *Humanitarian Intervention in the Post-Cold War Era* pg 158

<sup>224</sup> United Nations Operation in Somalia.

<sup>225</sup> Quotes from Gordon, Ruth E.: *Humanitarian Intervention by the United Nations: Iraq, Somalia and Haiti* 31 Tex. Int’l L. J. 1996 pg 51.

<sup>226</sup> Tagged ;‘Operation Restore Hope’ of 3 December 1992.

<sup>227</sup> Gordon Ruth E: *Ibid*.

for the delivery of food and medicine to the people of Somalia.<sup>228</sup> Somalia's internal humanitarian crisis in and of itself was a threat to international peace despite the absence of any trans-boundary impact that might have incited interstate conflict.<sup>229</sup> The governmental void in Somalia presented a unique situation, a fact echoed by the members of the Security Council.<sup>230</sup>

Subsequently, resolution 814 which established UNOSOM II was adopted in 1993 with the mandate to use force as *envisaged* in Chapter VII of the UN Charter.<sup>231</sup>

The Security Council instructed UNOSOM II to assist in the process of national reconciliation, in the rehabilitation of Somalia's institutions and economy, and in the re-establishment of the nation's police forces.<sup>232</sup>

#### 4.5 THE INTRICACIES OF THESE INTERVENTIONS

Actions taken subsequent to the UNSC Resolutions in Bosnia-Herzegovina were not a success because more effective military measures were not taken to protect the people in need from murder, rape and 'ethnic cleansing'.<sup>233</sup> Rather, according to Vogel Tobias, aid workers and peacekeepers became the true objects of military assistance: UNPROFOR was not deployed to assist the Bosnian civilians but to assist those who assisted them.<sup>234</sup> On the contrary, humanitarian aid convoys were blocked particularly on the part of the Bosnian Serbs despite guarantees of safe passage.<sup>235</sup>

Peacekeepers, representing the will of the international community, were themselves scorned, taken hostage, attacked, and killed in Bosnia Herzegovina.<sup>236</sup>

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<sup>228</sup> Barrie, George N.: supra note 51.

<sup>229</sup> Gordon, Ruth E.; supra note 53.

<sup>230</sup> Gordon, Ruth E.: pg 53.

<sup>231</sup> Barrie, George N.: supra note 51.

<sup>232</sup> *The United Nations and Somalia* supra pg 40.

<sup>233</sup> Quotes from Barrie, George N.: *Humanitarian Intervention in the Post-Cold War Era* (2001) 118 SALJ pg 160.

<sup>234</sup> Vogel Tobias: *The Politics of Humanitarian Intervention; the Journal of Humanitarian Assistance* 3 September, 1996 Published by Feinstein International Centre.

<sup>235</sup> Quote from Annan Kofi A infra pg 65.

<sup>236</sup> *Ibid.*

Between 1991 and 1993 more aid workers met their deaths due to the war in Somalia where they were carrying out humanitarian assistance.<sup>237</sup> That UNOSOM II failed to fulfil completely the ambitious mandate highlights the dangers of trying to mix peacekeeping and peace enforcement, especially in the absence of a coherent or solidly supported international policy.<sup>238</sup>

Nowadays, relatively few states have the capacity to intervene on their own with the necessary combination of skill, surprise, speed and sufficient force to accomplish the aim with minimal collateral damage.<sup>239</sup>

In Afghanistan, as in any military operation, collateral damage occurred; the USA struck the only Red Cross facility in Kabul not once but twice.<sup>240</sup>

Also, the quick overthrow of the Taliban regime led to continuing insecurity but no Osama bin Laden<sup>241</sup>; and Washington's claims shifted away from the destruction of Al-Qaeda to the importance of liberating Afghans from Taliban brutalities.<sup>242</sup>

#### 4.6 EVALUATION OF ITS EFFECTIVENESS AS A TOOL FOR ENFORCING HUMAN RIGHTS

The situation in Bosnia Herzegovina posed the greatest, most novel, and most disturbing challenges.<sup>243</sup> In the joint UNSC and NATO operation in Bosnia-Herzegovina, too much emphasis was placed on the delivery of humanitarian assistance and not enough emphasis was placed on *protecting* those in need.<sup>244</sup>

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<sup>237</sup> Quotes from Duffield Mark, 'Ethnic War and International Humanitarian Intervention: A Broad Perspective' in Turton David, *War and Ethnicity; Global Connections and Local Violence Vol. 2 Studies on the nature of war* 1997 pg 203.

<sup>238</sup> Annan Kofi A: 'Peacekeeping, Military Intervention, and National Sovereignty' in Moore Jonathan, *Hard Choices, Moral Dilemmas in Humanitarian Intervention* 1998 pg 60.

<sup>239</sup> Kindiki Kithure, *The Legality and Applicability of Humanitarian Intervention to Internal Conflicts in Africa East African Journal of Peace & Human Rights* Vol. 7:1 2001 pg 23 Quotes in Barrie, G.: *South Africa's Forcible Intervention in Lesotho: What Does International Law Say?*, De Rebus 46 (1999).

<sup>240</sup> Chesterman Simon, 'in Welsh Jennifer M, (ed.) *Humanitarian Intervention and International Relations* pg 166 As quoted in Elizabeth Becker and Eric Schmitt, 'US Planes bomb a Red Cross Site', New York Times, 27 October 2001.

<sup>241</sup> Not until May 1 2011 when Osama Bin Laden was killed in Pakistan by the USA.

<sup>242</sup> Quotes from Weiss Thomas G: *The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era*, *Security Dialogue* Vol.35, No. 2, June 2004 pg 144.

<sup>243</sup> Annan Kofi A, *Infra* pg 61.

<sup>244</sup> Quotes from Barrie, George N.: *Humanitarian Intervention in the Post-Cold War Era supra* note 61.

The citizens of Bosnia found themselves in a situation where the rule of the gun had replaced the rule of law.<sup>245</sup>

Although the humanitarian problems in Somalia, have for the most part of the period in consideration ended.<sup>246</sup> However, the factional warlords are still controlling Somalia, the recent situation of things in Somalia attests to the fact that Somalia is not a stable state. Humanitarian assistance in the form of relief is still needed. The UN Operation in Somalia was by 1993 the largest (28,000 personnel) and the most costly in the world (\$ 1.5 billion annually, more than twice Yugoslavia).<sup>247</sup>

The United Nation's interventions in Somalia (1992), .....all support the contention that the Security Council presently believes it is empowered under Chapter VII of the UN Charter to authorise the use of military force to end massive human rights abuse.<sup>248</sup> In Kofi Annan's words:

"Recent years have seen United Nations interventions succeed in helping several troubled nations make the difficult transition from conflict to reconciliation, reconstruction, and long term development. Elsewhere, however, the organization has become embroiled in circumstances that scarred its credibility and moral stature."<sup>249</sup>

For instance, in Bosnia-Herzegovina, the NATO air strike operation was fraught with mass civilian casualties. According to Chandler<sup>250</sup>, the Canadian lawyer, Michael Mandel argues that NATO leaders deliberately and illegally made military targets of city bridges, factories, marketplaces, residential neighbourhoods and TV studios with slight or no military value, with the knowledge that hundreds of civilian deaths would be caused. In the same vein, interventions in Somalia and Afghanistan suffered similar fates.

Lack of adequate troops to carry out the humanitarian mission often poses a situation whereby the civilians are killed in crossfire. If the troops were sufficient to spread across the conflict zone, there may be minimal casualty from the troops and civilians. For instance, in Bosnia Herzegovina, when the Security

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<sup>245</sup>Quote from Wheeler Nicholas pg 250.

<sup>246</sup> Petersen Frederick J, *supra* note 42.

<sup>247</sup>Quotes from Lewis, Ioan M.: '*Clan Conflict and Ethnicity in Somalia: Humanitarian Intervention in A Stateless Society*' in Turton David *War and Ethnicity; Global Connections and Local Violence Vol. 2 Studies on the nature of war* 1997 pg 179.

<sup>248</sup> Quoted from Holzgrefe J L and Keohane Roberts O, *Humanitarian Intervention Ethical Legal and Political Dilemmas* (ed.) 2003 pg 41.

<sup>249</sup> Annan Kofi A: '*Peacekeeping, Military Intervention, and National Sovereignty in Internal Armed Conflict*' in Moore Jonathan, *Hard Choices; Moral Dilemmas in Humanitarian Intervention* 1998 pg 56.

<sup>250</sup> Chandler David: '*International law and the challenge of Human Rights*' in '*From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto Press) 2002 pg 145.

Council designated the safe areas, the Secretary General offered options ranging from 7,600 to 34,000 troops to deter attacks against them but member states chose the minimum option, and even they only provided troops to reach the required level after more than a year.<sup>251</sup>

The failure of air power in Bosnia-Herzegovina to deliver the Security Council's promise to protect the safe areas proved yet again that air power is no substitute for an effective force on ground.<sup>252</sup> It was this combination of air and ground forces that had been so cruelly lacking in the previous years in Bosnia and that was to be missing yet again in NATO's response to Milosevic's human rights violations in Kosovo.<sup>253</sup>

Colossal waste of lives, no clear mission and lack of exit strategy often cloud humanitarian intervention thereby causing *more harm than good*. The words of Kofi Annan are apt here:

"The lessons of Somalia, Bosnia, and Rwanda is that the U.N, must be clear about the problems facing it in discharging a mandate; the lengths to which we are prepared to go to overcome them; the means required; and the risks, costs, and moral dilemmas that will inevitably accompany any course of action or inaction in such difficult situations."<sup>254</sup>

However, sometimes in the long run, humanitarian intervention often put paid its mission.

#### 4.7 CONCLUSION

The opportunity for presenting a general framework for successful humanitarian intervention has arisen.<sup>255</sup> Effective humanitarian intervention with minimal or no loss of lives is envisaged in future interventions. The situation of the state at the end of the intervention should be seen to be better off. The intervention ought 'to have done more good than harm'.

The United Nations can be a courageous third party that brings hope to victims and succour to the needy and that rouses the collective conscience of humankind.<sup>256</sup>

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<sup>251</sup>Quote from Annan Kofi A, *supra* pg 67.

<sup>252</sup> Wheeler Nicholas: pg 255.

<sup>253</sup> *Ibid.* pg 257.

<sup>254</sup> Annan Kofi A: *supra* pg 66.

<sup>255</sup> Barrie, George N.: *supra* pg 166.

<sup>256</sup> Quote from Annan Kofi A: *supra* pg 69.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 INTERVENTIONS AND ITS FLAWS

In undertaking a humanitarian intervention mission, however good the intentions of the interveners might be, it is often fraught with difficult challenges. These challenges range from manmade situations to unforeseeable circumstances. The use of arms by combatants is not devoid of killing civilians either by way of stray bullets or being caught in the cross-fire. For instance, according to Tobias, 250,000 Bosnians paid for Western indecision with their lives.<sup>257</sup> Also, troops dispatched to carry out intervention missions are not spared, as they often fall casualty of war. For instance, during the operation in Bosnia Herzegovina, air strikes were strongly opposed by Britain and France, who feared for the safety of their military personnel on the ground and that of UN aid workers.<sup>258</sup> In addition, Bill Clinton the former President of the United States of America ruled out from the beginning the deployment of US troops into a combat environment, believing that the risks of an open-ended commitment were too high, and that the American public would not support the spilling of American blood to stop Bosnians killing Bosnians.<sup>259</sup> Hence, use of force has often been reiterated to be utilized as a last resort because of its inherent nature.

Interventions can themselves generate new cycles of abuse or discrimination.<sup>260</sup> This view is mirrored in the occurrence in Bosnia Herzegovina when 'the NATO air strikes placed the UN clearly in the role of a combatant, and the response of the Bosnian Serbs after the attacks against Pale in May 1995 was to take UN soldiers hostage and to overrun the towns of Srebrenica and Zepa'.<sup>261</sup> There are unforeseen costs in damage, deaths and disruption.<sup>262</sup>

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<sup>257</sup> Vogel Tobias, *The Politics of Humanitarian Intervention* The journal of Humanitarian Assistance 3 September, 1996 Published by Feinstein International Centre.

<sup>258</sup> Wheeler Nicholas J.: *Saving Strangers Humanitarian Intervention in International Society* pg 252

<sup>259</sup> As quoted in Wheeler Nicholas J. *Supra* pg 253

<sup>260</sup> Paper on Human Rights Crises: NGO Responses to Military Interventions by international council on Human Rights Policy pg 32.

<sup>261</sup> As quoted in Wheeler, Nicholas J.: *supra* pg 255.

<sup>262</sup> Paper on Human Rights Crises, *Ibid* 32.

The costs of lost opportunity also need to be considered.<sup>263</sup> This was highlighted by Sahnoun with reference to Somalia when he stated that the “U.N which is supposed to make peace, found itself killing people, and bombing a meeting of elders under the mistaken impression that General Aidid was among them”.<sup>264</sup> Furthermore, the United Nations’ reputation ought to be protected whilst intervening in a conflicting state.

The fall of Srebrenica according to Annan is attributed to the inability of the United Nations to keep a designated safe area safe and to avert a human rights tragedy-hence, it has stained the record of the United Nations and will make it difficult for the international community to act in the future as a moral force.<sup>265</sup>

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<sup>263</sup> *Ibid.*

<sup>264</sup> Sahnoun Mohammed: *‘Mixed Intervention in Somalia and the Great Lakes Culture, Neutrality, and the Military’* in Moore Jonathan, (ed.) *Hard Choices Moral Dilemmas in Humanitarian Intervention* (Lanham Md., Rowman & Littlefield, Oxford) 1998 pg 98.

<sup>265</sup> Annan Kofi A: *‘Peacekeeping, military Intervention, and National Sovereignty in Internal Armed Conflict’* in Moore Jonathan, *Hard Choices; Moral Dilemmas in Humanitarian Intervention* 1998 pg 67.

## 5.2 GENERAL RECOMMENDATIONS

It is essential that the consent of the government wherein the intervention is to take place be sought. According to Annan<sup>266</sup>, more difficult have been cases in which the United Nations has been called on to intervene in conflicts without the full and reliable consent of all the relevant parties. In Bosnia Herzegovina the consent of the parties, when it came, tended to be hard-won and short-lived.<sup>267</sup>

In a situation whereby there is no functional or effective government, precaution should be taken as a way of making sure that the UNSC authorization is sought and granted before embarking on such a mission. However, if the authorization is not forthcoming and intervention is urgently needed in the conflict state, the UN General Assembly should be approached. The UN General Assembly under the 'Uniting for Peace' procedure may recommend to the Security Council to intervene. Although, according to Article 18 of the United Nations Charter, this procedure requires two-third majority of the General Assembly members that are present and voting at the session.

Regional agencies or coalition of states acting under the authorization of the Security Council, when carrying out humanitarian mission ought to do so with the aim of saving lives and not to escalate the death toll caused by the conflict. There should be adequate man power and machineries put in place to forestall the escalation of the conflict. Also, the troops should apply accuracy and precision in combat. It has been argued that the lack of coordination and effective measures created conditions where UN peace-keeping forces often found themselves under direct attack in Bosnia Herzegovina.<sup>268</sup>

The criteria enumerated by the ICISS and the UN High-Level Panel on threats, Challenges and Change should as much as possible, are diligently adhered to irrespective of state interest when carrying out peace enforcement and peace keeping missions.

It has been advocated also that successful settlement and conflict resolution requires a level of participation by local actors in the peace-building process that

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<sup>266</sup> Annan Kofi A: *supra* pg 59.

<sup>267</sup> *Ibid* pg 65.

<sup>268</sup> Gizelis Theodora-Ismene and Kosek Kristin E.: *Why Humanitarian Intervention Succeed or Fail The Role of Local Participation in Cooperation and Conflict: Journal of the Nordic International Studies Association* Vol.40(4) pg 377.

intervening parties have rarely managed to foster, as attested by the two cases of Somalia and Bosnia-Herzegovina (Bosnia).<sup>269</sup> Working with the local population was also postulated by Sahnoun.<sup>270</sup> He argues that the various engagements of outside parties in Somalia failed to make use of local networks as good channels for assistance, which led to a top-down process rather than a grassroots approach and was symptomatic generally of a low priority placed on local participation.<sup>271</sup>

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<sup>269</sup>Gizelis Theodora-Ismene and Kosek Kristin E, *Ibid* pg 367.

<sup>270</sup> Sahnoun Mohammed: *supra* pg 88-91.

<sup>271</sup> *Ibid* pg 89.

### 5.3 CONCLUSION

Generally, internal armed conflicts are often associated with deaths, injuries and disruption to the lives of people within the conflict zone. 'Civilians are not only caught in the cross fire but are often the targets of violence; denied food, shelter, and dignity; and subject to suffering less likely to occur in more conventional wars between the armies of two states'.<sup>272</sup>

The aftermath of the attempted secession of the eastern Nigeria under the umbrella of the name 'Biafra'<sup>273</sup> from Nigeria is still fresh in the mind of the people of Nigeria. Lots of families lost their bread winners to the war and there was economic backwardness amongst the easterners as their properties were confiscated as abandoned property. Some of the survivors of the war are still living with deformities sustained during the war such as amputation of the limbs. Therefore, humanitarian intervention should be utilized as a last resort to quell the violence occasioned by the internal conflict. Alternate dispute resolution medium such as mediation and conciliation should be exhausted. Moreover, the United Nations must give notice to the state concerned that unless that state stops the violations itself or with the help of others, intervention will follow.<sup>274</sup>

Considering the fact that the concept 'humanitarian intervention' enhances the fear of the "Trojans", the term 'responsibility to protect' is well embraced. The United Nations Secretary General Ban Ki Moon "has taken the lead to implement R2P in all areas of UN policy".<sup>275</sup> According to Saxer<sup>276</sup>, R2P essentially;

- \* transformed the controversial "right to intervene" to a subsidiary "responsibility to react", leaving it in the hands of sovereign governments to put things right to fend off international action,
- \* limited the scope of the intervention agenda to four internationally solidly codified cases (genocide, ethnic cleansing, war crimes) and to crimes against humanity which is not overly controversial,
- \* embedded the controversial question of military interventions in a comprehensive concept with strong focus on prevention,
- \* broadened the policy options from an "intervention or standing by" approach to a wide cascade of measures ranging from diplomatic pressure, economic and political sanction to military intervention.

In sum, humanitarian intervention ought to alleviate the suffering during internal conflict.

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<sup>272</sup> Quotes from Annan Kofi A: supra pg 56.

<sup>273</sup> The war erupted from 1967-1970.

<sup>274</sup> Kindiki Kithure, *The Legality and Applicability of Humanitarian Intervention to Internal Conflicts in Africa* East African Journal of Peace & Human Rights Vol.7:1 (2001) pg 53.

<sup>275</sup> Saxer, Marc *The Politics of Responsibility to Protect* Fes Briefing Paper No, 2, April 2008 pg 7.

A special adviser to the UN Secretary General was appointed.

<sup>276</sup> Saxer, Marc: supra pg 2.

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